

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

CONTEMPT APPLICATION NO 35 OF 2021

IN

ORIGINAL APPLICATION NO 229 OF 2019

DISTRICT : PUNE, NASIK

1. Amol Abaso Nazirkar)
At Post Nazare K.P., Tal-Purandhar,)
Dist-Pune.)
2. Mahesh P. Avhad,)
Payhardi Phata, Navin CIDCO,)
Nasik.)
3. Dadahari Ashok Wanve,)
At Post – Ahandwadi, Tal-Bhum)
Dist-Osmanabad.)
4. Shaikh Mohaseen Jabbar,)
R/at: Shri Jagdamba Hsg. Society,)
Rashin, Tal-Karjat. Dist-Ahmednagar)
5. Shri Balaji Maruti Jagtap,)
At Post Undergon, T1 Barshi,)
Dist-Solapur.)
6. Priyanka Lahu Patil,)
R/at 2459, D-Ward, Sukrawar Peth)
Kolhapur.)
7. Lanka Shankar Namde,)
At Post Perjapur, Tal-Bokardan,)
Dist-Jalna.)...**Applicants**

Versus

Smt Swati Mhase Patil,)
Secretary,)
Through M.P.S.C, Floor 5-8,)
Cooperage MTNL Building,)
M.K Road, Mumbai 400 021.)...**Respondent**

Shri S.S Dere, learned advocate for the Applicant.

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

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

DATE : 08.12.2023

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. This Contempt Application is filed by the seven applicants as Respondent-M.P.S.C, has failed to comply with the order passed by this Tribunal dated 10.12.2020

2. Learned C.P.O has submitted that Respondent-M.P.S.C, as per the order of this Tribunal has prepared the revised wait list and considered the names of the applicants in the wait list and has recommended the names of eligible candidates on 1.7.2021.

3. Learned counsel for the applicants have submitted that the M.P.S.C has not prepared the revised wait list properly and Respondent- M.P.S.C should have considered the name of the applicants and should have recommended their names for the post of Police Sub-Inspector.

4. It is necessary to cull out the facts and directions given in the original order. M.P.S.C has advertised 750 posts of P.S.I and names of 750 meritorious candidates were recommended to the Respondent-State. The Respondent-State issued the appointment orders. However, 57 candidates out of the 750 candidates did not join and therefore, the Respondent-State sent two letters of requisition within one year which is the stipulated time available to the waitlist. Despite these two requisitions, though there was vacancy of 57 candidates, M.P.S.C did not recommend names of 57 candidates, who were next to the original 750 candidates, according to their respective categories. That issue was agitated in O.A 229/2019 by the applicants

5. It is necessary to mention that earlier O.A 694/2018 was filed by Ms Rohini Sonwalkar, to consider her claim on the point of horizontal reservation in female category. The said O.A was allowed. Against which W.P 92/2019 was filed by Respondent-M.P.S.C and it was dismissed by judgment and order dated 10.1.2019. In view of the judgment of the Bombay High Court in the said Writ Petition No. 92/2019, M.P.S.C had to reshuffle the first revised merit list dated 20.6.2018, where the names of 750 candidates were declared and revised list was prepared of the Main Examination on 12.4.2019. In the said list, the names of 57 candidates who did not join also appeared on merit. However, in the revised list, names of 45 candidates were excluded as their selection was not following the rules of reservation laid down in the matter of Sonwalkar.

6. However, the Respondent-State has already sent these 45 candidates for training to the post of P.S.I and some of them have completed the training when the Original Application was filed before this Tribunal and was decided on 10.12.2020

7. M.P.S.C informed that these 45 candidates were de-recommended by M.P.S.C and Government does not want to consider them. The Tribunal observed that a group of 45 candidates is different than the 750 posts and the Government should take decision about these 45 candidates and the Tribunal passed the following order:-

“(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.”

8. Learned C.P.O informed that it was necessary for M.P.S.C to prepare a list of the candidates who were next to the 750 candidates as original 57 candidates out of 750 candidates did not join. She submitted that M.P.S.C prepared the list of 57 candidates. It was found that out of 57 candidates, 27 candidates were recommended. 45 candidates are to be included as they fall in between the list of next 57 candidates. M.P.S.C thus selected names of 57 candidates pursuant to the order of this Tribunal which found these 27 candidates and also 30 more candidates were included in the list of 57 candidates as per their merit in the examination. While doing so, this exercise obviously other 27 candidates who are next to the 57 candidates were not

recommended as they could not be counted in the revised list of 57 candidates.

9. The entire tenor of the learned counsel for the applicants was that once the Tribunal has ordered to keep the 45 candidates separate within the group of 57 candidates, then not a single candidate from the said group can be considered in fresh 57 candidates. These submissions may prima facie appear correct. However, after proper reading of the order and the operative part, directions given to M.P.S.C do not stand to reason. It is made clear nowhere in the judgment this issue that some of the candidates from the dereserved group of 45 meritorious candidates can be considered in next fresh 57 candidates. The judgment is silent on this point because it was not argued and not even contemplated. M.P.S.C was directed to revise wait list and recommend the names of applicants if they are found eligible and also consider the names of the applicants in the wait list by following the law laid down by the Hon'ble Bombay High Court on the point of reservation.

10. Thus, M.P.S.C was bound to prepare afresh a list of 57 candidates who are meritorious and next to the revised list of 750 candidates. A factual position that some of the candidates out of 45 de-recommended candidates also would stand in the said group was not contemplated and therefore it is not discussed. The M.P.S.C has rightly considered and revised a list of next 57 candidates on merits. Admittedly, the 27 candidates included who are taken from the group of 45 de-recommended candidates and listed in this fresh list of 57 candidates have secured more marks than the persons who unfortunately were pushed down because of less marks. However, it is to be noted that merit and reservation are the two decisive factors which are required to be observed by

M.P.S.C. It is the law of the land. M.P.S.C has followed the rules, procedure ad law of reservation and merit while preparing a list of next 57 candidates.

11. Thus, we are of the view that our order is complied with by the M.P.S.C. Hence, Contempt Application stands disposed of.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 08.12.2023
Dictation taken by : A.K. Nair.