

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
AURANGABAD BENCH, AURANGABAD**

**ORIGINAL APPLICATION NO.282 OF 2012**

**DISTRICT : NANDED**

Mahesh Keshavrao Chate, )  
R/o. Police Head Quarter Colony, )  
House No.48, Vazirabad, Nanded. )

**...APPLICANT.**

**VERSUS**

1. The State of Maharashtra, )  
Through it Secretary, Home Department, )  
Mantralaya, Mumbai 32. )
2. The Superintendent of Police, )  
Nanded, Tq. And Dist. Nanded. )
3. Manoj Vijay Chate, )  
R/o. Malakoli, Tq. Loha, )  
District Nanded. )

**.....RESPONDENTS.**

Shri S.A Deshmukh, holding for Shri M.D Godhamgaonkar,  
learned Advocate for the Applicant.

Shri S.K Shirke, learned Presenting Officer for the  
Respondent Nos. 1 & 2.

None for Respondent no. 3

**CORAM : Shri Rajiv Agarwal, (Vice-Chairman)  
Shri J.D Kulkarni (Member) (J)**

**DATE : 18.10. 2016**

**PER : Shri Rajiv Agarwal, (Vice-Chairman)**

**O R D E R**

1. Heard Shri S.A Deshmukh, holding for Shri M.D Godhamgaonkar, learned Advocate for the Applicant, Shri S.K Shirke, learned Presenting Officer for the Respondent Nos. 1 & 2 and None for Respondent no. 3

2. This Original Application has been filed challenging the revised selection list for the post of Police Constable, issued by the Respondent no. 2 on 10.4.2012 which has included the name of the Respondent no. 3.

3. Learned Counsel for the Applicant argued that the Applicant belongs to NT-D category and had applied for the post of Police Constable in Nanded District, pursuant to the advertisement issued by the Respondent no. 2 on 1.10.2011. A total of 261 posts were advertised out of which two posts were reserved for NT-D category. The Applicant secured a total of 169 marks in the selection process and his name was included in the Selection List dated 27.11.2011 from NT-D category. The Applicant was called for Medical Examination on 12.12.2011, but it was not conducted. He made several representations to the Respondent no. 2, but to no avail. The

Respondent no. 2 prepared a revised Selection List on 10.4.2012 for NT-D category and the name of the Applicant was deleted, while the name of the Respondent no. 3 was included. The Respondent no. 3 had also secured 169 marks. As per clause 6(b) of G.R dated 27.6.2008, if two candidates secure equal marks, the person older in age is to be preferred. On that criterion, the Applicant should have been selected. As per Rule 5 of the Recruitment Rules for the post of Police Constables, if a criminal case is pending against a candidate, he cannot be appointed as Police Constable. A criminal case no. 51/2005 was registered against the Respondent no. 3. The Respondent no. 3 faced trial in RCC no. 173/2005 in the Court of J.M.F.C at Loha. The Respondent no. 3 was acquitted as the matter was settled out of Court by the parties. The Respondent no. 3 should not have been selected for the post. Learned Counsel for the Applicant argued that the Applicant should have been appointed as Police Constable from NT-D category and not the Respondent no. 3.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents no 1 & 2 that the Applicant and the Respondent no. 3, both belong to NT-D category and secured equal marks, i.e. 169 marks. There were two posts reserved for NT-D category and one was horizontally reserved for women category. Learned Presenting Officer stated that as per G.R dated 27.6.2008, the Respondent no. 3 was preferred over the Applicant as he was more qualified than the

Applicant. Learned Presenting Officer stated that Rule 5 of the Maharashtra Police Constable (Recruitment) Rules, 2011 (notified on 16.6.2011) requires that the case of a person who was facing criminal prosecution has to be referred to the High Level Committee at Government level. This Committee had approved the selection of Respondent no. 3 by letter dated 30.8.2012. Learned Presenting Officer stated that the selection of the Respondent no. 3 was as per the rules and there is no merit in the present Original Application.

5. It is seen that clause 6 of G.R dated 27.6.2008 reads as follows:-

“ ६. उमेदवारांना समान गुण मिळाल्यास:-

परीक्षेचा निकाल तयार करताना परीक्षेत ज्या उमेदवारांना समान गुण असतील अशा उमेदवारांचा गुणवत्ता क्रम खालील निकषांवर क्रमवार लावला जाईल:-

- १) अर्ज सादर करण्याच्या अंतिम दिनांकास उच्च शैक्षणिक अर्हता धारण करणारे- उमेदवार ; त्यानंतर
- २) मागासवर्गीय उमेदवारांच्या बाबतीत प्रथम अनुसूचित जमाती मधील नंतर अनुसूचित जाती, विशेष मागास प्रवर्ग, विमुक्त जाती (१४ व तत्सम जाती, भटक्या जमाती जानेवारी १९९०- पूर्वीच्या २८ व तत्सम जमाती), भटक्या जमाती (धनगर व तत्सम), इतर मागासवर्ग्या क्रमाने; त्यानंतर
- ३) शारीरिक दृष्ट्या अपंग असलेले उमेदवार ; त्यानंतर
- ४) माजी सैनिक असलेले उमेदवार; त्यानंतर
- ५) स्वातंत्र्य सैनिकाचे पाल्य असलेले उमेदवार; त्यानंतर
- ६) वय (वयाने ज्येष्ठ असलेल्या उमेदवारांचा क्रम वरती लागेल.)

वरील प्रत्येक संवर्गामध्ये महिलांना अग्रक्रम देण्यात येईल.”

The Applicant has not denied the fact that the Respondent no. 3 was more qualified than him. He is seeking preference over the Respondent no. 3 as his age was more than the Respondent no. 3. The Respondent no. 2 in his affidavit in reply dated 7.9.2012 has stated in para 14 that the applicant had not passed B.A, while the Respondent no. 3 had passed B.A. As per clause 6 of the G.R dated 27.6.2008, the Respondent no. 3 was definitely entitled to be preferred over the Applicant. The Applicant has referred to the judgment of Nagpur Bench of Hon'ble Bombay High Court dated 5.5.2015 in Writ Petition no 4723/2013. By this judgment Hon'ble High Court has struck down clause 6 of the G.R dated 27.6.2008 and held that the only criterion which could be applied in case when two candidates secure equal marks is the age. However, the Respondent no. 2 had already taken a decision on 10.4.2012 based on this G.R dated 27.6.2008 and judgment of Hon. High Court is dated 5.5.2015. The Respondent no. 3 is already appointed and has been working for last 4 years. After the judgment of Hon. High Court, Nagpur bench, Government has issued G.R dated 5.10.2015 which has prospective effect. Judgment of Hon. High Court also does not envisage reopening of old cases. Considering all these facts, we are not inclined to unsettle the settled position.

6. The Applicant has referred to the criminal case which was pending against the Respondent no. 3 and in which he was acquitted. As per Rule 5 of the Maharashtra

Police Constables (Recruitment) Rules, 2011 (notified on 16.6.2011), the case of the Respondent no. 3 was referred to the High Powered Committee at Government level and by letter dated 30.8.2012 at Exh. 'H' (page 42 of the Paper Book), the approval of Government to appoint Respondent no.3 on the post of Police Constable was communicated. The appointment of the Respondent no. 3 is in compliance of the aforesaid Rules.

7. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

**J.D KULKARNI  
(MEMBER. J)**

**RAJIV AGARWAL  
(VICE-CHAIRMAN)**

**Date : 18.10.2016  
Place : Aurangabad  
Dictation taken by : A.K Nair**