

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.348 OF 2023

DISTRICT : THANE
Sub.:- Selection Process

Shri Nitesh Babasaheb Bhonde.)
Age : 33 Yrs, Working as Assistant)
Police Sub-Inspector (ASI), Wireless in the)
Office of Commissioner of Police, Thane)
City and Posted at Polic Wireless)
Department, Thane City, Zone-3, Kalyan,)
Thane City – 400 601.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Secretary.)
Maharashtra Public Service)
Commission, Cooperage Telephone)
Exchange Building, M.K. Road,)
Cooperage, Mumbai 400 021.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Shri Debashish Chakrabarty, Member-A

DATE : 26.07.2024

JUDGMENT

1. The Applicant is challenging impugned Order dated 10.2.2023 passed by Respondent No.2 - M.P.S.C, by which the applicant is declared ineligible to appear for all the examinations and selection conducted by

Respondent No. 2 w.e.f 30.7.2022 and debarring him permanently. The Applicant further seeks declaration that the Applicant is eligible to appear for the examination and allow him to participate in the recruitment process.

2. Learned Advocate submitted that Applicant joined the Police Force on 22.08.2016 as 'Assistant Police Sub-Inspector (Wireless)'. The learned Advocate submitted that Respondent No. 1, issued advertisement on 11.2.2022 for the post of 'P.S.I Limited Departmental Pre-Examination, 2021'. On 16.4.2022, the Respondents conducted the Preliminary Examination and Respondent No. 2 published the result of the Preliminary Examination and Applicant successfully qualified in the said examination. On 15.6.2022, Respondents had issued the advertisement for the Main Examination and on 30.7.2022, the Applicant appeared for the Main Examination. The result of Main Examination was declared on 23.9.2022 by Respondent No. 2 - M.P.S.C. As Applicant secured 56.25 marks, he qualified for the Interview. The learned Advocate submitted that Respondent No.2 - M.P.S.C issued 'Show Cause Notice' dated 24.11.2022 to Applicant. The Respondent No. 2 - M.P.S.C made allegations that Applicant has violated Instruction No. 9.1 (6), (8), (12) & (13) of the General Instructions to the candidates. Learned Advocate submitted that Applicant gave his explanation. However, Respondent No. 2 - M.P.S.C without considering his explanation passed 'Impugned Order' on 10.2.2023 permanently debarring the Applicant.

3. Learned Advocate for the Applicant has submitted that Applicant has submitted his Written Explanation before M.P.S.C that he has not violated Instructions No. 9.1(6), (8), (12) & (13) of the General Instructions to candidates. The Applicant did not intend to violate the rules in respect of copying at the time of the examination. Learned Advocate further submitted that there was no incident of copying. Learned Advocate submits that Applicant has worked in 'Police Force' having unblemished Service Record and if Applicant is permanently

debarred, then his future career will be spoiled, as the chances of promotion of Applicant is scuttled. Learned Advocate for Applicant relied on decision of Hon'ble Supreme Court in the case of **GURU NANAK DEV UNIVERSITY & ANR Vs. HARJINDER SINGH & ANR, (1994) 5 SCC 208.**

4. Learned C.P.O relied on 'Affidavit-in-reply' dated 25.4.2023 filed by Smt. Megha S. Dhere, Under Secretary in the office of M.P.S.C, Navi Mumbai and submitted that 'Show Cause Notice' was issued under Instructions No. 9.2.3 of General Instructions to the candidates for violating Instruction Nos. 9.1 (6), (8), (12) & (13) of the General Instructions to the candidates. Learned C.P.O submitted that Respondent No. 2 - M.P.S.C has followed proper procedure before passing the Impugned Order of debarring the Applicant from appearing in Competitive Examinations. Learned C.P.O explained that in order to avoid the malpractices in the examination by the candidates, the Commission informed all the candidates through 'Official Twitter' and 'Telegram Channel' on 29.7.2023 that examination will be held under the surveillance of CCTV. Learned C.P.O submitted that from the CCTV surveillance footage is clearly visible and during examination, the Applicant was talking with candidates and showing the Question Paper and solving the questions with the help of each other. This being cheating not allowed in the examination process, Applicant has violated Instruction No. 9.1(6), (8), (12) & (13) of the General Instructions to candidates. Learned C.P.O further submitted that Applicant indulged in copying in the examination and thereafter giving Notice and considering the explanation of Applicant, the Respondent No. 2 - M.P.S.C has taken action for permanently debarring the Applicant under Instructions No. 9.2.3. Learned C.P.O relied on decision of Hon'ble Supreme Court in **Bihar Public Service Commission Vs. Vinay Kumar Singh, (2003) 7 SCC 28.**

5. Considered the submissions of both the parties. The Applicant is in-service candidate from 'Police Force' and he is permanently debarred which will have set back in his career. M.P.S.C itself is a Constitutional Body having their powers and rights of conducting the examination for filling up various posts in the Government. M.P.S.C have their set of principles, guidelines and the procedure. The Tribunal cannot go into the correctness of the order of M.P.S.C as an Appellate Authority, but can only find out whether the M.P.S.C has failed to follow the procedure or the order passed is arbitrary or against the principles of natural justice. Admittedly, 'Show Cause Notice' was given to Applicant to give his say. After obtaining his explanation, it was considered by authority and thereafter, Respondent No.2 - M.P.S.C has issued the 'Impugned Order' dated 10.2.2023 permanently debarring the Applicant. These facts are reflected in 'Impugned Order'. The evidence by the Authority is of CCTV Footage and it is submitted by learned C.P.O that under the CCTV footage, the Applicant is seen to be talking with each other at the time of the examination. Moreover, the Supervisor had also warned him not to indulge into these practices. The Applicant neglected it and went on talking with each other. Though learned Advocate for Applicant while refuting this has submitted that in CCTV Footage, no Supervisor is seen. This submission of learned Advocate cannot be accepted, because there can be possibility that Supervisor may be standing outside the range of Camera. We saw CCTV footage and confirmed that Applicant intermittently talked with the other candidates regarding Question Papers. Thus, they helped each other illegally at the time of examination.

6. In the case of **Guru Nanak Dev University** (cited supra), a Flying Squad found many students possessed incriminating material of copying. So, University inquired into the complaints received by it. The answers were compared and found verbatim. The students were charged for using unfair means in the examination and were given opportunity to meet the charges. However, the 'Standing Committee' of the 'University'

found the Respondents guilty in its proceedings. The Hon'ble High Court quashed the proceedings of 'Standing Committee' on the ground of non-recovery of incriminating material from the Respondents. The 'University' approached Hon'ble Supreme Court challenging the order of Hon'ble High Court and Hon'ble Supreme Court dealt with the expression "unfair means" and it held that there is no evidence to the ingenuity in discovering new techniques and methods of copying in the examination halls. It is therefore not possible to give an exhaustive definition of "unfair means". The Hon'ble Supreme Court allowed the Appeal. This judgment is in fact is helpful to the Respondent-State.

7. In the case of ***Bihar Public Service Commission*** (cited supra), while dealing with the similar issue in respect of practicing 'unfair means' of examination and recruitment in public employment, the answer books were found to be based on material smuggled from outside. So also, the signatures of Invigilators were found to be forged. The Hon'ble Supreme Court while dealing with the powers and action taken by Commission against the Candidates practicing 'unfair means' held that the Courts can certainly examine whether the decision making process was reasonable, rationale and not arbitrary on the facts and circumstances in each case. The Hon'ble Supreme Court has confirmed the order of the Commission of cancelling the examination of the candidate and debarring him in view of the act committed by him.

8. The present case is distinguishable on facts on that point, however, it is true that Applicant has violated the guidelines of M.P.S.C that the candidates should not ask the answers to other candidates and take help of other candidates while writing answers. In the present case, admittedly, there is no planning or preparation to bring external material or cheat the Commission. We do not want to encourage or hush up any act of copying in the examination hall, but we do understand that the unfair means used for copying is of a lesser degree.

9. However, involving in copying by conversation with the nearby candidates seeking their help to solve the question paper does amount to copying which is the easiest and accessible way of copying. We unfortunately cannot show any leniency to Applicant, as it will be a precedent for others, if the incidence of such copying takes place in future. However, we agree that debarring him permanently is disproportionate, hence, we are of the view that Applicant should be debarred from appearing for One Examination, excluding the one for which he has appeared for promotion/appointment to post of 'PSI'.

10. We, therefore, pass the following order.

ORDER

- (A) The Original Application is Partly Allowed.
- (B) No Orders as to Costs.

Sd/-

(DEBASHISH CHAKRABARTY)
Member-A

Sd/-

(MRIDULA BHATKAR, J.)
Chairperson

Mumbai

Date : 26.07.2024

Dictation taken by :

S.K. Wamanse.

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