

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**MISCELLANEOUS APPLICATION NO. 545 OF 2019
IN
ORIGINAL APPLICATION NO. 722 OF 2019**

DISTRICT: - AURANGABAD.

- 1. Shyam Rambhau Gaikwad,**
Age-33 years, Occu. : Service
(as Police Constable),
R/o : Plot No. 6, Survey No. 65/8,
Rajiv Gandhi Nagar, N-2,
Aurangabad.
- 2. Deepak Dadarao Dikale,**
Age: 33 years, Occu.: Service
(as Head Police),
R/o : Home No. 1124,
Sudhakar Nagar, Police Housing
Society, Satara Parisar,
Aurangabad.

.. APPLICANTS.

V E R S U S

- 1. Gajanan Babulal Bansode,**
Age : 27 years, Occu.: Service
(as Police Constable),
R/o : Varud – Kazi,
Varud, Tal. & Dist. Aurangabad.
- 2. Washim Hamid Shaikh,**
Age : 33 years, Occu.: as above,
R/o : Sohel Garden, Plot No. 54,
Ganesh Colony, Near Icon Hospital,
Aurangabad.
- 3. Yogesh Bhagwanrao Dungahu,**
Age : 29 years, Occu.: as above,
R/o : Police Colony, Mill Corner,
Aurangabad.

4. **Smt. Sarita Shridhar Sakhare,**
Age : 34 years, Occu.: Service
(as Lady Police Constable),
R/o : 32/10, Police Colony,
N-10, CIDCO, Aurangabad.
5. **Ishwar Rangnath Nagare,**
Age : 31 years, Occu.: Service
(as Police Constable),
R/o : Plot No. 39, Shree Nagar,
Ulka Nagari, Garkheda Area,
Aurangabad.
6. **The State of Maharashtra,**
Through the Addl. Chief Secretary,
Home Department, Mantralaya,
Mumbai – 32.
7. **The Addl. Chief Secretary,**
General Administration Department,
Mantralaya, Mumbai – 32.
8. **The Director General of Police,**
Shaheed Bhagat Singh Road,
Colaba, Mumbai – 05.
9. **Maharashtra Public Service
Commission,**
Cooprej Telephone Exchange
Building, Maharshi Karve Road,
Cooprej, Mumbai – 21.

.. **RESPONDENTS**

(R-1 to R-5: Orig. Applicants,
R-6 to R-9: Ori. R-1 to R-4)

APPEARANCE : Shri. Avinash S. Deshmukh, learned
Advocate for the applicants in the
present M.A. / respondent Nos. 5 & 6
in O.A.

: Shri M.S. Mahajan, learned Chief
Presenting Officer for the respondent

Nos. 6 to 9 in M.A. / Respondent Nos.
1 to 4 in O.A.

: Shri Ajay Deshpande, learned Advocate
for the applicant Nos. 1 to 5 in M.A. /
applicants in O.A.

CORAM : **B.P. PATIL, ACTING CHAIRMAN**

DATE : **30TH NOVEMBER, 2019**

ORAL ORDER

1. Heard with consent Shri Avinash S. Deshmukh, learned Advocate for the applicants in M.A., Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent Nos. 6 to 9 and Shri Ajay Deshpande, learned Advocate for the applicants in O.A.

2. Learned Advocate Shri Avinash S. Deshmukh for the respondent Nos. 5 & 6 in O.A. has submitted that on 27.06.2016 the Government of Maharashtra issued a Circular notifying 828 vacancies of Police Sub Inspector (PSI) to be filled on the basis of Limited Departmental Competitive Examination (LDCE). Accordingly, examination has been conducted by the Maharashtra Public Service Commission (for short "the Commission") and the written result has been published and, as many as, 2903 candidates have declared

successful. Accordingly, the Government issued the orders of 828 posts including 154 posts for the reserved category on the basis of Government Resolution dated 25.05.2004. He has argued that thereafter the Government Resolution dated 25.05.2004 has been quashed and set aside by this Tribunal and thereafter the said decision has been upheld by the Hon'ble High Court in Writ Petition No. 2797/2015 on 04.08.2017. He has argued that thereafter the State Government sent in all 828 candidates including those recommended on the basis of reservation for training on 05.01.2018 and 05.03.2018. One Original Application No. 394/2018 has been filed by some of the candidates before the Principal Seat of this Tribunal. The said O.A. No. 394/2018 came to be dismissed on 06.11.2018, but the Tribunal was pleased to grant liberty to the applicants therein to make suitable representation to the Government. Accordingly, they made representation before the Government. On the basis of the representation made by tis aggrieved employees / persons the Government took policy decision on 22.04.2019 and issued a Government Resolution to appoint 636 candidates, who had secured more than 230 marks in the Limited Departmental Competitive Examination 2016. He has

submitted that the names of the applicants in O.A. have not figured in the list of the successful candidates, who passed Limited Departmental Competitive Examination 2016.

3. He has submitted that the present applicants have no *locus standi* to challenge the Government Resolution dated 22.04.2019, as they have not passed the Limited Departmental Competitive Examination 2016, and they are not eligible to promote on the post of PSI but they suppressed the said fact and filed the O.A. and obtained interim relief by which this Tribunal directed to maintain the *status quo* regarding the appointment of 636 candidates.

4. Learned Advocate Shri Avinash S. Deshmukh for the applicants in M.A. has further argued that the applicants in O.A. have suppressed the material fact while claiming interim relief and obtained interim order. Therefore, it requires to be vacated. He has argued that the applicants have no *locus standi* as they are not deprived of from any legal rights. On the contrary the respondents and other candidates whose names have been figured in the Government Resolution dated 22.04.2019 are aggrieved by the interim order. Because of the order of the status quo, the further process of sending them

for training and appointment is stalled. He has argued that some of the aggrieved persons filed Writ Petition No. 3555/2019 before the Hon'ble High Court of Judicature at Bombay Bench at Nagpur, challenging the Government Resolution dated 22.4.2019, in which the Hon'ble High Court has passed order on 03.05.2019 stating that, "the process of selection shall go on, which shall be subject to the result of this petition." He has submitted that the interim order passed by the Hon'ble High Court has not been brought to the notice of this Tribunal at the time of passing interim order. He has submitted that in view of the order passed by the Hon'ble High Court in the aforesaid Writ Petition the interim order requires to be vacated.

5. He has further submitted that at the time of seeking interim relief, the applicants in O.A. have placed reliance on the interim order passed by the Principal Seat of this Tribunal in O.A. No. 445/2019 on 01.08.2019 and on the basis of the said order this Tribunal was pleased to direct the respondents to maintain *status quo* in respect of 636 candidates as per the list given in the Appendix A to the Government Resolution dated 22.04.2019 issued by the Under Secretary to the

Government, Home Department, Mantralaya, Mumbai-32. He has argued that the O.A. No. 445/2019 pending before the Principal Seat of this Tribunal has been disposed of on 07.11.2019 as the applicants in that O.A. had withdrawn the O.A. unconditionally and, therefore, the interim relief granted in that O.A. came to be vacated. He has submitted that in view of the said fact also the order of *status quo* requires to be vacated.

6. Learned Advocate for the applicants in M.A. has further argued that the applicants in O.A. have not made 636 candidates, whose names have been appended in the Government Resolution dated 22.04.2019 as party respondents to the O.A. No. 722/2019, though they are necessary parties. He has further submitted that the rights of those 636 candidates have been affected by the interim order passed by this Tribunal. He has submitted that their rights are involved in the O.A. and without joining them as party respondents; the applicants in O.A. sought interim relief against them. Therefore, it requires to be vacated. In support of his submission he has placed reliance on the judgment of the Hon'ble Apex Court in **Civil Appeal No.**

(Arising out of SLP (Civil) No. 31957/2018) in case of Vishal Ashok Thorat & Ors. Vs. Rajesh Shrirambapu Fate & Ors. with further Civil Appeals decided on 19.07.2019, wherein it has been observed as follows: -

“33. One more submission raised by the learned counsel for the appellant in civil appeal filed by Vishal Ashok Thorat needs to be noticed. The submission of the appellant is that respondent No.1 in his Writ Petition No.1270 of 2018 did not implead any of the selected candidates out of the list of 832. No selected candidate having been impleaded by respondent No.1, the High Court erred in issuing direction to modify and review the select list. The direction of the High Court in paragraph 51 is clearly against the interest of the appellants, who as per direction shall go out of the select list, the select list having been published on 31.03.2018, i.e., much before the date when respondent No.1 filed application for amendment in the writ petition for challenging the advertisement Nos.2 of 2017 and 48 of 2017, he ought to have impleaded the selected candidates whose names were already published by the MPSC. Respondent No.1 without bringing the selected candidates on record could not have obtained any order adverse to the selected candidates. The appellants rightly placed reliance on the Constitution Bench judgment of this Court

in Udit Narain Singh, Malpatharia vs. Additional Member Board of Revenue, Bihar and another, AIR 1963 SC 786. The Constitution Bench in paragraphs 6, 7 and 9 laid down following:

“6. The question is whether in a writ in the nature of certiorari filed under [Art. 226](#) of the Constitution the party or parties in whose favour a tribunal or authority had made an order, which is sought to be quashed, is or are necessary party or parties. While learned Additional Solicitor General contends that in such a writ the said tribunal or authority is the only necessary party and the parties in whose favour the said tribunal or authority made an order or created rights are not necessary parties but may at best be only proper parties and that it is open to this Court, even at this very late stage, to direct the impleading of the said parties for a final adjudication of the controversy, learned counsel for the respondents contends that whether or not the authority concerned is necessary party, the said parties would certainly be necessary parties, for otherwise the High Court would be deciding a case behind the back of the parties that would be affected by its decision.

7. To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled: it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

9. The next question is whether the parties whose rights are directly affected are the necessary parties to a writ petition to quash the order of a tribunal.

As we have seen, a tribunal or authority performs a judicial or quasi-judicial act after hearing parties. Its order affects the right or rights of one or the other of the parties before it. In a writ of certiorari, the defeated party seeks for the quashing of the order issued by the tribunal in favour of the successful party. How can the High Court vacate the said order without the successful party being before it? Without the presence of the successful party the High Court cannot issue a substantial order affecting his right. Any order that may be issued behind the back of such a party can be ignored by the said party, with the result that the tribunal's order would be quashed but the right vested in that party by the wrong order of the tribunal would continue to be effective. Such a party, therefore, is a necessary party and a petition filed for the issue of a writ of certiorari without making him a party or without impleading him subsequently, if allowed by the court, would certainly be incompetent. A party whose interests are directly affected is, therefore, a necessary party.”

7. He has further submitted that the interim order has been obtained by the original applicants by suppressing material facts and without joining the necessary parties to the present Original Application as party respondents, which they cause injustice to the present applicants in M.A. and other candidates. Therefore, he prayed to vacate the interim order of status quo.

8. Learned Advocate for the respondents in the M.A. i.e. applicants in O.A. No. 722/2019 has submitted that the

applicants are serving in the Police Constabulary. The applicant Nos. 2 & 4 had appeared for the appointment to the post of PSI on the basis of Limited Departmental Competitive Examination held in the year 2016 and they secured 139 & 138 marks respectively in the written examination. He has submitted that rest of the applicants i.e. applicant Nos. 1, 3 & 5 had not appeared for Limited Departmental Competitive Examination-2016, but they are eligible to participate in the said examination in future. He has submitted that as they will be eligible to participate in the Limited Departmental Competitive Examination, it cannot be said that they have no *locus standi* to challenge the Government Resolution dated 22.04.2019. He has submitted that in view of the provision of Rule 3 of the Police Sub-Inspector (Recruitment) Rules, 1995, appointment to the post of Sub-Inspector of Police Force in the State of Maharashtra shall be made either by promotion of a suitable person on the basis of seniority subject to fitness from amongst the persons holding the post of Police Constable or Police Naik or Police Havaldar or Assistant Police Sub-Inspector in the Police Force having not less than ten years continuous regular service from the date of appointment in the Police Force and who qualify in the

departmental examination held by the Director General of Police as per the Examination Rules prescribed by the Government, by special or general order, from time to time. Or by selection of person working in the Police Force on the basis of the result of the limited departmental examination held by the Commission or by nomination. He has submitted that rule 4 provides that, appointment to the post of Police Sub-Inspector by promotion, selection on the basis of limited departmental examination and nomination shall be made in the ratio of 25 : 25 : 50. He has argued that in the Police Force in the State of Maharashtra in all 4843 are sanctioned posts for the appointment in the cadre of Police Sub Inspector by nomination. 2422 posts are sanctioned for the appointment of Police Sub Inspector by promotion and same number of posts i.e. 2422 posts are sanctioned for the promotion on the post of Police Sub Inspector on the basis of Limited Departmental Competitive Examination. He has submitted that in the year 2016 there were vacancies of 828 posts in the cadre of Police Sub Inspector to be filled in on the basis of selection on the basis of Limited Departmental Competitive Examination. He has argued that the Government accordingly notified the said post and conducted

the Limited Departmental Competitive Examination through the Commission in the year 2016 in which 3 applicants and other candidates participated. He has submitted that accordingly all the candidates declared as successful candidates. The selection list has been published and names of 828 candidates are figured therein. Thereafter, again further list of 154 candidates was sent. He has further submitted that thereafter all the posts have been filled. Therefore, the Government cannot appoint other candidates for those posts which have been to be filled in the year 2016 and, therefore, the Government Resolution dated 22.04.2019 is in violation of the provisions of the Rules. He has submitted that the said G.R. is issued by the Government without recommendation of the Commission and the Commission has also raised the objection in that regard. He has submitted that the said act of issuing G.R. dated 22.4.2019 by the respondent No. 1 is illegal. Therefore, further process of appointment cannot be continued. Therefore, this Tribunal passed the order of *status quo* accordingly.

9. He has submitted that in view of the provisions of Article 320 of the Constitution of India, the said posts have to be filled in by the Commission, but the Government issued the appointment order of issuing 636 appointment orders without recommendation of the Commission and, therefore, it is in violation of the provisions of Article 320 of the Constitution of India. He has submitted that appointment of the 636 candidates has not been approved by the Commission and, therefore, it is illegal. In support of his submissions he has placed reliance on the judgment of the Hon'ble Apex Court in case of **V.P. SHRIVASTAVA AND OTHERS VS. STATE OF M.P. AND OTHERS** reported in **1996 AIR SCW 946**. He has submitted that the Government notified the selection on the post of Police Sub Inspector on the basis of Limited Departmental Competitive Examination for the posts of 828 in the year 2016. Therefore, the Government is not permitted to make appointment beyond the number of posts advertised and, therefore, G.R. dated 22.04.2019 is arbitrary and in violation of the Articles 14 & 16 of the Constitution of India. He has submitted that right of the applicants will be infringed in case, 636 candidates will be appointed on the post, which will be filled on these

vacancies, which will arise the next year. It will deprive the applicants in participating in the said process and, therefore, the order appointing the applicants is illegal. In support of his submissions he has placed reliance on the judgment of the Hon'ble Supreme Court in case of **ARUP DAS AND OHTERS VS. STATE OF ASSAM AND OHTERS** reported in **(2012) 5 SUPREME COURT CASES 559**; wherein it has been observed as follows: -

“17. It is well-established that an authority cannot make any selection/appointment beyond the number of posts advertised, even if there were a larger number of posts available than those advertised. The principle behind the said decision is that if that was allowed to be done, such action would be entirely arbitrary and violative of Articles 14 and 16 of the Constitution, since other candidates who had chosen not to apply for the vacant posts which were being sought to be filled, could have also applied if they had known that the other vacancies would also be under consideration for being filled up.

18. In fact, in the decision rendered in Ishwar Singh Khatri's case (supra) which was referred to by the High Court, this Court while considering the preparation of panel of 1492 selected candidates as

against the 654 actual vacancies notified, recorded the fact that after filling up the notified number of vacancies from the panel, no further appointments were made therefrom and instead fresh advertisement was issued for further appointment. Since a promise had been made in the minutes of the meeting of the Selection Board that the panel would be valid till all the candidates were offered appointments, this Court held that the Selection Board had taken into consideration anticipated vacancies while preparing the panel. It is on such basis that this Court had observed that it had to be concluded that the Selection Board had prepared the panels containing 1492 candidates, as against the then available vacancies, and, accordingly, the selected candidates had a right to get appointment. It is in such circumstances that further appointments from the published panel of 1492 candidates, as directed by the Tribunal, were upheld.

19. In a recent decision rendered by this Court in State of U.P. Vs. Raj Kumar Sharma [(2006) 3 SCC 330], this Court once again had to consider the question of filling up of vacancies over and above the number of vacancies advertised. Referring to the various decisions rendered on this issue, this Court held that filling up of vacancies over and above the number of vacancies advertised would be violative

of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution and that selectees could not claim appointments as a matter of right. It was reiterated that mere inclusion of candidates in the Select List does not confer any right to be selected, even if some of the vacancies remained unfilled. This Court went on to observe further that even if in some cases appointments had been made by mistake or wrongly, that did not confer any right of appointment to another person, as [Article 14](#) of the Constitution does not envisage negative equality and if the State had committed a mistake, it cannot be forced to perpetuate the said mistake.

20. Even the decision in Prem Singh's case (supra), which had been strongly relied upon by Mr. Joydeep Gupta in support of his claim that the State had a right to deviate from the advertisement published by it, has to be considered in the light of the circumstances in which the same was made. While holding that if the requisition and advertisement are for a certain number of posts only, the State cannot make more appointments than the number of posts, this Court went on to hold that the State could deviate from the advertisement and make appointments in posts falling vacant thereafter in exceptional cases or in an emergent situation, and, that too, by taking a policy decision in that behalf.

21. The said finding cannot possibly be interpreted in the manner in which it has been done by Mr. Gupta that the advertisement could be deviated from by the State, even in the present circumstances, which, in our view, were neither exceptional nor emergent. The fact that 690 seats were available is not a relevant consideration for application of the aforesaid principle. It is in such situation that a fresh advertisement is required to be published for filling up the remaining number of vacancies after the vacancies advertised are filled up.

22. The latter portion of paragraph 25 of the said decision in Prem Singh's case (supra) deals with a situation where posts in excess of those advertised had been filled up in extra-ordinary circumstances. In such a case it was observed that instead of invalidating the excess appointments, the relief could be moulded in such a manner so as to strike a just balance, if it is in the interest of the State and in the interest of the person seeking public employment, to the facts of such case. The facts of that case are different from the facts of the instant case, in that no extra-ordinary and/or exceptional circumstances exist in the present case requiring the filling up of the vacant seats available after filling up the 160 seats advertised. The decision in Prem Singh's case (supra) has to be read in such a

context and cannot be said to be the rule, but rather the exception.

In view of the above said principles, he prayed to reject the Miscellaneous Application.

10. He has further submitted that Principal Seat of this Tribunal has considered all these aspects in O.A. No. 445/2019 and granted interim relief in favour of those applicants. He has submitted that this Tribunal had considered the order passed by the Hon'ble High Court of Bombay Bench at Nagpur in Writ Petition No. 3555/2019 and thereafter granted interim relief in that O.A. and on the basis of the interim relief granted in O.A. No. 445/2019 this Tribunal has passed the order of *status quo*. He has submitted that merely because O.A. No. 445/2019 has been withdrawn by those applicants it cannot be said that the order passed in the matter comes to an end. He has submitted that the order passed by the Hon'ble High Court of Bombay Bench at Nagpur in Writ Petition No. 3555/2019 has not been passed on merit and while passing order, the Hon'ble High Court has not considered the decisions of the Hon'ble Apex Court. He has submitted that in view of the

provisions of Article 141 the law declared by the Hon'ble Supreme Court shall be binding on all the Courts within the territory of India. Therefore, in view of the settled principles laid down by the Hon'ble Apex Court in the above cited decision, the order passed by the Hon'ble High Court in W.P. No. 3555/2019 cannot be considered and it may be ignored. He has submitted that this Tribunal has passed the interim order after considering all these aspects and, therefore, he prayed to reject the present Miscellaneous Application.

11. Learned Chief Presenting Officer has submitted that the O.A. filed by the Original Applicants is not maintainable, as the applicants have no *locus-standi* to file the present O.A. He has submitted that some of the applicants were not eligible for the promotion on the post of P.S.I., as they had not fulfilled the required criteria and some of the applicants were appeared for the Limited Departmental Competitive Examination held in the year 2016, but they had passed the said examination and they have not been declared as successful candidate and therefore, they have no *locus-standi* to challenge the G.R. dated 22.04.2019 and consequently, the appointment of 636 candidates, who have been appointed by the said G.R. He has submitted that the original applicants

have not joined the 636 candidates as party respondents to the Original Application. Therefore, the present O.A. is not maintainable. He has submitted that the Government consulted the Commission for recruitment of employees in view of the provisions of Article 320 of the Constitution. It is not mandatory to the State to consult the Commission for the recruitment/promotion of PSI. He has submitted that the only assistance or service of the Commission was taken for limited purpose of conducting the examination, as the MPSC has acquired the expertise in holding the said examination. Accordingly, the Commission took the Limited Departmental Competitive Examination of the year 2016 for filling up the post of PSI on promotion and recommended names and submitted list of the successful candidates of 2903. He has submitted that it is for the Government to make appointment of candidates on promotional post, if additional requirement is there. In support of his submissions, he has placed reliance on the judgment delivered by the Hon'ble High Court of Judicature at Bombay in **W.P. No. 4625 of 2001 with W.P. No. 4626 of 2001** in case of **Sunil Rajaram Ghosalkar Vs. The State of Maharashtra and Others.**

decided on 24.04.2002, wherein it has been observed as follows:-

“9. The M.P.S.C. is established in the State of Maharashtra in accordance with the provisions of Article 320 of the Constitution of India. Clause (3) thereof lays down categories in which the Commission shall be consulted by the Government. A perusal of this will demonstrate that recruitment to Class III posts of Sub-inspector is not covered by any of these clauses and consequently it is not mandatory to the State of Maharashtra to consult the M.P.S.C. for recruitment of PSI. In this case the M.P.S.C. was requested to assist the Government of Maharashtra in the conduct of the examination for recruitment of PSI. It will be seen that as many as 23000 constables in the State of Maharashtra had applied for appearing in the competitive examination and out of them, persons eligible as per the recruitment rules were required to be recommended. The holding of examination of the kind prescribed by the Rules was therefore a big task and the State Government thought it fit to use the services of M.P.S.C. who has acquired expertise in holding such examination. In effect the assistance of the service of the Commission was taken for the limited purpose of conducting examination after laying down the passing

standards of eligibility etc. The Commission has factually done this work, who had fixed certain standard for passing different categories of people in accordance with the reservation made by those clauses. It was thereafter that the Commission found 726 candidates suitable and eligible for appointment as PSI. It then recommend 179 out of them in accordance with the merit for appointment as that was the only requirement then sent to it by the State. When the requirement of Government was found more, the Government sent additional requisition. We need not consider the pendency of the Original Application before the Tribunal. We will be considering basically the action of the M.P.S.C. in refusing to send names when it is bound to do so. In the instant case there being no such compulsion of consultation under Article 320, using of the services of the M.P.S.C. for the limited purpose of conducting the departmental examination, no such obligation extended on the State of Maharashtra nor M.P.S.C. has any right to withhold the selection list from the State. In effect in this case the M.P.S.C. was acting as an agent of the State of Maharashtra for the purpose of holding examination as the number of candidates was as much as 23000. That being the factual and legal position the M.P.S.C. cannot refuse sending the names of such number of persons as are required by the State.”

He has further submitted that the said decision has been upheld by the Hon'ble Apex Court.

12. He has further submitted that the Hon'ble High Court of Judicature at Bombay, Nagpur Bench had passed order in **W.P. No. 3555/2019** in case of **Nivrathi Venkatrao Gitte Vs. State of Maharashtra, Principal Chief Secretary & others.** and directed that, "the process of selection shall go on, which shall be subject to the result of the petition". He has argued that in that W.P., the G.R. dated 22.04.2019 has been challenged. He has submitted that the said order is not brought to notice by this Tribunal by the original applicants at the time of obtaining interim relief of *status quo*. He has submitted that the applicants in the O.A. have suppressed the material facts while approaching this Tribunal and therefore, he has prayed to vacate the order of *status-quo* granted by this Tribunal by allowing the present M.A.

13. On going through the record, prima-facie, it reveals that on 22.06.2016, the Government sent requisition to the Commission for selection of 828 posts of PSI by the Limited Departmental Competitive Examination for the year 2016. Accordingly, the Department issued the Advertisement for

selection of 828 candidates inclusive of 154 candidates of reserve category on 27.06.2016. On 07.05.2019, the Commission published the list of 2903 qualified candidates after conducting the Limited Departmental Competitive Examination. On 12.12.2017, the Commission recommended 828 candidates for the appointment on the post of PSI out of which, 642 candidates were appointed from Open category who secured 253 marks and above and 186 candidates from reserve category who secured 230 and above marks. On 04.08.2017, the Hon'ble High Court of Bombay in **W.P. No. 2797/2015** in case of **State of Maharashtra Vs. Vijay Ghogre and Ors.** struck down the G.R. dated 25.05.2004 providing reservation in the matter of promotion in favour of the candidate belonging to reserve category and declared as being ultra-vires of Article 16(4A) of the Constitution. Thereafter, the Government took remedial measure and created 154 more post for open merit candidates over and above 828 posts subject to outcome of SLP (C) No. 28306/2017 pending before the Hon'ble Supreme Court. Meanwhile, **Shri Santosh Bapurao Rathod and Ors.** had filed **O.A. No. 394/2018** before the Principal Seat of this Tribunal at Mumbai challenging the decision of the

Government for appointment of 154 candidates. It was dismissed on 06.11.2018. However, opportunity was given to those applicants to make suitable representation to the Government and directions were given to the Government that if any representation is made to them, then it can be decided in due course of time on its own merit. On 22.04.2019, the Government had taken policy decision to accommodate 636 additional candidates from the list of 2903 qualified candidates prepared by the Commission, who secured more than 230 marks in the examination. The benchmark of 230 was considered in view of the fact the last candidate from the batch of 154 candidates had secured 230 marks. Thereafter, on 11.06.2019 the Director General of Police issued directions to conduct the medical test and other formalities to send those 636 candidates for training. The impugned order has also been challenged by **Shri Madan T. Metake and Ors. Vs. The State of Maharashtra and Ors.** before the Principal Seat of this Tribunal at Mumbai by filing **O.A. no. 445/2019**. In the said O.A., the Principal Seat of this Tribunal passed the interim order and granted relief in terms of prayer clause 51 (D). Therefore, the original applicants have filed the present O.A. and claimed relief on

the basis of the interim relief granted by the Principal Seat of this Tribunal at Mumbai in O.A. No. 445/2019 and accordingly the interim relief was granted by this Tribunal on 18.10.2019 in the present O.A. no. 722/2019 on the basis of the interim relief granted by the Principal Seat of this Tribunal at Mumbai in O.A. No. 445/2019 and the respondents were directed to maintain status-quo in respect of 636 candidates. At that time, none of the parties brought to the notice of this Tribunal that the said G.R. dated 22.04.2019 has been challenged by the aggrieved persons before the Hon'ble High Court. They have also not brought to the notice of this Tribunal regarding order passed by the Hon'ble High Court of Judicature at Bombay, Nagpur Bench in **W.P. No. 3555/2016** in case of **Nivrathi Venkatrao Gitte Vs. State of Maharashtra, Principal Chief Secretary & others.** and the directions of Hon'ble High Court that, "the process of selection shall go on, which shall be subject to the result of the said writ petition".

14. On perusal of the G.R. dated 22.04.2019, it reveals that the Government took a policy decision to accommodate 154 additional candidates from the list of 2903 qualified

candidates prepared by the Commission, who secured more than 230 marks considering the facts and situation and the representations made by the aggrieved candidates. Prima-facie, it seems that the impugned decision taken by the Government by way of G.R. dated 22.04.2019 has been taken in extraordinary circumstance.

15. On perusal of the pleadings of the applicant, it reveals that the applicants have suppressed the material fact. They have not specifically mentioned that the applicants viz. Gajana Babulal Bansode, Yogesh Bhagwanrao Dungahu and Ishwar Rangnath Nagare had not participated in the Limited Departmental Competitive Examination for the promotion of PSI. They have not specifically mentioned the fact that Wasim Hamid Shaikh and Smt. Sarita Shridhar Sakhare had appeared for the Limited Departmental Competitive Examination held in the year 2016, but they were not qualified in the said examination and therefore they were not declared as selected candidates by the Commission. They have not mentioned the marks secured by them in written examination in O.A. On the contrary, they have vaguely contended that they had applied for the post of PSI to be filled

in by way of promotion through Limited Departmental Competitive Examination. They have suppressed the said material fact while seeking the equitable relief. Not only this, but they have not impleaded 636 candidates who were selected and appointed by the G.R. dated 22.04.2019, as a party respondents to the O.A. Definitely, the rights of 636 candidates have been affected by the order passed by this Tribunal in the present O.A. No. 722/2019. They had no opportunity to defend their rights. In their absence, the O.A. cannot be decided effectively, as they are necessary parties in the said O.A.

16. While deciding the interim relief, I have to consider the prima-facie case made out by the parties. The original applicants are seeking equitable relief, but they have not approached this Tribunal with clean hands. Prima-facie, it reveals that the Government took conscious decision to create additional 636 posts for appointment in the cadre of PSI on the basis of Limited Departmental Competitive Examination and the G.R. provides that the said posts will be filled in as and when the vacancies arise. In these circumstances, in my view, there is no need to enter in the arena of the merit of the

O.A. at this juncture. The issue raised by the learned Advocate for the applicants in O.A. is touching to the merit of the case and therefore, the same can be considered at the time of final hearing of the present O.A.

17. Prima-facie, it seems that the Hon'ble High Court of Judicature at Bombay, Nagpur Bench in **W.P. No. 3555/2019** in case of **Nivrathi Venkatrao Gitte Vs. State of Maharashtra, Principal Chief Secretary & others**, wherein G.R. dated 22.04.2019 has been challenged had directed that, "the process of selection shall go on, which shall be subject to the result of the petition". In the instant case, the original applicants have not challenged the G.R. dated 22.04.2019, but they are seeking relief to stay the further selection process regarding selection of 636 candidates without making them as party respondents in the present O.A. Therefore, in view of the order passed by the Hon'ble High Court, in my view, there is no propriety to continue the order of status-quo granted by this Tribunal. Had the fact regarding passing of the order of the Hon'ble High Court in **W.P. No. 3555/2019** on 03.05.2019 has been brought to notice of this Tribunal at the time of passing of the interim order/status-quo order by

the parties to the O.A., definitely, this Tribunal could have considered the said order and would have passed the appropriate order. But none of the parties had brought the said fact to the notice of this Tribunal at that time and, therefore, order of *status quo* came to be passed. Because of the status-quo order passed by this Tribunal, unnecessary complications and confusion have been created in the matter. Therefore, in my view, the said status-quo order requires to be vacated by allowing the present M.A.

18. In view of the discussions in the foregoing paragraphs, the M.A. No. 545/2019 is allowed. The order of status-quo passed in O.A. No. 722/2019 on 18.10.2019 stands vacated. There shall be no order as to costs.

ACTING CHAIRMAN

PLACE : AURANGABAD.

DATE : 30TH NOVEMBER, 2019

M.A.NO.545-2019 In O.A.No.722-2019(SB)-HDD-2019
KBP (FROM PARAS 8 ONWARDS)