



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO.2224 OF 2023**

Manoj s/o. Prabhakar Rao Samag,  
Age : 43 years, Occ : Senior Clerk  
in the Court of CJJD, Ghansawangi,  
Dist.Jalna.

...PETITIONER

**-VERSUS-**

1. The State of Maharashtra.  
Through the Principal Secretary,  
Finance Department, Mantralaya,  
Mumbai-32.
2. The Maharashtra Public Service  
Commission, Seven and Eighth Floor,  
Kuprej Telephone Nigam Building,  
Maharshi Karve Road, Mumbai-21.
3. The Director of Accounts and Treasuries,  
5<sup>th</sup> Floor, New Administrative Building,  
Opposite Mantralaya, Mumbai-32.

...RESPONDENTS

...  
Shri Balbhim R. Kedar, Advocate for the Petitioner.  
Shri P.K. Lakhotiya, AGP for Respondents 1 and 3/State.  
Shri Mukul Kulkarni, Advocate for Respondent 2/MPSC.

...

**CORAM : RAVINDRA V. GHUGE  
&  
Y. G. KHOBRAGADE, JJ.**

**DATE :- 31<sup>st</sup> January, 2024**

**ORAL JUDGMENT (Per Ravindra V. Ghuge, J.):-**

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner has put forth prayer clause B as under:-

*“B) By issuing writ of certiorari or any other appropriate writ, the impugned judgment and order dated 17/11/2022, passed by the Ld. Division Bench of Maharashtra Administrative Tribunal in O.A.NO.215/2020 and M.A. No. 49/2021 thereby dismissing the Original Application and Misc. Application may kindly be quashed and set aside and by allowing the writ petition, the respondents may kindly be directed to add 2 more marks in the 5<sup>th</sup> paper for question No.4 (b) of the petitioner and by granting grace marks to him for which he is entitled for, his name to be included in the list of successful candidates of M.F.A.S. Departmental Examination part-II, by giving him consequential service benefits including the seniority in the cadre, by treating his date of passing as on 19.10.2019.”*

3. The Petitioner is aggrieved by the judgment and order delivered by the learned Maharashtra Administrative Tribunal, dated 17.11.2022 by which, Original Application No.215/2020 was dismissed.

4. The case of the Petitioner can be compartmentalized into three parts:-

(A) Challenge to “No Revaluation” rule.

(B) Students be permitted to attempt more questions than the restricted limit and the best answers be taken into account.

(C) The examiner has wrongly denied one mark to the Petitioner when the Petitioner believes that he had answered correctly.

**(A) Challenge to ‘No Revaluation’ Rule**

5. The Petitioner had appeared for the 2018 examination by which, he was aspiring to be selected as an Assistant Accounts Officer in the Finance Ministry of the State of Maharashtra. This was a departmental examination. The clerks working in the District Courts, who had completed five years of service on the cut off date July, 2013, were eligible to appear for such examination, which was conducted in two parts. The first part of the examination was conducted in 2015 and the second part was conducted in 2018. Though the Petitioner has four attempts, the age limit of 40 years would prevent the Petitioner from taking any further attempt even if he had attempted lesser times.

6. The first part of the examination has been successfully cleared by the Petitioner. In the second part, for the subject “Paper on Precis and Draft (without books)”, which was paper No.V, he has fallen short by one mark to score 40 marks and he would have been eligible for grace marks of five for which he would have obtained qualifying 45 marks. Precis writing is a summary that condenses a passage into a few words as possible. The word “Precis” comes from the French word “Preisi”, which means “cut short”.

7. As regards the first, the Maharashtra Public Service Commission (MPSC) has published the Maharashtra Public Service Commission Rules of Procedure, 2014, which came into force on 16.05.2014. Under Rule 11(2), it has been provided as under:-

*“11(2) For conventional examination, the candidates shall have the right to apply to the Commission for verification of their answer books. The action of verification shall be limited to:-*

- (a) ascertaining that every answer is assessed;*
- (b) totalling of all the marks.*

*Thus there shall be no revaluation of answer books whatsoever:*

*Provided further that the applicant/candidate shall be required to submit his application within a stipulated period of time and with the prescribed fees as laid down either in the Notification or in the Scheme of*

*the examination as the case may be.”*

Rule 12 provides as under:-

“12. *Method of Moderation:-*

*To ensure fair and equitable assessment of the Answer Books, the Commission may resort to moderation of the evaluated answer books in respect of all the conventional examinations. The modalities in which moderation is to be done have been spelt out by the Commission in its Standing Orders. The Commission may suitably modify any one the above orders based on the experience gained by them.”*

8. It is, thus, clear that the candidates have a right to apply to the MPSC for verification of their answer books and such verification is limited to ascertaining whether, every answer is assessed and the totaling of marks is correct. It is specifically provided that there would be no revaluation of answer books whatsoever.

9. Having read Rule 11(2), more specifically the clause providing revaluation of answer books, we find that the said Rule cannot be faulted in view of Rule 12, which provides for method of moderation. In order to ensure a fair and equitable assessment of the answer books, the MPSC may resort to moderation of the evaluated answer books in respect of all the

conventional examinations. The modalities in which moderation is to be done have been spelt out by the MPSC in it's Standing Orders.

10. The relevant Standing Order reads as under:-

“१. नियमन : विविध स्पर्धा परीक्षांच्या पारंपारिक स्वरूपाच्या उत्तरपुस्तिका नियमन करण्याची पध्दत खालीलप्रमाणे राहिल.

अ) (i) उत्तरपुस्तिका परीक्षकांकडून तपासून झाल्यानंतर ६०% वा त्यापेक्षा जास्त गुण मिळालेल्या उत्तरपुस्तिकांचे तसेच ३०% ते ४०% मधील सर्व उत्तरपुस्तिकांचे व उर्वरित उत्तरपुस्तिकांमधील किमान ५% उत्तरपुस्तिका RANDOM पध्दतीने काढून त्यांचे नियमन करणे.

(ii) फक्त दिवाणी न्यायाधिश (कनिष्ठ स्तर) व न्यायदंडाधिकारी (प्रथम वर्ग) (मुख्य) परीक्षेसाठी उत्तरपुस्तिका परीक्षकांकडून तपासून झाल्यानंतर ६०% वा त्यापेक्षा जास्त गुण मिळालेल्या उत्तरपुस्तिकांचे तसेच ४०% ते ५०% मधील सर्व उत्तरपुस्तिकांचे व उर्वरित उत्तरपुस्तिकांमधील किमान ५% उत्तरपुस्तिका RANDOM पध्दतीने काढून त्यांचे नियमन करणे.

ब) ज्या विषयाच्या उत्तरपुस्तिकांची संख्या २० किंवा त्यापेक्षा कमी आहे, अशा विषयांच्या सर्व उत्तरपुस्तिकांचे नियमन करण्यात यावे.

२. पुनर्मुल्यांकन : प्रस्तुत आदेशातील तरतुदीनुसार विविध स्पर्धा परीक्षांच्या नियमनाचे काम पूर्ण झाल्यावर परीक्षकांनी दिलेले गुण व नियामकांनी दिलेले गुण यात १५% पेक्षा जास्त फरक पडल्यास त्याची

तज्ज्ञ-परीक्षक (मुख्य नियामक) यांच्याकडून पुनर्मूल्यांकन/तपासणी करून घ्यावी व ते गुण अंतिम समजावेत.

३. चाळणी परीक्षेच्या उत्तरपुस्तिकांचे नियमन केले जाणार नाही.”

11. It is common policy that where moderation methodology is utilized for equitable assessment of answer books, revaluation is normally not permitted. In such a backdrop, restriction on revaluation would not appear to be arbitrary considering that the method of moderation is being utilized for ensuring a fair and equitable assessment of answer books. On this count, therefore, since there is no specific challenge and there is no prayer put forth and in view of the fact that moderation methodology is applied, we do not find the Rule to be arbitrary.

12. The learned Advocate for the MPSC places reliance upon the judgment delivered by the Honourable Supreme Court (three Judges Bench) in ***Pramod Kumar Srivastava vs. Chairman, Bihar Bihar Public Service Commission, Patna and others, 2004 SCW 4541***, wherein, it has been concluded in paragraphs 7 and 8 as under:-

“7. We have heard the appellant (writ-petitioner) in

*person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the learned Single Judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totaling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. This question was examined in considerable detail in Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kurmarsheth and others, AIR 1984 SC 1543. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it*

*was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant re-evaluated.*

8. *Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer-books. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided.”*

13. On the aspect of revaluation, the view taken by the Honourable Supreme Court in ***Pramod Kumar (supra)*** is crystal

clear. It was dealing with the Bihar Public Service Commission. In paragraphs 7 and 8, the Honourable Supreme Court has recorded that the revaluation of an answer-sheet is an independent exercise and if the students appearing for the examination, make such applications, the Commission will have to spend lot of time on revaluation and as a consequence, the results of such examination would be unduly postponed. Reference has been made to the decision of the Hon'ble Supreme Court in *Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kurmarsheth and others*, AIR 1984 SC 1543. We, therefore, conclude that the challenge to the aforesaid Rule 11(2)(b) fails.

**B. Students be permitted to attempt more questions than the restricted limit and the best answers be taken into account.**

14. The learned Advocate for the Petitioner has strenuously canvassed that answering more questions than what is permissible, cannot be an anathema. If a student is supposed to answer only five questions and he answers six, there should be no controversy on this issue as it is the choice of the

student/examinee to attempt as many number of questions that he may desire with the hope that the best answers would be taken into account while computing the marks.

15. The learned advocate for the Commission contends that where it is specifically permissible to attempt many number of questions and the best of the answers are to be taken into account, the candidates in such cases could do so depending upon the Rules that may be prescribed in this behalf. By relying on *Pramod Kumar (supra)*, he submits that nobody can travel beyond the Rules and if it is not permissible to answer more than the prescribed number of questions or go against the procedure prescribed for the examination, it would not be appropriate for this Court to take a different view.

16. According to the Petitioner, the instructions cited by the MPSC before this Court, as well as before the Tribunal, were not specifically published for the said examination. We find that the MPSC has been uniformly following a particular pattern while issuing the instructions to the examinees. A notification bearing No.P-1(2)/(April, 2013)/1 dated 19.03.2018 is placed before us at page 47 indicating that these are the instructions with regard to the examinations held in 2018 in which, the Petitioner

was one of the examinees. Clauses 4, 5, 6, 9 and 12 of the instructions read as under:-

"४) ज्या प्रश्नपत्रिकांची उत्तरे पुस्तकांच्या सहाय्याने लिहावयाची आहेत. अशा वेळी उमेदवारांनी विभागाने प्रमाणित केलेली शासन प्रकाशित अधिकृत पुस्तके (स्वतःची) (यथास्थिती केवळ बेअरअॅक्ट्स आणि / किंवा रुल्स) वापरावी. परंतु परीक्षेसाठी असलेल्या कोणत्याही प्रश्नपत्रिकेवरील टिपण्या असलेली पुस्तके, मार्गदर्शिका किंवा पेजर, मोबाईल फोन, प्रोग्रामेबल कॅलक्युलेटर वा नकाशे, इत्यादि वस्तू परीक्षा कक्षामध्ये आणण्याची उमेदवारांना सक्त मनाई आहे. सदर सूचनेचे उल्लंघन झाल्याचे आढळल्यास ती बाब शिस्तभंग असल्याचे समजण्यात येईल व आयोगामार्फत तसेच विभागामार्फत कारवाई केली जाईल. उमेदवारांना आयोगाकडून कोणतीही पुस्तके पुरविली जाणार नाहीत."

"५) परीक्षेच्या नियमामध्ये प्रमाणित केल्याप्रमाणे उमेदवारांना प्रश्नांची उत्तरे इंग्रजी किंवा मराठीमध्ये लिहिण्याची मुभा आहे. परंतु उत्तरपुस्तिकेत ज्या भाषेत उत्तर लिहिणे सुरु केले असेल, त्याच भाषेत त्या उत्तरपुस्तिकेत शेवटपर्यंत उत्तरे लिहिली पाहिजेत. परीक्षेच्या प्रश्नपत्रिका इंग्रजी भाषेतच काढल्या जातील."

"६) उमेदवाराने प्रश्नांचे उपप्रश्न सोडविताना (अ, ब, क, ड किंवा १, २, ३, ४] सलगरित्या सोडवावेत. प्रश्नाचा एक भाग एका पृष्ठावर दुसरा भाग काही पृष्ठे सोडून अथवा काही अन्य पृष्ठावर उपप्रश्न सोडविल्यास तो उपप्रश्न दुर्लक्षित करण्यात येईल व अशा प्रश्नांच्या उत्तरांना शून्य गुण समजण्यात

येतील.”

“९) विभागीय परीक्षेच्या पारंपरिक स्वरूपाच्या उत्तरपुस्तिकेकरिता गुणांची पडताळणी करण्यात येते. फेरमुल्यांकन केले जात नाही.”

“१२) आयोगाने विभागीय परीक्षा संदर्भाने केलेल्या सूचनांचे उमेदवाराने अत्यंत काळजीपूर्वक पालन करावे. सूचनांचे पालन न करणे, उमेदवार परीक्षा कक्षाबाहेर घालवून देणे, गुण वजा करणे, पुढील परीक्षांना प्रतिरोधित करणे, उमेदवारी रद्द करणे, इत्यादी शिक्षा देण्यास ठरेल. शिक्षा देण्याचा अधिकार सर्वस्वी आयोगाचा राहील.”

17. It is, thus, apparent that the instructions mandate a particular pattern to be followed even while answering questions in continuity under clause 6. Revaluation has been specifically refused in clause 9. In clause 6, it is made clear that the MPSC would have the right to ignore certain answers if systematic pattern/sequence, as was instructed, is not followed. In clause 12, it is mentioned that all instructions have to be scrupulously followed by the examinees.

18. The contention of the Petitioner is that when the instruction on the question paper was “Answer Any Five”, it was clear that no examinee was restricted from answering more than five. Despite his strenuous submissions, we find that he is unable

to persuade us. In matters of interpretation of any provision or any clause, a normal meaning has to be attributed to the sentence if language is plain and simple and not ambiguous. When the instruction to examinee is “Answer Any Five”, in our view, he is expected to answer only five out of the available options. The instruction did not indicate that the examinee should answer any number of questions and the best five answers would be considered while evaluating his answer-sheet.

19. There are certain examinations wherein, the Authorities prescribe vide the rules, of taking the best answers or scores, like ‘best five’ or ‘best seven’ while evaluating an examinee. When the instructions mandate the examinee to answer any five, in our view, it goes without saying that he is not supposed to answer more than five. This interpretation is fortified by clause 6 of the instructions. Clause 9 of the instructions for the examinees for the departmental examination, at page 91-D of the petition paper book, reads as under:-

“9) सोडविण्याच्या प्रश्नांची संख्या:- प्रत्येक प्रश्नपत्रिका वरील सूचनेप्रमाणे उमेदवाराने प्रश्न सोडविले पाहिजेत जर विहित संख्येपेक्षा अधिक प्रश्न सोडविले तर विहित संख्या पर्यंत अगोदर सोडवलेल्या प्रश्नांची उत्तरे तपासली जातील. उरलेल्या प्रश्नांची उत्तरे उत्तरे दुर्लक्षित केले

जातील. उमेदवाराने एका प्रश्नाचे उत्तर दोनदा लिहिल्यास तपासावायचे नसलेले एक उत्तर रद्द समजण्याबाबत उमेदवाराने त्या उत्तरावर उत्तर रद्द असा शेरा नमूद करावा.”

20. It is apparent that if an examinee answers more than the prescribed number of questions, the first of those answers would be taken into account and any answer beyond the prescribed number, would not be even evaluated. Since such examination rules are held to be having a binding force on the examinees in *Pramod Kumar (supra)*, we do not find that the learned Tribunal has erred in passing the impugned order in refusing to scrutinize the excess answers. We answer issue no.2 accordingly.

(C) The examiner has wrongly denied one mark to the Petitioner when the Petitioner believes that he had answered correctly

21. On the third issue, the learned Advocate for the Petitioner has drawn our attention to the copy of the answer-sheet that he has received from the MPSC, placed at page No.57 in the petition paper book. His grievance is with regard to an answer

offered to a word at serial No.4 under the caption of answering 'opposite meaning of the words'. To write an opposite word to the word "compulsory", the Petitioner has answered as "optional/mandatory". According to the Petitioner, the examiner was not satisfied with the word "optional" since he preferred the word "voluntary", which is on the basis of the expert opinion.

22. The contention of the Petitioner twofold. Firstly, that the examiner should have ignored the word "mandatory" and should have accepted the word "optional". Secondly, that the Petitioner has attempted one more answer at serial No.6 when he wrote the word "horizontal" as the opposite to the word "vertical". If not serial No.4, the examiner should have accepted the answer at serial No.6.

23. On the first count, we hold that since optional and mandatory are self contradictory words offered together by the Petitioner as an answer, we would not find any fault with the examiner. Moreover, we would not step into the shoes of the examiner to decide which is the correct answer notwithstanding the reliance placed by the Petitioner on the "Shasan Vyavahar Kosh" (Government Administrative Dictionary), which mentions the word "optional" as having an opposite meaning to the word

“compulsory”.

24. The second contention also cannot be accepted since the Petitioner was under a mandate of answering any five and not to attempt unlimited questions. Having interpreted the meaning of “Answer Any Five” and taking into account the specific instructions in clause 9 reproduced above, which does not oblige the examiner to evaluate the extra answers given by the examinee, answer at serial No.6 will have to be ignored.

25. In view of the above, we do not find that the learned Tribunal has committed any error in delivering the impugned order. Merely because a second view is possible, this Court would not be justified in exercising its supervisory jurisdiction in interfering in the impugned order considering the law laid down by the Honourable Supreme Court in *Syed Yakoob Vs. K.S.Radhakrishnan and others [AIR 1964 SC 477]* and *Surya Dev Rai Vs. Ram Chander Rai [2003(6) SCC 682]*.

26. **This Writ Petition is, therefore, dismissed.** Rule is discharged.

27. No order as to costs.