

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 483 OF 2022

DISTRICT : NASIK

Shri Magan Govardhan Prajapat,)
Occ : Nil, R/o At Post-Deola,)
Tal-Deola, Dist-Nasik.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Principal Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. The Commissioner of Police,)
Commissioner Office, Thane.)
3. The Addl. Commissioner of Police,)
Thane City, Dist-Thane.)
4. Kalpesh Vilas Nimse,)
R/o : Commissioner of Police,)
Thane City, Thane.)
5. Nileshkumar S. Patil,)
R/o: C/o Commissioner of Police,)
Thane City, Thane.)
6. Viraj Bhaskar Pansare,)
R/o : Commissioner of Police,)
Thane City, Thane.)
7. Vijay Eknath Shelar,)
R/o: C/o Commissioner of Police,)

Thane City, Thane.)
Respondents no 4 to 7 to be served)
Through Respondents no 2 & 3.)...**Respondents**

Ms Savita Suryavanshi, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents no 1 to 3.

Ms Punam Mahajan, learned counsel for Respondent no. 7.

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

DATE : **29.09.2022**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. The applicant participated in the selection process pf appointment to the post of Police Constable, prays that the selection of the private Respondents 4 to 7 is to be quashed and set aside and directions be given to the Respondents no 2 and 3 to consider the claim of the applicant from OBC Male category.

2. Respondents no 2 and 3 issued the advertisement on 21.8.2019 for filling up the post of Police Constables. Pursuant to the said advertisement, the applicant applied in the Open Category-Male on 16.9.2019. On 3.2.2020, Respondents no 1 & 2 issued a revised advertisement/Corrigendum thereby increasing the vacancies and horizontal reservation in the advertisement for Thane City Police Constables Recruitment of 2019. In the advertisement dated 21.8.2019, no reservation for OBC category

was shown. On issuing a revised advertisement/Corrigendum 12 vacancies were shown reserved in OBC category.

3. The Screening Test was conducted on 24.10.2021. The applicant successfully cleared the said Screening Test and thereafter physical test was conducted from 3.1.2022 to 9.1.2022. The applicant appeared for the physical test on 3.1.2022 at Thane. Respondents no 2 and 3 published the final select list in which the name of the applicant did not appear and the names of pvt Respondents no 4 to 7 appeared at Sr No. 121 to 124. The applicant is not selected though he has secured more marks than the private Respondents no 4 to 7.

4. The main grievance of the applicant is that though the applicant belongs to OBC category, he did not disclose his Caste due to the specific instructions given by the Respondents no 2 & 3 in their advertisement dated 21.8.2019. Learned counsel for the applicant pointed out in the said advertisement to the reference:-

(१) www.mahapariksha.gov.in (२) www.thanepolice.gov.in

She further relied on Exh. 2, i.e.

www.mahapolice.gov.in या संकेतस्थळांवर उमेदवारांच्या माहितीकरिता प्रसिध्द करण्यात आली आहे.

उमेदवारांना सुचित करण्यात येते की, ऑनलाईन अर्ज भरण्यास सुरु करण्यापुर्वी, संबंधित घटकाच्या जाहिरातीमध्ये नमूद केलेल्या प्रवर्गानिहाय रिक्त पदांची खातरजमा करून अर्ज भरण्यास सुरुवात करावी. उमेदवार, घटकातील ज्या प्रवर्गातील अर्ज भरण्यास पात्र आहे. त्या प्रवर्गामध्ये रिक्त पदे नसतांना अर्ज सादर केल्यास भरतीच्या कोणत्याही टप्प्यावर त्याची उमेदवारी रद्द करण्यात येईल व याकरिता उमेदवार स्वतः जबाबदार असतील. अशा प्रकारे अपात्र ठरलेल्या उमेदवारास आवेदन शुल्क परत दिले जाणार नाही

5. Learned counsel for the applicant argued that in the said Portal the candidates were directed to verify whether reservation is provided in a particular category. If not, then the candidate should not fill up the form in the category, where no reservation is provided. If the applicant has claimed the reservation category

which is not provided, the candidature of the applicant would be cancelled. Such candidates would not get their money refunded. Learned counsel for the applicant has submitted that the Respondents no 2 & 3 have published this advertisement. The then Additional Commissioner of Police, Thane has specifically informed that there will be no change in the instructions and the conditions in the advertisement. Learned counsel for the applicant has further argued had this condition not been mentioned in the advertisement, the applicant would have applied in the reserved category of O.B.C. The applicant is deprived of his right to take the benefits of reservation in the O.B.C category due to the arbitrary policy of the Respondents. Moreover, after publication of the Corrigendum, it was the duty of the Respondents to invite fresh applications from the candidates who wanted to apply in the reserved category. She pointed out that the applicant has secured 89 marks in the Screening Test and 44 marks in the Physical Test. Thus, he has secured total 133 marks and Respondents no 4 to 7 have secured less marks as follows:-

Respondent no. 4 - OBC-Male - 129 marks
Respondent no. 5 - OBC-Male - 129 marks
Respondent no. 6 - OBC-Male - 126 marks
Respondent no. 7 - OBC-Male - 125 marks

6. Learned counsel for the applicant has submitted that the final select list was published on 12.5.2022 wherein the name of the Respondents no 4 to 7 are appearing at Sr. Nos 119 to 122 respectively and the applicant's name is appearing at Sr. No. 5 in the General Category-Male. Learned counsel further submits that Respondents no 2 & 3 should have kept the website open and should have allowed the candidates to change their option on-line after issuance of the Corrigendum. The applicant's case should have been considered from the OBC category and should not have been considered from the General Category-Male.

7. While justifying the delay in approaching the Tribunal, learned counsel for the applicant pointed out that on 3.2.2020 the Corrigendum was issued and thereafter immediately on 15.3.2020 the Covid-19 Pandemic lockdown was declared by the Government of India and therefore, the applicant could not respond to the Corrigendum. Thereafter, immediately, he made representation on 3.4.2021 and 23.4.2022, that his claim is to be considered from OBC category. Learned counsel for the applicant in support of her submissions on the point of migration relied on the decision of the Hon'ble Supreme Court in the case of **SAURAV YADAV & ORS Vs. STATE OF UTTAR PRADESH & ORS, AIR 2021 S.C 233**. She also relied on the decision of the Hon'ble High Court of Rajasthan dated 23.7.2018, in the case of **Manish Kumar Nagda Vs. State of Rajasthan & Ors, S.B Civil Writ Petition No. 8529/2018**, on the point of change of rules in the game.

8. Learned C.P.O while opposing the Original Application relied on the affidavits dated 18.1.2022 and 21.9.2022 filed by the Assistant Commissioner of Police, Thane and also relied on the judgment and order of this Tribunal dated 21.7.2022 in O.A 37/2022, Shri Mangesh P. Nagare Vs. The State of Maharashtra & Ors. Learned C.P.O pointed out that the directions preventing the candidate from giving option for the reservation is not issued by the Respondents. In between the Mahapariksha.gov.in portal was cancelled by the Government. Learned C.P.O relied on the on-line application form filled up by the applicant and she pointed out that the applicant in the form did not mention his category before the specific column in the Application Form. Thus, in absence of such information, it was not possible for the Respondents to have any clue about the Caste/Category of the applicant. Learned C.P.O has submitted that the applicant should have made representation or challenged the revised advertisement /Corrigendum whereby a

particular post is reserved. The applicant did not come forward nearly for 1 ½ years, but thereafter he had approached this Tribunal after publication of the final select list. Moreover, learned C.P.O pointed out the rule in the advertisement reserving the right to change the posts or reservations. Learned C.P.O has submitted that the applicant's case is identical to the case of the applicant in O.A 37/2022.

9. Learned counsel Ms Punam Mahajan, for Respondent no. 7, has adopted the argument of the learned C.P.O and submitted that the applicant has participated in the selection process. As he could not secure more than the cut-off marks in the open category, he has challenged the process of selection. On this point, learned counsel for Respondent no. 7 relied on the decision of the Hon'ble Supreme Court in the case of **ASHOK KUMAR & ANR Vs. STATE OF BIHAR & ORS, (2017) 4 SCC 357.**

10. In the case of **ASHOK KUMAR (supra)**, the Hon'ble Supreme Court has relied on various decisions of the Hon'ble Supreme Court wherein the principle has been laid down that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process of selection is precluded. The Hon'ble Supreme Court held as under:-

“12. The appellant participated in the fresh process of selection. If the appellants were aggrieved by the decision to hold a fresh process, they did not espouse their remedy. Instead, they participated in the fresh process of selection and it was only upon being unsuccessful that they challenged the result in the writ petition. This was clearly not open to the appellants. The principle of estoppel would operate.”

11. The decision of the Hon'ble Supreme Court in the case of **SAURAV YADAV** (supra) relied on by the learned counsel for the applicant cannot be made applicable to the facts of the present case as it is matter of non-disclosure of facts. Similarly, in **Manish Kumar Nagda's case (supra)** is also distinguishable as Respondent has not changed the rules but used right to increase the posts and reservation. In the advertisement such right was reserved by the M.P.S.C.

12. It appears that there was some confusion in respect of the coordination between the advertisement given by the Respondents and the disputed instructions appearing on the Maha Portal. We assume that as per the case of the applicant the said instruction was given and appeared on the Maha Portal, and therefore the applicant could not apply for the post of Police Constable in the reserved category of OBC. However, the applicant's case was not singled out as none of the candidates were given the opportunity to given option after the Corrigendum or the revised advertisement dated 3.2.2020. Thus, the rule was made applicable to all the candidates. However, the Respondents no 4 to 7 were selected from the reserved OBC category only because they had disclosed their Caste as belonging to OBC, without claiming any reservation. We perused the on-line application form filled up by the applicant. We reproduce two relevant columns from the said Form, which are as follows:-

“Do you belong to reserved category (Social)?	- NO
Category through which you want to apply for the recruitment.	- GENERAL

Thus, in the first column the candidates were required to inform whether a person belongs to any reserved category and the other column was about claiming the reservation in a particular

category. The applicant in the first column has mentioned “No”. Thus, it means that he did not belong to the reserved Category. In the other column he has mentioned “General”. It means that he claimed “No Reservation” and has applied in the General category. The information he has filled up in the second column was correct. However, the information given by the applicant in the first column is incorrect. A person has right to disown claim of reservation, but however, he is estopped from claiming the reservation.

13. We accept the submission of learned C.P.O that the applicant should have informed the Respondents by making representation, when he was claiming the post in the reserved category of OBC, as soon as revised advertisement was published or when he was aware that the option was not made available to the candidates he should have raised the objection at that time only.

14. We are of the view that the case of the applicant is squarely covered by our earlier order dated 21.7.2022 in O.A 37/2022.

15. Under the circumstances, we find no merit in the Original Application and the same stands dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 29.09.2022
Dictation taken by : A.K. Nair.

16. After the judgment was pronounced, the Ld. Advocate for the applicant prays that applicant is desirous of approaching the Hon'ble High Court by way of filing writ petition and therefore the execution, implementation and operation of the order passed today i.e. 29.9.2022 by this Tribunal in the above OA be suspended/stayed for four weeks, in view of the interim order dated 24.5.2022 passed by this Tribunal.

17. Ld. CPO opposes the prayer by submitting that since the issue has already been decided by this Tribunal in OA No.37 of 2022 (Mr. Mangesh Pralhad Nagare Vs. The State of Maharashtra & Ors.) decided on 21.7.2022. She further submits that the training has already been started and stay may not be continued.

18. I have considered the submissions of Ld. Advocate for the applicant, however, in view of the earlier decision, I am not inclined to grant stay.

Sd/-
(Medha Gadgil)
Member (A)

Place : Mumbai
Date : 29.09.2022
Dictation taken by : A.K. Nair.