

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4496 OF 2015

Mahesh Hambirrao Shinde	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

Mr. R. S. Apte – Senior Advocate i/b. Mr. R. B. Nalavade for
Petitioner.

Mr. O. M. Kulkarni – AAGP for State.

Mr. G. Solanke i/b. Mr. P. M. Patil for Respondent No. 3.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 27th FEBRUARY 2018

ORAL JUDGMENT : (Per : SMT. V. K. TAHILRAMANI, Acting C.J.)

1] Heard the learned counsel for the petitioner, the learned counsel for respondent no. 3 and the learned AGP for respondent Nos.1 and 2.

2] Rule. By consent, Rule is made returnable forthwith and the matter is heard finally.

3] The petitioner has preferred this petition being aggrieved by the order dated 19th January 2015 passed by the Maharashtra Administrative Tribunal, Mumbai, in OA 956 of 2011 preferred by the present respondent no. 3. By the said order, the said OA preferred by the present respondent no. 3 came to be allowed.

4] The facts of the case briefly stated are as under:-

The present petitioner as well as present respondent no. 3 had applied for the post of peon from project affected category for which 2 posts were reserved out of 6 open category posts. The matter relates to advertisement dated 24th July 2006 for the said post given by the respondent no. 2 Dy. Director of Economics & Statistics, Government of Maharashtra. After clearing the written examination, the petitioner as well as present respondent no. 3 appeared for the interview on 1st March 2008. Respondent no. 3 scored 83.40 marks. However, the petitioner got tied up with respondent no. 4 at 84 marks and both got selected and appointed.

5] It was the case of the respondent no. 3 before the Tribunal that if one were to go through the answers to the written examination, it would be found that as per conditions 4 and 5 the options with regard to the correct answers were to be clearly set out in the square against each question. Thus it was his case that the options should not have been given anywhere other than in the said square or block nor there should be any over-writing or spilling over. Further, it was the categorical case of the present respondent no. 3 that in case of the present petitioner answers to 9 questions

were not in the square or block, in such case there would be negative marking which would be given to the petitioner on account of which his marks would be less than 83.40 which was secured by the present respondent no. 3. Thus after addition of the marks obtained in the oral examination and the written examination, the total that the petitioner would get was 73.5 marks whereas the present respondent no. 3 would get 83.40 marks.

6] The learned counsel for the petitioner submitted that the written test was held on 16th December 2007, the interview was held on 1st March 2008 and the petitioner was appointed to the post of peon on 7th May 2008. The petitioner was confirmed on 14th May 2011. He submitted that the OA was preferred in 2011 i.e. after an inordinately long period. As far as this contention is concerned, it is seen that the present respondent no. 3 had earlier preferred a complaint in relation to the selection process. Pursuant to the said complaint, a Committee came to be constituted comprising Additional Director and 2 Deputy Directors. The Committee examined the matter and submitted a confidential report on 6th September 2011. The said report shows that the Committee found substance in the allegation made by the present respondent no. 3. In so far as the present petitioner is concerned, it was found that there were 9 such instances in which the answers were outside the

square or block, which would result in negative marking. Thus, as far as the contention regarding delay in filing OA is concerned, it is seen that in fact the present respondent no. 3 had filed a complaint and was following up the matter and it took some time for the Committee to give its report which is dated 6th September 2011. Obviously present respondent no. 3 could not have filed his OA prior to the report of the Committee. It is in these circumstances that the OA came to be filed in the year 2011. In the circumstances of this case, it cannot be said that there is any delay in approaching the Tribunal.

7] The learned counsel for the petitioner did not dispute the state of affairs that there were 9 such instances in the case of the petitioner which would result in negative marking on account of which the marks obtained by the present petitioner would be less than that of the present respondent no. 3. However he only submitted that in view of the fact that the petitioner was appointed on 7th May 2008 and was confirmed on 14th May 2011, he should have been allowed to continue.

8] It is seen that as far as the present petitioner is concerned, the Director had issued oral instructions at the time of paper

checking that the answers written outside the block should be taken to be correct and accordingly, marks to be given. Thus, as far as the petitioner is concerned in the 9 instances wherein the answers written outside the block were taken into consideration and hence it was held that he had higher marks than the present respondent no. 3, that is, how the petitioner came to be appointed.

9] It is to be noted that the rule of negative making is not in dispute so also the fact that 9 answers of the petitioner did not comply with the rules, is not disputed. It is also admitted that the enquiry also established this fact. When there were specific written instructions as to how checking of the papers was to be done and the marks were to be awarded, it was not legally and by rules permissible for the Director to issue any such oral instructions which were contrary to the written conditions. Before us also no provision was cited which empowered the Director to give such oral directions which would override and supersede the written conditions. It is seen that the Director exceeded his powers in giving such directions and therefore no one could have acted thereupon. The Tribunal took into consideration all these aspects and thereafter allowed the OA preferred by the present respondent no. 3 and directed the respondents to issue a fresh order of appointment wherein the present respondent no. 3 be shown as selected in

place of the petitioner.

10] In ***Secretary, Tamil Nadu Public Service Commission vs. A.B. Natarajan and ors – (2014) 14 SCC 95***, the Hon'ble Supreme Court was concerned with examination conducted by the State Public Service Commission, in which, clear instructions were issued to the candidates regards the manner of indicating their answers in the answersheet provided for the purpose. However, from the record, it transpired that most of the candidates had not adhered to the instructions given to them which were to be followed while answering the questions. In such circumstances, the Division Bench of the Madras High Court quashed the results of such candidates. The Hon'ble Supreme Court dismissed the appeals instituted by the Public Service Commission and others by giving detailed reasons as to necessity of adhering to such instructions given to candidates at such examination.

11] The Hon'ble Supreme Court has held that in all competitive examination, an effort is made to see that the answer books are examined impartially and without any bias. An effort is always made to see that identity of the candidate is not revealed. Therefore, if the candidates, in breach of the instructions, start giving indication with regard to themselves, it is possible that the identity of such

candidates is made known to the examiners. If such an attempt is permitted to be made, the sanctity of examination work would not be maintained. Such actions on the part of candidate cannot be tolerated if one wants clean, fair and transparent process of selection. It was further held that if a strict view is not taken by a constitutional body which has been entrusted with the work of selecting best candidates, the entire purpose behind having the Commission or any other such body for examining merit of the candidates would be frustrated. The Hon'ble Supreme Court also held that if a candidate writes answers without bothering about instructions given to him, he is a careless person, he must not be appointed and if he has breached the instructions deliberately, then, also, he should not be appointed as an officer because one who plans such illegalities even before he joining service cannot be accepted to become a fair and straightforward officer in future.

12] Looking to the facts as discussed above and looking to the fact that as per rules, the present respondent no. 3 got 83.40 marks whereas the petitioner got only 73.5 marks, the decision of the Tribunal cannot be faulted. Hence, we are not inclined to entertain the present petition. Petition is dismissed. Rule is discharged.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA