

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7052 OF 2022

SUNIL BHANUDAS MAGRE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Advocate for Petitioners : Mr. R.A. Joshi
AGP for Respondents : Ms. R.P. Gour

**CORAM : C.V. BHADANG &
SANDIPKUMAR C. MORE, JJ.**

DATE : 8 JULY, 2022.

ORDER :-

Heard finally by consent of parties.

2. By this petition, the petitioners are challenging the order dated 6 July, 2022, passed by the learned Vice Chairman of the Maharashtra Administrative Tribunal (MAT), Aurangabad, in Original Application No. 512/2022. By the impugned order, the Tribunal has refused to grant interim relief to the petitioners for appearing for the Mains Examination scheduled to be held on 9 July, 2022, for a recruitment to the posts of Assistant Section Officer, Sales Tax Inspector and Police Sub – Inspector.

3. The petitioners had applied in pursuance of the said advertisement and had appeared for the Preliminary Examination.

The Respondent No. 2 – Maharashtra Public Service Commission ('Commission' for short) published first answer key on 2 March, 2022, and objections were invited for the said answer key. After receipt of the objections, a second answer key was published on 5 May, 2022, in which the answers to question Nos. 20, 54 and 89 were modified, while eight questions namely question Nos. 8, 12, 13, 24, 32, 35, 46 and 73 came to be deleted. It may be mentioned that the petitioners had not raised any objection to the first answer key.

4. Be that as it may, the petitioners approached the Tribunal in which they sought interim relief for permitting them to appear for the Mains Examination on 9 July, 2022, which interim relief has been refused by the Tribunal, which brings the petitioners to this Court.

5. We have heard the learned counsel for the petitioners and the learned AGP for the respondents. With the assistance of the learned counsel for the parties, we have gone through the papers.

6. It is submitted by the learned counsel for the petitioners that the Commission could not have modified the answers to three questions and further deleted as many as eight questions which according to the learned counsel is impermissible and has resulted into a serious prejudice to the petitioners in the matter of obtaining the cut off marks in order to qualify for the Mains Examination.

7. It is submitted that, it is not clear from the affidavit-in-reply filed by the Commission before the Tribunal as to whether the

experts or the body of experts for the first and the second answer key were same, or the first answer key was referred to different experts before publication of the second answer key. In so far as the deletion is concerned, the learned counsel submits that there is no prescribed procedure, statutory or otherwise, which covers the matter of deletion except Rule 7 (B) of the Maharashtra Public Service Commission Rules of Procedure, 2014 ('2014 Rules' for short). It is submitted that reliance placed on behalf of the Commission on Rule 18 of the 2014 Rules is misplaced. It is submitted that the deletion of as many as eight marks would result into putting the petitioners into a disadvantageous position when they have answered all such deleted questions correctly and on the contrary would benefit such of the aspirants who have answered these questions incorrectly, as those aspirants may secure negative marks, to the extent of 0.25 for each incorrectly answered question. Thus, in the submission of the learned counsel, this will have an effect on the total marks obtained and the resultant cut off. He, therefore, submits that the petitioners may be allowed to appear for the Mains Examination provisionally subject to the out come of the application pending before the Tribunal.

8. Learned AGP has submitted that the modification of the answer key in so far as three questions is concerned, is on the basis of the opinion of the experts in the field and even so far as deletion is concerned Rule 7 (B) will clearly govern the procedure which requires one mark to be deleted from the total marks for the paper, in respect of such deleted questions.

9. Learned AGP has placed reliance on the decision of the Supreme Court in **U.P.P.S.C., through its Chairman and another Versus Rahul Singh and another, (2018) 7 SCC 254**, which was also a case of modification as well as deletion of some of the questions and the Supreme Court has found that the High Court was in error in setting aside the decision of the experts as in the opinion of the Supreme Court, the Court does not have expertise to examine the opinion of the subject experts. She submitted that the necessary arrangements and preparations for the Mains Examination which is scheduled to be held tomorrow are complete and at this stage the permission to the petitioners to appear for the said examination may create difficulty.

10. We have carefully examined the circumstances and the submissions made.

11. The preliminary paper which was of a multiple choice questions (MCQ) comprised of 100 questions, each question carrying one mark. Thus the paper was of 100 marks. The Commission had published the first answer key to which objections were called. As noticed earlier the petitioners had not submitted any objections. According to the Commission, on the basis of the opinion of the subject experts, the second key was published on 5 May, 2012, whereunder the answers to three questions were modified and eight questions were deleted. A perusal of the order passed by the Tribunal shows that the Tribunal has found that as per the settled legal position

the Courts and Tribunals would be slow in interfering with the opinion given by the subject experts.

12. We find that the Tribunal is right in finding that normally the Court would not venture to interfere in the opinion of the subject experts as the Courts and Tribunals do not possess the required expertise in various fields and thus, the opinion of the subject experts would assume primacy.

13. This takes us to the issue of deletion. Rule 7 (B) of the 2014 Rules which is relevant for the purpose reads thus :

“7 (B). If it is required to delete a question from any Preliminary / Main / Screening / Departmental examination for any reason whatsoever marks allocated for the question shall be reduced from the total maximum marks for that paper and the percentages for that particular paper, subject or examination, as the case may be, shall be deduced on the basis of such reduced maximum marks.”

It can thus be seen that the rules envisage / contemplate a situation where the Commission is required to delete a question in Preliminary / Main / Screening / Departmental examination for any reason and in the event of such deletion, the marks allocated for the said questions shall be reduced from the maximum marks for that paper and the percentage for that paper shall be deduced on the basis of such reduced maximum marks.

14. In view of the Rule 7 (B) as aforesaid, *prima facie*, we are

unable to accept that the deletion of eight questions would result into any prejudice, in as much as, the eight marks, would also stand deleted from the total allocated for the paper. In the present case after the deduction of eight marks the percentage of cut off will have to be calculated on the basis of maximum ninety two marks. We, *prima facie*, find that as the cut off is of a particular percentage of the total marks, the deletion of any question may not result into any prejudice.

15. We, however, leave this question for deeper examination by the Tribunal in the Original Application.

16. Considering the fact that the Original Application is still pending before the Tribunal, we do not feel it appropriate to dwell further on the question. We do not find that any case for interference is made out. The petition is accordingly, rejected.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.