

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.473 OF 2024

WITH

MISCELLANEOUS APPLICATION NO.310 OF 2024

DISTRICT : PUNE

Smt. Komal Sanjay Bhopale,)
Age 27 years, occ. Student, R/o Flat No.9, Sai Villa,)
Lane No.5, Sudarshan Nagar, Near Shrushti Chowk,)
Pimpalgarav, Pune 61)..Applicant

Versus

The Secretary,)
Maharashtra Public Service Commission,)
Trishul Gold Field Building, Plot No.34,)
Opp. Sarovar Vihar, Sector 11, CBD, Belapur,)
Navi Mumbai 400614)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson

DATE : 13th May, 2024

J U D G M E N T

1. The applicant has filed the present OA and interim application seeking directions from this Tribunal to the Respondent-MPSC to carry

out the assessment for Question Booklet No.305900 with Question Booklet Series 'D' (Set Code Number) for Answer sheet of Paper No.1 of Maharashtra Subordinate Services Main Examination – 2022 for Police Sub Inspector and accordingly the respondent be further directed to declare the marks of the applicant for the Mains Examination in order to undergo further selection process such as Physical Test and the Interview test.

2. Ld. Advocate for the applicant has submitted that the Respondent-MPSC issued advertisement No.53/2022 dated 23.6.2022 for Maharashtra Subordinate Services Non-Gazetted Group-B Post Common Preliminary Examination – 2022 to fill up total 800 posts including 603 posts of the Police Sub Inspector. The applicant cleared the Preliminary Examination on 11.8.2023. The schedule of the Mains Examination was declared by Advertisement dated 14.8.2023. Applicant appeared for the Main Examination and the results were declared on 13.3.2024 wherein the name of the applicant did not appear. Applicant was informed that as the applicant had failed to mention the Question Booklet Series and to darken the circle provided for alphabets in the Answer sheet, hence her answer sheet was not assessed.

3. Ld. Advocate for the applicant has further argued that when the applicant had relooked the Answer sheet copy, it was found that inadvertently this bonafide error has occurred. The applicant did not wrote the Question Booklet Series (set code) 'D' in the Answer sheet and also did not blacken the circle provided for alphabet 'D'. Even the Invigilator has neither filled the Question Booklet Series nor darkened the circle provided for the alphabet which is required to be done by the Invigilator at the time of supervision. He has only signed in the box provided for the Invigilator.

4. Ld. Advocate for the applicant has pointed out the Press Note/Public Notice/Announcement dated 2.8.2022 wherein in column no.14 it was mentioned that if the candidate and the invigilator both does not write the question booklet series and darken the circle provided, then such answer sheet will not be assessed. Ld. Advocate for the applicant has argued that the mains examination was conducted on 1.10.2023 and the applicant realized within two days thereafter that she forgot to fill up the Question Booklet Series No.'D' and she immediately submitted her representation dated 4.10.2023 to the respondent with acknowledgement dated 4.10.2023. This Press Note is issued for the first time and for such bonafide mistakes the MPSC earlier used to take different stand. Ld. Advocate for the applicant pointed out 5 reasons provided in para 2 of the Press Note dated 2.8.2022 for details of mistakes i.e. not writing name of the examination, roll number, signature, number of questions attempted and the signature of the invigilator and in the next column it is stated that for such mistakes the answer sheet will be assessed. In para 3 of the notice they have given different circumstances such as mentioning of question booklet number and series and darkening of circle etc., and for such mistakes the assessment will not be done. Ld. Advocate for the applicant submits that the applicant has not mentioned the Question Booklet series and not darkened the circle provided for such alphabet and he is facing the issue. Ld. Advocate for the applicant submits that the Press Note is instructions and not the rules.

5. Ld. Advocate for the applicant submits that the applicant has now filed the above MA for the directions to the respondent to allow the applicant to undertake and to appear for the Physical Test scheduled as per publication dated 9.5.2024 for the period between 24.5.204 and 6.6.2024. Ld. Advocate for the applicant submits that he has made a case for interim relief and the applicant may be allowed to appear in the physical examination.

6. Affidavit in reply dated 8.5.2024 is filed by Dilip Arjun Waghe, Under Secretary, MPSC and he appeared today through Videoconferencing. He on query has submitted that the work of assessment of the papers is given to the private service providers by issuing tenders. He pointed out para no.4 of the Press Note dated 2.8.2022, that any representation or correspondence in respect of error or mistakes in the answer paper will not be taken into account and whatever letters are sent by candidates are filed and not looked into and that is why the letter of the applicant was not replied. He answered that no action is taken against the Invigilator for his/her mistake of not mentioning the Question Booklet Series on the answer sheet of the applicant.

7. Ld. PO relied on the said affidavit in reply dated 8.5.2024 and has submitted that the process and assessment of answer papers by the MPSC is computerized and no human interference is found. The MPSC is unable to identify in which set code (Booklet Series No.) the answer sheet of the applicant is to be considered. Ld. PO argued that the applicant has not challenged the Press Note dated 2.8.2022. Ld. PO vehemently opposed the submissions of the Ld. Advocate for the applicant and she relied on the decision dated 28.7.2022 taken by the MPSC annexed to the reply. She has submitted that if at all interim relief is granted it is as good as deciding the OA finally. Moreover, there may be number of candidates who have committed such mistakes and not written the booklet series in the answer sheet and they all will approach this Tribunal, if the relief is granted and this will become a precedent and will create chaos.

8. Heard both the sides. The result of the mains examination was declared on 13.3.2024 and the applicant has filed this OA on 3.4.2024. The interim relief and the final relief are same and therefore if interim relief is granted it will be granting final relief and deciding the OA finally.

The applicant has filed the present MA today i.e. on 13.5.2024 and moved before the Vacation Court. Applicant in the above MA prays for directions to the respondent to allow the applicant to appear for Physical Test scheduled for the period between 24.5.2024 and 6.6.2024.

9. In the present matter the mistake committed is that the applicant forgot to write the question booklet series (Set Code) and darken the circle provided for such alphabet in the answer sheet is admitted by the applicant. The decision is taken by MPSC on 28.7.2022 and pursuant to that the Press Note was published on 2.8.2022. I have perused the copy of answer sheet. It confirms the error on the part of the applicant and also by the Invigilator. The main resistance on the part of the MPSC is that entire process is computerized and there is no human interference and therefore they cannot correct such mistake. This argument is not tenable and frustrating their own decision dated 28.7.2022. In para 2 of the said decision it is specifically mentioned that whatever the system they have adopted but the object is, no candidate should unnecessarily be a sufferer and there should be an observance of the principles of natural justice so that the Court matters can be avoided. In para 3 also in the decision-making process it is mentioned the competitive examination is a major phase in the life of candidates. However, the concerned departments do not attend such calls and do not cooperate with the candidates which leads to quarrels and disputes. It is further stated in para 3 of the said note dated 28.7.2022 that the candidates should be well informed about the action taken by the MPSC. The object of the MPSC appears to be candidate friendly and laudable. However, the MPSC has lost sight of one important aspect that in the computerized process the assessment of the answer sheet though is computerized without human interference; it is the human being who writes the answer sheet so common human errors are bound to take place despite of any Press Note. The human errors, which are not intentional and not deliberate, will not

invite serious repercussion, such mistakes are required to be examined and considered by applying human logic and criteria. Use of machines should not frustrate the basic human approach and considerations.

10. When this OA was filed on 3.4.2024, notices were issued on 4.4.2024 returnable on 15.4.2024 and no interim order was passed as Ld. CPO sought time to file reply. Thereafter the matter appeared on 15.4.2024, 25.4.2024, 2.5.2024 and 7.5.2024 and Ld. CPO sought time to take instructions and file reply. Reply is filed by Under Secretary of MPSC on 8.5.2024. 10.5.2024 was the last working day before summer vacation. Ld. Advocate for the applicant pointed that in between on 9.5.2024 the MPSC declared the program for physical test commencing from 24.5.2024 to 6.6.2024 and therefore the applicant has filed the present MA in vacation for grant of interim relief praying that the applicant be allowed to participate in the physical test.

11. It is made clear that the applicant cannot be allowed to appear for the physical test without passing the main examination. She cannot be given different treatment than the other candidates who have cleared the mains examination and are found eligible for the physical test.

12. There is one more important aspect which is required to be mentioned that, in the Press Note dated 2.8.2022 the mistakes and errors committed by the candidates and the Invigilator are taken into account. Thus, MPSC has rightly considered that it is the responsibility of the Invigilator/Supervisor also to take care of such errors like not writing the question booklet series (set code) in the answer sheet and darkening the circle provided for such alphabet. It appears that the Invigilator who was on duty at the time of examination had failed in his/her duty. Under such circumstances a candidate cannot be debarred when the candidate has written the answer sheet. On perusal of the answer sheet it is clear that

the applicant has filled details in other columns in the answer sheet except question booklet series, which is 'D'. The MPSC could have easily found the set code number of the Question Booklet Series on the basis of other information provided by the applicant on the first page of the answer sheet.

13. The balance of convenience lies in favour of the applicant because if the relief is not granted the applicant will be debarred from the examination; on the other hand the MPSC has only to ask the applicant to write 'D' in the column provided for writing Question Booklet Series and to darken the circle provided for alphabet 'D' and process the answer sheet. It is to be remembered that a human brain feeds the program to the computer and computer is to make the examination process easy.

14. In view of the aforesaid circumstances of the case, the Respondent-MPSC is directed to allow the applicant to write 'D' in the column provided for writing Question Booklet Series and darken the circle provided for alphabet 'D' in the answer sheet and process the answer sheet. The result is to be declared by 17.5.2024 and communicated to the applicant immediately. In case the applicant clears the Mains Examination, she may be allowed to appear for the physical test and interview. With these directions the OA and MA are disposed off by consent. No order as to costs.

Sd/-
(Mridula Bhatkar, J.)
Chairperson
13.5.2024

Dictation taken by: S.G. Jawalkar.