

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10455 OF 2014
WITH
CIVIL APPLICATION NO. 166 OF 2015

1. Pandurang s/o Gangadhar Sawant,
Age 25 years, Occ. Nil,
R/o. Kashinath Nagar,
near House of Shri Gadge,
Pangri Road, Beed
2. Mubin Khan s/o Gulam Mohd. Pathan,
Age 42 years, Occ. Nil,
R/o at Post Ajmernagar
Belepeer, Beed
3. Ankush s/o Rama Pawar,
Age 27 years, Occ. Nil,
R/o. C/o. Sainath Dresses,
Mondha Road, Wadwani,
Taluka Wadwani, Dist. Beed
4. Pushpa d/o Arjun Mhaske
Age 27 years, Occ. Nil,
R/o. C/o. Mohan Rambhau Ukande,
Burud Galli, Ravivar Peth,
Beed, District Beed. ...Petitioners

versus

1. The State of Maharashtra
Through it's Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai 32
2. The District Collector, Beed
3. The District Selection Committee,
Through it's Member Secretary,
& Resident Deputy Collector, Beed. ...Respondents

.....
Mr. Hemant S. Surve, advocate for the petitioners
Mr. K.G. Patil, A.G.P. for respondents
.....

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

**Date of Reserving
the Judgment : 26.06.2015**

**Date of pronouncing
the Judgment : 14.08.2015**

JUDGMENT (PER V. K. JADHAV, J.) :-

1. Rule. Rule returnable forthwith. By consent, heard finally.

The brief facts, giving rise to the present writ petition, are as under:-

2. On 7.3.2012, the respondent District Collector, Beed issued an advertisement for filling up 46 clerical posts, 59 posts of Talathi and 12 posts of Peon. In the said advertisement, it was specifically stated that selection list would be prepared on the basis of written examination of 200 marks, to be conducted by the selection committee. From 1.4.2012 to 8.4.2012, the admit cards/hall tickets were issued to the respective candidates, including the petitioners by the Selection Committee. The question papers of written examination were framed by the Selection Committee under the chairmanship of the District Collector. On 8.4.2012, the written examination was conducted by the Selection Committee. In due course, to cross-check the correctness of result sheet, an answer key was also published by the Selection Committee and after considering objection raised to the answer key, revised answer key was also published by the Selection Committee. After entire process of selection was finalized, the Selection Committee published the final select list on 16.6.2012. The petitioner Nos. 1 and 2 came to be selected as Clerk-cum-Typist while

petitioner Nos. 3 and 4 came to be selected as Talathi. On 25.6.2012, the petitioners were asked to attend the office for verification of documents and the same was done on that day. After entire process was over, the further process was stalled due to certain complaints.

3. On 1.7.2012, the new incumbent was posted as District Collector in place of earlier incumbent. It appears that certain journalists approached the newly posted District Collector and pointed out certain malpractices in conduct of the selection process. Thus, the newly posted District Collector passed an order of stoppage of issuance of appointment orders to the candidates. The District Collector, thereafter appointed a sub committee consisting of five officers from the Collectorate at Beed, to submit a report about correctness of earlier selection process undertaken by the Selection Committee. Except the resident Deputy Collector, no other member from the Selection Committee was appointed in the aforesaid sub committee as member.

4. The said sub committee has ultimately submitted its report on 6.8.2012. The sub committee, has referred several points in the report. Prominent amongst them, that the question papers set out by the Selection Committee were not in consonance with the Government Resolution dated 19.10.2007, which prescribes number of questions for each subject. The Additional District Collector, who headed the sub committee, and 3 other Deputy Collectors did sign the report, however, the resident Deputy Collector refused to sign on the said report. Consequently, the District

Collector, has asked for specific report of the resident Deputy Collector, in this regard. Thus, the resident Deputy Collector, has rendered his independent report dated 9.8.2012. The District Collector, thereafter, forwarded the report of the resident Deputy Collector to other members of the sub committee and asked them to offer their comments. Accordingly, a detail noting sheet was prepared by the three Deputy Collectors, who were the members of the sub committee.

5. In the meanwhile, certain candidates had approached the Divisional Commissioner, in this regard. In the result, the Divisional Commissioner had asked for explanation from the District Collector. The District Collector, has tendered his explanation vide communication dated 15.9.2012 and pointed out the aforesaid reports submitted by the sub committee appointed by him. According to the District Collector, the selection process was faulty, as sub committee has reported to him that there was non-compliance of condition prescribed in Government Resolution dated 19.10.2007 in respect of number of questions to be framed in selected subject. The Dist. Collector, by communication dated 21.8.2012, had also motioned the Government asking for cancellation of entire selection process.

6. After the District Collector made recommendation for cancellation of entire selection list, the Divisional Commissioner disassociated himself from the observations and left the decision to

be taken by the Government. Till that time, certain candidates also approached the concerned Minister and the Chief Minister making a grievance in that regard. Consequently, the Deputy Secretary came to be deputed for verifying the factuality with a direction to submit a report to the concerned Minister. Thus, the Deputy Secretary, alongwith a team of at least seven other officials, once again re-assessed the entire happenings and a detail noting sheet was prepared. Thereafter, conclusive decision was taken to remand the matter back to the District Collector and it was left to the District Collector to take decision on the selection process already concluded. The District Collector, thereafter once again convened a meeting of the Selection Committee and it was concluded in the said meeting that the selection process was not in conformity with the guidelines on the subject. Thus, entire selection process was cancelled.

7. Thereafter, in all 21 candidates, being aggrieved by the decision of the District Collector, in which 11 candidates were from Clerk-cum-Typist category while others were from Talathi category, filed Original Application before the Maharashtra Administrative Tribunal at Mumbai. The present petitioners were also the applicants in the said Original Application filed before the Maharashtra Administrative Tribunal. The petitioners in the Original Application

claimed that there was discrimination meted out to them and the others *qua* the yardsticks of posing questions in the question papers. It was specific contention of the petitioners that the decision of posing question in the question papers was necessarily at the behest of the Selection Committee and even assuming that there was flaw in framing number of questions of a particular subject, still the candidates cannot be held responsible for the same. The Tribunal at Principal Seat at Mumbai, by judgment and order dated 10.10.2013 in Original Application No. 799 of 2013, on the basis of the reasoning, was pleased to uphold the decision of the Collector of cancellation of selection process.

8. Feeling aggrieved and dissatisfied with the order passed by the Maharashtra Administrative Tribunal, Mumbai, thereby disallowing the Original application of the petitioners and other similarly situated candidates, the petitioners/candidates from the select list approached this Court by filing the present writ petition.

9. The learned counsel for the petitioners submits that the Government Resolution dated 19.10.2007 prescribes number of questions for a particular subject. The candidates like the petitioners had no role whatsoever in drafting the question papers, as they were only to answer the questions. The learned counsel further submits

that expecting the particular number of question for a particular subject is the guidelines given in the Government Resolution. These guidelines are meant for the officials to be followed, who are connected with the recruitment process. Thus, any alteration in the number of questions cannot become detrimental to the entire selection process itself. The learned counsel further submits that the committee framing excess/less number of questions in any particular subject was something, which can be said to be an “irregularity” and necessarily not an “illegality”. These lacunae in drafting the question paper has to be attributed to the selection committee and not to the candidates. Therefore, cancellation of entire selection process cannot be said to be a remedial measure to overcome the said irregularity. The learned counsel thus submits that this aspect is not at all considered by the Tribunal while adjudicating the Original Application. Learned counsel also submits that preparation of the select list was composite act of duly constituted selection committee and if the committee had taken a decision and finalized the select list, the subsequently posted District Collector had no powers to assess the decision taken by the selection committee and further interference by the newly posted District Collector was uncalled for. The Tribunal has failed to appreciate the recommendation given by the Divisional Commissioner as well as the Secretariat of the Government. Both these superior Officers of the District Collector

have concluded that such approach, which was otherwise affecting the candidates, need not be taken. In shape of reviewing earlier decision, the District Collector has set at naught the earlier selection process, which is impermissible in law.

10. The learned counsel for the petitioner submits that the select list pertains to the year 2012. The petitioners are waiting for 2 long years owing to the reversal of the selection process. The petitioners have approached the Court at the earliest possible juncture. The learned counsel thus submits that the decision of respondent No.3 dated 13.3.2013 to cancel the selection list for the post of clerk-cum-typist as well as Talathis on the establishment of respondent No.2 is required to be quashed and set aside and at the same time, the impugned decision dated 10.10.2014 of the Tribunal at its Principal Seat at Mumbai, rejecting the Original Application No. 799 of 2013 is also liable to be quashed and set aside. The learned counsel for the petitioners lastly submits that respondent No. 2 and 3 may be directed to issue appointment orders to the petitioners for the post of clerk-cum-typist and Talathis as is applicable as per the select list prepared by the selection committee-respondent No.3 on 28.6.2012.

11. The learned counsel for the petitioners, in order to substantiate his arguments, places reliance on the following cases:

- i) ***Inderpreet Singh Kahlon vs. State of Punjab and Harayana, reported in 2006 (11) SCC 356***
- ii) ***East Coast Railway and another ; K. Surekha vs. Mahadev Appa Rao and others, reported in 2010 AIR (SC) 2794.***
- iii) ***K. Manjusree vs. State of A.P. and another, reported in AIR 2008 SC 1470.***
- iv) ***Ramesh Kumar vs. High Court of Delhi and Another, reported in AIR 2010 SC 3714.***
- v) ***Rajesh Kumar and others etc. vs. State of Bihar and others etc. with connected case, reported in AIR 2013 SC 2652.***
- vi) ***Baban Sadashiv Waghmare and others vs. The State of Maharashtra, writ petition No. 2707 of 2008 decided on 13.8.2008, Bombay High Court, Aurangabad Bench.***
- vii) ***Jahabhai Dangarbhai Rathod vs. State of Gujarat and Ors, reported in (1995) 1 GLR 427***

12. The learned A.G.P. for the respondents submits that the select list was based on written examination which was not in strict adherence to the provisions of Government Resolution dated 19.10.2007. Thus, the action of respondents to cancel the selection process is not an arbitrary action. The learned A.G.P. further submits that cancellation of selection list was for valid reasons. The learned A.G.P. has supported the decision rendered by the Tribunal. The learned A.G.P. lastly submits that the writ petition is devoid of any merits and the same is required to be dismissed with costs.

13. Multiple choice tests have been a staple of candidate

assessment for decades and it is likely that they will remain so for a long time to come. In multiple choice test, the candidate select an answer from several alternative answers from each question. The biggest advantages of multiple choice tests include that they are extremely easy to grade, and it is simple for the Selection Committee to identify where the candidates at large struggle. The multiple choice tests conducted properly are another tool for Selection Committee to measure learning and reflection. The biggest advantage of multiple choice examination is that it can assess both knowledge as well as application of knowledge. These types of tests mainly focus on detail knowledge.

14. The Apex Court in the case of ***Lila Dhar vs. State of Rajasthan and others, reported in AIR 1981 SC 1777*** has dealt with the question as to what is ideal mode of selection to public service i.e. by written examination, by oral tests or by combination of both and what is proper relative weight that should be attached to the written examination and the oral test. On this backdrop, in para 4 of the said judgment, the Apex Court has observed thus:-

“4. The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to

be accepted almost universally as the gateway to public services". "The ideal in recruitment is to do away with unfairness". United Nations Handbook on Civil Service Laws and Practice; "Competitive examinations were the answer to the twin problems represented by democracy and the requirements of good administration. They were the means by which equality of opportunity was to be united with efficiency.. By this means favouritism was to be excluded and the goal of securing the best man for every job was to be achieved". Public Personal Administration by O. Glenn Stahl "Open competitive examinations are a peculiarly democratic institution. Any qualified person may come forward. His relative competence for appointment is determined by a neutral, disinterested body on the basis of objective evidence supplied by the candidate himself. No one has "pull"; everyone stands on his own feet. The system is not only highly democratic it is fair and equitable to every competitor. The same rules govern, the same procedures apply, the same yardstick is used to test competence". Introduction to the study of Public Administration by Leonard White.

The Apex Court has observed in the aforesaid judgment that the object of any process of selection for entry into public service is to secure the best and the most suitable person in the job, avoiding patronage and favouritism. Any form of written test possess certain administrative advantages over the oral and performance types. The oral test has long served as a basic selection tool in private employment but has been more slowly accepted in the public field. That is because the difficulty in developing a valid and reliable oral test, the difficulty of securing a reviewable record of an oral test and public suspicion of the oral as a channel for the exertion for securing public employment. The reliability of oral tests, even under the best of conditions, tends to be lower than that of the well designed written

test, which can assess the intellectual competence.

15. In the present case, the selection process for the post of Clerk-cum-Typist and Talathis has been cancelled mainly on the ground that the structure of the question paper of the written examination was not in consonance with the Government Resolution dated 19.10.2007. On this backdrop, we have carefully gone through the Government Resolution dated 19.10.2007. It appears that as per the aforesaid Government Resolution, only written examination is contemplated for the post of Clerk-cum-Typist and Talathis and no oral examination/interview has been prescribed. As per clause 6 of the said Government Resolution dated 19.10.2007, instructions have been given as to how the written examination is to be conducted for group-C posts. For the post of Clerk-cum-Typist, the minimum educational qualification is S.S.C. whereas for the post of Talathi, the minimum qualification is degree from recognized University. Consequently, for the post of Clerk-cum-Typist, the written examination will be of the standard of S.S.C. and there will be 50 marks each for Marathi, English, General Knowledge and Arithmetics, totaling 200 marks. So far as the post of Talathi is concerned, for which degree is the minimum qualification, the standard of written examination is that of the degree examination from recognized University, except the subject of Marathi for which

the standard of written examination is that of H.S.C. (12th class). 50% marks each would be provided for Marathi, English, General Knowledge and intelligent test totaling to 200 marks. It appears that detail and specific instructions have been provided in Government Resolution dated 19.10.2007 regarding the manner in which written examination has to be conducted for the post of Clerk-cum-Typist and for the post of Talathi.

16. However, the marks actually allotted to each subject in the examination for the post of Clerk-cum-Typist and for the post of Talathi are shown in the tabular form, as reproduced below:-

For the post of Clerk-cum-Typist

Sr. No.	Subject	Marks as per GR dated 19.10.2007	Marks as per Question paper	Difference in marks
1.	Marathi	50	58	+8
2.	English	50	46	-4
3.	General Knowledge	50	56	+6
4.	Mathematics	50	40	-10

For the post of Talathi

Sr. No.	Subject	Marks as per GR dated 19.10.2007	Marks as per Question Paper	Difference in marks
1.	Marathi	50	54	+4
2.	English	50	6	-44
3.	General Knowledge	50	74	+24
4.	Intelligence Test	50	66	+16

17. It appears that equal weightage in all four subjects for both the tests have been given to secure the best and most suitable person in the job. So far as the post of Clerk-cum-Typist is concerned, less marks are allotted for the important subject of Maths and more marks are allotted for Marathi subject which is comparatively easy to solve. For the post of Talathi, for English subject only six marks are allotted and more marks are allotted for general knowledge and intelligence test. It also appears that even though there is no Maths subject prescribed for the post of Talathi, for the intelligence test, the questions have been framed from Maths subject. Consequently, there is gross violation of instructions as contained in the Government Resolution dated 19.10.2007. It appears that the said instructions were recommended by the experts in the field after taking into consideration the post to be filled in. It is to be repeated

here that the selection was to be made on the basis of the written examination only and there is no way to assess the performance of the candidates except the written examination.

18. After the written examination was held, the result was prepared, but the same was not displayed as the erstwhile Collector, Beed, stood retired on 30.06.2012 and the new incumbent joined on 30.06.2012 itself. Thereafter, though the lists of the selected candidates were published on the notice board and even the appointment orders were signed by his predecessor, however, subsequently, the same were not issued. The respondent No. 2 District Collector (new incumbent) took a review of the entire selection process. He had taken a decision to review the entire selection process as he had received some oral complaints as well as news were published in the local news papers. Consequently, the respondent District Collector set up a Committee headed by the Additional Collector, Beed. The said Committee had submitted a preliminary report to respondent No. 2 District Collector. The preliminary report was signed by the Additional Collector and three other members of the Committee. However, the Resident Deputy Collector, who was also a member of the Committee, refused to sign on the said report. Consequently, the respondent District Collector has asked for a specific report of the Resident Deputy Collector in

this regard. Accordingly, the Resident Deputy Collector then tendered his own report. Since the earlier report was a preliminary report, the respondent No. 2 District Collector thought it fit to appoint a Committee comprising of three officers to make a detailed enquiry in the entire selection process. Accordingly, the three Deputy Collectors submitted a detailed report to respondent No. 2 District Collector on 17.08.2012. The Resident Deputy Collector, who had refused to sign the earlier report (preliminary report), while tendering his independent report, did not comment on the structure of the question papers of the written examination for the post of Clerk-cum-Typist and Talathi under the pretext that the question papers for the said post were prepared by the erstwhile District Collector. The main finding of the said Committee comprising of three Deputy Collectors was that the question papers were not set up as per Government Resolution dated 19.10.2007. As per the findings of the said Committee, the recruitment process to fill up the posts of Peon was appropriate, however, so far as the recruitment of Talathis and Clerk-cum-Typists were concerned, the structure of the question papers was not in consonance with the Government Resolution dated 19.10.2007.

19. The respondent District Collector, based upon the report of the said Committee, submitted his own report to the respondent No. 1

Additional Chief Secretary, Revenue and Forest Department, highlighting therein the said finding of the Committee about the framing of the questions being not in consonance with the Government Resolution dated 19.10.2007 and sought permission to quash, cancel and set aside the earlier recruitment process and examination held to fill up the posts of Clerk-cum-Typists and Talathis and also sought permission to hold a fresh examination.

20. We have carefully gone through the report submitted by the three Deputy Collectors dated 17.08.2012, the report of the Resident Deputy Collector, the noting sheet prepared by the Deputy Secretary and his team and finally, the decision taken by the District Selection Committee. It appears that, unequivocally, all the Committees as aforesaid, have highlighted in their reports that the structure of the question papers, so far as the recruitment of Talathis and Clerk-cum-Typists is concerned, were not in consonance with the Government Resolution dated 19.10.2007. It also appears that the respondent District Collector has not taken the decision of cancellation of the selection process alone. The respondent District Collector has appointed a Committee headed by the Additional Collector and also appointed another Committee comprising of three Deputy Collectors and directed to make a detailed investigation in the matter. On receipt of the said reports and even after considering the report of

the Resident Deputy Collector, the respondent District Collector submitted his report to the Divisional Commissioner as well as to the Government for taking appropriate action in the matter. The respondent District Collector, when the matter was remanded by the Government for taking appropriate decision in the matter, convened a meeting of the District Selection Committee and on considering the entire reports and after due deliberations, took a decision to cancel the earlier recruitment process.

21. Though the candidate who has passed examination or whose names appear in the selection list does not have indefeasible right to be appointed, yet appointment cannot be denied arbitrarily, nor can selection list be cancelled without giving any justification. The Court is competent to give appropriate directions where decision is found to be arbitrary. At the same time there should not be undue interference by way of judicial review of the decision to cancel the recruitment process when there was some material for doing so. Though it depends upon the facts and circumstances of each case, the essential requirement, however, is that the selection committee should have taken decision after due application of mind instead of acting mechanically or impulsive. In the case in hand, when the Government relegated the matter to the respondent District Collector for taking appropriate decision in the matter, the respondent District

Collector convened a meeting of the District Selection committee and on considering entire reports, as discussed above, and after due deliberations, took a decision to cancel the earlier recruitment process. It appears that, members of the selection committee have thoroughly discussed that the structure of the question papers so far as the recruitment of Clerk-cum-Typist and Talathi is concerned, were not in consonance with the Government Resolution dated 19.10.2007. As discussed in the foregoing paras, the object of any process of selection for entry in the public service is to secure best and most suitable person for the job. The selection based on merit and carried out objectively is essential foundation of efficient public servant. The selection was to be made on the basis of written examination only and there was no way to assess the performance of the candidates except the written examination. In our considered opinion, the faulty structure of the question papers, which was not in consonance with the guidelines given in the Government Resolution dated 19.10.2007, defeated the very object of finding out best and most suitable person in the job.

22. The learned counsel for the petitioners has cited the number of cases in support of his arguments. In most of the cases, cited by the learned counsel for the petitioners, malafides in the selection process have been alleged and said question was dealt with by the Apex

Court elaborately. In the case in hand, the selection process was found in violation of the prescribed procedure. It was clearly mentioned in the advertisement dated 7.3.2012 that the selection would be made in accordance with the Government Resolution dated 19.10.2007. There is clear evidence and same is also highlighted by all enquiry committees that the selection was not in accordance with the guidelines given in the Government Resolution dated 19.10.2007, though strict adherence was necessary.

23. In the case of ***Inderpreet Singh Kahlon vs. State of Punjab and Harayana, (referred supra)***, the cancellation of entire selection process both of executive and judicial Officers was the subject matter of challenge on the ground of corruption in selection process. On the basis of the report of the vigilance bureau, the Full Bench of the High Court of Punjab and Haryana, made the observations that the question papers were leaked to the candidates and marks awarded to the candidates were manipulated and upgraded. It was also observed that the instructions were given to the examiner to give highest marks. The High Court, while examining the record and proceedings, found that there had been a large scale tampering of marks in some of the answer sheets and that selection had not been made on merits. The Apex Court in para 122 has made the following observations:-

“122. The High Court has not considered the case in the proper perspective. The consequences of en masse cancellation would carry a big stigma particularly on cancellation of the selections which took place because of serious charges of corruption. The question arises whether for the misdeeds of some candidates, honest and good candidates should also suffer on en masse cancellation leading to termination of their services? Should those honest candidates be compelled to suffer without there being any fault on their part just because the respondents find it difficult to segregate the cases of tainted candidates from the other candidates? The task may be difficult for the respondents, but in my considered view, in the interest of all concerned and particularly in the interest of honest candidates, the State must undertake this task. The unscrupulous candidates should not be allowed to damage the entire system in such a manner where innocent people also suffer great ignominy and stigma.”

24. In ***East Coast Railway and another; K. Surekha vs. Mahadev Appa Rao and others (referred supra)***, in para 13, the Apex Court has made the following observations:-

“13. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent Writ Court. If any such decision is indeed found

to be arbitrary, appropriate directions can be issued in the matter.”

In the above cited case, the order of cancellation of typing test was passed by the competent authority without giving any reason. On this backdrop, the Apex court observed that, in absence of reason in support of the order, it is difficult to assume that the authority had properly applied its mind before passing the order of cancellation of typing test.

25. In the case of ***K. Manjusree vs. State of A.P. and another (refereed supra)***, two of the candidates, whose names were found in the first list and who got excluded in the second list, approached the High Court praying for a declaration that the said action in preparing the select list by prescribed minimum qualified marks in the interview was arbitrary and illegal and sought directions to re-draw the selection list without adopting minimum qualified marks in the interview. The said writ petitions were dismissed by the High Court. The Apex Court while examining the said issue has observed that the the introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played, which is clearly impermissible.

26. in the case of ***Ramesh Kumar vs. High Court of Delhi and another (referred supra)*** the High Court of Delhi and Government of N.C.T. of Delhi were to offer appointment to the petitioners in the cadre of District Judge. There was no challenge to the validity of the Rules in the writ petitions, however, the question was raised as to whether the Rules enabled the High Court to fix the minimum benchmark in the interview. The Apex Court in the facts and circumstances of that case, held that it was not permissible for the High Court to change the criteria of selection in the midst of the selection process.

27. In the case of ***Rajesh Kumar and others etc. vs. State of Bihar and others etc. with connected case (referred supra)***, the challenge was raised to the process of evaluation of answer sheets on the ground that “Model Answer Key” was wrong. The High Court has directed the Bihar staff selection commission to conduct fresh examination and re-draw the merit list on that basis and for those who have already been appointed on the post of the earlier examination, fresh examination has been directed by the High Court. The Apex Court while examining this issue in para 18 of the judgment has made following observations:-

“18. There is considerable merit in the submission of Mr. Rao. It

goes without saying that the appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result. There is no mention of any fraud or mal-practice against the appellants who have served the State for nearly seven years now. In the circumstances, while interse merit position may be relevant for the appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. The re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such re-evaluation and shall pick up their appointments on that basis according to their interse position on the merit list."

In the above cited case, the Apex Court has considered the case of the appellant, who had served the State for nearly 7 years. In the case in hand, the facts are altogether different. The Government Resolution prescribes a particular mode of selection and strict adherence was required to be given to it. Further more, pursuant to the selection process, no appointment order was given to any of the candidates including the petitioners.

28. In the case of ***Baban Sadashiv Waghmare and others vs. The State of Maharashtra (referred supra)***, after oral interviews were held and the selection process had come to a near conclusion, a complaint was received from the President, Zilla Parishad alleging

therein the malpractice committed during the examination. Consequently, the authority recommended fresh selection process to avoid any suspicion regarding transparency of selection process. The Division Bench of this Court while examining this issue has observed that the allegation regarding lack of transparency and confidentiality and fairness of selection process is without substance.

29. In the case of ***Jahabhai Dangarbhai & Anr vs. State of Gujarat and Ors (referred supra)***, the group of petitions came to be filed before Gujarat High Court for issuance of directions to the respective Panchayat to operate selection list pursuant to the selection and inclusion of names of the petitioners in the select list duly prepared. In the said case, the issue was raised before the Court that unless the select/wait lists are fully exhausted, the authorities whether should be permitted to prepare any fresh select list.

30. In the above cited cases, altogether different issues were raised and considering the facts and circumstances of each and every case, those issues were dealt with by the Apex Court or the High Courts. In the case in hand, the selection process was cancelled due to violation of prescribed procedure. It is not a matter of controversy that the selection was not in accordance with the

Government Resolution dated 19.10.2007 though strict adherence was necessary. The selection committee headed by the respondent District Collector after considering the reports of the committees, has taken unanimous decision in the matter. In the light of above, none of the case cited above, can be made applicable to the facts and circumstances of the present case.

31. We are conscious of the fact that the petitioners are not at fault, as structure of question papers are not in consonance with the Government Resolution dated 19.10.2007. However, if such examination is saved, it would be in the nature of denial of the claim of more deserving candidates though undetected. It would result in some inconvenience to all and extra time would be consumed for fresh examination. However, same is justifiable to find out the most suitable and deserving candidates for the public employment. It was brought to our notice during the course of arguments that fresh selection process has been commenced and the petitioners still eligible to apply.

32. In view of the above discussion, we are not inclined to interfere in the impugned decision of cancellation of selection process for the post of Clerk-cum-Typist as well as Talathi on the establishment of respondent No.2. We do not find any error in the impugned decision

dated 10.10.2014 of the Tribunal, at its Principal Bench at Mumbai, in Original Application No. 799 of 2013. We accordingly pass the following order:-

ORDER

- I) Writ petition is hereby dismissed. Rule discharged. In the circumstances, there shall be no orders as to costs.

33. In view of disposal of writ petition, pending civil application is also disposed of.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

rlj/