

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
929 WRIT PETITION NO.7576 OF 2019**

KALYANI VIDHYADHAR PATIL THROUGH HER FATHER
VIDHYADHAR PITAMBER PATIL ..PETITIONER

VERSUS

CHAIRMAN OF MAHARASHTRA STATE BOARD OF SECONDARY
AND HIGHER SECONDARY AND ANOTHER ..RESPONDENTS

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Mr. Paresh B. Patil, Advocate for the Petitioner.
Ms. Surekha P. Mahajan, Advocate for Respondent
No.2.

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**CORAM : S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATED : 16th JULY, 2019.

PER COURT:-

1. The petitioner had appeared for SSC Board Examination conducted in March-2019. The performance of the petitioner has been canceled for the said examination and also for one more examination to be held subsequently.

2. Mr. Patil, learned counsel submits that only on the ground that by pencil rough work was done by the petitioner on the last page of the answer sheet, the petitioner has been held guilty for misconduct. The petitioner has not indulged in any sought of misconduct. The punishment imposed is erroneous.

3. Ms. Mahajan, learned counsel for respondents submits that the answer written by the

petitioner in pencil at page nos.18, 19 and 20 of the answer sheet of Math-I paper does not appear to be a rough calculation. The petitioner had already attempted the said question at page no.10 and the same was wrong answer, whereas page no.18 which is written in pencil, the answer is somewhat correct. This itself shows that the working done at page no.18 is not rough work. This act amounts to malpractice. The petitioner has not written at page no.18 of the answer sheet that the petitioner is attempting rough work. If the petitioner is attempting rough work, then as per the instructions on the answer sheet, more particularly, instruction nos.10 and 14, the petitioner has to mention that the same is rough work. According to the learned counsel, the said attempt is only for creating identification. The examiner has also given marks to the said rough work as alleged by the petitioner. The action is also being proposed against the said examiner.

4. The learned counsel submits that the terminology, malpractice and examination has to be given a wider meaning. The learned counsel relies on the judgment of the Division Bench of this Court in the case of **Umesh Vithalrao Balpande and Another Vs. Maharashtra State Board of Secondary and Higher Secondary Education, Nagpur** reported in 1991 **Mh.L.J. 1510.**

5. With the assistance of the learned counsel for the respondents we have gone through the answer sheet and the decision taken, so also the finding of the committee.

6. The committee has nowhere observed that the said answer has been written after the answer sheet is delivered. The committee has also not found any chit. It is also not the case of the committee that the petitioner has copied that answer, which the petitioner claims to have done as a rough work. There is absolutely no finding of whatsoever nature of any untoward act of the petitioner, except the fact that at page nos.18, 19 and 20 of the answer sheet the petitioner has written the same in pencil. According to the petitioner the same was a rough work. The instruction no.10 on the answer sheet itself provides that rough work can be done in pencil and at the back page. The pencil work appears to be at the back side. Even, if we accept the contention of the respondents that the answer written with pencil at page 18, 19 and 20 is not rough work, however, in absence of any finding that the petitioner has copied the same or that the petitioner has written it subsequently nor there is a finding of the committee that the same was done by the petitioner to create an identification of the answer paper. In absence of any such findings, the punishment imposed certainly cannot be

sustained.

7. The committee at the most would have said that no marks could be allotted to the said question, which the petitioner claims to have answered by way of rough work. However, cancellation of the whole performance and also debarring the petitioner from appearing for the next examination was certainly not warranted in absence of any of the finding as referred to above.

8. In the result, we set aside the order imposing punishment upon the petitioner of cancellation of the entire performance and debarring the petitioner for appearing for the next examination. The performance of the petitioner of Math-I paper shall remain canceled.

9. Naturally, respondents shall declare the result of the petitioner's examination forthwith. The respondents may allow the petitioner to fill up the examination form alongwith late fees, if any.

10. Writ Petition is disposed of. No costs.

(MANGESH S. PATIL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE