

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 387 OF 2018**

DISTRICT : THANE

1. Shri Santosh P. Lokhande,)
R/at, 304/A, Nav Amrut Kumbh CHS,)
Birla School Road, Kalyarn [W],)
Dist-Thane.)
2. Shailesh Shashikant Tikam,)
R/at Panchvati CHS, Vijaybag Complex,)
Kalyan [W], Dist-Thane.)
3. Avinash Vitthal Patil)
R/at Bldg no. 12(B), Room No. 43,)
Railway Police Quarter, Pantnagar,)
Ghatkopar [E], Mumbai – 75.)
4. Dipak Hemraj Patil,)
R/at, 11th floor, Arun Bldg,)
New Police Line, Kharkar Ali,)
Thane [W] 400 601.)
5. Pankaj Pandurang Shigwan,)
R/at. Shigwan Niwas, Room no. 1799,)
Lokmanya Nagar Pade no. 4,)
Thane 400 060.)
6. Manisha D. Jangitwar,)
R/at. Railway Police Line,)
Bldg no. 12/54, Panthnagar,)
Ghatkopar [E] – 75.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Secretary,)

- Home Department, Mantralaya,)
Mumbai 400 032.)
2. The Secretary,)
Maharashtra Public Service Commission)
5th, 7th & 8th floor,)
Cooperage Telephone Exchange Bldg,)
M.K Marg, Cooperage,)
Mumbai 400 021.)
3. Vikas B. Gunjal,)
R/o: Pimpalgaon, Malvi, Tal-Nagar,)
Dist-Ahmednagar.)
4. Shekhar Narayan Domale)
R/o: Appegaon, Tal-Shegaon,)
Dist-Ahmednagar.)
5. Anuksh Bhausahab Navale,)
R/o: Chnad Bu, Tal-Karjat,)
Dist-Ahmednagar.)
6. Sandeep Gawajiram Darwade)
R/o: Tarvadi, Tal-Navasa,)
Dist-Ahmednagar.)
7. Prashant Tukaram Malvade,)
R/o: Nandani, Tal-Shirol,)
Dist-Kolhapur.)
8. Govind Laxman Phad,)
R/o; SRPF, Gut no. 14,)
Satara Parisar, Dist-Aurangabad.)...**Respondents**

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

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents no 1 & 2.

Shri S.B Talekar, learned Counsel with Shri V. Sangvikar, learned advocate for Respondents no 3 to 8.

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

RESERVED ON : **13.03.2019**

PRONOUNCED ON : **27.03.2019**

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

J U D G M E N T

1. Heard Shri S.S Dere, learned advocate for the Applicants, Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents no 1 & 2 and Shri S.B Talekar, learned Counsel with Shri V. Sangvikar, learned advocate for Respondents no 3 to 8.

2. By this Original Application, present applicants have approached for reliefs which read as follows:-

“10(a) This Hon’ble Court may be pleased to call for record and proceeding in the case of present applicant, and this Hon’ble Tribunal may further be pleased to issue appropriate direction to the Respondent nos 1 and 2, to declare the result of Pre-LDCE-2017 dated 18.11.2017 on the basis of judgment dated 4.8.2017 passed by Hon’ble High Court in C.W.P No. 2797/2015 and accordingly the Respondents may be pleased to further direct to conduct the Main-LDCE-2017 Exam on the basis of merit of result of Pre-LDCE-2017.

(b) The Respondent no. 2 may further be pleased to direct to conduct the fresh examination of meritorious candidate of Pre-LDCE-2017, without applying the criteria of reservation.”

(Quoted from page 19 of O.A)

3. The foundation of the prayer (a) & (b) is averred by the applicant in paras 6.7 & 6.8. It shall be of no gain to reproduce the text and shall suffice to extract the points which are as follows:-

- (a) By virtue of judgment and order rendered in W.P 2797/2015, though Reservation Act of 2001 is held constitutionally valid, the G.R dated 25.5.2004 is struck down.
- (b) Hon'ble High Court has directed corrective measures upon/due to quashing of G.R dated 25.5.2004 to be taken.
- (c) The corrective measures would mean selection and appointment of candidates from SC, ST & OBC etc permitted by carving out a quota for reservation, and permitting open merit candidate, to be replaced in order of their merit and as per rules.

4. According to the learned advocate for the applicants, his prayer is like an arithmetic equation and the State Government does not have an option other than obeying the judgment and order of Hon'ble High Court in its totality.

5. The Original Application is opposed by private Respondents no 3 to 8. They have opposed the present Original Application with a plea that since the applicants have participated in the selection process, now it is not open for them to challenge the process of selection, relying on the reported judgments of Hon'ble Supreme Court in Dhananjay Malik & Others Vs. State of Uttaranchal & Ors (2008) 4 SCC 171 & Ramesh Chandra Shah & Ors Vs. Anil Joshi & Ors (2013) 11 SCC 309.

6. The State has opposed the Original Application by filing an affidavit in reply and raising a plea as raised in defence in O.A 394/2018, to the effect that subject matter, process of selection is not by way of "promotion" rather it is barely "selection".

7. The limited question which arises for consideration is as follows:-

Whether applicants are entitled to be substituted in place of Respondents no 3 to 8 on the basis of judgment and operative order of Hon'ble High Court contained in para 3 of order passed in

W.P 2797/2015 dated 4.8.2017 (quoted at page 9 & 10 of the memo of O.A).

8. While deciding the question framed in foregoing paragraph No. 7, this Tribunal has to recall the judgment and order passed in O.A 384/2018.

9. In Original Application No. 394/2018, decided on 6.11.2018, the questions which had arisen pertained to effect of the judgment of Hon'ble Supreme Court in case of Jarnail Singh & Others Vs. Lachhmi Narain Gupta & Ors, in S.L.P (Civil) No. 30621/2011. While deciding O.A 394/2018, this Tribunal has dealt with this aspect.

10. The discussion contained in the judgment rendered in O.A 394/2018 is not too long, and instead of narrating/describing it, it shall be useful to quote the text which reads as follows:-

“14. In view of rival submissions, this Tribunal has to decide as to what is the jurisdictional question which would decide the fate of the applicants.

15. For the sake of convenience of adjudication, the questions which have emerged are framed as follows: -

- (i) What is the exact dictum of the judgment in Jarnail Singh & Others Vs. Lacchmi Narain Gupta & Others, S.L.PO (Civil) No.30621/2017?
- (ii) What is the effect of the said judgment on the fate of 154 candidates from reserved quota selected and sent for training of P.S.I's posts?

16. In order to address and decide on the aforesaid questions, this Tribunal has minutely perused the judgment of Their Lordships of Hon'ble Supreme Court in Jarnail Singh (supra).

17. On reading said judgment, it is seen that, their lordships have dealt with and discussed the scheme of Constitution of India qua reservations, discussed about the scheme of reservation as applied in State of Uttar Pradesh as seen in U.P Power Corporation's case etc. and recorded in para no. 19 of the judgment as follows: -

“19. Since the object of Article 16(4-A) and 16(4-B) is to do away with the nine-Judge Bench in *Indra Sawhney's* (1)

(supra) when it came to reservation in promotions in favour of the Scheduled Castes and Scheduled Tribes, that object must be given effect to, and has been given effect by the judgment in Nagaraj (supra). This being the case, we cannot countenance an argument which would indirectly revisit the basis or foundation of the Constitutional amendments themselves, in order that one small part of Nagaraj (supra) be upheld, namely, that there be quantifiable data for judging backwardness of the Scheduled Castes and the Scheduled Tribes in promotional posts. We may hasten to add that Shri Dwivedi's argument cannot be confused with the concept of "creamy layer" which, as has been pointed out by us hereinabove, applies to persons within the Scheduled Castes or the Scheduled Tribes who no longer require reservation, as opposed to posts beyond the entry stage, which may be occupied by members of the Scheduled Castes or the Scheduled Tribes."

(Quoted from page 54 of judgment)

18. Their Lordships of Hon'ble Supreme Court, after negating the appellants' submission (in Jarnail Singh's case) considered the request of Learned Attorney General "to lay down that the proportion of Scheduled Castes and Scheduled Tribes to the population of India should be taken to be the test for determining whether they are adequately represented in promotional posts for the purpose of Article 16(4A) of the Constitution of India.

19. After considering the learned Attorney General's submissions and upon discussing the scheme of Article 330 of the Constitution of India and effect of Indra Swahney's case, Their Lordships of Hon'ble Supreme Court in para 20 and 21 held and ordered as follows: -

"20..... It can be seen that when seats are to be reserved in the House of the People for the Scheduled Castes and Scheduled Tribes, the test of proportionality to the population is mandated by the Constitution. The difference in language between this provision and Article 16(4-A) is important, and we decline the invitation of the learned Attorney General to say any more in this behalf.

21. Thus, we conclude that the judgment in Nagaraj (supra) does not need to be referred to a seven-Judge Bench. However, the conclusion in Nagaraj (supra) that the State has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes, being contrary to the nine-Judge Bench in Indra Sawhney (1) supra is held to be invalid to this extent."

(Quoted from page 57 & 58 of the Judgment in Jarnail Singh's)

20. The operative order of the judgment in Jarnail Singh's case namely, paragraph 21, at page 58, has to be read jointly with paragraphs 19 & 20 thereof. Paragraph 21 cannot be read in isolation to construe that though quantifiable data cannot be asked for assessment of backwardness, however it can be asked for extent of reservations to be provided.

21. In the result, the requirement of quantifiable data for either backwardness or adequate / fair representation of S.C & S.T. in the services which is mandated in the judgment of Hon'ble High Court of Bombay in W.P 2729/2015 stands completely overruled by necessary implication.

22. The uncertainty of the fate of 154 candidates may have existed until 26.9.2018, i.e. the date when the judgment of Hon'ble Supreme court in Jarnail Singh & Ors vs. Lachhmi Narain Gupta & Ors was pronounced. However no ambiguity is now, prevalent due to dictum of Hon'ble Supreme Court in Jarnail Singh's case.

23. In view of the finding recorded in foregoing paragraphs, which this Tribunal has arrived as regards questions framed in foregoing paragraph No.15, the fate of 154 candidates is no more hazy or in suspended animation, and is concretized. Now it is the turn of the State Government to abide by the judgment of the Hon'ble Supreme Court in Jarnail Singh's case.

24. It shall be open to the applicants to make suitable representations to the Government if they are so advised, and in case any representation is made Government may consider in due course and on its own merit."

(Quoted from paras 14 to 24 of Judgment in O.A 394/2018 dated 6.11.2018)

11. In view of the text which is quoted in foregoing paragraph, the question raised by the applicant in the present Original Application does not any more remain open for adjudication. It stands squarely answered in said judgment rendered in O.A 394/2018 decided on 6.11.2018.

12. In the background that by virtue of the fact that judgment of Hon'ble High Court rendered in W.P.No.2797/2017 is impliedly overruled, we see that there is no legal or constitutional bar in reserving the vacancies for SC, ST, OBC etc., even if the filling of vacancies to the post of P.S.I is to be considered to be by way of

promotion. However, as the case proceeds in the admitted background that though reservation may be provided for candidates belonging to SC, ST, OBC etc. yet they are entitled to compete and get placed on their own merit. Therefore, the question as to whether the posts are being filled in by promotion has no impact or bearing on merit of the present O.A.

13. Today, we have decided O.A 934/2018, and even as sequel of said judgment also this O.A has to fail.

14. Point as to whether the filling of the vacancy of the post of P.S.I is a recruitment by nomination or promotion or selection, does not fall within the ambit for consideration in the present case. Therefore, we are not adjudicating that issue.

15. We are quashing the impugned notification “घोषणा” and “पुनर्घोषणा” and we are not issuing a ruling on the aspect of “reservation in promotion or selection etc”.

16. Hence, present Original Application is without any merit whatsoever and it is dismissed.

17. Parties are directed to bear their own costs.

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

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

**Place : Mumbai
Date : 27.03.2019
Dictation taken by : A.K. Nair.**