

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 224 OF 2022

PREETAM BALIRAM NANDESHWAR Petitioner.

Versus

GOA PUBLIC SERVICE
COMMISSION AND 6 OTHERS. Respondents

Mr Pranay A. Kamat, Advocate for the Petitioner.

**Mr Dattaprasad Lawande, with Mr Pradosh Dangui,
Advocates for Respondent No.1.**

**Mr Shubham Priolkar, Addl. Govt. Advocate for the
Respondents No.2 and 3.**

CORAM : M. S. SONAK &

BHARAT P. DESHPANDE, JJ.

DATE : 7th February 2023

ORAL ORDER :- (Per M.S. Sonak, J.)

1. Heard Mr Pranay Kamat for the Petitioner, Mr Dattaprasad Lawande, who appears along with Mr Pradosh Dangui for Respondent No.1 and Mr Shubham Priolkar, learned Addl. Govt. Advocate for Respondents No.2 and 3.

2. The Petitioner complains about the Computer Based Recruitment Test (CBRT) conducted by the Goa Public Service Commission (GPSC) as a part of the selection process for the Assistant Professor in Mathematics post. Additionally, he

complains that 22 out of 50 questions were out of the syllabus. He has also placed on record the opinions of two experts which concur with the Petitioner's opinion about the 22 questions being out of the syllabus.

3. The Deputy Secretary of the GPSC has filed an affidavit. To this affidavit, she has annexed general instructions to the candidates. Clauses 8.3 and 8.4 of these instructions are relevant, and the same are transcribed below for the convenience of reference :

"8:3 Qualifying marks at Computer Based Recruitment Test (CBRT)/Interview and the candidates who appear for the Interview after passing the screening test (CBRT)

1) The minimum qualifying marks for the Interview/Computer Based Recruitment Test (CBRT) category-wise is as under:

General category/EWS - 60%

OBC/PwD/CFF category - 55%

SC/ST category - 50%

However, the minimum marks to be obtained at the interview for those candidates who passed the Screening Test (CBRT) conducted by the Commission would be as follows.

General category/EWS -50%

OBC/PwD/CFF category - 45%

SC/ST category - 40%

2) An option "(e) none of the above" for all questions

has been introduced, please read instructions at 8.4.5 for details.

3) The result uploaded on the Commission's website on the next working day after the CBRT, will be provisional and final result will be displayed only after grievance redressal process is complete

8.4 The CBRT Question paper will be uploaded on Commission's website on the next working day from the date of CBRT.

In case of any grievances related to the questions of the CBRT,

1. Fee payable is Rs. 100/- per question.

2. Candidate should submit a hard copy of her/his grievance, which should be as per the Grievance Application format available on Commission's website along with the Demand Draft (Separate for each grievance) payable to the "Secretary, GPSC" with two working days from the date the question paper is uploaded on Commission's website.

3. No grievances will be entertained after the above mentioned period.

4. in case of any grievances received related to the questions of the CBRT, the Commission will review the same and act accordingly.

5. Marks allocation after grievances redressal

a. No mark will be allotted to the candidate who has not selected any of the options provided or has not attempted the question.

b. If the answer key for a question, uploaded on Commission's website is found incorrect, then:

I. One mark will be allotted to the candidate who has selected the correct option.

II. No mark will be allotted to the candidate who has selected the option other than the correct answer.

III. In case the candidate had selected the option which is the same as the answer key displayed which is found incorrect then one mark will be deducted.

c. If the question is

o (i) incorrect

o (ii) incorrectly worded

o (iii) data is missing

o (iv) data is insufficient

then the candidate may select option "(e) none of the above" and after expert opinion a mark will be awarded in such cases for those who select this option.

EXAMPLE 1: We may consider following example to understand the above point:

Question: What is the capital of India?

A. Mumbai

B. New Delhi

C. Hyderabad

D. Chennai

E. None of the above

Answer Key: A

For the above question a grievance is received from the candidate stating that Option B is the correct answer and not option A.

After taking opinion of the expert it is found that Option B is the correct answer.

Marks allocation after grievance for the above question is as follows:

- *One mark will be deducted towards the question for the candidates who have selected option "A"*
- *One mark will be allotted to the question for the candidates who have selected option "B"*
- *No mark will be allotted to the question for the candidates who have not selected option "B"*

With respect to above condition for example if a candidate had obtained 36 marks wherein qualifying was 36 marks in the provisional results. After Grievances, this candidate will obtain 35 marks as per the final result. Hence this candidate will not qualify for the further selection process in terms of point no. 8.3

d. If two options towards a question is found as correct answers by the expert after the grievance received then one mark will be allotted to the candidates who have selected either of the two options.

EXAMPLE 2:

We may consider following example to understand the above point:

Question: Which is the type of carbohydrate from following?

A. Starch

B. Glucose

C. adenine
D. reboflavic acid
E. None of the above
Answer Key: A

- *For the above question a grievance is received from the candidate stating that either Option A or B is the correct answer.*
- *After taking opinion of the expert it is found that either Option A or B is the correct answer.*
- *Marks allocation after grievance for the above question is as follows:*
- *One mark will be allotted to the question for the candidates who have selected either Option A or B.*
- *No mark will be allotted to the question for the candidates who have not selected either Option A or B."*

4. In the present case, the CBRT examination was held on 10/4/2021. The question paper was uploaded to the website on 11/4/2021. On 12/4/2021 at 8.19 p.m., the Petitioner addressed the following email to the GPSC:

"Respected Sir,

I would like to inform you that something is unfair has happened in setting up of questions in the CBRT held on 10/04/2021 for the subject of mathematics for the post of assistant professor. As not less than 17 questions were asked from Linear programming and statistics department which was not mentioned in the syllabus published online. I think this syllabus was provided to some candidates secretly. As

these questions play a definite role in qualifying the test, I request you to kindly take initiative to stop the result based on this test and remove those questions and declare the result from 58 questions."

5. The above email does not comply with the requirements of clause 8.4 referred to above. Firstly, no fees per question, as prescribed, were paid by the Petitioner. Secondly, no hard copy of his grievance in the grievances application format as available on the Commission's website was uploaded. Therefore, considering the detailed procedure provided under Clause 8.4 and the apparent breach of such procedure by the Petitioner, there was no legal requirement as such for the GPSC to act based on the Petitioner's email communication dated 12/4/2021.

6. On 20/4/2021, the Petitioner send one more email to the GPSC. Along with this email, the Petitioner did furnish the details of the questions, which, according to him, were out of the syllabus. But, again, even the email was way beyond the period prescribed in instructions Clause 8.4. Moreover, even this email was not accompanied by the prescribed fees.

7. Mr Lawande has placed the prescribed format referred to in the above instructions before us. The format is detailed. The format requires several particulars to be filled in by the objector. The format requires objections to be stated, question-wise. What

is contemplated is that every objection about the objected question must be raised on a separate form.

8. Whilst we do not discount the argument based on substantial compliance or that a mere form must not precede substance, in the facts of the present case, we find that there is not even any substantial compliance. There is some purpose behind timelines and prescribing the format by the GPSC. Such timelines and format enable the GPSC to expeditiously address genuine grievances so that the declaration of results of the competitive examination or the selection procedure is not unduly delayed.

9. Clause 8.3. (3) provides that the result uploaded on the Commission's website on the next working day after the CBRT will be provisional. The final result will be displayed only after completing the grievance redressal process. For this reason, some time limit is prescribed for raising grievances. Similarly, the formats have been prescribed to facilitate expeditious disposal of grievances. Some fees are prescribed to weed out non-serious objectors. Before us, there was no challenge to the instructions. The breach of the instructions by the Petitioner is apparent.

10. Mr Kamat's only contention was that the instructions apply in case of "*any grievances related to the questions of CBRT*". He

submitted that the Petitioner had no grievance but had '*complaints*'. In our judgment, considering the context, the difference between a "*grievance*" and a "*complaint*" is like the difference between the tweedledee and tweedledum, as immortalized by Charles Dickens. Based on such a contention, the Petitioner could not have bypassed the instructions prescribed by the GPSC.

11. Based on the reports privately obtained by the Petitioner, Mr Kamat invited us to examine the issue of the out-of-syllabus questions in the Maths paper. Ordinarily, it is not for this Court to go into such highly technical or academic matters. Therefore, these will have to be left to the experts in the subject.

12. Mr Lawande pointed out that some of the objections received within the period prescribed and after complying with the requirements of the prescribed format were entertained by the GPSC, and some of the grievances were also redressed. Therefore, based on such redressal, even the Petitioner has received one additional mark. Be that as it may, the decision-making process leading to the rejection of the Petitioner's grievance or the complaint, as the case may be, is not vitiated by illegality, irrationality or procedural impropriety. Accordingly, we are disinclined to entertain the present Petition.

13. For the above reasons, this Petition is dismissed.

14. There shall be no order for costs.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.

SANTOSH S. MHAMAL
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SANTOSH S. MHAMAL
Date: 2023.02.08
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