

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 518 OF 2021

DISTRICT : AURANGABAD

1. **Asmita d/o Machindra Kekan,**)
Age : 28 years, Occu. : Education,)
R/o Hanuman Nagar, Galli No. 1, Plot No. 14,))
Garkheda Parisar, Aurangabad,)
Dist. Aurangabad.)
2. **Lanka d/o Shankar Namde,**)
Age : 32 years, Occu. : Education,)
R/o Perjapur, Post. Bhokardan,)
Tq. Bhokardan, Dist. Jalna.)
3. **Mahesh s/o Panditrao Avhad,**)
Age : 31 years, Occu. : Education,)
R/o Shivaji Nagar, Aurangabad,)
Tq. & Dist. Aurangabad.)

(Deleted as per leave granted by this Tribunal by the order Dt. 20.01.2022)

4. **Balaji s/o Maruti Jagtap,**)
Age : 31 years, Occu. : Education,)
R/o Bajrang Nagar, Sundarwadi,)
Aurangabad.)

.. **APPLICANTS**

V E R S U S

1. **The State of Maharashtra,**)
Through its Principal Secretary,)
General Administration Department,)
Mantralaya, Mumbai- 400 001.)
2. **The Principal Secretary,**)
Home Department, Maharashtra State,)
Mantralaya, Mumbai.)
3. **The Director General of Police,**)
Old Council Hall, Maharashtra State,)
Mumbai.)
4. **The Maharashtra Public Service Commission,))
Floor 5-8, Cuprage, MTNL Building,)
Maharshi Karve Road, Cuprage,)
Mumbai-21) .. **RESPONDENTS****

APPEARANCE : Shri S.S. Thombre, Advocate for the Applicants.
: Shri M.S. Mahajan, Chief Presenting Officer for respondents.

CORAM : **Justice Shri P.R. Bora, Vice-Chairman
and
Shri Bijay Kumar, Member (A)**

Reserved on : **14.10.2022**

Pronounced on : **20.10.2022**

ORDER

(Per : Shri Bijay Kumar, Member (A))

1. This Original Application had been filed by 4 applicants jointly who were granted leave to sue jointly vide this Tribunal's order dated 03.09.2021. Later on the Applicant No. 3 i.e. Shri Mahesh s/o Panditrao Avhad had sought leave to withdraw his application, which was granted by the Tribunal on 20.01.2022, leaving only 3 co-applicants, two of which i.e. Ms. Lanka D/o Shankar Namde and Shri Balaji S/o Maruti Jagtap, referred to as the Applicant No. 2 and 4 respectively in the present O.A. were co-applicants in O.A. No. 229/2019 along with 15 other applicants.

2. It is admitted fact that the matter pertains to the recruitment process started by the Maharashtra Public Service Commission (in short, 'MPSC') for 750 posts of Police Sub-

Inspector (in short, 'PSI') for which advertisement No. 54/2016 was issued on 07-12-2016. Based on the result of the process declared on 20.06.2018, names of total 748 candidates were recommended by MPSC on 23.07.2018 and the name of one candidate was recommended by MPSC on 04.02.2019 to the Respondent No. 1 for issue of appointment orders.

3. Aforesaid recommended candidates were appointed by the Respondent No. 1 and sent for training on 22.10.2018, who in turn, completed their one year's training on 30.12.2019. In the meantime, O.A. No. 694/2018 and O.A. No. 636/2018 were filed to challenge the said recruitment process, mainly on ground of non-application of law regarding horizontal reservations which was settled by judicial pronouncements in the year 2017. One Writ Petition No. 92/2018 too, was filed in the matter. As per the orders and judgments passed in the aforesaid O.A.s and Writ Petition, MPSC was under mandate to revise the select-list. Accordingly, MPSC revised the select list on 12.04.2019 as a result of which names of 45 selected candidates who, by then, had completed the training had to be de-selected and 44 new names were included and given appointment. It was then decided that services of said 45 de-selected candidates who had completed training and were working at their places of postings

may not be terminated on humanitarian grounds and their services may be regularized. The possible ways for regularization was being explored which included appointing them against vacancies occurring subsequently or by creating supernumerary posts. In pursuance of this a number of internal communications between offices of the Respondents were made however, till today, no final decision has been taken. Thus the said 45 de-selected candidates are working without regularization of their services.

4. As per the subsequent development, out of 750 appointed candidates (excluding 45 de-selected candidates), 57 candidates did not join / left after joining resulting into 57 resultant vacancies. Therefore, Respondent No. 3 sent requisition to MPSC on 04.01.2019 to recommend 57 names from the waiting list for appointment. The MPSC, however, did not immediately act upon the said requisitions. In the circumstances, 23 candidates, *(which includes the names of only the Applicant No. 2 and 4 of the present OA)*, claiming to be in the wait list and likely to be recommended if the MPSC acts upon the requisition received from the Respondent No. 3, filed O.A. No. 229/2019 and O.A. No. 1121/2019 at the Principal Bench of the Tribunal at Mumbai.

The Principal Bench by a common judgment dated 10.12.2020, decided both the said O.As. and passed the following order:-

“32. Thus in view of above, we allow the Original Applications with following directions:-

*(a) We direct the M.P.S.C. to **prepare the revised wait / reserved list** of the candidates of 2016 PSI examination and consider the names of the applicants in the wait list by following the law laid down by the Hon’ble High Court on the point of reservation within three weeks i.e. on or before 5th January, 2021.*

*(b) The M.P.S.C. is hereby directed to recommend the names of the applicants from the **revised wait list**, if they are eligible, and prepare the list within 10 days thereafter i.e. till 16th January, 2021.*

(c) We are not inclined to give time further as already the issue remained unsolved for a long time of 3 years.

(d) No order as to costs.”

5. MPSC, in compliance with the aforesaid orders dated 10.12.2020, passed by the Principal Bench of the Tribunal, has revised the wait list /reserve list following the law laid-down by Hon’ble High Court in respect of reservation and published the same on 01.07.2021. While revising the wait/reserve list, MPSC has assigned place to the 45 de-listed candidates too, according to their merit position along with all other candidates whose names appeared in un-exhausted wait-list. As a result, names of 27 de-listed candidates who have higher merit-position too have

become eligible for recommendation for regular appointment. Thus, these 27 de-listed candidates may not have to wait for special scheme / policy decision by government for getting their services regularized.

6. The Applicants in the present O.A. have invoked the common Order dated 10.12.2020 passed by the Principal Bench of this Tribunal in O.A. No. 229/2019 with O.A. No. 1121 /2019 and prayed for following relief which is reproduced verbatim for ready reference:-

“10. RELIEF CLAIMED:-

HENCE IT IS PRAYED THAT:

A. The Original application may kindly be allowed with costs;

B. This Hon’ble Tribunal may be pleased to direct the respondent No. 4- MPSC to modify the list of candidates who are eligible for recommendation through the waiting list published by the MPSC on 01.07.2021 with immediate effect and to delete the names of candidates who have already completed training and they are working as POlice Sub-Inspector and to include the names of the applicants and other candidates in the wait list and further be pleased to issue necessary directions to recommend the names of the applicants and send them for training with Police Academy Nashik with immediate effect and for that purpose issue necessary orders;

C. By issuing an appropriate order or directions in the like nature, direct the respondent no. 4 to delete the

names of those candidates who have already completed training and to take steps to revise the list by including the names through the wait list and recommend the applicants and other candidates for training with immediate effect and for that purpose issue necessary orders;”

7. Based on discussion in foregoing para, first of all it is observed that the only 2 out of the total 3 co-applicants had been the applicants in O.A. No. 229/2019 and the Hon'ble Tribunal had directed to consider their cases on merit for inclusion in revised wait/ reserve list. Moreover, instead of substantiating their claims for inclusion in revised wait /reserve list the Original Applicants are making pleadings on behalf of all other candidates from pre-revised wait/reserve list without locus standi to do so. After all, the present O.A. cannot be adjudicated as a Public Interest Litigation by seeking relief for those whole lot of candidates whose names does not appear in array of applicants.

8. The original applicants have not adduced any evidence to show that they have a better claim based on their merit-positions vis a vis those whose inclusion in the wait list is being challenged by them, and therefore, they are getting adversely affected by inclusion of de-listed candidates; in other words, the applicants have not established any cause of action.

9. In addition to above aspects, it is necessary to examine the aspect of eligibility of de-selected candidates for inclusion of their names in un-exhausted merit list in accordance with their merit-position. Cognizance is taken of the fact that the de-selected 45 candidates have been waiting for regularization of their services by absorption against resultant vacancies or, by creating supernumerary posts etc. As they stand deselected by the process of settling of law by judicial pronouncements, for no fault of their own in getting selected at the first instance, in our considered opinion, rights of these de-selected candidates to get their names restored in the merit list as per their merit-position, do not get extinguished or evaporated. The argument of the applicants that the candidates who have suffered de-selection have lost their entitlement to get regular appointment against vacancies occurring during validity period of wait list, even if they may be having higher merit-position, is ultra vires to provisions of Articles 14 and 16 of the Constitution of India.

10. The applicants have also argued that the de-selected 45 candidates constitute a different group which is not entitled to get appointment based on their merit against vacancies occurring subsequently. The Applicants have further argued that the services of de-selected candidates can only be regularized by

creation of supernumerary posts is also against the *Canons of Financial Propriety* and therefore, against sound public policy.

11. The applicants' yet another argument that the 45 de-selected candidates can be regularized against new vacancies occurring subsequently, over and above those vacancies taken in to account in the advertisement No. 54/2016 published for recruitment 2016, is also against public policy that rights of public employment to new set of candidates who have become eligible subsequently cannot be snatched from them for satisfying selfish desire of candidates to may thereby, get appointment orders with lower merit-position in the selection of year 2016.

12. On perusal of the order passed by the Principal Bench of this Tribunal, it is clear that the MPSC was required to revise the wait list / reserve list following the law laid down by the Hon'ble High Court's on point of reservation and consider the names of the two Original Applicants No. 2 and 4 in the present O.A. who were applicants in O.A. No. 229/2019 too, as per their eligibility. The applicants have failed to establish that MPSC has not complied with the said orders. Had that been the case, the Applicant had remedy available to file contempt petition against

the Respondent No. 4 at the Principal Bench instead of filing the present O.A. at Aurangabad bench of this Tribunal. Therefore, in our considered opinion, the present O.A. No. 518/2021 is misconceived and devoid of merit, hence following orders:-

ORDER

- (A) The Original Application No. 518/2021 stands dismissed being misconceived and devoid of merit.
- (B) The respondents are, hereby, permitted to complete the process of filling of resultant 57 vacancies, re-confirming that the wait list/reserve list has been revised as per law laid down by the Hon'ble High Court's on the point of reservation.
- [C] No order as to costs.

MEMBER (A)
(Bijay Kumar)

VICE-CHAIRMAN
(Justice P.R. Bora)