

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.839 OF 2023

Sunil Suryabhan Kekane)
R/at A-wing, Room No.196,)
Railway Police Colony, Dadar (E),)
Mumbai 400 014) **....Applicant**

Versus

1. The State of Maharashtra,)
Through the Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032)
2. Director General of Police,)
Near Shahid Bhagat Singh Marg,)
Colaba, Mumbai 400 001)
3. Commissioner of Police, (Railway))
Wadi Bandar, 4th floor, Area Manager,)
Building, P.D. Mello Road Sandhurst,)
Road, Near Central Railway Godown,)
Mazgaon, Mumbai)
4. The Secretary,)
Maharashtra Public Service Commission)
Trishul Gold Field, Plot No.34, Sector 11,)
Opp. Sarovar Vihar, Belapur CBD,)
Navi Mumbai 400 614) **....Respondents.**

Mr. S.S. Dere, learned Counsel for the Applicant.

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

CORAM : **Justice Mridula Bhatkar, Chairperson,
Shri Debashish Chakrabarty, Member (A)**

DATE : **11.10.2023.**

J U D G M E N T

1. Applicant working as Police Constable challenges order dated 10.02.2023 passed by Respondent No.4, M.P.S.C. thereby debarring the Applicant from all the examinations for the post of PSI through Limited Departmental Competitive Examination or Direct Recruits to be conducted by M.P.S.C. Respondent No.4.

2. The Respondent No.1, Additional Chief Secretary, Home Department, published Advertisement dated 11.02.2022 for the Limited Departmental Competitive Preliminary Examination for the post of PSI in the year 2020-21 and Respondent No.4 M.P.S.C. conducted the Preliminary Examination on 16.04.2022 and published the results of the Preliminary Examination on 09.06.2022. The Applicant successfully qualified the Preliminary Examination and was allowed to appear for the Main Examination. The Advertisement of the Main Examination was issued on 15.06.2022. Respondent No.4 conducted the Main Examination on 30.07.2022. It was informed that the Applicant though claimed that he has completed Four Years' of service on the post of Police Constable on 01.01.2022, his service was found lesser than Four Years and therefore he was given Show Cause Notice on 24.11.2022 and the Applicant replied to it on 30.11.2022 wherein he has accepted that on 01.01.2022 he had not completed Four Years of service as Police Constable. However, he filled up the Application Form on wrong understanding of the Terms and Conditions mentioned in the Advertisement dated 11.02.2022. The said explanation of the Applicant submitted on 30.11.2022 was not accepted by Respondent No.4 M.P.S.C. Thereupon Respondent No.4, M.P.S.C. by order dated 10.02.2023 debarred the Applicant

permanently from appearing for these examinations of LDCE and Direct Recruits to the post of PSI.

3. Learned Counsel for the Applicant Mr. S.S. Dere has submitted that the Applicant did not fill up the information with the intention to cheat or misguide the Respondent No.4, M.P.S.C. He drew our attention to the contents of the Application Form and submitted that in the Application Form the Applicant has given his Date of Appointment to the post of Police Constable as 05.01.2018. However, he was supposed to complete Four Years of service till 01.01.2022. The said Application Form was also verified by the Superintendent of Police, Force-I, Mumbai. Learned Counsel has submitted that the Respondent No.4 M.P.S.C. had erroneously held that the Applicant has made a false claim to manipulate the Respondent No.4, M.P.S.C. Learned Counsel pointed out that in the explanation given by the Applicant on 30.11.2022, he has admitted that on 01.01.2022 he did not complete Four Years of service in the feeder cadre, therefore he prays that the said order passed by the Respondent No.4, M.P.S.C be quashed and set aside as the punishment given is disproportionate to the alleged act of the Applicant. He has further submitted that this is the last chance for the Applicant to appear for the Limited Departmental Competitive Main Examination for the post of PSI which is scheduled on 02.12.2023 and the last date for filling the Application Form was 03.10.2023.

4. Learned C.P.O. for the Respondents Ms. S.P. Manchekar while opposing this O.A. has relied on the contents of Application Form and has submitted that the Applicant ought not to have submitted online

Application Form when in the Advertisement dated 11.02.2022 for the Limited Departmental Competitive Preliminary Examination for the post of PSI as it was specifically instructed that the candidates should possess Four Years of service till 01.01.2022 from his Date of Appointment as Police Constable and that the Applicant's Date of Appointment is 05.01.2018. She defended the order passed by the Respondent No.4, M.P.S.C., and further submitted that being a 'Constitutional Authority' and the order passed by the Respondent M.P.S.C. after following due procedure cannot be changed by the Tribunal. Hence, the order of Respondent No.4, M.P.S.C. dated 10.02.2023 is legal and correct.

5. We have perused the contents of Application Form of the Applicant. It is shown that the Applicant was eligible to fill up the online Application Form. In the said Application Form admittedly the Applicant had filled up his Date of Appointment as 05.01.2018. Thus, as per date mentioned in the Advertisement dated 11.02.2022 the candidates are required to have Four Years of service put in the Feeder Cadre of Police Constables as on 01.01.2022. Thus, the Applicant falls short of service of Four Years as on 01.01.2022. The date mentioned in the Application Form is correct and there is no factual error. The Superintendent of Police Force-1, Mumbai has also certified the said Application Form. It is to be noted that the Applicant filled in his online Application Form on 01.03.2022 and the last date of the submission of the Application Form was 08.03.2022. Thus, the Applicant filled up Application Form within time; so it was accepted by the online Computerized System of Respondent No.4, M.P.S.C. It is to be noted that when the Applicant has filled the

Application Form on 01.03.2022 he had in fact completed Four Years of service on the post of Police Constable. We failed to understand why the Computerized System of Respondent No.4, M.P.S.C. accepted the Application Form, if at all it was incorrect. Thus, the Applicant has not given any wrong or incorrect information in the Application Form. It is the fault of the online Computerized System which has accepted the Application Form of the Applicant submitted on 01.03.2022. We have further gone through the impugned order passed by the Respondent No.4 M.P.S.C. wherein the Applicant is permanently debarred from appearing in all future examinations of Respondent No.4, M.P.S.C. It is to be noted that the Applicant has neither committed forgery nor filled incorrect information in respect of his Date of Appointment to the post of Police Constable which is 05.01.2018. We are of the view that the Applicant took chance and filled up the Application Form on 01.03.2022 as he had on that date completed Four Years of service in the post of Police Constable.

6. Under such circumstances, we are of the view that Respondent No.4 M.P.S.C. has considered and appreciated the facts erroneously and arbitrarily. Respondent No.4, M.P.S.C. could not grasp or understand the essence of cheating or misguiding as 'mens rea' which is found absent in this matter. At the most we can say that the Applicant has taken chance by applying through the online Computerized System as he fell short of only Four Days of fulfilling the conditions of Four Years as on 01.01.2022 but was submitting the Application Form on 01.03.2023 and was sure that he by then had completed Four Years of service in the post of Police Constable. Assuming he would have taken chance Respondent No.4, M.P.S.C.

should not have allowed him to appear for the Limited Departmental Competitive Preliminary Examination of the year 2000-21 and further debarring the applicant permanently from all examinations is undoubtedly arbitrary disproportionate and erroneous order of Respondent No.4, M.P.S.C. In view of the above, the impugned order of Respondent No.4 M.P.S.C. dated 10.02.2023 deserves to be quashed and set aside. As per the submissions made by learned Counsel for the Applicant that the Limited Departmental Competitive Main Examination is scheduled to be held on 02.11.2023 and for which the last date of submission of on-line Application Form was 03.10.2023 and further in view of the fact that it is the last chance of the Applicant, we pass the following order :-

ORDER

- (A) O.A. is allowed.
- (B) The impugned order dated 10.02.2023 passed by Respondent No.4, M.P.S.C. is hereby quashed and set aside.
- (C) The Applicant is directed to submit the Application Form for either physically or online as per the instructions of Respondent No.4 M.P.S.C.
- (D) The Respondent No.4 M.P.S.C. is directed to accept the Application Form of the Applicant physically or through on-line on or before 17.10.2023, if submitted by the Applicant.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

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