

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.229 of 2019
WITH
ORIGINAL APPLICATION NO.1121 OF 2019**

ORIGINAL APPLICATION NO.229 of 2019

1. Ganesh Ananda Kiture,)
Age 26 years, Occ. Nil,)
Room No.C-318, Sector No.2, Airoli,)
Navi Mumbai 400 708)
2. Jaysing Dhanraj Adhe,)
Age 27 years, Occ. Nil,)
R/at. Kader Tanda No.2,)
Taluka Umarga, Dist. Usmanabad 413 606)
3. Shyamrav Punjaji Watsar,)
Age 26 years, Occ. Nil,)
R/at. Plot No.47, Om Nagar,)
Behind Vidyanagar, Machhamalabad Road,)
Panchavati, Nashik 422 003)
4. Arjun Dattatray Barge,)
Age 24 years, Occ. Nil,)
At post Hatgaon, Tal. Shegaon,)
Dist. Ahmednagar 414 503)
5. Amol Abaso Nazirkar,)
Age 31 years, Occ. Nil,)
At post Nazare K.P., Tal. Purandhar,)
Dist. Pune, 412 303)
6. Nitin Ramchandra Devale,)
Age : 27 years, Occu. Nil,)
At Post Kamlapur, Tal. Sangola,)
Dist. Solapur 413 307)

7. Mahesh Panditrao Avhad,)
Age : 29 years, Occu. Nil.)
Pathardi Phata, Navin Cidco, Nashik 422 009)
8. Dadahari Ashok Wanve,)
Age : 27 years, Occu. Nil,)
At Post Ahandwadi, Tal. Bhum,)
Dist. Usmanabad 413 505)
- 9 Rahul Ashok Beldar,)
Age : 28 years, Occ. Nil,)
At Post Sheri, Po. Zurkheda,)
Tal. Dharangaon, Dist. Jalgaon,)
10. Shaikh Mohaseen Jabbar,)
Age : 31 years, Occu. Nil,)
R/at. Shri Jagdamba Hsg. Soc.,)
Rashin, Tal. Karjat,)
Dist. Ahmednagar 414 403)
11. Shri Kishor Dattatray Jadhav,)
Age : 34 years, Occu. Nil,)
R/at. Gadenagar, Mukindpur,)
Newasa Phata, Tal. Newasa,)
Dist. Ahmednagar.)
12. Shri Balaji Maruti Jagtap,)
Age : 30 years, Occu. Nil,)
At Post Undegaon, Tal. Barshi,)
Dist. Solapur 413 403)
13. Sandip Kakasaheb Bhitade,)
Age : 25 years, Occu. Nil,)
At post Sarapdoh, Po. Kondhej,)
Tal. Karmala, Dist. Solapur 413 202.)
14. Dilip Ramhari Gavali,)
Age : 25 years, Occu. Nil,)
At post Bhada, Tal. Ausa, Dist. Latur.)

15. Priyanka Lahu Patil,)
 Age : 26 years, Occu. Nil,)
 R/at. 2459, D-Ward, Sukrawar Peth,)
 Kolhapur 416 002)
16. Priyanka Dilip Suryavanshi,)
 Age : 28 years, Occu. Nil,)
 R/at. 118/6, Plot No.3, Dwarka Nagar,)
 Jalgaon 425 001.)
17. Lanka Shankar Namde,)
 Age : 29 years, Occ. Nil,)
 At Post Perjapur, Tal. Bhokardan,)
 Dist. Jalna.)

..Applicants**VERSUS**

1. The Secretary,)
 Through the Maharashtra Public Service)
 Commission, Floor 5-8, Cuprage MTNL)
 Building, Maharshi Karve Road, Cuprage,)
 Mumbai, Maharashtra 400 021)
2. The State of Maharashtra,)
 Through the Secretary,)
 Home Department, Mantralaya,)
 Mumbai 400 032)
3. The Director General of Police,)
 Old Council Hall, M.S., Mumbai.)

...Respondents**WITH****ORIGINAL APPLICATION NO.1121 of 2019**

1. Sandip Kakasaheb Bhitade,)
 Age : 25 years, Occu. Nil,)
 At post, Sarapdoh, Po. Kondhej,)
 Tal. Karmala, Dist. Solapur 413 202)

2. Nitin Ramchandra Devale,)
Age : 27 years, Occu. Nil,)
At post Kamlapur, Tal. Sangola,)
Dist. Solapur 413 307)
3. Prashant Maniramji Sonawane,)
Age : Adult, Occu. Service,)
At Post Parsodi, Near Sahkari Dudha Dairy)
Tal. Sakoli, Dist. Bhandara 441 806)
4. Ganesh Ananda Kiture,)
Age : 26 years, Occu. Nil,)
R/at. Room No.C-318, Sector No.2,)
Airoli, Navi Mumbai 400 708)
5. Dilip Ramhari Gawali,)
Age : 25 years, Occu. Nil,)
At Post Bhada, Tal. Ausa, Dist. Latur,)
6. Arjun Dattatray Barge,)
Age : 24 years, Occu. Nil,)
At Post Hatgaon, Tal. Shegaon,)
Dist. Ahmednagar 414 503)

..Applicants

VERSUS

1. The State of Maharashtra,)
Through Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032)
2. The Secretary,)
Through the Maharashtra Public Service)
Commission, Floor 5-8, Cuprage MTNL)
Building, Maharshi Karve Road, Cuprage,)
Mumbai, Maharashtra 400 021)
3. The Director General of Police,)
Old Council Hall, M.S., Mumbai.)

4. The Director of Maharashtra Police Academy)
Nashik.)
5. Pradip Ramesh Marathe,)
Age : Adult, Occu. Service.)
6. Kiran Nandkumar Balip,)
Age : Adult, Occu. Service.)
7. Amit Ganpati Patil,)
Age : Adult, Occu. Service.)
8. Shrikrushna Dattu Shinde,)
Age : Adult, Occu. Service.)
9. Bhagwan Eknath Mujgule,)
Age : Adult, Occu. Service.)
10. Amol Ananda Kadam,)
Age : Adult, Occu. Service.)
11. Anurag Vinayak Dixit,)
Age : Adult, Occu. Service.)
12. Rupesh Balu Pawar.)
Age : Adult, Occu. Service.)
13. Akshay Mahadeorav Patil)
Age : Adult, Occu. Service.)
14. Sanjay Navnath Temgire,)
Age : Adult, Occu. Service.)
15. Ramling Bhagwan Bhangre)
Age : Adult, Occu. Service.)
16. Sharad Dnyandeo Gaikwad,)
Age : Adult, Occu. Service.)
17. Sagar Vilas Dhumal)
Age : Adult, Occu. Service.)

Through Director, Maharashtra Police Academy,)
Nashik, Mumbai)

..Respondents

Shri Sandeep Dere, learned Advocate for the Applicants.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : JUSTICE MRS. MRIDULA BHATKAR, CHAIRPERSON
SHRI P.N. DIXIT, VICE-CHAIRMAN

PER : JUSTICE MRS. MRIDULA BHATKAR, CHAIRPERSON

RESERVED ON : 27.11.2020

PRONOUNCED ON : 10.12.2020

J U D G M E N T

1. All the Applicants who are wait listed in the result of 2016 examination of Police Sub Inspector (P.S.I.), conducted by the State of Maharashtra, seek direction that the Respondent, Maharashtra Public Service Commission (M.P.S.C.) to recommend the names of the present applicants to the post of Police Sub Inspector pursuant to the demand made by the Respondent No.3 – The Director General of Police, Mumbai for 57 vacant seats.

2. The brief facts of the case are as follows :-

(i) The Respondent - Home Department through the Respondent No.3- The Director General of Police, Mumbai, had published an advertisement on 07.12.2016 for the posts of 750 Police Sub Inspectors. The Applicants applied for the same and passed pre-examination. Thereafter, the Respondent No.3 on 18.05.2017, vide advertisement

No.41/2017, issued the publication for the main examination which was also cleared by the Applicants. The final list of the names of the recommended candidates along with the wait list as per the merit of the candidates was published by the Maharashtra Public Service Commission (M.P.S.C.) on 20.06.2018.

(ii) The names of all the applicants appeared in the wait / reserved list. The wait list remains operative for a period under per Clause 8 of Rule 10 of the Maharashtra Public Service Commission Rules of Procedure (Amendment), 2016, which states :-

“In the case of the direct recruitment the reserved list / wait list shall be operative for the period of one year from the date of declaration of the result or till the declaration of the result of the subsequent recruitment process for the same post, whichever is earlier.”

Thus, the list would have been lapsed after one year i.e. on 19.09.2018. However, the result of the next examination of 2017 of P.S.I. was declared on 08.03.2019 and thus in view of Clause 8 of Rule 10 of Maharashtra Public Service Commission Rules of Procedure (Amendment), 2016, the said wait list came to an end on 08.03.2019 before the period of one year.

(iii) Out of the 750 recommended candidates, 57 recommended candidates did not join the services. Respondents (Home Department and Director General of Police) therefore made demand for recommendations of 57 candidates from the wait list by sending letters on 04.01.2019 and

16.01.2019. However, the M.P.S.C. did not send the names. Thus the candidates i.e. the applicants who are in the waiting list filed these Original Applications for the directions that they are eligible for recommendations.

(iv) Meanwhile one Ms. Rohini Sonwalkar, the candidate who had appeared for 2016 examination and whose name did not appear in the select list, had challenged the said list in O.A.No.694/2018, before the Maharashtra Administrative Tribunal. The Tribunal after considering law on the point of horizontal reservation, by order dated 01.11.2019 directed the M.P.S.C. to recommend her name. However, Respondent (M.P.S.C.) challenged the judgment of the Maharashtra Administrative Tribunal, before the Hon'ble High Court by filing Writ Petition No.92/2019, which was dismissed by the judgment dated 10.01.2019. The Hon'ble Division Bench of the Bombay High Court issued show cause notice to the Secretary, M.P.S.C. for disobeying the law laid down by the Hon'ble High Court in respect of the procedure of selection in the recruitment process. The Respondent (M.P.S.C.) after receiving the said notice immediately recommended not only the name of Ms. Sonwalkar but it also considered the other Original Applications filed in the Tribunal as well as the Writ Petitions filed before the Hon'ble High Court by other such candidates challenging the recommendations and the select list issued by the Respondent (M.P.S.C.). The M.P.S.C. decided to recommend the names of those candidates by following reservation policy and further took decision to publish the revised list of the selected candidates for 750 posts, so the

names of the candidates who were not considered earlier, later found eligible were mentioned in the revised list and were recommended. The names of 44 such candidates appeared in the revised recommended list. However, while carrying out this process nearly same number of candidates i.e. 45 candidates were excluded as those 44 fresh candidates were appointed in their place after following the horizontal reservation. The names of these 45 candidates were published as non-recommended candidates, (hereinafter called as de-recommended candidates) however, these 45 candidates were already sent for the training of the P.S.I. M.P.S.C. decided to inform the Respondent – Home Department to absorb those de-recommended 45 candidates as a special case and not to remove them from their services, as they had already undergone training for more than 7 months. The revised list of the result of 2016 of main examination was published on 12.04.2019.

3. The learned Counsel Shri S.S. Dere for the Applicants made elaborate submissions on facts and law. He argued that the names of the applicants ought to have been recommended against 57 vacancies, because 57 persons from the recommended list did not join. The Respondent-State made demand within time i.e. before the wait list lapsed. He pointed out the preamble of rules and procedure of M.P.S.C. of 2014, wherein functioning of the M.P.S.C should be more transparent, impartial, rational, reasonable, fair and equitable is stated. He submitted that the 45 candidates whose names were excluded from the revised list cannot be adjusted or accommodated against those 57 vacant posts. They form a

separate group and their case is still under consideration of the Government. The Government has not yet taken any decision in respect of absorbing those 45 candidates who have undergone training of the P.S.I. He further submitted that those 45 candidates as on today are given appointments on various places in Maharashtra to work as P.S.I. and some of them have started functioning on field as P.S.I. The case of those applicants should not be mixed with those 57 vacancies because these applicants seek their right on the basis of reserved list against the available vacancies.

4. The learned Counsel has further submitted that the Applicants have obtained the communication between M.P.S.C.-Respondent No.1 and the Home Department - Respondent No.2, in respect of filling up the 57 vacancies of 2016 examination of P.S.I. He relied on the said communication and pointed out that the letter dated 05.03.2019 which was written by Under Secretary to M.P.S.C. in response to letters dated 04.01.2019 and 16.01.2019. The said letter was written in respect of sending names of candidates from reserved list to fill-up 57 vacancies. The persons who would be excluded from earlier recommended list, are required to be absorbed after ascertaining the available vacancies and M.P.S.C. therefore did not send the names of the candidates from the reserved list to avoid further complications. The learned Counsel submitted that this decision was not legal.

5. He has further argued that in the letter dated 09.05.2019 Shri Venkatesh Madhav Bhat, Deputy Secretary of Home Department, has sought opinion of M.P.S.C., whether the 45 de-recommended candidates should be absorbed and, if yes, then on what basis. The learned Counsel has also pointed out the case of other candidates who have secured more marks and they are at higher number in the merit list.

6. He further relied on Section 4 of the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001, stating that the posts reserved under these categories shall be filled in by only those candidates belonging to Castes or Tribes for which the posts are reserved. The 45 candidates who were de-recommended and excluded were from women in open and open sports category. He further relied on the affidavit dated 06.11.2019 of Shri Venkatesh Bhat, Deputy Secretary of Home Department wherein at paragraph 16 the Respondents have made the statement that the vacancies on the roster points / category arose due to non-joining of 57 candidates as per their earlier recommendation are different than the 44 candidates who have subsequently become eligible for recommendation in view of the revised result. He further pointed out the letter dated 24.11.2020 sent by the Public Relations Officer, Smt. Smita Nair, from the Office of Respondent No.3 that the demand to recommend 57 candidates against, 57 vacancies still stands as there are 57 vacancies available out of 750 advertised posts.

7. The learned Counsel for the Applicant, on the point of right of wait listed candidates relied on the following judgments :-

- (1) Manoj Manu & Anr vs Union Of India & Ors, [reported in (2013) 12 SCC 171].
- (2) Ravindra Purohit Vs. State of Rajasthan a Jaipur Bench Jaipur (S.B. Civil Writ Petition No.1781/2015).
- (3) Asha Kaul (Mrs.) v. State of Jammu and Kashmir [(1993) 2 SCC 573)].
- (4) State of J & K & Ors vs Sat Pal [reported in (2013) 11 SCC 737].

8. The learned C.P.O. in reply, argued that the applicants are wait listed and the said wait / reserved list lapsed on 08.03.2019. Therefore, these applicants have no right to claim any recommendation from M.P.S.C. She has submitted that the Government has every choice not to fill up all the vacancies and the Government cannot be compelled to fill up all the vacancies even though advertised. Though the M.P.S.C. (Respondent) has published the 1st list of the selected candidates along with wait list, due to the decision of the Hon'ble Bombay High Court, the M.P.S.C. is justified in including the candidates similarly situated 44 candidates like Ms. Sonwalkar. The total of 66 such candidates were found. However, after the scrutiny and willingness the total number was reduced to 44. In the process of selection of 44 candidates by observing horizontal reservation policy, 45 candidates who were earlier recommended were not found eligible and therefore it was binding on the M.P.S.C. to delete the names of those 45 candidates from the list of recommended candidates. Therefore, rightly the revised list of the recommended candidates was published on

12.04.2019. However, this case of 45 candidates who have undergone the training is pending before the Law and Judiciary Department and therefore Government is not taking any decision in respect of those 45 candidates. However, those 45 candidates cannot be appointed other than these 750 posts because it will amount to appointing the excess posts than the post advertised.

9. On this point, the learned Chief Presenting Officer Ms. S.P. Manchekar for the Respondents placed reliance on the following judgments:-

- (1) Arup Das & Ors vs State Of Assam, [reported in (2012) 5 SCC 559].
- (2) Prem Singh & Ors Versus State Of Haryana, reported in 1996 SCC (4) 319.
- (3) Madan Lal & Ors Versus The State Of Jammu & Kashmir And Ors reported in (1995)3 SCC 486.

10. In support of the submission she pointed out the affidavit dated 09.07.2019 of Shri Devendra Vishwanath Tawde, Under Secretary, wherein it is mentioned that it is not possible for the M.P.S.C. to perform the recommendation process in the waiting list partially in the mid way without ascertaining the actual number of candidates available in various categories and posts remaining in the revised waiting list and thus it was very peculiar situation and therefore no candidates were recommended from the wait list to avoid complex situation.

11. She also relied on the noting of M.P.S.C. dated 28.02.2019 and 02.03.2019 which was signed by the Under Secretary, Secretary and the

President of the M.P.S.C. and so also noting dated 24.09.2020 and 25.09.2020, which was prepared by the Secretary, Under Secretary, Additional Secretary, Home and the same was signed by the Joint Secretary of Home and Principal Secretary of Home, wherein it was stated that group of 45 de-recommended candidates whether can be absorbed additionally is yet to be decided and on that point the opinion of the Law and Judiciary Department is sought. Till today, the Law and Judiciary Department has not given opinion and she submitted that, therefore, under such circumstances it is not possible to appoint the applicants.

12. Considered the submissions.

13. The facts stated above are not disputed by either of the parties. The only question before us is whether the applicants who are wait listed candidates can claim any right for getting recommended by the Respondent-M.P.S.C. This peculiar situation arose because the Respondents who are accountable to system fail to take decision which they are in fact required to decide. Pursuant to the judgment of the Hon'ble Division Bench in the Writ Petition in **Sonwalkar's case** (cited supra), wherein the M.P.S.C. decided to recommend the names of similarly situation candidates who were not earlier recommended. It was obligatory on the part of M.P.S.C. to follow the law laid down by the Hon'ble High Court on the point of horizontal reservation policy.

14. Thus in that shuffling 44 candidates were included in the list and 45 candidates were found not eligible for recommendation and therefore they

were excluded. In 750 advertised posts, 57 posts fell vacant due to non-joining of the service by the recommended candidates, therefore the Respondent-Home Department, has rightly informed the M.P.S.C. by letters dated 04.01.2019 and 16.01.2019 that 57 names were to be recommended from the wait list. The request made by the State is mentioned in notings dated 28.02.2019 and 02.03.2019, maintained by the M.P.S.C. Thus, the demand was well within the time when admittedly the wait list prepared on 20.06.2019 was in existence. In the revised list the names of the 57 candidates who chose not to join were also included along with the names of new 44 candidates. Thus, the 57 vacancies were carried forward again after the revised list was published. However, at the time of publishing the revised list, no revised waiting list was published. Thus, the fact remained that when the demand was made by the State, old wait list was alive and was very much available to the M.P.S.C. to recommend the 57 names to enable the Respondent – State to fill-up all the required posts.

15. Why the 57 names were not recommended ? This basic question finds answer in two notings.

16. Before advertizing to those notings, for better clarity, it is necessary to address the two matters, wherein the Tribunal has directed M.P.S.C. to recommend the two candidates in this 2016 P.S.I. main examination, one was of Shri Suraj Prakesh Shinde in O.A.No.635/2018 wherein it was requested that his name should have been considered in the horizontal

reservation in separate category and his case was allowed by this Tribunal and other case of **Smt. Sonwalkar (cited supra)**. She belongs to Nomadic Tribe Group-C. There was no reservation for Nomadic Tribe Group-C so she filled her form in the open category, but she could not enter in the list because she secured 216 marks less than cut off marks 230 i.e. less marks than cut off. However, she claimed recommendation on horizontal reservation in women category where the cut off marks was 170. The Tribunal allowed her Original Application and Appeal filed by M.P.S.C. Respondent no.1 in O.A.No.229/2019 against the said order was rejected by the Hon'ble Bombay High Court and therefore the entire process of merit list was recalled by the M.P.S.C. and revised list was published on 12.04.2019. The M.P.S.C. tried to correct its mistake of not considering the candidates who could have been eligible on the basis of horizontal reservation and thus the 44 candidates were included and one post was kept vacant. However, the task was not done fully, M.P.S.C. left the process halfway as it did not prepare the revised wait list. The officers of Home Department thereafter send this matter for opinion to the Law and Judiciary Department. Since 25.09.2020 the said issue of 45 de-recommended candidates is pending before the Law and Judiciary Department, however, it has nothing to do with the 57 vacancies.

17. The learned C.P.O. has placed the noting of 28.02.2019 and 02.03.2019 of the M.P.S.C. and the noting of the Respondent State on 24/25.09.2020 are self-explanatory. Let us look into these noting. In the said noting it is mentioned that after shuffling some more new candidates

will be included in the list and their names were to be recommended afresh. In the process, the 45 candidates not found eligible, however, recommended in the earlier list were taking training since last 7 months and therefore this being the situation those de-recommended excess 45 candidates are to be accommodated after taking stock of vacant posts. In the same nothing the M.P.S.C. has also referred to the earlier results of P.S.I. of main examination 2011. In O.A.No.437 of 2011, which is filed by one erstwhile Smt. Archana Khambe, the similar situation was dealt with by the Tribunal. The recommendation of additional 191 candidates was maintained and they were absorbed. On that basis it was proposed that these excess de-recommended 45 candidates of P.S.I. examination 2016 can also be absorbed. However, it was further proposed that in paragraph 5.3 of the said noting marked at Exhibit-1, the result of next examination of 2017 was soon to be declared and thereafter the wait list of 2016 would lapse and therefore the M.P.S.C. would not be in a position to recommend 57 candidates from the said wait list. This issue will put M.P.S.C. in difficulty as in view of the decision of Hon'ble High Court in **Sonwalkar's case**, the recommendation of 57 candidates would be questionable. The President, M.P.S.C., approved publishing revised list of the recommended candidates by adding similarly situated candidates like Smt. Sonwalkar. It also took decision that as per paragraph 6.2 of Exhibit -1, the Government to be informed that the names of further 57 candidates from the reserved list could not be recommended. Thus the noting shows that the M.P.S.C. did not respond to the demand made by the Government for 57 candidates

for the vacant posts since January, 2019. Approximately, 2 months after the demand letter of the Government, the M.P.S.C. decided not to send the 57 names in reserved list because it might invite litigation in the Court due to reservation policy. It shows that the M.P.S.C. avoided to prepare the revised wait list by following the law of horizontal reservation laid down by the Hon'ble High Court.

18. Now we advert to the noting dated 25.09.2020 of the Respondent-State, which is marked at Exhibit-2. The Respondent-State wanted to take decision in respect of absorbing the additional 45 candidates who were de-recommended. It was mentioned that those 45 candidates, however, had completed training on 30.12.2019 and if at all they are removed from service then it would lead litigation. On perusal of the said noting it is transpired that the Respondent-State is clear that 45 de-recommended candidates form a separate group and their case is to be considered independently other than 750 advertised posts. No intention is expressed by the Respondent (Home Department) to absorb these de-recommended 45 candidates against 750 advertised posts. Paragraph 6.7 of Exhibit-2, it is specifically stated that these 45 candidates are additional and therefore, the number of posts would be more than the number of 750 posts advertised. In paragraph 6.8 of Exhibit-2, the Respondent has mentioned that on scrutiny of the revised list of the recommended candidates, the applicants have acquired more marks in between the 45 candidates who are de-recommended and 44 candidates who are recommended, therefore those candidates demand their claim.

19. In the case of ***Manoj Manu & Anr vs Union Of India & Ors, [reported in (2013) 12 SCC 171]*** the Department of Personnel and Training (DoP&T) has given advertisement for 184 posts. Thereafter, the Limited Departmental Competitive Examination (LDCE), was conducted by the Union Public Service Commission (UPSC). However, 6 posts remained vacant and DoP&T argued, UPSC did not recommend 6 names but recommended only 3 names. Thus, 6 candidates requested for mandamus against UPSC for their recommendations. The Hon'ble Supreme Court observed that not sending the names of those candidates when the demand was made within time cannot be justified. No further selection is required from the qualified candidates when there is reserved list. Paragraphs 14 and 15 of the said judgment reads as under :-

14. It is, thus, manifest that though a person whose name is included in the select list, does not acquire any right to be appointed. The Government may decide not to fill up all the vacancies for valid reasons. Such a decision on the part of the Government not to fill up the required/advertised vacancies should not be arbitrary or unreasonable but must be based on sound, rational and conscious application of mind. Once, it is found that the decision of the Government is based on some valid reason, the Court would not issue any Mandamus to Government to fill up the vacancies.

15. In the present case, however, we find that after the UPSC sent the list of 184 persons/ recommended by it, to the Government for appointed six persons out of the said list did not join. It is not a case where the Government decided not to fill up further vacancies. On the contrary DoP&T sent requisition to the UPSC to send six names so that the remaining vacancies are also filled up. This shows that in so far as Government is concerned, it wanted to fill up all the notified vacancies. The

requisition dated 20th November 2009 in this behalf was in consonance with its Clause 4(c) of O.M. dated 14th July 1967. Even when the Government wanted to fill up the post, the UPSE chose to forward names of three candidates.

This decision of the U.P.S.C. was held not sustainable in law.

20. ***Ravindra Purohit Vs. State of Rajasthan (S.B.Civil Writ Petition***

No.1781/2015. In this judgment, the learned Counsel relied on the point of right of wait listed candidates seeking appointment to the post of Lecturer Civil Engineer. The advertisement was issued by the Government and 62 candidates were selected as per the merit list along with the wait list. Some candidates did not join the posts and vacancies were not filled, so the applicants sought direction for the appointment against vacant posts in general category as he was standing No.1 in the waiting list. The learned Single Judge allowed the Petition directing the Respondents to send requisition for the appointment of the Petitioner to the post of Lecturer.

21. ***Asha Kaul (Mrs.) v. State of Jammu and Kashmir [(1993) 2 SCC***

57]. The learned Counsel relied on the judgment of the Hon'ble Apex Court wherein it was held that there was no indefeasible right for appointment to the selected candidates, yet that is only one aspect of the matter. The Hon'ble Apex Court held that the cases of action of seeking appointment against the vacant list arose from the arbitrary inaction of the State Government evaporated with the lapsing of waiting list.

22. ***State Of J & K & Ors vs Sat Pal [reported in (2013) 11 SCC 737]***. In the said judgment the Apex Court held that the refusal of legitimate claim of the wait listed candidates would amount to denial of legitimate claim of innocent citizens. Subsequently, the Hon'ble Supreme Court issued mandamus and Sat Pal was appointed to the post of Junior Engineer (Civil) Grade II.

23. Considering the law laid down by the Hon'ble Supreme Court and various Hon'ble High Courts, we are of the view that though the wait listed candidates have no indefeasible right, yet the claim of the wait listed candidates arises out of legitimate expectation and equity, especially if the demand is made within time by the Government to fill up the vacancies. Thus, the Rules of procedure laid down by the M.P.S.C. are to be complied with; not to act upon it due to fear that the selection would go wrong, is nothing but arbitrary inaction. The officers sitting at the top of various Departments are required to take decisions as the duty demands then shirking to take such decision or omission is wrong and cannot be justified in law. The policy decision is one of the foremost functions of the Government. When there is duty to decide the officers who are in the position should not dilute it by omission or inaction. Caution and diligence is necessary in decision making process, but it should not wrap the competence to take decision itself. Such kind of unfounded apprehension or silence out of fear of committing wrong paralyses the governance and so also the internal working of the administration when

the Government officers are bound by the principle of accountability. Thus prompt, timely, fair and legal action by the administration is the legitimate expectation of the public. The M.P.S.C. ought to have prepared the wait list after making revised list of recommended candidates.

24. It is curious to note that though the M.P.S.C. prepared the revised list of recommended candidates by following the Reservation Policy, the M.P.S.C. did not make the revised wait list. The object of preparation of a wait / reserved list can be stated as follows :-

Firstly, to specify that no names, other than the recommended candidates are sent and candidate who stands at number 1 in wait list is next to the cut off line and these candidates are also meritorious who can be considered in the event of vacancy.

Secondly, the eligible wait listed candidates are readily available to the Government to fill up the vacancies if are created on account of non-joining of the posts by the recommended candidates.

Thirdly, this saves the time, expenditure, repetition and energy in the process of the Government and so also of the public. Thus to keep wait list already at hand expedites the process of filling up of vacancies without any gap. It is helpful to refer and rely the Hon'ble Supreme Court the case of **Manoj Manu (supra)** wherein, it is held as below :-

16. There is a sound logic, predicted on public interest, behind O.M. dated 14th July 1967. The intention is not to hold further selection for the post already advertised so as to save unnecessary public expenditure. At the same time, this very O.M. also stipulates that the Government should not fill up more vacancies than the vacancies which are advertised. The purpose behind this provision is to give chance to those who would have become eligible in the meantime. Thus, this OM dated 14th July 1967 strikes a proper balance between the interests of two

groups of persons. In the present case since the requisition of the DoP&T contained in the communication dated 20th November, 2009 was within the permissible notified vacancies, the UPSC should have sent the names of six candidates instead of three.

25. It is true that the wait list does not furnish the source of recruitment except vacancies, if available, in the posts advertised demand for the same is made within time. unless the posts fall vacant in the total number of posts advertised. No excess number of posts than the posts advertised can be filled up by the recommended candidates from the wait list as they do not have any vested right. However, as stated above, in the present case the right is created when 57 candidates did not joined the services, out of total 750 advertised posts of Police Sub Inspector and the demand was specifically made by the State twice in the month of January when the original wait list was in existence. The M.P.S.C. did not send the names of more 57 candidates from the reserved list which they should have. The M.P.S.C. in fact avoided to do the necessary exercise of preparing the wait list on the basis of reservation policy. If they would not have prepared the wait list in the beginning at all then the situation would have been different. But to prepare the revised list by cancelling the original list and not to prepare the wait list is wrong and illegal. In the rules and procedure (amended 2016) of M.P.S.C., Clause 8 of Rule 10 supra states about the preparation of reserved list in case of direct recruitment. Thus the inaction or omission on the part of M.P.S.C. is not justifiable.

26. The M.P.S.C. tried to cover up its mistake of omission to prepare revised wait list by observing the reservation policy and threw a ball in the

court of Government. Mixing of two unrelated issues is a lame excuse given by the M.P.S.C. which is not convincing and not tenable. The demand of 57 candidates is against the vacancies in 750 advertised posts and while a group of 45 posts of de-recommended candidates is excess then the 750 advertised posts. The learned C.P.O. cited the case of Hon'ble Supreme Court. However, they are mainly on the point of restriction on the powers of the Government to fill-up the additional posts than the advertised posts. Therefore, in fact the ratio laid down in those cases is not applicable in the present case where the issue of non-recommendation of wait listed applicants is involved. However, it is appropriate to refer to those cases to have a complete and whole perspective of the matter.

27. ***Arup Das & Ors vs State Of Assam, [reported in (2012) 5 SCC 559.*** In this case the Hon'ble Supreme Court addressed the issue whether the appointments can be made in Government service beyond number of vacancies advertised. The advertisement could be deviated only in exceptional circumstances. However, such circumstances were not in existence in the case of ***Anup Das.*** While rejecting the Special Leave Petition it was held by the Hon'ble Supreme Court that no more posts are to be filled up.

28. In case of ***Madam Lal (cited supra)*** against 11 advertisement vacancies, 20 candidates were recommended so the Court held that only 11 vacancies are to be filled-in. Whereas, while sending the requisite for

recruitment of posts the Government can keep in view not only actual erstwhile vacancies but also anticipated vacancies.

29. The case of **Prem Singh (cited supra)** 62 posts were advertised against which the board made appointments of 138 posts. After the commencement of selection process 13 posts fell vacant due to retirement and 12 posts became vacant due to death. Thus, the total additional 25 posts fell vacant other than the advertised 62 posts. The posts for these anticipated. The Hon'ble Supreme Court stated that in view of the special facts and circumstances of the case appointments of 25 additional posts other than 62 advertised posts were regularized. However, other posts beyond 87 were held invalid.

30. Thus in **Prem Singh's case** it is held that the State cannot make more appointments than the number of posts advertised even though the select list consists of more number of candidates. The Government may not fill up all the vacancies but should not appoint or cross the said number of advertised posts. However, in the case of **Prem Singh's case** it is also held,

“The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case.”

Thus, this ratio laid down by the Hon'ble Supreme Court in the case of **Prem Singh** is very much useful for resolving dilemma before the M.P.S.C. and the Government in the present set of facts, so we have highlighted the same.

31. While taking decision on the relief as prayed by the applicants the noting discussed above are found very helpful. The law is settled on the point of horizontal reservation. Similarly, the law is also settled on the point of right of the wait list candidates. The candidates in the reserved list do not have indefensible right to claim the appointment. However, the right emerges if any post falls vacant amongst the posts advertised and the demand for filling up such post/ posts is made by the Government to the M.P.S.C. within the life of the reserved list. These are the two criteria laid down by the Hon'ble Supreme Court in the case of **Manoj Manu's case**. It is obligatory on the part of the Government to act fairly and the whole recruitment process cannot be diluted by the arbitrary inaction. The Governments needs to take decision regarding a group of 45 de-recommended candidates who have undergone the training but not covered under 57 vacancies whether to be absorbed or not. We do not devoid the same. The applicants who are in between the 44 recommended and 45 de-recommended candidates in the merit list have legitimate expectation that they rightfully claim recommendation, if found eligible.

32. Thus in view of above, we allow the Original Applications with following directions :-

- (a) We direct the M.P.S.C. to prepare the revised wait / reserved list of the candidates of 2016 PSI examination and consider the names of the applicants in the wait list by following the law laid down by the Hon'ble High Court on the point of reservation within three weeks i.e. on or before 5th January, 2021.
- (b) The M.P.S.C. is hereby directed to recommend the names of the applicants from the revised wait list, if they are eligible and prepare the list within 10 days thereafter i.e. till 16th January, 2021.
- (c) We are not inclined to give time further as already the issue remained unsolved for a long time of 3 years.
- (d) No order as to costs.

Sd/-

(P.N. DIXIT)
VICE-CHAIRMAN

prk

Sd/-

(MRIDULA BHATKAR, J.)
CHAIRPERSON