

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO 934 OF 2018**

**DISTRICT : THANE/JALGAON/YEOTMAL**

1. Sachin Raghunath Choudhary, )  
R/o: 3/404, "Chintamani", )  
Gajanan Nagar, Vitawa, Thane. )
2. Motilal Dilip Patil, )  
R/o: Plot no. 3, Kanchan Nagar, )  
Vishal Provision, Jalgaon. )
3. Pandit Madansing Pawar, )  
R/o: Bankewar Layout, Shrirampur, )  
Adarsh Nagar, Pusad, Dist-Yeotmal. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through its Principal Secretary, )  
General Administration Department, )  
Mantralaya, Mumbai 400 032. )
2. The Addl. Chief Secretary [Home], )  
Mantralaya, Mumbai 400 032. )
3. Director General and Inspector General )  
of Police, M.S, Mumbai. )
4. Maharashtra Public Service Commission )  
Through its Secretary, )  
Cooperage Building, Cooperage, )  
Mumbai. )
5. Pravin Rambhau Surkar, )  
R/o: Police Line Taokli, Kalal Road, )  
Nagpur - 13. )
6. Tanaji Pandurang Wagh, )  
R/o: Saidarshan, 'B' 408, )  
Suryanagar, Vitava, Thane. )
7. Rajabhau Trimbakrao Ghogare, )  
R/o: Through Director General of )  
Police, posted at Yeotmal City. )
8. Pankaj Shantaram More, )  
Through Director General of Police, )  
Posted at Aurangabad Rural. )
9. Ravsaheb Ashok Kakad, )  
Through Director General of Police, )  
Posted at Jalna. )
10. Bapusaheb Bhagvat Khandare, )  
R/o: Khamagaon, T-Barshi, )  
Solapur. )

11. Janardhan Ramkisan Kale, )  
R/o: Through Director General of )  
Police, posted at SRP Group-14, )  
Aurangabad. )
12. Vinod Dadasaheb Dhore, )  
R/o Room no. 301, Govinda Bldg, )  
Krushna Complex, Nandivali, )  
Kalyan [E], Dist-Thane. )
13. Amit Pravin Mali, )  
At post Taloja, Khadeshhi Galli, )  
Near Vadchowk, Taluka Taloda, )  
Dist-Nandurbar. )
14. Sandip Bhausahab Jadhav, )  
R/o: At post Ambale, Kajala, )  
Tal-Shirur, Dist-Pune. )...**Respondents**

Shri S.B Talekar with Ms Madhvi Ayyapan, learned advocate for the Applicants in O.A 934/2018.

Shri A.A Desai with Shri S. Patil, learned advocate for the applicants in O.A 1083/2017.

Shri K.R Jagdale, learned advocate for the applicants in O.A 1186/2017 & O.A 165/2018.

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

Shri S.S Dere, learned advocate for Respondents no 4 to 13 in O.A 1186/2017 and Respondent no. 4 in O.A 1083/2017.

Shri N.P Dalvi, learned advocate for M.P.S.C.

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

**RESERVED ON** : **15.03.2019**

**PRONOUNCED ON** : **27.03.2019**

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

### **J U D G M E N T**

1. Heard Shri S.B Talekar with Ms Madhvi Ayyapan, learned advocate for the Applicants in O.A 934/2018, Shri A.A Desai with Shri S. Patil, learned advocate for the applicants in O.A 1083/2017, Shri K.R

Jagdale, learned advocate for the applicants in O.A 1186/2017 & O.A 165/2018, Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents no 1 to 3, Shri S.S Dere, learned advocate for Respondents no 4 to 13 in O.A 1186/2017 and Respondent no. 4 in O.A 1083/2017, Shri N.P Dalvi, learned advocate for M.P.S.C.

2. Present O.A No. 934/2018 is taken as a lead Original Application.

3. Applicants have approached this Tribunal with following reliefs:-

- “A. To quash and set aside the impugned declaration dated 19.9.2014 issued by the Secretary, MPSC, (Exh. H)
- B. To quash and set aside the impugned declaration dated 25.9.2014 issued by the Secretary, MPSC, (Exh. I),
- C. To quash and set aside the revised list of candidates eligible for recommendation dated 11.12.2017 published by MPSC (Exh. J).
- D. To quash and set aside the letter dated 15.12.2017 and the list of 10 candidates dated 18.12.2017 recommending their names for appointment as Police Sub-Inspector pursuant to Government Circular No. PSB-0341/C.N.353/Pol-5A dated 27.6.2016 inviting applications for 828 posts of Police Sub-Inspectors Limited Departmental Examination issued by the Deputy Secretary, Home Department, Mantralaya, Mumbai. (Exh. K and L).”  
(Quoted from page 17 of O.A)

4. Main challenge in this Original Application to the announcement and reannouncement text thereof read as follows:-

“घोषण

I

आयोगाच्या दिनांक १.४.२०१४ रोजी झालेल्या बैठकीमध्ये संघ लोकसेवा आयोगाच्या निकाल प्रक्रियेच्या कार्य पध्दतीनुसार “महाराष्ट्र लोकसेवा आयोगाच्या यापुढे घेतल्या जाणा-या परिक्षेच्या कोणत्याही टप्प्यावर मागासवर्गीयांना देय असलेली वय । परीक्षा शुल्क तसेच इतर पात्रता विषयक अटी । निकषासंदर्भात सवलत उमेदवारांनी घेतली असल्यास अशा उमेदवारांची अमागास वर्गवारीच्या पदावर शिफारस करण्यात येणार नाही” असा निर्णय घेण्यात आलेला आहे. याची कृपया उमेदवारांनी नोंद घ्यावी”.

ठिकाण : मुंबई  
दिनांक : १९ सप्टेंबर २०१४

सचिव  
महाराष्ट्र लोकसेवा  
आयोग

## “पुर्नघोषणा

आयोगाच्या दिनांक १.४.२०१४ रोजी झालेल्या बैठकीमध्ये संघ लोकसेवा आयोगाच्या निकाल प्रक्रियेच्या कार्य पध्दतीनुसार “महाराष्ट्र लोकसेवा आयोगाच्या यापुढे घेतल्या जाणा-या परिक्षेच्या कोणत्याही टप्प्यावर मागासवर्गीयांना देय असलेली वय | परीक्षा शुल्क तसेच इतर पात्रता विषयक अटी | निकषासंदर्भात सवलत उमेदवारांनी घेतली असल्यास अशा उमेदवारांची अमागास वर्गवारीच्या पदावर शिफारस करण्यात येणार नाही” असा निर्णय घेण्यात आलेला आहे, सदरची सुचना यापुर्वी प्रसिध्द झालेल्या जाहिरातीत जेथे नमुद असेल प्रकरणी व यापुढे प्रसिध्द होणा-या सर्व जाहिरातीसंदर्भात लागू होईल. याची कृपया उमेदवारांनी नोंद घ्यावी”.

ठिकाण : मुंबई  
दिनांक : २५ सप्टेंबर २०१४

सचिव  
महाराष्ट्र लोकसेवा  
आयोग

(Quoted from pages 73 & 74 of O.A)

5. Based on the announcement and reannouncement which are challenged, the Respondents no 1 to 5 had declined applicants' candidature and selected the Respondents by refusing to the applicants to be considered in the open category/open merit competition, having availed concession as regards upper age limit and as regards fees etc.

6. This Original Application is opposed by MPSC. However, is not opposed by the State Government.

7. The limited question in this Original Application is as follows:-

Whether the candidates who have availed concession in fees and concession in relaxation of age limit are entitled to be considered in open merit competition?

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

9. Original Application is fervently opposed by M.P.S.C.

10. 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.

11. Whenever someone debates about M.P.S.C's powers and as regards procedure of recruitment, the 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 the recruitment rules as well as standing orders and the law relating to reservation shall have the primacy.

12. 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.

13. This Tribunal has minutely perused the judgment in the case of Jitendra Kumar Singh's case. What transpired is as follows:-

14. The issue which is now debated and was actually debated before the Hon'ble Supreme Court in Jitendra Kumar Singh's case. Their Lordships of Hon'ble Supreme Court in clear terms refused to accept the said plea which is evident from the observations and findings contained in para 48, 72, 75 & 77.

15. It shall suffice to quote ad verbatim text of para 76, which reads as follows:-

“76. Mr Rao had suggested that Section 3(6) ensures that there is a level playing field in open competition. However, Section 8 lowers the level playing field, by providing concessions in respect of fees for any competitive examination or interview and relaxation in upper age-limit. We are unable to accept the aforesaid submission.....”

(Quoted from page 147 of the Judgment)

16. Their Lordships of Hon'ble Supreme Court also gave a rational as to why the argument to the contrary was ruled out without any room for ambiguity. Said reasoning is contained in paragraphs 49, 50, 63 & 64. The purpose and object behind rejecting same argument which now MPSC continues to press, is drawn from the judgment in *Indira Sawhney's case* by quoting para 743 and relevant text reads as follows:-

“7.43.....  
.....  
The several concessions, exemptions and other measures issued by the Railway Administration and noticed in *Karmachari Sangh* are instances of supplementary, incidental and ancillary provisions made with a view to make the main provision of reservation effective i.e. to ensure that the members of the reserved class fully avail of the provision for reservation in their favour.”

(Quoted from page 139 of the report in *Jitendra Kumar Singh's case* (2010) 3 SCC 119, which text is an excerpt from para 743 of *Indra Sawhney's case* 1992 Supp (3) SCC 217)

17. Their Lordships further recorded that the said argument was bad being based on overruled judgment in the case of *Post Graduate Institute of Medical Education & Research Vs. K.L Narasimhan*, (1997) 6 SCC 283.

18. In the result, the stand of M.P.S.C has miserably failed to support impugned declaration. Very stance of M.P.S.C is contemptuous visa-vis unambiguous dictum of Hon'ble Supreme Court as reiterated in *Jitendra Kumar Singh's case supra*.

19. 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.

20. 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)***.

21. M.P.S.C's approach and attitude of being loud, autocratic and defiant towards rules which are duly laid down and towards the law proclaimed by Hon'ble Supreme Court is liable to be strictly criticized and deprecated. As an organ of executive, M.P.S.C is entitled and empowered to interpret and implement the law as it is laid down and law as is laid down which is binding under Art. 141 of Constitution of India, but M.P.S.C cannot arrogate to itself the privilege and power to tinker with the law laid down and binding under Art. 141 of the Constitution of India.

22. We hope that wisdom shall prevail and M.P.S.C take steps to behave appropriately. The forum being a Constitutional organ and authority which M.P.S.C enjoys does not allow it to arrogate power to over reach the law of precedent, which M.P.S.C has done by ignoring the dictum contained in Indra Sawhney's case supra of reckoning the candidate securing entitlement in open competition as open competition contestant etc. Be it as it may, and hope for better for wisdom to bestow upon the executive wisdom of the M.P.S.C.

23. Learned Advocate for the applicants have pointed out to the statement of learned Chief Presenting Officer made before this Tribunal in O.A 1083/2017 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)

24. 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.

25. 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”.

26. 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 have availed the concession as regards upper age limit and as regards fees, is 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, in keeping with the statement made before this Tribunal, as recorded and narrated in foregoing paragraph.

27. 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 : 27.03.2019**  
**Dictation taken by : A.K. Nair.**