



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

942 WRIT PETITION NO. 6906 OF 2024

MOHAMMED AMMAAR MOHAMMED SHOIBUDDIN
VERSUS
THE STATE OF MAHARASHTRA THROUGH
ITS SECRETARY AND OTHERS

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Advocate for petitioner : Mr. H.I. Pathan
AGP for the respondent – State : Mr. R.S. Wani
Advocate for respondent no. 2: Ms. Nayana Patil h/f. Ms. Surekha P. Mahajan
Advocate for respondent no. 3 : Ms. A.N. Ansari

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 10 SEPTEMBER 2024

PC :

We have heard both the sides.

2. The petitioner is before us, being aggrieved by the fact that in spite of having appeared for class improvement scheme of the respondent – board, he is not being issued with a marksheet. He is challenging the decision of the board cancelling his performance.

3. Learned advocate for the board submits that as per regulation 92.6 and the departmental circulars issued from time to time stating that he having failed to exercise the option within six months, his performance at the examination has been cancelled.

4. The issue has been addressed by this Court at least on two occasions. The division bench in the matter of ***Soheb Sageerali Khan V. State of Maharashtra*** (writ petition no. 926 of 2024 – order dated 01-04-2024 – Principal Seat) had expressly observed that no rule is applicable to the fact situation. It was also observed that rule 55(2) and rule 102(2) would apply only to meet the contingency where correction is sought in the performance / result. Even we had an occasion to decide the issue in the matter of ***Rushikesh Udhavrao Mutkule Vs. The State of Maharashtra through its Department of Education and another*** (writ petition no. 7168 of 2024 – order dated 12-07-2024 and connected writ petition). The performance in the examination under class improvement scheme cannot be cancelled by resorting to rule 55 (2) and rule 102(2).

5. In the light of above, we are merely being consistent and are of the considered view that the impugned order is liable to be struck down being *sans* any provision.

6. Considering the afore-mentioned facts, we allow the writ petition, quash the impugned communication and direct respondent no. 2 – board to issue the marksheet of the examination to the petitioner at which he appeared in July 2022.

7. The petitioner shall surrender the earlier marksheet. The petitioner shall deposit Rs.1000/- (Rs. One Thousand) with the board.

8. The petitioner shall approach respondent no. 2 – board on 18 September 2024 and the board shall immediately on receipt of Rs.1000/-, issue the marksheet to the petitioner.

9. Parties to act on an authenticated copy of this order.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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