

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

WRIT PETITION NO. 4050 OF 2005

The Chairman,
Maharashtra Public
Service Commission and anr. ...Petitioners
Versus
The State of Maharashtra and ors. ...Respondents

Mr. Ashutosh Kulkarni for the Petitioner.
Ms Shruti D. Vyas, B-Panel Counsel for Respondent
No.1/State.
Mr. N.V. Bandiwadekar for Respondent Nos. 2 to 4.

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

DATE OF RESERVING THE JUDGMENT : 15th JUNE 2018.
DATE OF PRONOUNCING THE JUDGMENT : 22nd JUNE 2018.

JUDGMENT:

1] Heard learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 9.03.2005 made by the Maharashtra Administrative Tribunal (MAT), Mumbai in O.A. No.13 of 1994 instituted by respondent Nos.2 to 4 questioning the penalties imposed upon them for the charges of leakage of question papers in examinations conducted by the Maharashtra Public Service Commission (MPSC).

3] Respondent No.2 to 4 were Clerks appointed with the MPSC. Respondent No.2 was in fact promoted as an Assistant with effect from 15.12.1981. On 26.09.1986, a FIR came to be lodged with the Anti Corruption Bureau (ACB) in respect of leakage of question papers of the examinations conducted by the MPSC for the year 1984-1985. In the course of investigation, ACB recorded statements of respondent Nos.2 to 4, in which, they admitted their involvement in the leakage of question papers.

4] MPSC issued a charge-sheet against respondent Nos.2 to 4. Since such charges were denied by the respondents, an enquiry officer was appointed to enquire into charges. The evidence was led before the enquiry officer and on the basis of the same, the enquiry officer concluded that the charges of leakage of question papers was proved. On the basis of report of enquiry officer and after compliance with principles of natural justice penalties were imposed upon respondent Nos.2 to 4. Respondent No.2 was initially ordered to be dismissed from service, but on appeal the penalty was reduced to that of compulsory retirement. Respondent No.3 was ordered to be removed from service

and respondent No.4 was ordered to be dismissed from service. Respondent No.4 did not even institute any appeal to question the penalty imposed upon him.

5] Respondent Nos.2 to 4 instituted O.A. No. 13 of 1994 to question the penalties imposed upon them initially, the MAT dismissed the O.A. on the ground that it lacked jurisdiction in the matter. However, this order was set aside by this court and the matter was remanded to the MAT for disposal of O.A. No. 13 of 1994 on its own merits and in accordance with law.

6] By judgment and order dated 25.09.2002, the MAT allowed the O.A. and directed reinstatement of the respondents with all consequential benefits. The MPSC instituted Writ Petition No. 1701 of 2003 questioning the MAT's judgment and order dated 25.09.2002. This petition was allowed on 22.11.2004 and the matter was remanded to the MAT for fresh decision after taking on record additional evidence, which respondent Nos.2 to 4 offer to place on record.

7] After the remand, the MAT has once again allowed O.A. No. 13 of 1994 and directed reinstatement of respondent Nos.2 to 4 along with all consequential benefits. Hence, the present petition.

8] On 10.10.2005, the Division Bench of this court comprising F.I. Rebello & Dr. D.Y. Chandrachud, JJ. (as their Lordships then were) made the following order:

“Rule. Considering that this Court by its earlier order had remitted the matter to enable the respondent employee to produce additional material and prima facie as such material has not been produced, there will be interim relief in terms of prayer clause (c). Respondents waive service.”

9] Mr. Ashutosh Kulkarni, learned counsel for the MPSC, has made the following submissions in support of this petition:

(a) This court, in its judgement and order dated 22.11.2004, by which, the matter was remanded to the MAT had in fact concluded that there was no evidence on record to hold that the respondents had, within reasonable time resiled from the statement made by them before the ACB. Only because a statement was made on behalf of the respondents

that they have material to establish this fact, was the matter remanded to the MAT. Upon remand, the respondents failed to produce any such material and the MAT without, there being any additional evidence, has only reiterated its earlier finding, which had already been set aside by this court. Mr. Kulkarni submits that such a course was not open to the MAT and on this ground itself the impugned judgment and order warrants interference ;

(b) The respondents claim to have resiled from the statement made by them before the ACB by writing letters dated 2.10.1986 and 6.10.1986 to the MPSC. The respondents have, however, failed to produce these letters or any endorsement as regards the receipt of such letters by MPSC. All that the MPSC had stated before the MAT was that some letters had been received but the same do not pertain to this department. In any case, since, the respondents had stated that they have the necessary material in their possession, the respondents were duty bound to produce such letters to establish that they have

resiled from their statements within reasonable period. Since, this was never done, the MAT was not justified in interfering with the penalty imposed upon the respondents.

(c) The circumstance that almost a year and a half after the respondents made such statements to ACB, the respondents, in writ petition questioning their suspension had made a statement that whatever they had stated before the ACB was under coercion, is not at all sufficient to conclude that the respondents had indeed resiled from their statements within reasonable time. In any case, this circumstance had been considered by the MAT in its order dated 25.09.2002, which was specifically set aside by this court in its judgment and order dated 22.11.2004. Therefore, the MAT was not justified to reiterate itself earlier order on the basis of the very same material.

(d) The respondents, in the course of examination-in-chief in the enquiry proceedings, did not even state that they have vide letters dated 2.10.1986 and

6.10.1986 in fact resiled from the statements made by them before the ACB, rather, one of the respondents stated that they did not make any complaints to the Government fearing retribution from the ACB. The subsequent statement in the course of cross-examination that retraction was informed to the office hardly constitutes any material upon which reliance could have placed. Mr. Kulkarni submits that in fact, the MAT has not even referred to the depositions of the respondents in this regard.

(e) The MAT failed to appreciate that the scope of judicial review to interfere with the findings of fact is extremely limited. In this case, the MAT, has purported to reassess the material on record and comment upon the sufficiency of the evidence on record. Mr. Kulkarni submits that this is impermissible. He submits that the findings recorded by the enquiry officer were not perverse and therefore, the MAT exceeded jurisdiction in interfering with such finding of fact.

(f) Mr. Kulkarni submits that the case of Mr. Pardhi is distinguishable because role of Mr. Pardhi in the scam of question papers leakage was not similar to that of the respondents. Besides, the MAT has adverted to the statements of the witnesses in the enquiry against Mr. Pardhi and on such basis exonerated Mr. Pardhi. In any case, Mr. Kulkarni submits that mere fact that the MPSC may not have questioned the MAT's order in Pardhi's case does not mean that the MAT's order in the present case acquires any immunity from challenge.

(g) Mr. Kulkarni submits that the charges leveled against the respondents were extremely serious. He submits that the MPSC is a constitutional body, which conducts examinations for selection to various posts in Government service. If, the employees of the MPSC are involved in leakage of examination question papers for illegal gratification, then, the very credibility of the MPSC at stake. Mr. Kulkarni submits that this aspect has been completely ignored by the MAT.

10] Mr. Bandiwadekar, learned counsel for respondent Nos. 2 to 4 submits that there is no difference in the case of the said respondents and that of Mr. Pardhi. He submits that the MAT has exonerated Mr. Pardhi and the MPSC did not even bother to challenge such exoneration. Accordingly, the relief is required to be denied to the MPSC in the present case petition as well. Mr. Bandiwadekar submits that the MpSC cannot be permitted to deal with its employee with an unequal hand and practice discrimination.

11] Mr. Bandiwadekar submits that MPSC admits the receipt of letters dated 2.10.1986 and 6.10.1986 addressed by the respondents. However, the MPSC simply states that these letters pertaining to some other determination and further that records of 1986 are not traceable. Mr. Bandiwadekar submits that the burden of proving the charge is on the MPSC and the burden cannot be said to have been discharged on the basis of such statements. The MAT, in such circumstances, has quite correctly interfered with the penalty imposed upon the respondents.

12] Mr. Bandiwadekar submits that in the writ petition filed by the respondents challenging their suspension, they had clearly stated that they were coerced into giving the statement before the ACB. He submits that at the stage when the writ petition was filed no disciplinary proceedings were even in contemplation against the respondents. He submits that credence is required to be given to the statements and the MAT has not at all erred in giving credence to such statements.

13] Mr. Bandiwadekar submits that since the MPSC had admitted letters dated 02.10.1986 and 6.10.1986, there is no reason to draw any adverse inference against the respondents for non-production of such letters or for non-production of any endorsement regards the receipt of such letters. Mr. Bandiwadekar submits that apart from the statements made by the respondents before the ACB, there is absolutely no other evidence in support of the charges levelled against the respondents. The respondents, at the earliest opportunity, retracted from their statements. In such circumstances, the MAT was quite justified in holding that the findings recorded by the enquiry officer are

perverse and could not have form the basis for imposition of penalties upon the respondents.

14] For all the aforesaid reasons, Mr. Bandiwadekar urges the dismissal of the present petition.

15] The rival contentions now fall for our determination.

16] The MAT , in its judgment and order dated 25.09.2002 had set aside the penalty imposed upon the respondents and directed their reinstatement with all consequential benefits by reasoning as follows:

(a) That respondent Nos.2 to 4 had resiled from the statements made by them before the ACB by addressing letters dated 2.10.1986 and 6.10.1986 to the MPSC and therefore, the statements before the ACB, could not have been looked into by the enquiry officer, much less relied upon;

(b) That in the writ petition instituted by respondent Nos.2 to 4 to question their suspension, said respondents had made a statement that they had

resiled from the statements given by them before the ACB;

(c) Since there was no other evidence to establish the charge of the respondents involvement in the leakage of question papers, the findings recorded by the enquiry officer were vitiated and warrant interference.

17] The MAT's judgment and order dated 25.09.2002 was challenged by the MPSC before this court by instituting Writ Petition No. 1701 of 2003. This was disposed of by this court by judgment and order dated 22.11.2004. In the context of the aforesaid reasoning found mainly in paragraphs 30,31 and 33 of the MAT's judgment dated 25.09.2002, this court, at paragraph 2 of its judgment and order dated 22.11.2004 observed thus:

*"2. After hearing the learned Counsel for the parties and after perusing the Judgment and order of the Maharashtra Administrative Tribunal which is impugned herein, **we find that no proper evidence had been placed by Respondent Nos. 2,3 and 4 with regard to their statements which they themselves resiled from before the Investigating Officer. In fact, the Respondent Nos.2, 3 and 4 themselves ought to have placed before the Maharashtra Administrative Tribunal***

the requisite material so as to enable the Maharashtra Administrative Tribunal to come to the correct finding and give a judgment thereon. In that behalf, it would be necessary to quote paragraph Nos. 30,31 and 32 of the impugned Judgment and Order, which reads as under:-

...

(emphasis supplied)"

18] In the specific context of the MAT's reasoning in paragraph 31 of its judgment and order dated 25.09.2002, this court, at paragraph 3 observed thus:

*"3. A perusal of paragraph No.31 of the Judgment and order of the Maharashtra Administrative Tribunal, as referred to above, clearly indicates that the Tribunal had proceeded on the basis that the Enquiry Officers approach to treat the previous statements made by the witnesses (Respondent Nos.2,3 and 4) before the Investigating Officer as gospel truth, was not proper and had resulted in causing miscarriage of justice. **Whereas the Tribunal itself has also observed in paragraph No. 30 of its Judgment that when the Respondent Nos.2,3 and 4 had disowned their earlier statements made before the Investigating Officer was not known, hence the efficacy of their earlier statements ceased to have any probative value. Apparently, the entire judgment of the Tribunal has proceeded on certain surmises and conjectures without knowing the exact date on which the said statements were resiled, and the consequences thereof.**"*

(emphasis supplied)

19] This court was persuaded to remand the matter to the MAT because the counsel appearing for respondent Nos.2 to

4 stated that respondent Nos.2 to 4 have “*all material to indicate as to when the previous statements were made and as to when and under what circumstances they had resiled from those statements*”. This is evident from what is observed in paragraph 4 of our judgment and order dated 22.11.2004, which reads thus:

*“4. Mr. Gavnekar, the learned Counsel for Respondent Nos.2,3 and 4 states that the Respondent Nos.2,3 and 4 have **all the material to indicate as to when the previous statements were made and as to when and under what circumstances they had resiled from those statements**. If that be so, in the facts and circumstances of the case, it would be just and proper to quash and set aside the Judgment and order passed by the Maharashtra Administrative Tribunal on 25-9-2002.”*

(emphasis supplied)

20] Finally, this court, set aside the MAT's judgment and order dated 25.09.2002 and remanded the matter to the MAT to decide it afresh after taking on record appropriate evidence with regard to the manner and dates on which the previous statements were resiled by respondent Nos.2 to 4 and also the effect of such resiling in the facts and circumstances of such case this case. The operative portion of the remand order in paragraph 5 reads thus:

“5. Under these circumstances, the Judgment and Order passed by the maharashtra Administrative

*Tribunal dated 25-9-2002 is hereby quashed and set aside only on the above limited ground. Matter is remanded back to the Maharashtra Administrative Tribunal to decide it afresh **after taking on record appropriate evidence with regard to the manner and dates on which the previous statements were resiled by Respondent Nos.2,3 and 4 and also the effect of such resiling in the facts and circumstances of this case.** The Maharashtra Administrative Tribunal is directed to decide the matter in accordance with law, strictly on its own merits, afresh."*

(emphasis supplied)

21] In pursuance of remand, therefore, what was expected was that respondent Nos.2 to 4 to produce all the material which they claimed was in their possession to indicate as to when the previous statements were made and as to when and under what circumstances they had resiled from those statements. However, there is no dispute that respondent Nos.2 to 4 produced no further materials before the MAT in pursuance of the remand although, they had stated that they have all such material with them.

22] The MAT has correctly held that the statements recorded before the ACB could have taken into consideration by the enquiry officer because the strict rules under the Evidence Act do not apply to departmental proceedings. The MAT has however held that the only

reason why statements ought not to have been taken into consideration by the enquiry officer in the present case is because respondent Nos.2 to 4 allegedly resiled from such statements at some alleged earliest opportunity. Respondent Nos.2 to 4 despite stating before this court that they have all the material to indicate that when the previous statements have made by them and as to when and under what circumstances they have resiled from the statements, failed to produce such material before the MAT although, it was on this basis that respondent Nos.2 to 4 , succeeded in securing the remand to the MAT. Since the remand was only in order to enable respondent Nos.2 to 4 to produce all such materials and thereafter to enable the MAT to consider the effect for such material, there was no question of the MAT reiterating its earlier view when admittedly, respondent Nos.2 to 4 failed to produce any such material before the MAT.

23] This court, on the basis of the material which was available before the MAT when it made its judgment and order dated 25.09.2002 had already held that such material did not justify interference with the penalties imposed upon

the respondents. This court had in fact held that the entire judgment of the MAT had proceeded on certain surmises and conjectures without knowing the exact date on which the said statements were resiled, and the consequence thereof. Since, respondent Nos.2 to 4 despite opportunity granted to them, failed to produce any additional material before the MAT though, they have claimed that they have all the material with them, the MAT, was not justified in reiterating its earlier view was held to be based on mere surmises and conjectures.

24] Further, since respondent Nos.2 to 4 failed to produce all the materials as regards the date and the circumstances in which they allegedly resiled from the statements before the ACB, the MAT was required to draw an adverse inference against respondent Nos.2 to 4. Respondent Nos.2 to 4 had categorically stated to this court through their counsel that they have all the material to indicate as to the previous statements were made and as to when and under what circumstances they had resiled from those statements. If this be so, it was the duty of respondent Nos.2 to 4 to produce such material before the MAT, for which, they had

secured a specific liberty from this court. Non-production of such material, in such circumstances, warrants drawing of adverse inference against respondent Nos.2 to 4.

25] The MAT clearly exceeded its jurisdiction in relying upon the averments in the writ petition lodged by respondent Nos.2 to 4 questioning their suspension. Such material had been relied upon by the MAT in its earlier judgment and order dated 25.09.2002 which was already set aside by this court on 22.11.2004. Same is the position with regard to the so called admission on the part of MPSC that they have received some letters, but such letters did not pertain to their department. If respondent Nos.2 to 4 had indeed resiled vide letters dated 2.10.1986 and 6.10.1986, then, it is reasonable to proceed on such basis that respondent Nos.2 to 4 would have certainly kept the copies along with endorsement receipts on such letter. Besides, as noted earlier, respondent Nos.2 to 4 did give an impression that they have such copies and they would produce the same before the MAT. In such circumstances, the MAT clearly exceeded its jurisdiction in reiterating its

earlier view, which, as noted earlier, was based only on surmises and conjectures.

26] In the course of examination-in-chief of Mr. Manohar S. Patil (respondent No.2), respondent No.2 did not even whisper about retracting of the statements made before the ACT admitting the involvement in the question papers leakage scam. Respondent No.2 made no reference whatsoever to the letters dated 2.10.1986 and 6.10.1986, even though, before the MAT, these two letters form the main basis of the respondent Nos.2 to 4's defence. In the examination-in-chief, respondent No.2 stated that he was beaten up by the police and therefore, he confessed to his involvement. He stated that the police threatened him of revenge and therefore, he did not file any complaint with the Government. He stated that he had also been told that if he gave a complaint in his own office (MPSC), then, action would be taken in the matter. It is only in the cross-examination that respondent No.2 has stated that he and others had informed the office within 15 days after returning from the ACB that the statements were made under torture. Again, there is no reference to the information being

imparted by means of any letters, muchless, letters dated 2.10.1986 and 6.10.1986.

27] The MAT in the present case has itself held that strict rules of evidence do not apply to domestic enquiries. The MAT has itself held that although a statement of a person to a police officer is not admissible in evidence under Sections 25 and 26 of the Evidence Act, such a statement is admissible in a domestic enquiry and there is no legal impediment to accept the same. The only reason why the MAT discarded such statements is because the MAT has accepted the case of respondent Nos.2 to 4 that such statements were resiled by them by addressing two letters. However, the remand by this court was in order to enable respondent Nos.2 to 4 to produce these letters and thereafter, the MAT was directed to examine the effect of such letters. Admittedly, since no such material was produced by respondent Nos.2 to 4, the MAT was not at all justified in reiterating its earlier view which had already been set aside by this court. .

28] In ***Kuldip Singh vs. State of Punjab and ors. -***

(1996) 10 SCC 659, the Hon'ble Supreme Court has held that even though it is true that a confession or admission of guilt made by a person accused of an offence before, or while in the custody of, a police officer is not admissible in a court of law according to sections 25 and 26 of the Evidence Act, 1872 but it is equally well settled that these rules of evidence do not apply to departmental enquiries. See **State of Mysore vs. Shivabasappa Shivappa Makapur - AIR 1963 SC 375** and **State of Assam vs. Mahendra Kumar Das - (1970) 1 SCC 709** - wherein the only test is compliance with the principles of natural justice - and, of course, compliance with the rules governing the enquiries, if any. In this context, it is well to remember that in India, evidence recovered or discovered as a result of an illegal search is held relevant departing from the law in the United States. The Hon'ble Supreme Court has further observed that if the appellant's confession is relevant, the fact that it was made to the police or while in the custody of the police may not be of much consequence for the reason that strict rules of Evidence Act do not apply to departmental/disciplinary enquiries. In a departmental enquiry, it would perhaps be permissible for the authorities

to prove that the appellant did make such a confession/admission during the course of interrogation and it would be for the disciplinary authority to decide whether it is a voluntary confession/admission or not. If the disciplinary authority comes to the conclusion that the statement was indeed voluntary and true, he may well be entitled to act upon the said statement. In the facts of the case before the Hon'ble Supreme Court, ultimately the appellant was acquitted by the Designated Court and despite such acquittal, the penalty imposed upon the appellant by the disciplinary authority was not interfered with.

29] This is a case where the MAT has failed to appreciate its scope in matters of interference with findings recorded by the disciplinary authority in pursuance of domestic enquiries, is quite limited. The Hon'ble Supreme Court in ***Union of India vs. P.Gunasekaran - AIR 2015 Supreme Court 545***, has held that the High Court in exercise of its powers under sections 226 and 227 of the Constitution of India shall not re-appreciate the evidence. The High Court has to only see whether the enquiry is held

by the competent authority, whether the procedure prescribed has been followed, whether there is violation of the principles of natural justice, whether any extraneous or irrelevant considerations have crept into the decision making process and whether the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion. Under Article 226/227 of the Constitution of India, the High Court shall not re-appreciate the evidence, interfere with the conclusion in the enquiry, in case the same has been conducted in accordance with law, go into the adequacy of the evidence, go into the reliability of the evidence, interfere, if there be some legal evidence on which findings can be based, correct the error of fact however grave it may appear to be, go into the proportionality of punishment unless it shocks its conscience. These principles apply to judicial review by tribunal as well. In the present case, the MAT has failed to apply these principles in interfering with the findings of fact recorded by the enquiry officer and the disciplinary authority. This is not a case of perversity because even the MAT admits the statements made by respondent Nos.2 to 4

before the MAT are admissible as evidence in disciplinary proceedings or in a domestic enquiry. This is an additional ground to interfere with the impugned judgment and order made by the MAT.

30] The case of Pardhi is distinguishable. The MAT's judgment and order exonerating Mr. Pardhi made in O.A. No. 618 of 1994 is on record. The role of Mr. Pardhi in the scandal cannot be said to be same as the role played by respondent Nos.2 to 4 herein. The MAT, it appears, has discussed the evidence of some of the present respondents and on such basis, ruled that the findings of the enquiry officer in relation to Mr. Pardhi are confusing and on such basis exonerated Mr. Pardhi. Since, the MPSC has not challenged the MAT's order in relation to Mr. Pardhi before us, we refrain from making any observations. However, merely because the MPSC's may not have challenged the order in case of Mr. Pardhi that by itself, does not confer any immunity upon the impugned judgment and order made by the MAT in case of present respondents. Therefore, on the ground that the MPSC failed to challenge the order in case of Mr. Pardhi is not a ground to dismiss the present petition.

31] For all the aforesaid reasons, we set aside the impugned judgment and order dated 09.03.2005 made by the MAT in O.A. No. 13 of 1994. Rule is made absolute in terms of prayer of clauses (a) and (b) of this petition. There shall, however, be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)