

MISC. APPLICATION NO. 346/2016.

(DS Bhalerao Vs. State of Mah. & Ors.)

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J).

DATE :--01.09.2016.

ORAL ORDER:-

Heard Smt. SR Bhilegaonkar, learned Advocate for the applicant and Shri NU Yadav, learned Presenting Officer for the Respondents.

2. In the O.A. the applicant is claiming that the impugned communication dated 23.7.2015 rejecting the increment to him be quashed and set aside. For challenging the said communication there is a delay of 33 days and therefore, the applicant is claiming the condonation of delay. In the interest of justice the M.A. is allowed with no order as to costs.

01.09.2016-ATP (SB)

MEMBER (J)

ORIGINAL APPLICATION St.No.1577/2016.

(DS Bhalerao Vs. State of Mah. & Ors.)

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J).

DATE :--01.09.2016.

ORAL ORDER:-

Heard Smt. SR Bhilegaonkar, learned Advocate for the applicant and Shri NU Yadav, learned Presenting Officer for the Respondents.

2. Vide impugned communication dated 23.7.2015 the applicant has not been granted economical benefit of increment on completion of M.E. course on the ground that the applicant has obtained the said degree without permission of the Govt.

3. It seems that the applicant has filed one representation to the Director Technical Education, Mumbai on 21.4.2016. The copy of the said representation is filed on record at paper book page nos.15 & 16 (both inclusive).

4. Learned Advocate for the applicant also invited my attention to the application preferred by the applicant for obtaining permission to appear for M.E. course at Aurangabad in Govt. Engineering College. The said application is dated 25.7.2002 and it is placed on record at paper book page no.10.

5. In view of the aforesaid circumstances, the O.A. can be disposed of with direction to the Respondents to consider the representation filed by the applicant on 21.4.2016, as per rules.

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6. In view thereof the O.A. stands disposed of with direction to the Respondent no.1 to take decision on the representation filed by the applicant dated 21.4.2016 as per rules and intimate the decision thereon to the applicant in writing by R.P.A.D. within two months from the date of this order.

7. Accordingly, O.A. stands disposed of with no order as to costs.

01.09.2016-ATP (SB)

MEMBER (J)

ORIGINAL APPLICATION NO. 477/2016.

(A.P. Ghodke Vs. State of Mah. & Ors.)

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J).

DATE :--01.09.2016.

ORAL ORDER:-

Heard Shri AL Kanade, learned Advocate for the applicant and Shri VR Bhumkar, learned Presenting Officer for the Respondents no.1 to 3. None present for the respondent no.4.

2. Learned P.O. files reply affidavit on behalf of Respondent no.3. Same is taken on record. Its copy is served on the applicant.

3. Learned Advocate for the applicant submits that he may be permitted to delete prayer clause "C". He is permitted to do so forthwith. In view thereof, he is not pressing prayer clause "C".

4. At the request of the learned P.O. the matter is kept tomorrow.

5. S.O. 2.9.2016.

MEMBER (J)

01.09.2016-ATP (SB)

ORIGINAL APPLICATION NO. 703/2016.

(Dr. Prakash Gaikwad Vs. State of Mah. & Ors.)

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J).

DATE :--01.09.2016.

ORAL ORDER:-

Heard Shri A.C. Deshpande, learned Advocate for the applicant and Shri DR Patil, learned Presenting Officer for the Respondents.

2. Learned Advocate for the applicant submits that he has been instructed by the applicant to withdraw the O.A. since his representation is already pending before the competent authority for accommodating him in vacant post at Aurangabad. In view thereof, the applicant is permitted to withdraw the O.A. Hence, the O.A. stands disposed of, as withdrawn, with no order as to costs.

01.09.2016-ATP (SB)

MEMBER (J)

ORIGINAL APPLICATION NO. 609/2016.

(AS Ambadasrao Vs. State of Mah. & Ors.)

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J).

DATE :--01.09.2016.

ORAL ORDER:-

Heard Shri Asif Ali learned Advocate holding for Smt. AN Ansari, learned Advocate for the applicant and Shri IS Thorat, learned Presenting Officer for the Respondents.

2. Vide order passed by this Tribunal on 5.1.2016 the Collector, Osmanabad was directed to file affidavit on following points :-

“Does he find any legal authority to disregard the judgment and order passed by this Tribunal in O.A. No.189/2011 and how does he reconcile objection to prayer in present O.A. and order in O.A.No.189/2011”.

3. The Collector did not file any affidavit in spite of repeated chances even thereafter vide order dated 20.7.2016 Respondent Collector was directed to file affidavit.

4. The learned P.O. submits that the writ petition against the order passed by the Tribunal in OA No.189/2011 is pending before the Division Bench of the Hon'ble High Court and the said matter is due on 7.9.2016. In view thereof learned P.O. seeks time to comply with the direction so as to

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comply with the direction. In view of the fact that the matter is also pending before Hon'ble High Court two weeks time is granted.

5. S.O. to 20.9.2016.

01.09.2016-ATP (SB)

MEMBER (J)

REV. APPLICATION NO. 3/2016 IN O.A. NO. 63/2015

(Dr. Tanuja S. Kulkarni.Vs. State of Mah. & Ors.)

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J).

**(This matter is placed before Single Bench
due to non-availability of Division Bench)**

DATE : 01.09.2016.

ORAL ORDER:-

Ms. Bhavana Panpatil, learned Advocate holding for Shri S.B. Talekar, learned Advocate for the applicant and Smt. Priya R. Bharaswadkar, learned Presenting Officer for the Respondents.

2. The learned Presenting Officer has filed affidavit in reply on behalf of respondent nos. 1 to 3 in O.A. No. 63/2015. It is taken on record and copy thereof has been served upon the learned Advocate for the applicant.

3. The learned Presenting Officer seeks time to file affidavit in reply on behalf of respondents in Review Application. Time granted.

4. S.O. to 20.09.2016.

MEMBER (J)

ORIGINAL APPLICATION NO. 267/2016

(Ashok L. Shejul and Ors. Vs. State of Mah. & Ors.)

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J).

**(This matter is placed before Single Bench
due to non-availability of Division Bench)**

DATE : 01.09.2016.

ORAL ORDER:-

Shri R.R. Banar, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the Respondents nos. 1 to 3 and Shri G.N. Patil, learned Advocate for respondent nos. 4, 10, 11, 14, 15, 16, 18, 23, 26, 27, 40 has filed VAKALATNAMA on their behalf and the same is taken on record. None appeared for other respondents.

2. The learned Presenting Officer for respondent nos. 1 to 3 as well as Shri G.N. Patil, learned Advocate for respondent nos. 4, 10, 11, 14, 15, 16, 18, 23, 26, 27, 40 seek time to file affidavit in reply. Time granted.

3. S.O. to 22.09.2016.

MEMBER (J)

01.09.2016-KPB(DB)

**MA 179/2016 in O.A. 835/2015 with
MA 180/2016 in O.A. 032/2016 with
MA 181/2016 in O.A. 067/2016 with
MA 274/2016 in O.A. 393/2016 with
MA 273/2016 in O.A. 397/2016 with
MA 275/2016 in O.A. 398/2016 with
MA 302/2016 with M.A. 207/2016 with M.A. 281/2016 IN
O.A. 370/16 with
MA 303/2016 with M.A. 208/2016 with M.A. 280/2016 IN
O.A. 371/16 with
M.A. 277/2016 in O.A. 361/2016 with
O.A. 400/2016 and 490/2016 with
O.A. Nos. 388 to 392 all of 2016**

(Sudhakar O. Jadhav and Ors. Vs. State of Mah. & Ors.)

CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J).

**(This matter is placed before Single Bench
due to non-availability of Division Bench)**

DATE : 01.09.2016.

ORAL ORDER:-

Heard Dr. Smt. Kalpalata Patil-Bharaswadkar and Shri V.B. Wagh, learned Advocates for the applicants in respective matters and S/Shri M.A. Mahajan, I.S. Thorat, S.K. Shirse, D.R. Patil, M.P. Gude, N.U. Yadav, V.R. Bhumkar and Smt. Priya R. Bharaswadkar, Resha S. Deshmukh, Deepali S. Deshpande and Sanjivani K. Deshmukh-Ghate, learned Chief Presenting Officer and learned Presenting Officers for the Respondents in respective matters.

2. Today, the learned Chief Presenting Officer has filed a copy of communication dated 31.08.2016 received

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from Divisional Joint Director of Agriculture, Nashik Division, Nashik to him. He submits that the W.P. St. Nos. 25046, 25050, 25049, 25130, 25121, 25122, 25129, 25044, 25047, 25048, 25045 & 25051 all of 2016 filed by the State of Maharashtra are pending before the Hon'ble Bombay High Court, Bench at Aurangabad and the same are listed on board on 14th September, 2016. He therefore, requested that these matters be placed on board on 29.09.2016. Request granted.

3. Hence, S.O. to 29.09.2016.

01.09.2016-KPB(DB)

MEMBER (J)

ORIGINAL APPLICATION NO. 696 OF 2016

{Palinidas D. Ahirrao Vs. The State of Mah. & Ors.}

CORAM :- Shri J. D. Kulkarni, Hon'ble Member (J)
**(This matter is placed before the Single Bench
due to non-availability of Division Bench.)**

DATE :- 01.09.2016

Oral Order :-

1. Heard Shri M.R. Wagh, learned Advocate for the applicant and Shri M.S. Sahajan, learned Chief Presenting Officer for the respondents.
2. It is submitted by the learned Counsel for the applicant that, vide the impugned order dated 31.5.2016 the Officers are promoted to the post of Extension Officer / सहायक दूध प्राषण अधिकारी and copy of the said order is placed on record at paper book page 68. In the said promotion order S/shri S.D. Tayade and C.A. Dhoom, who are at sr. Nos. 3 & 4 respectively therein, are junior to the applicant and still they are promoted and the case of the applicant for promotion is not considered.
3. The learned Counsel for the applicant, therefore, states that the said order of promotion of S/shri Tayade & Dhoom be stayed. In the alternative, he states that the said promotions are temporary and by way of interim relief the respondents be directed to not to make them permanent.
4. Unless and until say of the respondents is obtained in this regard, it will not be proper to stay the impugned order of promotion. Since the said order itself states that, said

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promotions are temporary and, therefore, there is no question to grant any interim relief in favour of the applicant.

4. Issue notices to the respondents, returnable on 3.10.2016.

5. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.

6. Applicant is authorized and directed to serve on respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondent is put to notice that the case would be taken up for final disposal at the stage of admission hearing.

7. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the question such as limitation and alternate remedy are kept open.

8. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

9. S.O. 3.10.2016.

11. Steno copy & hamdust allowed to both the parties.

MEMBER (J)

ARJ 01.09.2016 (D.B.)

ORIGINAL APPLICATION NO. 138 OF 2016

{Dr. Sk. Faiz Mohd. s/o Noor Mohd. Vs. State of Mah. & Ors.}

CORAM :- Shri J. D. Kulkarni, Hon'ble Member (J)
(This matter is placed before the Single Bench due to non-availability of Division Bench.)

DATE :- 01.09.2016

Oral Order :-

1. Heard Shri I.D. Maniyar, learned Advocate for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for the respondent nos. 1 to 3. None appears for respondent no. 4.
2. The learned P.O. seeks time to file affidavit in reply of the respondents. Time granted as a last chance.
3. It is also made clear that, if the affidavit in reply is not filed on the next date, the matter will be heard on merits without the affidavit in reply of the respondents.
4. S.O. to 6.9.2016.

MEMBER (J)

ARJ 01.09.2016 (D.B.)

MA NO. 224/2016 IN OA NO. 401/2016

{Shri Jamalsing D. Valvi Vs. State of Mah. & Ors.}

CORAM :- Shri J. D. Kulkarni, Hon'ble Member (J)
(This matter is placed before the Single Bench
due to non-availability of Division Bench.)

DATE :- 01.09.2016

Oral Order :-

1. Heard Shri S.D. Ghongde, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.
2. The learned C.P.O. seeks time to file affidavit in reply in M.A. No. 224/2016. Time granted.
3. S.O. to 6.9.2016.

MEMBER (J)

ARJ 01.09.2016 (D.B.)

MA NO. 339/2016 IN OA 401/2016 WITH MA NO. 224/2016

{Shri Jamalsing D. Valvi Vs. State of Mah. & Ors.}

CORAM :- Shri J. D. Kulkarni, Hon'ble Member (J)
(This matter is placed before the Single Bench due to non-availability of Division Bench.)

DATE :- 01.09.2016

Oral Order :-

1. Heard Shri C.D. Biradar, learned Counsel for the applicant in misc. application, Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent nos. 1 to 3 in M.A. no. 339/2016 and Shri S.D. Ghongde, learned Counsel for respondent no. 4 in M.A. no. 339/2016 / applicant in O.A. no. 401/2016.

2. The learned C.P.O. for res. Nos. 1 to 3 and learned Counsel for respondent no. 4 submit that the applicant has not served copy of the M.A. no. 339/2016 upon them.

3. The applicant in M.A. no. 339/2016 is directed to serve copy of the said M.A. along with annexures thereto upon the respective learned Counsel for the respondents. He states that, he will supply the copy of M.A. to the learned Counsel for respective respondents today itself.

4. S.O. to 6.9.2016.

MEMBER (J)

ARJ 01.09.2016 (D.B.)

MA NO. 323/2016 IN REV. ST. 1366/2016 IN OA 341/2014

{Shri Shivaji K. Suryavanshi Vs. The State of Mah. & Ors.}

CORAM :- Shri J. D. Kulkarni, Hon'ble Member (J)
(This matter is placed before the Single Bench due to non-availability of Division Bench.)

DATE :- 01.09.2016

Oral Order :-

1. Heard Shri M.R. Wagh, learned Counsel holding for Shri R.B. Narwade Patil, learned Advocate for the applicant and Shri M.S. Sahajan, learned Chief Presenting Officer for the respondents.
2. Issue notices to the respondents in Rev. Application No. 323/2016, returnable on 3.10.2016.
3. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.
4. Applicant is authorized and directed to serve on respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of Rev. Application. Respondent is put to notice that the case would be taken up for final disposal at the stage of admission hearing.
5. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the question such as limitation and alternate remedy are kept open.
6. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.
7. S.O. 3.10.2016.
8. Steno copy & hamdust allowed to both the parties.

MEMBER (J)

ORIGINAL APPLICATION NO.315/2000

(A.J.Pardeshi V/s. The State of Maharashtra & Ors.)

CORAM: Hon'ble Shri J.D.Kulkarni, Member (J)

DATE : 01-09-2016.

ORAL ORDER:-

Perused Office Note dated 31-08-2016. It is clear from the said note that original record of the O.A. has been destroyed, and therefore, office tried to reconstruct the O.A. The applicant, however, did not give response to the efforts made by office as inspite of service of notice, the applicant chose not to appear before the Tribunal.

2. Respondents have submitted set of the O.A.No.315/2000. Said set is xerox copy of memo of O.A. and various documents filed in the O.A. In the absence of any response from the applicant, the same will be construed as the reconstructed record. However, in the interest of justice, one more chance is given to the applicant to present his case. If the applicant wants to take any objection to the reconstructed record on the basis of copies supplied by the learned Advocate for the Zilla Parishad, Ahmednagar, he will be at liberty to take such objection on appearing before the Tribunal. In case, the applicant fails to appear and take any objection for such reconstruction, O.A. will be reconstructed and will be heard on merits on the very day.

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O.A.No.315/2000

3. In view thereof, issue notice to the applicant by RPAD for causing appearance before the Tribunal, returnable on 30-09-2016. Copy of this order shall also be served to the applicant along with such notice.

4. Applicant shall note that he will be at liberty to file evidence, if any, in support of allegations that the respondents are responsible for releasing the pensionary benefits at delayed stage and is entitled for interest. Therefore, question as put forth by the Hon'ble High Court as to who is responsible for delay in paying pensionary benefits will be decided on that date.

5. S.O.30-09-2016.

MEMBER (J)

YUK ORAL ORDER 01-09-16

CHAMBER APPEAL NO. 07 OF 2016 WITH M.A.ST.1610/2016

(Shri Ashok V. Dahiwal Vs. State of Mah. & Ors.)

CORAM : HON'BLE SHRI J.D. Kulkarni, Member (J)

DATE : 01.09. 2016.

ORAL ORDER:

Heard Shri Someshwar Mundik – learned counsel for the applicant. He has filed **VAKALATNAMA** on behalf of the applicant and the same is taken on record.

2. Vide order dated 1.9.2015 the Registrar of this Tribunal was pleased to refuse the registration under Rule 5 (4) of Maharashtra Administrative Tribunal (Procedural) Rules, 1988. On 31.10.2014 the office has raised the following office objections: -

- 1) Order in O.A. No. 609/1999 not filed; and
- 2) Page Nos. 7 to 12 & 15 not legible.

3. Vide office note dated 24.8.2015 Registrar of this Tribunal at Aurangabad Bench noted that nobody appeared for the applicant and office objections not removed.

4. The learned counsel for the applicant appeared and has filed M.A. St. No.1610/2016 for

**CHAMBER APPEAL NO. 07/2016 WITH
M.A.ST.NO. 1610/2016**

condonation of delay of about 350 days caused in filing the Chamber Appeal No. 7/2016.

5. Technically the Registrar was right in refusing the registration since nobody appeared for the applicant in view of the objection in spite of repeated chances. Learned Advocate Shri Someshwar Mundik for the applicant submits that the then Advocate Mrs. M.A. Kulkarni has not taken concrete steps to remove the office objections. He further submits that the then Advocate Mrs. M.A. Kulkarni has not informed the applicant in respect of office objections. The fact that the O.A. is for compassionate appointment and in order to give an opportunity to the applicant to prove his claim on merits, it will be in the interest of justice to allow the appeal by condoning delay of about 350 days caused in filing Chamber Appeal as the applicant shall not suffer for the negligence of his Advocate. Hence, the following order:

ORDER

The M.A. St. No. 1610/2016 stands allowed and delay caused in filing Chamber Appeal stands condoned. Consequently, the Chamber Appeal No.

CHAMBER APPEAL NO. 07/16 WITH M.A.ST.1610/16 ::-3-::

07/2016 is allowed and Registry to place the matter before the appropriate Bench for hearing.

MEMBER (J)

01.09.2016-HDD

ORIGINAL APPLICATION NO. 641/2016

{Smt. Neeta P. Samudre Vs. The State of Mah. & Ors.}

CORAM :- Shri J. D. Kulkarni, Hon'ble Member (J)
(This matter is placed before the Single Bench
due to non-availability of Division Bench.)

DATE :- 01.09.2016

Oral Order :-

1. Heard Shri A. S. Nimbalkar, learned Advocate for the applicant and Smt. Priya R. Bharaswadkar, learned Presenting Officer for the respondents.

2. At the request and by the consent of both the sides, the matter is taken up for final disposal at the stage of admission itself.

3. The applicant has applied for the post of Lecturer, District Institute of Education & Training, Maharashtra Education Service, Group-B (Teachers Training Branch). It is the contention of the applicant that she applied for the said post as per the advertisement dated 18.6.2015, copy of which is at paper book page 32. According to the applicant, while submitting online application, the applicant has stated that she belongs to Open category, but inadvertently, in the column "उमेदवार नॉन क्रिमीलेयर मधे मोडतो का ?" (whether the applicant belongs to non-creamy layer), she replied as 'no', though she belongs to non-creamy layer.

4. According to the learned Counsel for the applicant, as per the answer key of the screening test, the applicant has secured 103 marks as against the cut-off marks 66 for Open Female category. The applicant has, therefore, requested

that, she may be allowed to appear for the oral interview, which is scheduled during the period from 29.8.2016 to 8.9.2016. This is the only relief for which the O.A. is filed.

5. The respondents were given liberty to file affidavit in reply and it was specifically mentioned in the order dated 26.8.2016 that, in case affidavit in reply is not filed on the next date, the prayer of the applicant to allow him to appear for the interview will be considered.

6. The learned P.O. submits that, she has been instructed by the res. No. 2 – the M.P.S.C. – to argue the O.A. in respect of applicant's claim for allowing her to appear for oral interview, on merits.

7. The learned Counsel for the applicant submits that, since the applicant has secured 103 marks as against the benchmark as 66 for Open Female category, the applicant be allowed to appear for oral interview in the interest of justice.

8. The learned P.O. has strongly opposed the said contention of the learned Counsel for the applicant and has invited my attention to the judgment delivered by this Tribunal in **O.A. no. 410/2012 {Shri Anil Prakash Sarkate Vs. the State of Maharashtra & Ors.}** on 11.10.2013. In para 9 of the said judgment this Tribunal has observed as under :-

“9. Further contention of the applicant is that, factual information given by the applicant in the application form is incorrect and applicant has every right to correct the said information and it was

ORIGINAL APPLICATION NO. 641/2016 (3)

necessary for the authorities to allow the applicant to correct the information furnished by the applicant in the application form and take into consideration the correct information and, therefore, applicant should have been allowed to participate in the selection process. This submission is not a acceptable submission, because with the functioning of the MPSC and as per the procedure of the MPSC the authorities has to act only on the basis of information supplied by the candidates in the application forms and the said procedure is applicable to all the contesting candidates. So also, allowing the applicant to correct the information in the application form will also amount to discrimination to other candidates, who have also furnished incorrect information in the application forms and were rejected on account of so called mistake committed by them. In view of above discussion, the applicant is not entitled to any of reliefs claimed in this original application. As such, the original application will have to be dismissed. Hence, the order :-

ORDER

The original application stands dismissed. There shall be no order as to costs.”

9. The learned P.O. has also invited my attention to one judgment delivered by Hon’ble Bombay High Court, Bench at Aurangabad in **writ petition no. 4387/2012 {Chimabai Ramrao Sable Vs. the State of Maharashtra & Ors.}** on 22.7.2014. In the said case also Hon’ble High Court was

pleased to reject the prayer of the petitioner therein to allow her to appear for oral interview. In the said case, the applicant got 112 marks against 98 marks on which merit list was closed.

10. The learned Counsel for the applicant submits that in the said writ petition, the examinations were conducted in the year 2011 and thereafter meritlist was also prepared and petitioner's name therein did not appear in the said merit list and there was lapse of 2 years between the examination and publication of merit list.

11. Even accepting the submission of the learned Counsel for the applicant, it is clear from both the judgments that, in both the set of circumstances the applicants have committed mistake in mentioning themselves as belonging to non-creamy layer.

12. Thus, in view of the observations made by this Tribunal in O.A. no. 410/2012 as cited supra, I do not find merit in the claim of the applicant. There may be number of other candidates, who might have committed mistake while submitting their applications and still they did not challenge the action of the respondents of non calling them for interview.

13. In view thereof, it will not be proper to re-open the issue since M.P.S.C. has initiated the process of selection as per rules. The applicant has not challenged the legality of action taken by the M.P.S.C. nor claimed any mala-fides against it. Hence, I pass following order :-

ORIGINAL APPLICATION NO. 641/2016 (5)

ORDER

The Original Application stands dismissed. There shall be no order as to costs.

MEMBER (J)

ARJ 01.09.2016 (D.B.)