

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1190 OF 2022

DISTRICT : MUMBAI

Shri N.A Bankar & Ors)...**Applicants**

Versus

The State of Maharashtra)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicants.

Mrs K.S Gaikwad, learned Presenting Officer for the Respondents.

Shri S.S Dere, learned advocate for Respondents no 23 & 27.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Mrs Medha Gadgil (Member) (A)

DATE : **29.11.2022**

PER : **Justice Mridula Bhatkar (Chairperson)**

ORDER

1. This Original Application is offshoot of the Judgment and order dated 23.9.2022 passed in O.A 557/2021 and 676/2022 and the order in speaking to the minutes dated 28.9.2022. Hence, necessary to state background in brief.

2. In those O.A 557/2021 & 676/2022, by order dated 9.6.2022 interim stay was granted for promotion to the post of Police Inspector and on 8.8.2022 the stay was vacated by the detailed order and that order was challenged before the Hon'ble



High Court in W.P 9803/2022 and 9805/2022, which was disposed of by order dated 18.8.2022 restoring the earlier order of stay dated 9.6.2022. The said Original Applications 557/2021 & 676/2022 was finally disposed of on 23.9.2022, directing the Government to grant applicants who were promotees aspiring to the post of A.P.I & P.I deemed date and till then the entire process was stayed till 30.11.2022. Learned counsel for the applicant submits that he has filed affidavit of service on the Respondents as well as private Respondents.

3. Shri Dere, learned counsel who has appeared in the two O.As 557/2022 & 676/2022 and now have made private Respondents in this present O.A, submits that he is appearing on behalf of Respondents no 23 & 27 and he has filed short affidavit in reply on behalf of Respondent no. 23, opposing grant of interim relief. Copy of the affidavit in reply is furnished to the Respondents and also to the learned counsel for the applicants.

4. By this Original Application, the applicants pray for recalling of the order dated 23.9.2022 and the speaking to the minutes order dated 28.9.2022 in O.A 557/2021 and 676/2022. The applicants were not heard in these two matters and therefore, the applicants prayed by way of interim relief that the orders dated 23.9.2022 and 28.9.2022 in O.A 557/2021 & 676/2022 be stayed. Learned counsel for the applicants submit that on account of granting deemed date of promotion, the seniority of the applicants who are direct recruits is going to be affected. Learned counsel for the applicants submit that the seniority of these applicants in the cadre of P.S.I as well as A.P.I, who are direct recruits, holds the field since last 12 years. Learned counsel on the point of maintainability of the Original Application relied on the order of the Hon'ble Bombay High Court dated 25.11.2022 in Writ Petition

No. 14559 of 2022, Smt Sonali R. Chavan & 8 Anr Vs. The State of Maharashtra & Anr.


5. Learned counsel Shri Dere, for Respondents no 23 & 27 while opposing the Original Application of the applicants submitted that the applicants have challenged the earlier orders of this Tribunal in O.A 557/2021 and 676/2022 where he has represented the applicants, that is the Respondents in the present Original Application. Learned counsel Shri Dere, has submitted that there should be consistency in the orders passed by the Judicial Forum and he submits that the Tribunal should not disturb its own orders passed earlier in those two Original Applications, namely O.A 557/2021 and 676/2022. However, if the Tribunal is going to dissent its own order, then matter is to be referred to larger bench. On this point, he relied on the judgment of the Hon'ble Supreme Court in the case of **K. AJIT BABU & ORS Vs. UNION OF INDIA & ORS, (1997) 6 SCC 473**. We reproduce the relevant portion which is relied by the learned counsel for the Respondents no 23 & 27.

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“6. Consistency, certainty and uniformity in the field of judicial decisions are considered to be the benefits arising out of the “Doctrine of Precedent”. The precedent sets a pattern upon which a future conduct may be based. One of the basic principles of administration of justice is that the cases should be decided alike. Thus, the doctrine of precedent is applicable to the Central Administrative Tribunal also. Whenever an application under Section 19 of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in the earlier case, as a precedent

and decide the application accordingly. The Tribunal may either agree with the view taken in the earlier judgment or it may dissent. If it dissents, then the matter can be referred to a larger Bench/Full Bench and place the matter before the Chairman for constituting a larger Bench so that there may be no conflict upon the two Benches.”

6. Learned counsel Shri Dere, further relied on the pleadings in para 6.8 of the Original Application and submits that where there is a specific pleading by the applicants, that is to be taken into account and cannot be ignored. In para 6.8, the applicants have stated how they are going to be affected adversely if the deemed date as directed by this Tribunal is granted. Learned counsel Shri Dere submits that these pleadings are contrary to the decision of the Hon'ble High Court dated 4.8.2017 in State of Maharashtra & Ors Vs. Vijay Ghogre & Ors, W.P 2797/2015 and as per the pleadings only after review of promotion of the reserved category candidates the cases of employees like private Respondents would have been promoted in place of reserved category employees. Moreover, against one post two persons cannot be appointed. Learned counsel Mr Dere, picking up this point has submitted that in view of these pleadings it is necessary for the applicants to challenge clause 4 of the G.R dated 7.5.2021. He has submitted that unless the applicants challenge clause 4 of the said G.R, no relief can be granted in this matter. Pursuant to the G.R and the orders of this Tribunal in O.A 557/2021 & 676/2022 and in compliance with the judgment in Vijay Ghogre's case, W.P 2797/2015, while implementing the orders of this Tribunal there is bound to be inflation in the post of P.S.I. This is going to affect the seniority of the applicants. Thus, though it is necessary for the applicants to challenge the relevant clause 4 of the said G.R. The applicants deliberately have chosen not to challenge the said G.R.



7. Learned C.P.O, argued that the State wants time to consider the issue and so also the Respondent-State is going to file Misc Application in the earlier Original Applications no 557/2021 & 676/2022 seeking extension of time to implement the order of this Tribunal.

8. At the outset, we make it clear that when the Original Applications No 557/2021 & 676/2022 were heard and the learned counsel for the applicants in that matter and the learned C.P.O for the Respondents did not mention anything about the seniority of direct recruits appointed to the post of P.S.I. Hence, we did not contemplate that implementation of the orders in O.A 557/2021 & 676/2022, which are pursuant to the order of corrective measures in Vijay Ghogre's case, W.P 2797/2015, would affect adversely the direct recruits. We are informed by the learned C.P.O that even in that matter the issue of seniority of the direct recruits was not at all raised. Moreover, the issue as per the G.R dated 7.5.2021 was restricted only to reservation in promotions. We were obviously fully concentrated on the process of promotion in the feeder cadre and the reservation and we could not speculate the repercussions of this orders on the cadre of direct recruits in the cadre of P.S.I. However, as the applicants have come before the Tribunal, who are the direct recruits and not from the mode of recruitment of the Respondents, i.e., through Limited Departmental Examination to the post of P.S.I, we apply the basic principles of seniority that settled seniority of long years is not to be unsettled generally once it is fixed. So far as the issue of reservation is concerned, the applicants stand on a different footing than the promotee Respondents. There is a fixed quota for the direct recruits which obviously cannot be disturbed so also their settled seniority.

9. Thus, at the interim stage, we direct the Respondents not to disturb the settled seniority of the applicants, direct recruits. We are of the view that the G.R dated 7.5.2021 has created catch-22 situation and we are sure that the Government has its own policy and the ways to implement the G.R without unsettling the seniority of the direct recruits.

10. S.O to 3.1.2023.

(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 29.11.2022
Dictation taken by : A.K. Nair.

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

M.A./R.A./C.A. No. _____ of 20 _____

I N

Original Application No. _____ of 20 _____

FARAD CONTINUATION SHEET No.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date: 29.11.2022</p> <p align="center">O.A. No.1178 of 2022</p> <p>S.N. KhandagaleApplicant Versus The State of Maharashtra & Ors.Respondents.</p> <p>1. Heard Shri N.Y. Chavan, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.</p> <p>2. The Applicant who is serving as Medical Officer and who is going to retire after attaining 58 years i.e tomorrow 30.11.2022 on superannuation, seeks interim relief that he be allowed to continue on the post till the decision of this O.A. Learned Advocate for the Applicant relied on the notification dated 23.02.2022. In the said notification the Government has extended the age of retirement from 58 to 60 years. He submits that he falls in the cadre of Medical Superintendent and he is having Pay scale and Pay Matrix S-23 as mentioned in pay notification. He further submits that on 09.11.2022 an order was passed and communicated to him that he is going to retire on 30.11.2022 as some objections were taken by the Pay Verification Unit.</p> <p>3. Learned P.O. while opposing the interim relief relied on the same letter dated 09.11.2022 and she submits that the Applicant is holding degree of B.A.M.S. and he is in the pay scale of 6,500-10,500, and therefore he is not entitled to pay scale of Rs.8,000-13,500. She therefore submits that the Applicant is not entitled to get extension from 58 to 60 years.</p> <p>4. She seeks time to file detailed Reply in the matter.</p>

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>5. However, a Government servant when he joins a Government service is aware of his retirement. If there is subsequent notification of Government in respect of Medical Officers working in the State of Maharashtra the Applicant should have approached the Tribunal earlier. Moreover when the objection was raised by the pay verification unit by letter dated 09.11.2022 he should have approached the Tribunal immediately. However, the Applicant filed this O.A. on 23.11.2022 and circulation was sought on 25.11.2022. We need to hear the Respondents – State on this point. Such artificial urgency created cannot be entertained by us giving urgent interim orders.</p> <p>6. Learned Advocate for the Applicant submits that there is going to be some recovery from the Applicant pursuant to the letter from Pay verification unit dated 09.11.2022.</p> <p>7. Be that as it may, that is a separate cause of action.</p> <p>8. Interim relief is rejected.</p> <p>9. Three weeks time is granted to file Affidavit-in-Reply.</p> <p>10. S.O. to 20.12.2022.</p> <p style="text-align: center;">Sd/- (Medha Gadgil) Member (A)</p> <p style="text-align: center;">Sd/- (Mridula R. Bhatkar, J.) Chairperson</p> <p>NMN</p>

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	<p align="center">Date: 30.11.2022</p> <p align="center">O.A.No.993 of 2021</p> <p>A.R. JadhavApplicant Versus State of Maharashtra & Ors.Respondents</p> <p>1. Heard Mr. R.M. Kolge, learned Advocate for the Applicant and Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents.</p> <p>2. Learned Advocate states that the final decision in the matter of D.E. was taken on 23.11.2022.</p> <p>3. Learned P.O. produces copy of show cause notice dated 23.11.2022 and order of punishment dated 28.11.2022. The same is taken on record and marked as Exhibit-A.</p> <p>4. As nothing survives in the O.A. in the light of said orders dated 23.11.2022 and 28.11.2022, O.A. stands disposed of.</p> <p align="center">Sd/- <i>(Medha Gadgil)</i> (Medha Gadgil) Member(A) prk</p> <p align="center">Sd/- <i>(Mridula Bhatkar, J.)</i> (Mridula Bhatkar, J.) Chairperson</p>

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

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FARAD CONTINUATION SHEET No.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p align="center">Date: 30.11.2022</p> <p align="center">O.A.No.240 of 2022</p> <p>Shivaji Shinde ...Applicant Versus State of Maharashtra & Ors.Respondents</p> <p>1. Heard Ms. Sonali Pawar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.</p> <p>2. In view of the precipe dated 30.11.2022, moved by learned Advocate Ms. Sonali Pawar matter which was on yesterday's board and scheduled on 21.02.2013 as prayed by learned Advocate Ms. Pawar, to prepone the matter as the issue is pertaining to disability act for promotion, adjourned to 17.01.2023.</p> <p align="right">Sd/- A.</p> <p align="center">Sd/- (Medha Gadgil) Member(A) prk</p> <p align="right">Sd/- (Mridula Bhatkar, J.) Chairperson</p>

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Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date: 30.11.2022</p> <p style="text-align: center;">O.A.No.679/2022 with O.A.No.734/2022</p> <p>S.D. Satpute & Ors ...Applicants V/s. State of Maharashtra & Ors.Respondents</p> <p>1. Heard Mr. Bhushan A. Bandiwadekar, learned Advocate for the Applicants and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.</p> <p>2. Learned C.P.O. submits that similar issue is involved in both the matters. She submits that in the rejoinder in O.A.No.734/2022 filed by learned Advocate some allegations are made on the Department and therefore time is required to file sur-rejoinder.</p> <p>3. Adjourned to 14.12.2022.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="text-align: center;"> <p>Sd/-</p> <p>(Medha Gadgil) Member(A)</p> <p>prk</p> </div> <div style="text-align: center;"> <p>Sd/-</p> <p>(Mridula Bhatkar, J.) Chairperson</p> </div> </div>

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Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date: 30.11.2022</p> <p align="center">O.A.No.736 of 2022 with O.A.No.737 of 2022 with O.A.No.738 of 2022</p> <p>J.B. Patil & Ors. ...Applicants V/s. State of Maharashtra & Ors.Respondents</p> <p>1. Heard Ms. K.B. Jadhav, learned Advocate for the Applicants and Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents.</p> <p>2. Learned Advocate Ms. Jadhav seeks time to file rejoinder.</p> <p>3. Adjourned to 07.12.2022.</p> <p align="center">Sd/- Sd/-</p> <p align="center">(Medha Gadgil) (Mridula Bhatkar, J.) Member(A) Chairperson</p> <p align="left">prk</p>

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Original Application No. _____ of 20 _____

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Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p align="center">Date: 30.11.2022</p> <p align="center">O.A. No.1144 of 2022</p> <p>Dr.Sandip GavhaleApplicant Versus The State of Maharashtra & Ors.Respdents.</p> <p>1. Heard Smt Amita Chawale, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.</p> <p>2. Learned Advocate for the Applicant submits that the Applicant has been posted as Associate Professor, Grant Medical College vide order dated 10.08.2022. She further produces copy of the relieving order of the Respondent No.5 from the post of Associate Professor dated 18.11.2022.</p> <p>3. Learned C.P.O. is directed to take instructions whether the Government has taken policy decision on the representation as per order of Tribunal dated 22.06.2022.</p> <p>4. Learned C.P.O. submits that she wants to file affidavit about the decision taken by the State-Respondent on the representation as ordered by the Tribunal on 06.07.2022.</p> <p>5. Adjourned to 02.12.2022 at 10.30.a.m.</p> <p align="center">Sd/- _____ Sd/- _____</p> <p align="center">(Medha Gadgil) (Mridula R. Bhatkar, J.) Member (A) Chairperson</p> <p>nmn</p> <p align="right">[P.T.O.]</p>

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
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M.A./R.A./C.A. No. _____ of 20____

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Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date: 29.11.2022</p> <p align="center">O.A.No.01 of 2020 with O.A.No.02 of 2020</p> <p>N.N. Mane & Anr.Applicants V/s. State of Maharashtra & Ors.Respondents</p> <p>1. None for the Applicant. Heard Ms, K.S. Gaikwad, learned Presenting Officer for the Respondents.</p> <p>2. Learned P.O. states that reply is already filed.</p> <p>3. Admit with liberty to file rejoinder, if any,</p> <p>4. Adjourned to 10.01.2023.</p> <p align="center">Sd/-</p> <p align="center">(Medha Gadgil) Member(A) prk</p> <p align="center">Sd/-</p> <p align="center">(Mridula Bhatkar, J.) Chairperson</p>

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

M.A./R.A./C.A. No. _____ of 20 _____

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Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date: 29.11.2022</p> <p align="center">O.A.No.631 of 2022 with O.A.No.451 of 2022</p> <p>P.V. Topale ...Applicants Versus State of Maharashtra & Ors.Respondents</p> <p>1. None for the Applicant. Heard Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.</p> <p>2. Learned C.P.O. submits that reply is filed in O.A.No.451/2022. However she seeks time to file reply in O.A.No.631/2022.</p> <p>3. Adjourned to 13.12.2022</p> <p align="center">Sd/- (Medha Gadgil) Member(A) prk</p> <p align="center">Sd/- (Mridula Bhatkar, J.) Chairperson</p>

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

M.A./R.A./C.A. No. _____ of 20 _____

I N

Original Application No. _____ of 20 _____

FARAD CONTINUATION SHEET No.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date: 29.11.2022</p> <p align="center">O.A.No.795 of 2022</p> <p>B.B. Thite ...Applicant Versus State of Maharashtra & Ors.Respondents</p> <p>1. Heard Mr. U.V. Bhosle, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.</p> <p>2. Learned Advocate states that he has filed rejoinder.</p> <p>3. Adjourned to 13.12.2022 for Final Hearing.</p> <p align="center">Sd/- Sd/-</p> <p align="center">(Medha Gadgil) (Mridula Bhatkar, J.) Member(A) Chairperson</p> <p>prk</p>

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

M.A./R.A./C.A. No. of 20

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Original Application No. of 20

FARAD CONTINUATION SHEET No.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date: 29.11.2022</p> <p>O.A.No.891 of 2022</p> <p>K.S.A.H. Shaikh ...Applicant Versus State of Maharashtra & Ors.Respondents</p> <p>1. Heard Ms. Asawari, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.</p> <p>2. Adjourned to 13.12.2022. Interim relief, if any, to be continued till next date.</p> <p>Sd/- (Medha Gadgil) Member(A) prk</p> <p>Sd/- (Mridula Bhatkar, J.) Chairperson</p>

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
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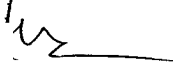
M.A./R.A./C.A. No. _____ of 20 _____

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FARAD CONTINUATION SHEET No.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p align="center">Date: 29.11.2022</p> <p align="center">O.A.No.656 of 2022</p> <p>G.A. Pethe ...Applicant Versus State of Maharashtra & Ors.Respondents</p> <p>1. Heard Mr. C.T. Chandratre, learned Advocate for the Applicant and Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents.</p> <p>2. Learned P.O. submits that reply is already filed.</p> <p>3. Adjourned to 20.12.2022 for Final Hearing.</p> <p align="center">Sd/- (Medha Gadgil) Member(A) prk</p> <p align="center">Sd/- (Mridula Bhatkar, J.) Chairperson</p>

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date: 29.11.2022</p> <p>O.A.No.1024/2022 with O.A.No,763/2022 with O.A.No.1053/2022 with C.A.No.8/2021 in O.A.No.848/2018 with M.A.No. 344/2020 with M.A.No.227/2022 in O.A.No.935/2021 (Nagpur) & O.A.No.36/2021 (A'bad)</p> <p>Y.A. Ahire & Ors. ...Applicants Versus State of Maharashtra & Ors.Respondents</p> <p>1. Heard Mr. Bhushan A. Bandiwadekar, learned Advocate for the Applicants in O.A.No,1024/2022 & O.A.No.1053/2022, Mr. M.D. Lonkar, learned Advocate for the Applicant in O.A.No.763/2022 and for Org. Applicant in M.A.No,227/2022, Ms. Asawari, learned Advocate for the Org. Applicant in M.A.No.227/2022, Mr. Ansari Faiyaz Ahmed, learned Advocate holding for Mr. A.A. Gharte, learned Advocate for the Applicant in C.A.No.8/2021, Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents in O.A.No.1024/222, O.A.No.763/2022, O.A.No.1053/2022, C.A.No.8/2021 in O.A.No.848/2018 with M.A.No.344/2020 and for Applicant (Org, Respondents) in M.A.No.227/2022 in O.A.No.935/2021 & O.A.No.36/2021.</p> <p>2. Learned Advocate Ms. Asawari submits that O.A.No.935/2021 was separated from this group.</p> <p>3. Learned C.P.O. submits that the State has filed M.A.No.227/2022 under Section 25 of Administrative Tribunals Act seeking transfer of O.A.No.935/2021 filed at Nagpur Bench and O.A.No.36/2021 filed at Aurangabad Bench to the Principal Bench at Mumbai.</p> <p>4. I am not satisfied with the ground mentioned in this M.A. seeking transfer. In case of O.A.No.935/2021 applicants are originally from Nagpur and considering their convenience and in view of territorial jurisdiction of the Administrative Tribunals Act, O.A. is not to be transferred to Mumbai Bench. So far as O.A.No.36/2021 is concerned by our earlier order matter was allowed to be transferred from Aurangabad Bench to Principal Bench at Mumbai. In view of this M.A. stands partly allowed.</p> <p>5. Registry is directed to get the record and proceedings in O.A.No.36/2021 from M.A.T. Bench Aurangabad to Principal Bench at Mumbai</p> <p>6. Adjourned to 03.01.2023</p> <p style="text-align: right;">Sd/- </p> <p style="text-align: center;">(Mridula Bhatkar, J.) Chairperson</p> <p>prk</p>

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1203 OF 2022

DISTRICT : PUNE

Nikita N. Mukhyadal)...**Applicant**

Versus

The State of Maharashtra & Ors)...**Respondents**

Shri Shreyas Barsawade, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Smt Medha Gadgil (Member) (A)

DATE : **29.11.2022**

ORDER

1. The Circulation is taken by the learned counsel for the applicant. The applicant who is a transgender wants to fill up the applicant in the third category for the post of Police Constable pursuant to the advertisement dated 9.11.2022, issued by Pimpri Chinchwad Police Commissionerate. The last date for submission of application form is 30.11.2022. Learned counsel for the applicant submits that only two options are made available by the Respondents, i.e., Male & Female and no third option is made available for transgender of the other sex. Learned counsel for the applicant prays that the Respondents be directed to make the third



option open for the transgender and allow the applicant to apply in the third category of transgender.

2. Learned P.O opposes the Original Application on administrative grounds.

3. We have earlier passed order dated 14.11.2022 in the case of Arya Vijay Pujari Vs. The State of Maharashtra, wherein we have relied on the judgment of the Hon'ble Supreme Court in the case of **NATIONAL LEGAL SERVICES AUTHORITY Vs. UNION OF INDIA & ORS, (2014) 5 SCC 438**. In the said case by another order dated 25.11.2022, we have made the legal position and the view taken by this Tribunal explicitly clear on this point. So we reproduce the concerned paragraphs from the said order dated 25.11.2022.

5. The State has right to challenge the order of the Tribunal. However, in view of the very specific directions given by the Hon'ble Supreme Court in **NATIONAL LEGAL SERVICES AUTHORITY's case (supra)**, and as pointed out by the learned counsel for the applicant certain paragraphs from the judgment of NALSA are required to be highlighted to reiterate the point of gender as well as sex discrimination which in fact is prohibited in the Constitution of India.

"66. Articles 15 and 16 sought to prohibit discrimination on the basis of sex, recognizing that sex discrimination is a historical fact and needs to be addressed. Constitution makers, it can be gathered, gave emphasis to the fundamental right against sex discrimination so as to prevent the direct or indirect attitude to treat people differently, for the reason of not being in conformity with stereotypical generalizations of binary genders. Both gender and biological attributes constitute distinct components of sex. Biological characteristics, of course, include genitals, chromosomes and secondary sexual features, but gender attributes include one's self image, the deep psychological or emotional sense of sexual identity and character. The discrimination on the ground of 'sex'


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under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity. The expression 'sex' used in Articles 15 and 16 is not just limited to biological sex of male or female, but intended to include people who consider themselves to be neither male or female.

67. TGs have been systematically denied the rights under Article 15(2) that is not to be subjected to any disability, liability, restriction or condition in regard to access to public places. TGs have also not been afforded special provisions envisaged under Article 15(4) for the advancement of the socially and educationally backward classes (SEBC) of citizens, which they are, and hence legally entitled and eligible to get the benefits of SEBC. State is bound to take some affirmative action for their advancement so that the injustice done to them for centuries could be remedied. TGs are also entitled to enjoy economic, social, cultural and political rights without discrimination, because forms of discrimination on the ground of gender are violative of fundamental freedoms and human rights. TGs have also been denied rights under Article 16(2) and discriminated against in respect of employment or office under the State on the ground of sex. TGs are also entitled to reservation in the matter of appointment, as envisaged under Article 16(4) of the Constitution. State is bound to take affirmative action to give them due representation in public services.

68. Articles 15(2) to (4) and Article 16(4) read with the Directive Principles of State Policy and various international instruments to which Indian is a party, call for social equality, which the TGs could realize, only if facilities and opportunities are extended to them so that they can also live with dignity and equal status with other genders.....

81. Articles 14, 15, 16, 19 and 21, above discussion, would indicate, do not exclude Hijras/Transgenders from its ambit, but Indian law on the whole recognize the paradigm of binary genders of male and female, based on one's biological sex. As already indicated, we cannot accept the Corbett principle of "Biological Test", rather we prefer to follow the psyche of the person in determining sex and gender and prefer the "Psychological Test" instead of "Biological Test". Binary



notion of gender reflects in the Indian Penal Code, for example, Section 8, 10, etc. and Page 85 85 also in the laws related to marriage, adoption, divorce, inheritance, succession and other welfare legislations like NAREGA, 2005, etc. Non-recognition of the identity of Hijras/Transgenders in the various legislations denies them equal protection of law and they face wide-spread discrimination.

83. We, therefore, conclude that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution, and hence we are inclined to give various directions to safeguard the constitutional rights of the members of the TG community.

6. In the judgment of **Shanavi Ponnusamy Vs. Ministry of Civil Aviation & Anr**, the Hon'ble Supreme Court has directed that the provisions of the 2019 Act need to be implemented in letter and spirit by formulating appropriate policies. The Union Government must take the lead in this behalf and provide clear guidance and enforceable standards to all other entities, including, those of the Union Government, State Governments and establishments governed by the 2019 Act. It is further stated that the Union Government shall adopt suitable measures after collaborating with the National Council and place a policy on the record before the next date of listing, which is now fixed on 6.12.2022. I rely on the Central Government's Office Memorandum dated 20.4.2020 has directed all the Government Offices to allow transgenders/other sex to participate in all the process of recruitment. It is necessary to point out that the directions were given in NALSA (supra) independently to the Central Government as well as the State Government. The Respondents in Shanvai Ponnusamy's case is the Ministry of Civil Aviation, which come under the Central Government. However, 'Police' is the subject in the State List in Seventh Schedule (VII) of the Constitution of India at Serial no. 2 and so also Sr. No. 41, is the State Public Service Commission. Thus, the State Government is fully

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empowered to draw its own policy and take decisions in such matters.

7. It is further to be noted that the Government of Bihar has carried out the necessary modification in the Recruitment Rules and issued the advertisement for the post of Constables on 12.11.2022, wherein the relevant clause 4.4 (g) is reproduced below:-

4.4 अभ्यर्थियों का शारीरिक मापदण्ड - ऊँचाई, सीना और वजन के लिए कोई अंक देय नहीं होगा | परंतु विहित अर्हताएँ पूरी नहीं करने वाले अभ्यर्थी असफल घोषित किए जाएंगे |

(घ) किन्नर /कोथी /हिजडा / ट्रांसजेन्डर (थर्ड जेन्डर) अभ्यर्थियों के लिए शारीरिक मापदण्ड तथा शारीरिक दक्षता परीक्षा का मापदण्ड पिछड़े वर्ग की महिला अभ्यर्थियों के समान होगा. |

8. In the case of K. Prithika Yashini (Transgender) (supra), the option was not given to the third gender for the recruitment to the post of Sub-Inspector. The Hon'ble Madras High Court has relied on the judgment of the Hon'ble Supreme Court in the case of NATIONAL LEGAL SERVICES AUTHORITY Vs. UNION OF INDIA & ORS. Though the judgment was pronounced in April, 2014, where there was no policy for the transgender framed by the Government of Tamil Nadu. The Hon'ble Madras High Court held that the petitioner is entitled to be recruited to the post of Sub-Inspector and allowed the Writ Petition with the following ratio:-

“9. On examination of the case of the petitioner qua the category she would be required to be recruited as there being no separate category, it was found that the petitioner qualified the horizontal reservation minimum bench mark of OC Women of Ministerial quota, which is 25.50 against which the petitioner had obtained 28.50 marks. It was this which persuaded the Court to grant interim orders in favour of the Petitioner. The physical efficiency test had been taken by the petitioner with the bench mark as that for a female.”

It was further observed as under:-

“12. We have given our thought to the matter. The discrimination suffered by the transgenders would be difficult for any of the other two genders to realize. The present case is one where the petitioner was categorized as man, though she was a female. She had undergone sufferance of an exit from her house without parental protection. It is in these difficult circumstances that the petitioner has been endeavouring to eke out a living.

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13. There can be various physical chances and mental effects arising from the situation in which the petitioner finds herself. The respondent failed to provide for the third gender in the application Form and thus, the petitioner had to rush to the Court to assert her rights. The next stage was to find out as to what bench mark should apply to the petitioner and thus, benefit was given to the petitioner accordingly, in which she was successful. We do not think that in the physical endurance test, a difference of 1.11 seconds should come in the say of the petitioner in being considered for recruitment. We hasten to add that she will have to meet the bench mark of the recruitment process, but the case cannot be knocked out in the middle, as was sought to be done by the respondent.”

11. Learned counsel for the applicant has produced copy of the Notification dated 6.7.2021 issued by the Government of Karnataka, whereby the Recruitment Rule is amended by providing reservation to transgender candidate. I have gone through Rule 9 of the said Recruitment Rules and it shows that not only the transgenders are allowed to participate in the process of recruitment in the Police Department, but they are provided reservation in all the services of the State of Karnataka.

12. Learned counsel for the applicant has also produced the advertisement dated 27.11.2022 issued by the Tamil Nadu Uniformed Services Recruitment Board, wherein specifically a class is created for transgender thereby allowing them to participate and the physical standard for physical test for female and transgender are the same.

13. Considering the submissions of the learned counsel for the applicant and the learned C.P.O, I am inclined to extend the date of acceptance of the Application Form for transgenders till 8.12.2022.

4. In view of the above, we extend the date of acceptance of the application form till 8.12.2022 and direct the Respondent-State to

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make the option available to the applicant by 4.12.2022, as the last date of acceptance of application form is 8.12.2022.

5. S.O to 23.12.2022.

Sd/-


(Medha Gadgil)
Member (A)

Sd/-


(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai

Date : 29.11.2022

Dictation taken by : A.K. Nair.

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
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FARAD CONTINUATION SHEET No.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date: 29.11.2022</p> <p align="center">O.A.No.664/2018</p> <p>A @ P.B. LoharApplicant Vs. The State of Maharashtra & Ors.Respondents.</p> <p>1. Heard Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents.</p> <p>2. Learned Advocate Mr. Bhushan A. Bandiwadekar submits that he has received NOC from learned Advocate Mr. C.R. Nagare, who was appearing on behalf of the applicant earlier and he will be filing vakalatnama today during the course of the day.</p> <p>3. We make it clear that today matter was fixed for hearing. Earlier also matter was taken up for hearing, however, learned Advocate Mr. Nagare remained absent. Consequently, we expressed our displeasure. However, as today learned Advocate Mr. Bandiwadekar informed that he is incharge of the matter, we granted him time to prepare. Learned Advocate Mr. Bandiwadekar to take note that it is matter of appointment of the year 2016.</p> <p>4. Adjourned to 20.12.2022.</p> <p align="center">Sd/- (Medha Gadgil) Member(A) prk</p> <p align="center">Sd/- (Mridula Bhatkar, J.) Chairperson</p>

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	<p>Date: 29.11.2022</p> <p align="center">O.A.No.187/2021</p> <p>D.N. ShindeApplicant Vs. The State of Maharashtra & Ors.Respondents.</p> <p>1. Heard Mr. D.B. Khaire, learned Advocate for the Applicant and Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents.</p> <p>2. Learned P.O. Ms. Gaikwad takes preliminary objection that the applicant challenges order dated 10.09.2020.</p> <p>3. Today the concerned officer Mr. A.H. Nalawade, Deputy Engineer from the office of Water Resources Department is present. He informs that officer from Irrigation Research and Development Department can answer the queries made by the Tribunal. Officer from the concerned Department as well as Mr. Nalawade are directed to remain present tomorrow.</p> <p>4. Adjourned to 30.11.2022.</p> <p align="right">Sd/- _____</p> <p align="center">Sd/- (Medha Gadgil) Member(A) prk</p> <p align="right">Sd/- _____ (Mridula Bhatkar, J.) Chairperson</p>

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	<p>Date: 29.11.2022</p> <p align="center">O.A.No.212/2021</p> <p>V.G. DawariApplicant Vs. The State of Maharashtra & Ors.Respondents.</p> <p>1. Heard Mr. R.M. Kolge, learned Advocate for the Applicant and Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents.</p> <p>2. Learned P.O. Ms. Gaikwad is directed to call the officer from the concerned Department.</p> <p>4. Adjourned to 01.12.2022.</p> <p align="center">Sd/- (Medha Gadgil) Member(A) prk</p> <p align="center">Sd/- (Mridula Bhatkar, J.) Chairperson</p>

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	<p>Date: 29.11.2022</p> <p align="center">C.A.No.78/2022 in O.A.No.89/2020</p> <p>P.R. AcharekarApplicants Vs. The State of Maharashtra & Ors.Respondents.</p> <p>1. Heard Mr. U.V. Bhosale, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer holding for Mr. A.J. Chougule, learned Presenting Officer for the Respondents.</p> <p>2. This matter was disposed of by order dated 24.11.2022. Learned Advocate submits that though statement is made by learned P.O., Government has not complied with the order till date. Learned Advocate submits that he wants to file M.A. in respect of the compliance of the order and incorporate statement made by learned P.O. on instructions in respect of payment of pensionary benefits made to the applicant. He submits that after checking accounts of the applicant it is found that the monetary benefits are not received.</p> <p>3. In view of this M.A. which is going to be filed by learned Advocate be placed on tomorrow's board.</p> <p>4. M.A. to be shown in the board of 30.11.2022</p> <p align="center">Sd/- _____ Sd/- _____ (Medha Gadgil) / (Mridula Bhatkar, J.) Member(A) Chairperson prk</p>


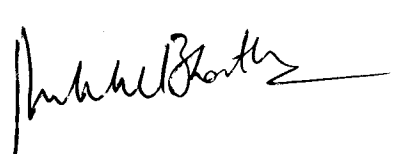
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Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date: 29.11.2022</p> <p align="center">O.A. No.460 of 2021</p> <p>M.D. JadhavApplicant Versus The State of Maharashtra & Ors.Respondents.</p> <p>1. Heard Shri T.V. Jadhav, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.</p> <p>2. Learned CPO shall file Affidavit-in-Rejoinder and the copy of the Rejoinder shall be furnished to the learned Advocate for the Applicant on or before 06.12.2022.</p> <p>3. And then the matter is fixed on 06.12.2022, H.O.B.</p> <p align="center">  (Medha Gadgil) Member (A) </p> <p align="center">  (Mridula R. Bhatkar, J.) Chairperson </p> <p align="center">NMN</p>

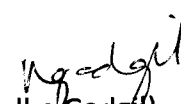
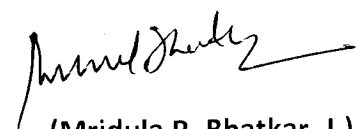
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	<p>Date: 29.11.2022</p> <p align="center">M.A. No.499 of 2022 in O.A. No.31 of 2022</p> <p>Y.B. WaghApplicant Versus The State of Maharashtra & Ors.Respondents.</p> <ol style="list-style-type: none"> 1. Heard Shri Y.B. Wagh, Applicant in Person and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents. 2. Learned Applicant in Person seeks time to file written arguments. 3. Two weeks time is granted for the same. 4. S.O. to 13.12.2022. <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">  (Medha Gadgil) Member (A) </div> <div style="text-align: center;">  (Mridula R. Bhatkar, J.) Chairperson </div> </div> <p align="center">NMN</p>

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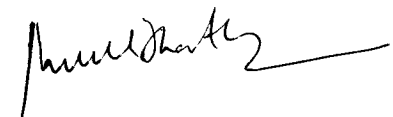
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	<p>Date: 29.11.2022</p> <p align="center">C.A. No.14 of 2022 in O.A. No.343 of 2021</p> <p>S.G. Rajput & Ors.Applicant Versus The State of Maharashtra & Ors.Respondents.</p> <ol style="list-style-type: none"> Shri K.R. Jagdale, learned Advocate for the Applicant has sent his leave note. Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents is present. Respondents are directed to comply with the order of the Tribunal. Three weeks time is granted for the same. S.O. to 20.12.2022. <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">  (Medha Gadgil) Member (A) </div> <div style="text-align: center;">  (Mridula R. Bhatkar, J.) Chairperson </div> </div> <p align="center">NMN</p>

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	<p>Date: 29.11.2022</p> <p align="center">M.A. No.695 of 2022 in O.A. No.280 of 2022</p> <p>A.M. Havsette & Ors.Applicants</p> <p>Versus</p> <p>The State of Maharashtra & Ors.Respondents.</p> <p>1. Heard Shri Hassen Khan, learned Advocate holding for Shri S.T. Yaseen, learned Advocate for the Applicants, Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondent Nos.1 & 2, Shri Waghmare, learned Advocate for the Respondent Nos.3 to 22 and Shri M.D. Lonkar, learned Advocate for the Caveator.</p> <p>2. This M.A. is preferred by the Original Applicants for grant of interim order in view of the letter dated 23.11.2022. Whereby the Government is going to issue appointment order of the candidates relating to Maharashtra Engineering Service 2019 (M.E.S.) be stayed till pending of the O.A. It is further prayed that appointment order of initially SEBC candidates converted into EWS category in respect of this examination be stayed. Learned Advocate for the Applicant submits the Applicants got selected in the merit but because of the conversion from SEBC category to EWS category these Applicants were excluded from the selection. He submits that the State of Maharashtra has issued circular dated 21.11.2022 of giving approval to the conversion from SEBC category to EWS category and also pointed that Respondent – State has issued order of giving appointment on the posts Assistant Engineer Grade – II (Civil), Group B (Gazetted) by order dated 23.11.2022 to 259 candidates. Learned Advocate for the Applicants submit that thereafter on the same day i.e. 23.11.2022, G.A.D. has issued a letter that the appointment order of the selected candidates for the post of Engineering (Civil) will be handed over. Learned Advocate for the Applicants submit that if at all these orders are issued on 30.11.2022 at the hands of Hon'ble Chief Minister & Hon'ble Deputy Chief Minister,</p> <p align="right">[P.T.O.]</p>

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>the Applicants in this O.A. will suffer great injustice as they are original claimants in the cadre of EWS. Learned Advocate for the Applicants further submits that entire process of this appointment of MES -2019 cadre from SEBC conversion in the EWS is to be stayed.</p> <p>3. In this matter caveat is filed. Shri M.D. Lonkar, learned Advocate appearing for the Caveator submits that earlier this Court on 29.03.2022 has passed order that the appointment given in this category of Assistant Engineer Grade – II (Civil), Group B (Gazetted) will be subject to outcome of this O.A. there is no need to grant any interim relief.</p> <p>4. Learned CPO while opposing this Application pointed out that in the letter dated 21.11.2022 and 23.11.2022 all the candidates who are going to be appointed in the category of EWS are required to give undertaking as per the profoma wherein it is specifically mentioned that the appointment will be subject to the judicial orders passed, which are going to be passed in Hon'ble High Court so also in Maharashtra Administrative Tribunal and also SLP (Dairy) No.29174/2022 which is pending before Hon'ble Supreme Court. Learned CPO further submits that these candidates who are going to be appointed are made fully aware that their appointments are going to be subject to outcome of judicial decision.</p> <p>5. We have considered the submissions made by all the parties. We have fixed the matter on 02.12.2022 and moreover, in view of the undertaking / bond which is going to be executed by the candidates who are going to be appointed in EWS category from all the cadre are fully aware that their appointments are conditional depending on the judicial decision.</p> <p>6. We do not want to pass any order regarding interim stay. Hence, the prayer for interim stay is rejected.</p> <p>7. S.O. to 02.12.2022.</p> <p style="text-align: right;">Sd/-</p> <p style="text-align: center;">(Medha Gadgil) / (Mridula R. Bhatkar, J.) Member (A) Chairperson</p> <p>NMN</p>