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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 1333 OF 2025
ALONGWITH
INTERIM APPLICATION NO.1272 OF 2025**

Ajay Halarneker

...Petitioner-
Applicant.

V/s

The Hon'ble High Court of Bombay at Goa &Respondents.
Others.

Mr. Nigel da Costa Frias (through V.C.) with Ms. Bavina Kukalekar (through V.C.), Mr. Prabhakar M. Jadhav and Mr. Shekhar Mane, Advocates for the petitioner-applicant.

Dr. Milind Sathe, Senior Advocate, with Mr. Rahul Nerlekar, Advocate for the respondent-High Court.

**CORAM : A. S. CHANDURKAR &
M. M. SATHAYE, JJ.**

DATE : 18th FEBRUARY 2025

P.C. : (Per A. S. Chandurkar, J.)

1] Heard. The petitioner, a candidate who seeks appointment to the post of Civil Judge Junior Division and Judicial Magistrate First Class in the judicial service of the State of Goa seeks a direction to be issued to the 1st respondent – High Court of Bombay at Goa through Registrar (Administration) to re-evaluate/re-examine the petitioner's answer-sheet of Paper II (Criminal) of the said examination. Pursuant to the advertisement dated 15/03/2024 issued by the 1st respondent, written examination of two papers was conducted. Paper I was for civil subjects while Paper II was for criminal subjects. The said examinations

were held on 22/09/2024 and the results were declared on 16/12/2024. The petitioner secured fifty one marks in Paper I and thirty eight marks in Paper II. Thereafter, list of candidates eligible to appear at the *viva-voce* test was published. As the petitioner was not satisfied with the marks awarded to him in Paper II, he applied for supply of his answer-book which was duly supplied to him. After perusing the same, the petitioner was of the view that his assessment had not been done with due application of mind. It is in that backdrop that the petitioner has filed this writ petition.

2] On 07/02/2025, Dr. Milind Sathe, the learned Senior Advocate for the 1st respondent on instructions submitted that if a candidate secured more than forty marks in the written examination, his answer paper was liable to be sent for moderation as per practice. Though the petitioner was stated to have secured thirty eight marks in Paper II, he had actually scored forty two marks as the marks against question nos. 2 and 5 had been incorrectly recorded. It was accordingly directed that the petitioner's said answer paper be subjected to exercise of moderation within a period of one week.

Today, affidavit-in-reply has been tendered on behalf of the 1st respondent wherein it has been stated that after due moderation, the petitioner had secured thirty eight marks out of hundred and hence it was clear that the petitioner had not passed Paper II.

3] In the aforesaid backdrop, we have heard the learned counsel for the parties. Mr. Nigel da Costa Frias, the learned counsel for the petitioner submits that perusal of the petitioner's answer paper would reveal that despite writing all correct answers he had been granted

lesser marks than what ought to have been awarded for the correct answers. The learned counsel took the Court through the petitioner's answer-sheet to contend that each question had been rightly answered and thus higher marks ought to have been awarded to the petitioner. In any event it was urged that a case for re-evaluation of the petitioner's answer-sheet had been made out. Placing reliance on the judgment of the Co-ordinate Bench in Writ Petition No.1685 of 2023 (*Nitish s/o Anil Sharma vs. State of Maharashtra, through Secretary Department of Home, Mantralaya, Mumbai -32*) decided on 12/06/2023 at the Nagpur Bench, it was submitted that reliefs prayed for in the writ petition be granted.

Per contra Dr. Milind Sathe, the learned Senior Advocate for the 1st respondent opposed the said submissions. According to him, there was no provision for directing re-evaluation of answer papers either in the recruitment rules nor in the concerned advertisement. There was no legal right whatsoever to seek any re-evaluation. There were no allegations of malafides made by the petitioner in the matter of assessing the petitioner's performance. Pursuant to the exercise of moderation, the petitioner had secured thirty eight marks which indicated that he was not successful in the said paper. Referring to the judgment of the Division Bench in Writ Petition No. 5 of 2024 (*Mrs. Halarnkar Reeha Adish Alias Rawal Reeha Vasudev vs The Hon'ble High Court of Bombay at Goa Through the Registration (Administration) Porvorim, Goa*) with companion writ petition decided on 01/03/2024 by the High Court of Bombay at Goa, it was submitted that the petitioner was not entitled to any relief whatsoever.

4] Having heard the learned counsel for the parties and having

perused the material on record, we do not find that there is any case made out by the petitioner to grant him the reliefs as prayed for. At the outset, it may be stated that under the recruitment rules there is no provision for a candidate to seek re-evaluation of his answer papers. The advertisement pursuant to which written examination was conducted also does not provide for any re-evaluation. Notwithstanding the absence of any provision for re-evaluation, we have considered the petitioner's case in the light of law laid down by the Supreme Court in *High Court of Tripura through the Registrar General vs. Tirtha Sarathi Mukherjee & Others*, (2019) 16 SCC 663. It is only in rare and exceptional cases that jurisdiction under Article 226 of the Constitution of India could be exercised if it is found that grave injustice may be caused by failing to do so and that there was no dispute about the correctness of the answers.

In the aforesaid backdrop when the case of the petitioner is examined, it is seen that Paper II for hundred marks was descriptive in nature with the first question carrying twenty marks to be compulsorily answered and other five questions with choices carrying sixteen marks each. On perusing the petitioner's answer-sheet it may be stated that though the petitioner had attempted to answer all the questions, answers given by him were brief. When they are considered in the backdrop of marks awarded for each question, it may be stated that examiner and thereafter moderator have in exercise of their discretion awarded marks to the petitioner. It cannot be said that the petitioner has been awarded lesser marks for any specific reason. The assessment of the answers and the marks awarded are keeping in view the nature of questions and the answers expected to be given. This Court cannot substitute its view in place of that of the examiner and the moderator. We do not find that there is any exceptional case made out to warrant

interference on the parameters laid down in *Tirtha Sarathi Mukherjee and Others* (supra).

5] For the aforesaid reasons, we do not find any case made out to exercise jurisdiction under Article 226 of the Constitution of India. The writ petition stands dismissed with no order as to costs. The Interim Application is also disposed of.

(M. M. SATHAYE, J.)

(A. S. CHANDURKAR, J.)