

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 427 of 2016 (D.B.)**

Shailesh S/o Punjabrao Mahure,  
Aged about 29 years, Occ. Service,  
R/o Nandsmit Residency,  
Behind Agricultural Produce Market Committee,  
Morshi, Tq. Morshi, Dist. Amravati.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Home Department,  
Mantralaya, Mumbai-32.
- 2) Maharashtra Public Service Commission,  
through its Secretary, 3<sup>rd</sup> floor Bank of India  
Building, Mahatma Gandhi Road,  
Hutatma Square, Mumbai- 400 001.
- 3) Director General of Police,  
Shahid Bhagatsingh Marg, Kulaba,  
Mumbai-400 001.

**Respondents.**

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**S/Shri P.S. Chawhan, R.S. Kalangiwale, Palash Mohta, Advs. for  
the applicant.**

**Shri P.N. Warjurkar, P.O. for the respondents.**

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**Coram :- Shri Shree Bhagwan,  
Member (A) and  
Shri A.D. Karanjkar, Member (J).**

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**JUDGMENT****Per : Member (J).****(Delivered on this 18<sup>th</sup> day of February,2019)**

Heard Shri P.S. Chawhan, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The applicant is member of Scheduled Caste (S.C.) (Khatik). The applicant is Bachelor of Arts. In the year 2011, the respondent no.2 published advertisement to fill 1212 posts of Police Sub Inspector (PSI), out of which 105 posts were reserved for the S.C. candidates. The applicant applied for the post of PSI in S.C. category, the applicant appeared in the preliminary examination, he was declared successful and he was called for the main examination. In the meantime, the respondent no.2 issued notification and thereby decided to fill 1869 posts of Police Sub Inspector, out of which 159 posts were kept reserved for the S.C. candidates. Out of 159 posts, 103 posts were to be filled by appointing male candidates belonging to S.C. category.

3. The applicant appeared in the main examination. The results were declared on 26/03/2012. The applicant secured 447 marks in the main examination and as the last candidate no.103 scored 452 marks, therefore, the cut off for the S.C. (male) category was fixed 452 marks. Similarly, the cut off for the male candidates

belonging to open category was fixed 475 marks. The applicant sought information under RTI Act regarding the selection process and incomplete information was supplied to the applicant. It is case of the applicant that though it was necessary to fill 1869 posts, only 1569 candidates reported to the Maharashtra Police Academy, Nashik for training, 300 candidates refused to join the service. It is further submitted that the respondent no.1 gave information to the applicant and informed that 1513 candidates had joined the training, 99 candidates had sought extension of time to join the duty, 7 candidates submitted their resignations and extension of time was refused to 34 candidates.

4. It is contention of the applicant as large numbers of the seats were vacant, but the candidates were not appointed. It is submission of the applicant that error is committed by the respondent no.2 in not maintaining the waiting list, consequently grave prejudice is caused to the applicant.

5. It is contention of the applicant that 15 posts reserved for S.C. candidates remained vacant, had the respondent no.2 prepared the waiting list of the candidates, the candidates like the applicant would have got the opportunity to join service. It is further contended that it was made obligatory on the respondent no.2 to include the S.C. candidates who had scored more than 475 marks in the list of

the open general category, but the respondent no.2 illegally not included the names of the S.C. candidates who had scored marks more than 475. It is submitted that the candidates at sr.nos. 194,357,399,756, 837,868, 883, 899,916,923,934,935,936 and 930 had scored 475 marks and above, they should have been included on merit in the list of open general category. It is submitted that had those candidates were included in open general category, the applicant could have found place in the list of S.C. category. It is grievance of the applicant that S.C. candidates at sr.nos. 74,103,114,131,141,202,270,318 and 341 were included in open general category as they had secured more than 475 marks. Thus it is submission of the applicant that the 14 candidates who scored more than 475 marks should have been included in the open general category and as it was not done, it is material illegality in the selection. It is submitted that had these 14 candidates were included in the open general category, then the applicant would have opportunity to find place in the list of S.C. candidates. On the basis of this, it is submitted that the application be allowed and direction be given to the respondents to include the 14 candidates in open general category and to consider the applicant in the S.C. category as the 15 posts of S.C. category are still available.

6. The application is opposed by the respondents vide reply which is at page no.217, the respondent no.2 has filed reply on behalf of all the respondents. At the outset, it is denied by the respondents that there is any illegality committed in conducting the recruitment process. It is submitted that the recruitment process was conducted as per the rules and regulations framed by the Government of Maharashtra and the MPSC. It is contended that as per Standing Order no.08/2011, dated 5<sup>th</sup> August, 2011 the Commission had decided not to maintain any waiting list for the competitive examinations and it was also decided that the vacant posts will be filled by the fresh recruitment process. As it was object of the Commission and the Government only to appoint meritorious candidates, therefore, such decision was taken. It is submission of the respondents that there is no illegality in this Standing order and the policy of the MPSC. It is further submitted that vide Standing Order no.05/2016, dated 31/05/2016 the decision was taken to maintain the waiting list, but as this decision was taken subsequent to the recruitment, therefore, there is no substance in the applicant's contention.

7. So for as contention of the applicant that the 14 S.C. candidates who secured more than 475 marks should have been appointed in open general category is concerned, it is submitted that

in view of the Government Circulars dated 16/03/1999 and 30/08/2014 the select list was prepared. It is submitted that as per these Government Circulars, in the first step select list of open candidates was to be prepared as per the merit and meritorious candidates belonging to all categories were to be included in the open category. It is further contended that following these rules the some of the S.C. candidates who scored higher standard marks at both the stages were included in the open general category. According to the respondents, if the requisite number of candidates from horizontal reservation in open category were not available, then it was necessary to accommodate remaining open category candidates under horizontal reservation to the extent of the posts reserved for them by deleting equal number of candidates from the bottom of the list. It is further contended that as some of the candidates were allowed for the interview on the basis of lower standard marks, fixed for the reserved category, consequently they were not considered for recommendations for open general category posts, but they were considered for their respective categories. On the basis of this, it is submitted that no illegality was committed by the respondent no.2 while preparing the select list of the open general category or all categories.

8. This matter was before this Bench on 9/7/2018 and after hearing direction was given to the respondent no.2 to file a short affidavit to clear following issues-

“(i) How many candidates from S.C. category who have secured more marks than the Bench marks from Open category have not been considered for Open (General) category.

(ii) How many candidates from S.C. (General) category who should have been considered for S.C. (General) category could not be considered from that category.

(iii) How many candidates of S.C. category have secured marks in between 447 to 452 marks.”

9. In compliance of this order, the respondent no.2 has filed short affidavit which is at page no. 255.

10. In view of the above facts and after hearing rival submissions, it is necessary to consider two aspects (i) whether it was mandatory for the respondent no.2 to prepare the waiting list (ii) whether it was necessary to include all S.C. candidates who had scored marks more than 475 in open general category.

11. We have heard submissions on behalf of the applicant and the respondents. After going through all the documents and additional affidavit filed by the Officer of respondent no.2 which is at page no.255, it appears that the result of this examination was declared on 10/11/2014 and at that time the Standing order

no.08/2011, dated 05/08/2011 was in force. The learned P.O. has invited our attention to Exh-R-2 which is at page no.231 of the P.B. Exh-R-2 is the copy of the Standing order no.08/2011, dated 05/08/2011. It is observed in Exh-R-2 that considering the difficulties arising out of the waiting list the judicial verdicts it was decided by the Commission to stop maintaining waiting list and it was held that MPSC shall not maintain the waiting list and the vacant posts would be filled by the separate recruitment procedure. It appears that when the recruitment process was completed the Standing order no.8/2011, dated 05/08/2011 was in force and later on vide Standing order no. 05/2016, dated 31/05/2016 decision was taken to maintain the waiting list.

12. As when the examination was conducted at that time the Standing order no.08/2011 was in force, therefore, it was not necessary for the respondent no.2 to maintain the waiting list, therefore, we do not see any merit in this contention of the applicant. So far as the inclusion of all S.C. candidates who scored more marks than 475 in open general category is concerned, we would like to examine the lists which are produced by the respondent no.2 along with additional affidavit which is at page no.255. It is contention of the respondents that 12 S.C. S.C. candidates got marks more than bench marks for the open general category, but as these candidates



had qualified for the written examination at the lower standard (i.e. the cut off fixed for the S.C. category candidates) therefore, they were not included in the open general category. The learned P.O. has invited our attention to rules, particularly clause no.8 (ii) which is as follows—

*“The cut off marks shall be fixed in such a manner that the number of candidates available for the main exam shall be 8 times the total post available for recruitment. The cut off line of marks so fixed shall be brought down so as to have candidates 10 times the number of vacancies, in each of the categories. However candidates so additionally qualified for the main exam shall be eligible for selection for the post from their respective reserved category only.”*

13. We have examined the details of all the candidates whose serial numbers are mentioned in Paragraph-4.10 of the O.A. The candidate at Sr.no.837 Shri Shailesh Uttamrao Pawar was not belonging to S.C. category, but he applied as DT (A) and therefore he was considered in open general category. Similarly candidate at sr.no.936 Shri Vinayak Baban Mankar was open candidate and he was appointed in Open (female) category. After examining the marks obtained by remaining 12 candidates it seems that all were appointed in S.C. general category.

14. The respondent no.2 has filed the list of 12 candidates which is at page no.260 and it is mentioned in this list that these

candidates were recommended for the main examination though they had cleared the previous examination with low standard and consequently considering their total marks, they were appointed in S.C. general category though they had scored marks more than 475. The respondent no.2 has also placed on record the list as per the direction of this Bench which is at page no.261. This is list of 34 candidates who were S.C., but included in open general category. It seems that all these S.C. candidates had passed the previous examination with high standard and scored 475 and more marks. Therefore, there is a substance in contention of the respondent no.2 that only the S.C. candidates who obtained 475 and more marks were included in open general category as they cleared the examination with high standard marks and the candidates who scored lower standard marks though they were belonging to S.C. category, were not included in the open general category. It appears that this decision taken by the respondent no.2 was in consonance with the policy mentioned in the Circulars dated 16/03/1999 and 13/08/2014. In view of this, we do not see any merit in the contention of the applicant that the S.C. candidates who had scored 475 and more marks should have been included in open general category though they had passed the examination with low standard. It seems that as these candidates had taken benefit of their caste though they passed the examination with the low standard, they were held

qualified for the main examination, therefore, they were not included in open general category. We do not see any fallacy in this decision taken by the respondent no.2.

15. The respondent no.2 has filed the list of S.C. candidates who scored marks in between 447 to 452. This list is at page no.266. In this list the name of the applicant is at sr.no.33. The applicant secured 447 marks with low standard and the candidates at sr.nos. 1 and 2 scored 452 marks each with high standard and low standard respectively and they were included in the S.C. general category. It appears that the S.C. candidates at sr.nos. 6 to 32 who scored more marks than the applicant and some of them passed the examination with high standard, were not included in the select list. The candidates who scored more marks than the applicant, are total 27 in number and considering this aspect of the matter, we do not see any merit in the contention of the applicant that had all S.C. candidates who scored 475 and more marks had been included in the open general category the applicant would have been selected in the S.C. category.

16. In view of these entire facts, we do not see any merit in this application. In the result, the following order –

**ORDER**

The O.A. stands dismissed with no order as to costs.

**(A.D. Karanjkar)  
Member(J).**

**(Shree Bhagwan)  
Member (A).**

**Dated :- 18/02/2019.**

\*dnk.