

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**ORIGINAL APPLICATION NOS 1035, 1083 & 1186/2017 WITH
165/2018**

DISTRICT : MUMBAI

1) ORIGINAL APPLICATION NO.1035 OF 2017

1. Shri Shankar Dhondiba Kumbhare,)
Residing at 13/7, Railway Police Colony,)
Painth Nagar Ghatkopar, Mumbai.)
2. Shri Mahesh Bhaskar Ghaytad,)
Residing at Flat No.18,)
Prabhit Pushpa Apartment,)
Adarsah nagar Panchavati Nashik.)
3. Shashikant Namdevrao Vyawahare,)
Residing at Lauji Nagar,)
Police HQ 95/3, Nagpur.)...**Applicants**

Versus

1. The Chairman/ Secretary,)
Maharashtra Public Service Commission,)
Mumbai 400 001.)
2. The State of Maharashtra,)
Through the Principle Secretary,)
Home Department,)
Mantralaya, Mumbai.)
3. The Director General of Police,)
Maharashtra Police Headquarter,)
Shahid Bhagatsingh Marg,)
Mumbai 400 032.)...**Respondents.**

WITH

2) ORIGINAL APPLICATION No.1083 of 2017

1. Shri Vinod Suryakant Wayagankar.)
R/at. 201/A Vasantdeep CHS Limited,)
Kharegaon, Pakhadi, Kalwa (W),)
District Thane 400 605.)
2. Shri Santosh Nana Wakchure,)
R/at. G1/706, Neelkanthadhara,)
Apartments, Subhashnagar, Lal Chowky,)
Kalyan (W), District Thane.)
3. Shri Mukesh Vitthalrao Dhoble,)
R/at. Plot No.9, Pavansut Nagar,)
Ramana-Maruti, Nagpur 9)...**Applicants**

Versus

1. Maharashtra Public Service Commission,)
Through its Secretary,)
Having office at 5 ½, 7 & 8th floor,)
Cooprej Telephone Nigam Building,)
Maharshi Karve Road, Cooprej, Mumbai.)
2. The Director General & Inspector General)
of Police, Maharashtra State, Mumbai,)
Having office at Old Council Hall,)
Shahid Bhagat Singh Marg,)
Mumbai 400 039)
3. The State of Maharashtra,)
Through the Principle Secretary,)
Home Department,)
Mantralaya, Mumbai 32)
4. The State of Maharashtra,)
Through Principal Secretary,)
General Administration Department,)
Mantralaya, Mumbai-32)..**Respondents.**

WITH

3) ORIGINAL APPLICATION No.1186 of 2017

1. Shri Shankar Dhondiba Kumbhare,)
Residing at 13/7, Railway Police Colony,)
Painth Nagar Ghatkopar, Mumbai.)
2. Shri Mahesh Bhaskar Ghaytad,)
Residing at Flat No.18,)
Prabhit Pushpa Apartment,)
Adarsah nagar Panchavati Nashik.)..Applicants

Versus

1. The Chairman/ Secretary,)
Maharashtra Public Service Commission,)
Mumbai 400 001.)
2. The State of Maharashtra,)
Through the Principle Secretary,)
Home Department,)
Mantralaya, Mumbai.)
3. The Director General of Police,)
Maharashtra Police Headquarter,)
Shahid Bhagatsingh Marg,)
Mumbai 400 032.)
4. Surkar Pravin Rambhau,)
Through Director General of Police,)
Posting at Thane City.)
5. Wagha Pravin Panduran,)
Through Director General of Police,)
Posting at Thane City.)
6. Ghogare Rajabhau Trimbakrav.)
Through Director General of Police,)
Posting at Yavatmal.)
7. More Pankaj Shantaram,)
Through Director General of Police,)
Posting at Aurangabad Rural.)
8. Kakad Ravsaheb Ashok,)
Through Director General of Police,)
Posting at Jalna.)

9. Khandare Bapusaheb Bhagvat)
Through Director General of Police,)
SRP Group 10 Posting at Solapur.)
10. Kale Janardhan Ramkisan,)
Through Director General of Police,)
SRP Group 14 Posting at Aurangabad.)
11. Dhore Vinod Dadasaheb,)
Through Director General of Police,)
Posting at Bruhan, Mumbai.)
12. Mali Amit Pravin,)
Through Director General of Police,)
Posting at Nandurbar.)
13. Jadhav Sandip Bhausahab,)
Through Director General of Police,)
SRP Group 1, Posting at Pune.)..Respondents.

WITH

4) ORIGINAL APPLICATION NO.165 OF 2018

Shashikant Namdevrao Vyawahare,)
R/o. Building No.13, Room No.7,)
Railway Police Colony,)
Pant Nagar Ghatkopar (East))
Mumbai 400 075.)..Applicant

Versus

The Chairman/ Secretary, M.P.S.C. & 13 Ors.)..Respondents.

Shri S.D Patil, with Shri A.A Desai, learned advocate for applicants in O.A Nos 1035, 1083 & 1186/2017.

Shri C.R Nagare, learned advocate for the applicant in O.A 165/2018.

Smt Swati Manchekar, learned Chief Presenting Officer with Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

Shri N.P Dalvi, learned Special Counsel for Respondent no. 1, MPSC.

Shri S.S Dere, learned advocate for private Respondents in O.A 1186/2017.

CORAM : **Shri Justice A.H Joshi (Chairman)**
Shri P.N Dixit (Member) (A)

RESERVED ON : **27.04.2018 and again on 07.06.2018**

PRONOUNCED ON: **12.06.2018**

PER : **Shri Justice A.H Joshi (Chairman)**

ORDER

1. Heard Shri S.D Patil, with Shri A.A Desai, learned advocate for applicants in O.A Nos 1035, 1083 & 1186/2017, Shri C.R Nagare, learned advocate for the applicant in O.A 165/2018, Smt Swati Manchekar, learned Chief Presenting Officer with Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents, Shri N.P Dalvi, learned Special Counsel for Respondent no. 1, MPSC and Shri S.S Dere, learned advocate for private Respondents in O.A 1186/2017.

2. These Original Applications were heard from time to time and were adjourned awaiting the State Government's policy decision as regards the matter of applicability of rule relating to relaxation of age for the candidates who belong to certain categories for whom reservation is provided, though the candidates do not claim appointment in the category, of cast, tribe etc, to

which they belong, whether or not the post are reserved for the said category.

3. The facts of the case which are common in all these Original Applications are as follows:-

- (a) Applicants belong to different castes for which concessions as regards relaxation of age, fees and reservation wherever available applies.
- (b) All the applicants do not claim appointment in reserved category.
- (c) All the applicants claim that each amongst them has secured marks which are above the bench mark.
- (d) All the applicants are claiming eligibility for relaxation in age limit on account of the fact that they belong to a particular caste or category.
- (e) Candidature of the applicants are rejected in view of the MPSC's declaration titled "पुनर्घोषणा" dated 25.9.2014, text of which reads as follows:-

“आयोगाच्या दिनांक १ एप्रिल, २०१४ रोजी झालेल्या बैठकीमध्ये संघ लोकसेवा आयोगाच्या निकाल प्रक्रियेच्या कार्यपध्दतीनुसार “महाराष्ट्र लोकसेवा आयोगाच्या यापुढे घेतल्या जाणाऱ्या परीक्षेच्या कोणत्याही टप्प्यावर मागासवर्गीयांना देय असलेली वय / परीक्षा शुल्क तसेच इतर पात्रता विषयक अटी/निकषांसंदर्भात सवलत उमेदवारांने घेतली असल्यास अशा उमेदवारांची अमागास वर्गवारीच्या पदावर शिफारस करण्यात येणार नाही” असा निर्णय घेण्यात आलेला आहे. सदरची सूचना यापुढी प्रसिध्द झालेल्या जाहिरातीत जेथे नमूद असेल त्या प्रकरणी व यापुढे प्रसिध्द होणाऱ्या सर्व जाहिरातीसंदर्भात लागू होईल. याची कृपया उमेदवारांनी नोंद घ्यावी.

ठिकाण : मुंबई
दिनांक : २५ सप्टेंबर, २०१४

सचिव
महाराष्ट्र लोकसेवा आयोग”

- (f) Applicants are regarded to be overage because they claim selection by way of accelerated promotion in open category while they are above 35 years of age.
- (g) Applicants' candidature have been rejected on the ground that they are over age as prescribed for candidates belonging to open competition category.

- (h) Applicants claim eligibility to be entitled to relaxation of age limit as they belong to certain reserved category though they do not claim appointment in a vacancy reserved for Caste/Tribe/Category belonged by each one.

4. M.P.S.C has opposed the Original Application justifying its stance to have the recruitment procedure of its discretion and power, it being a matter of M.P.S.C's absolute Constitutional privilege under Article 315 of the Constitution of India. Relevant text of M.P.S.C's affidavit in reply is seen in para 22 thereof, which reads as follows:-

“22. With reference to contents of para VII (xvii), I say and submit that the recruitment for the post in issue has been conducted as per the Recruitment Rules of the post and the Government Circular dated 27.6.2016 issued for the said post. Clause 7.10 of the said Circular provides that the candidates availing age relaxation available for reserve category candidates shall not be considered for open category posts. By issuing re-announcement, the Commission has not altered basic eligibility criteria provided in the Recruitment Rules. Moreover, in no way the re-announcement is preventing eligible candidates from participating in selection process. I also say and submit that the Maharashtra Public Service Commission is a body constituted under Article 315 of the Constitution of India and it has framed its own Rules of Procedure in accordance with the provisions dealing inter alia with the methodology to be adopted in matters pertaining to recruitment in Civil Services for Civil posts. Accordingly, the Commission has issued re-announcement dated 25.9.2014.”

5. It has to be accepted that M.P.S.C is a Constitutional authority. The matters of power and authority to regulate its own procedure is vested in M.P.S.C and these are the matters of absolute discretion and privilege of M.P.S.C. The matters and

powers of M.P.S.C shall include anything and everything to be done for implementing the process of selection.

6. In the present case, admittedly recruitment is governed by the Bombay Police Procedure for Recruitment by nomination to the post of Sub Inspectors and Constables (Rules, 1981). Age limit is laid down in Rule 3. The rule relating to age is incorporated in Rule

3. Relevant text reads as follows:-

“3. Appointment to the post of Sub-Inspector of Police in the Police Force in the State of Maharashtra shall be made either:-

(a)

(b)

(i) not be more than thirty-five years of age:

Provided that, relaxation of age of five years may be granted to candidates of Backward Classes.”

(Quoted from page 38 of O.A 1083/2017)

7. Now in the event any doubt would arise as to the interpretation of any rule, the rule making authority is to be final.

8. In the present case, text of the rule is eloquent. Yet M.P.S.C has raised debate. Therefore, this Tribunal framed a question and sought State Government’s view thereon. The said question reads as follow:-

“3. Question involved is framed as follows:-

Whether age relaxation under Rule 3(b)(i) of proviso of P.S.I's Recruitment Rules, 1995 can be granted to a candidate from Backward Class category while he competes in open merit.”

(Quoted from order dated 29.12.2017 in O.A 1186/2017)

9. The State Government has filed affidavit in reply in O.A 1186/2017. In the affidavit in reply the stance of the State has been distinctly averred. The relevant text reads as follows:-

“4. I say and submit that the view of the Respondent No. 2, i.e. Home Department is limited to the extent of applicability of the Government Policy on the point of reservation in the Government Service issued by General Administration Department. It is submitted that the Respondent No. 2 had sought opinion from Law & Judiciary Department on the point of question framed by the Hon'ble Tribunal in its order dated 29.12.2017. The Law & Judiciary Department had opined that, “since the applicants belong to reserved category, as per the provisions of Rule 3(b) of the Police Sub-Inspector (Recruitment) Rules 1995, they are entitled to age relaxation of five years, i.e. upto 40 years of age. The statutory rules are binding on the department, therefore, the contention of the department that the applicants are not fit for appearing in the departmental examination is not legal and proper. If the reserved category candidates are fulfilling the criteria of relaxation in age limit, they will have to be considered fit for appearing in the departmental examination.”

10. In view of the text which is quoted in foregoing paragraph, which is underlined, the present Original Application proceeds on admitted facts as to eligibility of the applicants.

11. Private Respondents have been added as a party because, they may have to vacate the position in the event the applicants are sent for training. The applicants' entry in the cadre does not in any manner violate any legal right of the private Respondents, because the entry of the private Respondents itself was a product of wrongful elimination of the applicants. Thus the Respondents could have shown that the opinion given by the State Government that the Recruitment Rules are binding could have been countered. The contest by private Respondents is dependent upon the ground of contest by M.P.S.C and they do not seem to plead any plea or defence of their own.

12. In the aforesaid background O.A proceeds where facts are admitted and State Government too has supported applicant's plea.

13. Original Application continues to be opposed by M.P.S.C.

14. The question as to what shall be the Recruitment Rules, what shall be the minimum eligibility, age relaxation are the matters of recruitment rules and this aspect fall within the ambit of Article 309 of the Constitution of India and the power and function of M.P.S.C is in the nature of duty to implement law and rules as those stand. M.P.S.C's power does not extend to interfere

or even interpret these rules contrary to State Government's views eloquently expressed.

15. Whenever someone debates about M.P.S.C's powers and procedure, views of M.P.S.C will have primacy. However, when it comes to the conditions of service and recruitment rules, the appropriate Government, and in the present case the State Government or the law governing will have primacy.

16. Moreover, the law laid down by the Hon'ble Supreme Court which is relied upon by the learned Advocate for the applicants namely, *Jitender Kumar Singh Vs. Union of India & Ors* 2010 AIR SC 1851, is not shown to be distinguished or overruled expressly or impliedly.

17. Despite availing age relaxation applicants continue to contest in open competition category. Due to age relaxation, standards and parameters of contest are not lowered are relaxed, all that is done is they are offered level playing field. As held in case of ***Jitendra Kumar Singh (Supra)***.

18. The law as laid down by the Hon'ble Supreme Court in *Jitender Kumar Singh's* case is binding precedent which reinforces the admission of the State Government.

19. Learned Advocate for the applicants have pointed out to the statement of learned Chief Presenting Officer made before this Tribunal on the basis of instructions received from I.G.P. (Establishment) Shri Rajkumar Vhatkar. The said text reads as follows:-

“3. Learned C.P.O states on instructions that applicants’ interest can be safeguarded for which instructions are received from Shri Rajkumar Vhatkar, Inspector General of Police (Establishment) that if applicants succeed in present OA, they shall not be denied chance of admission to the Training of promotional post, which is due to commence soon”.

(Quoted from order dated 21.12.2017 in O.A 1083/2017)

20. In the result, the Original Applications have to succeed.

21. Therefore, Original Applications are allowed with following directions:-

- (i) All these Original Applications are allowed and “पुनर्घोषणा” the declaration dated 25.9.2014 issued by M.P.S.C which is at page No. 41 of O.A 1083/2017 is quashed and set aside.
- (ii) Consequent action of M.P.S.C rejecting candidature of applicants in present O.A.s on the ground that they are above 35 years of age and hence not eligible, being above the age applicable to open competition category, is quashed and set aside.
- (iii) M.P.S.C is directed to scrutinize candidature of the applicants with reference to the bench mark of eligibility and with reference to recruitment rules and in particular by ignoring the reason of rejection and complete the scrutiny within 7 days from the date of receipt of this order.

(iv) After complete scrutiny, M.P.S.C shall furnish to the State Government within 3 working days, the list of candidates who are found to be eligible, however, their candidature were rejected on account of “पुनर्घोषणा” dated 25.9.2014 which is quashed hereinbefore.

22. In the result, parties are directed to bear their own costs.

Sd/-
(P.N Dixit)
Member (A)

Sd/-
(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 12.06.2018
Dictation taken by : A.K. Nair.