

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NOS 351 & 1037 OF 2014

DISTRICT : MUMBAI

1. ORIGINAL APPLICATION NO 351 OF 2014

1. Shri Vijay Laxman Atkari)
2. Shri Sunili Paburao Pant)
3. Shri Praving Dhananjay Patil)
4. Shri Sandeep Krishna Patkar)
5. Shri Vivek Chandrakant Mayekar)
6. Shri Prashant Hindurao Pawar)
7. Shri Sachin Bhiku Bagal.)
8. Smt Lata Raghunath Tayade)
9. Shri Sudhakar Sonaji Nikale)
10. Shri Sudhir Shankar Mahamulkar)
11. Shri Milind Gangaram Pawar.)
12. Shri Namdeo Ananda Vedante)
13. Smt Pushpa Arun Medhe)
14. Shri Vijay Dhondu Kamerkar)
15. Shri Arun Shriram Satarkar)
16. Shri Datta Madhavrao Jadhav)
17. Shri Dnyaneshwar Damodar Badrik)
18. Shri Raju Madhavrao Magar.)

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19. Shri Popat Patilba Salunke)
 20. Shri Vivek Ratnakar Mungikar)
 21. Smt Sunanda Kishanrao Maske.)
 22. Shri Subhash Fulchand Rajput.)
 23. Shri Hasibuddin Allauddin Sayyed)
 24. Shri Abhay Arvind Karmarkar)
 25. Shri Dhananjay W. Bugdani.)
 26. Shri Rajendra Babulal Jadhav.)
 27. Smt Aasha U. Kulkarni.)
 28. Shri Ganesh Dhondiram Sangam.)
 29. Shri Prashant Ramesh Khairnar.)
 30. Shri Hemant Bhaskar Patil.)
 31. Shri Vinayak Pandurang Patil.)
 32. Shri Sanjay Brahmprasad Yadav)
 33. Shri Kishor Vitthalrao Nagose)
 34. Shri Gajanan Gopalrao Thite.)
 35. Shri Ganesh Uttamrao Gite)
- All applicants are working as)
 Clerk-Typist with Sales Tax)
 Department in various places in)
 Maharashtra.)
 Add for service of notice)
 Shri A.S Tamhane, advocate for the)
 Applicants.)...**Applicants**

Versus

1. The State of Maharashtra)

- Copy served on Government Pleader)
 Maharashtra Administrative Tribunal,)
 Mumbai.)
2. The Secretary,)
 Sales Tax Department,)
 Finance Department, having office)
 at Mantralaya, Mumbai 400 032.)
3. The Commissioner of Sales Tax)
 State of Maharashtra, having its)
 office at Vikrikar Bhava, 9th floor,)
 Sardar Balvant Singh Dodhi Marg,)
 [Nesbit Road], Mazgaon,)
 Mumbai 400 203.)
4. The Chairman,)
 Maharashtra Public Service)
 Commission, [MPSC], having office)
 At Bank of India Building,)
 3rd floor, Hutatma Chowk. M.G Rd,)
 Fort, Mumbai 400 00)...**Respondents**

2. ORIGINAL APPLICATION NO 1037 OF 2014

- Shri Swanand Balkrishna Kulkarni)
 Clerk-Typist with Sales Tax Department)
 Mumbai. Residing at 11/1104)
 Amorina Heights, Shankar Sheth Road,)
 Grant Road,[West], Mumbai 400 007.)...**Applicant**

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Versus

1. The State of Maharashtra)
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Maharashtra Administrative Tribunal,)
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2. The Secretary,)
Sales Tax Department,)
Finance Department, having office)
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Sardar Balvant Singh Dodhi Marg,)
[Nesbit Road], Mazgaon,)
Mumbai 400 203.)
4. The Chairman,)
Maharashtra Public Service)
Commission, [MPSC], having office)
At Bank of India Building,)
3rd floor, Hutatma Chowk. M.G Rd,)
Fort, Mumbai 400 00)...**Respondents**

Shri A.S Tamhane, learned advocate for the Applicants.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)
Shri R.B. Malik (Member) (J)

DATE : 05.01.2016

PER : Shri Rajiv Agarwal (Vice Chairman)

ORDER

1. Heard Shri A.S Tamhane, learned advocate for the Applicants and Shri A.J Chougule, learned Presenting Officer for the Respondents.

2. These Original Applications were heard together and are being disposed of by a common order as the issues to be decided are identical.

3. The Applicants in O.A no 351/2014 were working as Junior Clerks on the establishment of the Respondent no. 3 at various places in Maharashtra. The Applicant in O.A no 1037/2014 was working as Clerk-typist at Mumbai. All of them appeared for Limited Departmental Competitive Examination (L.D.C.E) held by the Maharashtra Public Service Commission (M.P.S.C), the Respondent no. 4, in both the O.As, on 30.9.2014, pursuant to a circular issued by the Respondent no. 2 on 28.8.2012, for appointment to the post of Sales Tax Inspector. A total of 844 posts from different categories

(open, backward etc) were to be filled. All the Applicants applied and appeared for the L.D.C.E, the result of which was declared on 26.2.2013 by the Respondent no. 4. Only 234 candidates were declared successful. Though the Circular dated 28.8.2012, or the information put by the Respondent no. 4 on its website, did not mention any cut-off marks to become eligible for selection to the post of Sales Tax Inspector, the Respondent no. 4 applied cut-off marks criterion about which the candidates, including the Applicants were not informed in advance. Learned Counsel for the Applicants argued that the Applicants have been subjected to discrimination vis-à-vis the recommended candidates. Learned Counsel for the Applicants contended that similar Limited Departmental Competitive Examinations are held by M.P.S.C for selection to the post of Assistants in Mantralaya and Police Sub-Inspectors. No cut-off marks were prescribed for the examination conducted by M.P.S.C in 2009 for selection to the post of Assistants. Learned Counsel for the Applicants argued that the number of candidates who appears for Limited Departmental Competitive Examination, 2012 was 449, and the vacancies to be filled were 844, so, all the candidates who appeared for L.D.C.E should have been declared as successful.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicants are claiming that they should be selected for the post of Sales

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Tax Inspectors without any minimum competence level being achieved by them. In that case, there is no need to conduct any competitive examination and all Clerks will be eligible to be promoted on the basis of seniority only. However, as per the Recruitment Rules for the post of Sales Tax Inspectors, 40% posts are filled by direct recruitment. There is 30% quota for promotion. Remaining 30% posts are filled by holding a Limited Departmental Competitive Examination from amongst Clerk-typists, and those who have completed 7 years as Clerk-typist are eligible to compete. This has been provided to encourage talent and merit. If no cut-off marks are provided, the very purpose of providing 30% posts to be filled on the basis of L.D.C.E will be defeated. Learned Presenting Officer argued that the Applicants have themselves placed on record the general instructions to the candidates issued by the Respondent no. 4 during L.D.C.E held in 2012. As per para 3.6.1, M.P.S.C could fix cut-off marks, depending on the number of candidates, who were to be called for interview and to ensure minimum competency level and the cut off marks were to be decided as per policy of the Commission. Learned Presenting Officer argued that the Rules of Procedure of the Commission were amended on 17.11.2011 and as per clause (v)(a) of Rule 8, a minimum of 35% marks for open category, 30% marks for backward class category and 20% marks for physically handicapped and sports person category were fixed for

written examinations. The claim of the Applicants that they were not aware that there will be cut-off marks to qualify is not correct. Learned Presenting Officer argued that the limited Departmental Examination 2009 for Assistants was held before the Rules of Procedure were amended. In any case, in any Competitive Examination, cut-off marks have to be provided and now exact quantum is provided in the rules, while earlier it was fixed for each examination separately.

5. We find that the Applicants are claiming that they were being discriminated vis-à-vis selected candidates. We find no basis for this claim. Admittedly, the selected candidates scored marks, which were equal to or more than cut-off marks as per Rule 8(v)(a) of the Rules of Procedure of M.P.S.C, while the Applicants could obtain less than cut-off marks in their respective categories. As the selected candidates were undoubtedly more meritorious, the question of discrimination does not arise.

6. The Applicants claim that the Respondent no.4 for the first time applied cut-off marks. This claim is unfounded. The Applicants have themselves appended Exhibit 'C', which was the information available on the website of MPSC. Para 3.6.1 reads:

“३.६.१. आयोगाच्या धोरणानुसार गुणाची सीमारेषा (cut off line) निश्चित करण्यात येईल. सदर सीमारेषा निश्चित करताना मुलाखतीसाठी उमेदवारांची संख्या मर्यादित राखण्याच्या, तसेच किमान गुणवत्ता राखण्याच्या दृष्टिने गुणांची किमान टक्केवारी राखण्यात येईल व सदर टक्केवारी प्रकरणपरत्वे आयोगाच्या धोरणानुसार राहिल.”[emphasis added].

It is clear that in every examination, cut off marks were being decided by M.P.S.C. After Rule 8(v)(a) was introduced, this cut-off limit is now common for all written examinations. The claim of the Applicants that they were not aware of that there will be cut-off marks to qualify is not correct. Their claim that all those who appeared for L.D.C.E-2012 should have been selected as number of posts to be filled were more than the number of candidates, if accepted, will make the holding of such examination meaningless. It will also defeat the very purpose of holding such examinations, which are meant to encourage talent and merit. This contention of the Applicants has to be firmly rejected.

7. The Applicants have not been able to make out any case to grant them any relief. The Respondent no. 4 was well within its rights to fix cut-off marks for different category of candidates to maintain minimum competence level for selection of candidates for different posts. The Applicants in the present case were not selected as they could not reach the minimum competency level required for the post of Sales Tax Inspector.

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8. Having regard to the aforesaid facts and circumstances of the case, these Original Applications are dismissed with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 05.01.2016

Dictation taken by : A.K. Nair.