

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**BENCH AT NAGPUR****ORIGINAL APPLICATION NO. 22 OF 2022 (D.B.)**

Ms. Pushpa Ramkaran Yadav,
Aged about 28 years, Occ. Nil,
R/o Plot No. 1082, Buddha Nagar,
Near Gurudwara, Kamptee Road,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai- 400 032.
- 2) The Additional Director General of Police,
Training and Special Force,
Maharashtra State, Mumbai.
- 3) The Superintendent of Police,
Nagpur Rural, Dist. Nagpur.
- 4) The Director, Mahapariksha,
Maharashtra Information Technology
Corporation Ltd. (MAHA IT), 514, 5th
Floor, Mantralaya, Mumbai- 32.

Respondents

WITH

ORIGINAL APPLICATION NO. 308 OF 2022 (D.B.)

Ms. Puja Rajan Gharde,
Aged about 28 years, Occ. Nil,
R/o Plot No. 296, Indira Mata Nagar,
Near Masjid Ahamad Raza, Binaki Layout,
Ambedkar Marg, Nagpur-440017.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai- 400 032.
- 2) The Additional Director General of Police,
Training and Special Force,
Maharashtra State, Mumbai.
- 3) The Commissioner of Police,
Nagpur City, Dist. Nagpur.
- 4) The Director, Mahapariksha,
Maharashtra Information Technology
Corporation Ltd. (MAHA IT), 514, 5th
Floor, Mantralaya, Mumbai- 32.

Respondents

ORIGINAL APPLICATION NO. 309 OF 2022 (D.B.)

Ms. Rekha D/o Wasudeo Ganjre,
Aged about 34 years, Occ. Nil,
R/o Ward No. 14, Matakhedhi Post,
Saoner, Tal. Saoner, Dist. Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai- 400 032.
- 2) The Additional Director General of Police,
Training and Special Force,
Maharashtra State, Mumbai.
- 3) The Commissioner of Police,
Nagpur Rural, Dist. Nagpur.
- 4) The Director, Mahapariksha,
Maharashtra Information Technology
Corporation Ltd. (MAHA IT), 514, 5th
Floor, Mantralaya, Mumbai- 32.

Respondents

ORIGINAL APPLICATION NO. 325 OF 2022 (D.B.)

Mrs. Priya W/o Ravindra Hate,
Aged about 33 years, Occ. Nil,
R/o Krushananarpan, Behind Rajni,
Mangalam, Reosa, Reosa, Amravati,

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai- 400 032.
- 2) The Additional Director General of Police,
Training and Special Force,
Maharashtra State, Mumbai.
- 3) The Commissioner of Police,
Nagpur City, Dist. Nagpur.
- 4) The Director, Mahapariksha,
Maharashtra Information Technology
Corporation Ltd. (MAHA IT), 514, 5th
Floor, Mantralaya, Mumbai- 32.

Respondents

Shri A.B.Moon, Id. counsel for the applicants.

Shri S.A.Deo, Id. C.P.O. for the Respondents.

**Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman,
& Hon'ble Shri M.A.Lovekar, Member (J).**

JUDGMENT

PER : MEMBER (J)

(Delivered on this 31th day of March, 2022)

These applications are heard finally by consent of Shri Moon,
Id. counsel for the applicants and Shri Deo, Id. C.P.O. for the respondents.

2. Common point for determination in these applications is whether the applicants, by submitting more than one application each for the post of Police Constable Driver on the establishment of Police Commissioner as well as Police Superintendent committed breach of a condition stipulated in Clause 11.10 of the advertisement dated 30.11.2019 and have thereby incurred disqualification.

3. The applicants in O.A. Nos. 22/2022, 308/2022 and 309/2022 submitted applications for the post of Police Constable Driver on the establishment of Commissioner of Police, Nagpur as well as Superintendent of Police, Nagpur (Rural). The applicant in O.A. No. 325/2022 applied for the post of Police Constable Driver on the establishments of Commissioner of Police, Nagpur City, Commissioner of Police, Amravati and Superintendent of Police, Akola.

4. It is not in dispute that all the applicants passed written test and driving test and they were called for physical test. Barring the applicant in O.A. No. 22/2022 the applicants in the remaining O.As. have contended that their result of physical test was also declared.

5. Clause 11.10 of the advertisement dated 30.11.2019 which has given rise to these O.As. is as under:-

"11-10 menokjkl ¼1½ftYgk iksyhl nykrhy iksyhl vk; Ør @ iksyhl v/kh{k;d ; k; k vkLFki uojhy iksyhl f'ki kbZpkyd] ¼2½ ylgexZ iksyhl nykrhy iksyhl f'ki kbZ pkyd o ¼3½ jkT; jk[kho iksyhl cykrhy l 'kL= iksyhl f'ki kbZ inkl kBh , d v'kk , dwk inka kBh rhu vkonu vtZ l knj djrk ; rhy A efgyk

**menokluk jkT; jk[kho isyhl cykrhy I 'kL= isyhl f'ki kbZ inkl kBh vkosu vtZ
I knj djrk ; skj ulghA**

, dkp isyhl ?kVdkrhy , dkp inkl kBh , dki §kk tkLr vtZl knj djrk ; skj ukghr
¼mnkgj .kkFk& isyhl vk; Ør] cglUepbz ; kØ; k vLFFki uoJhy isyhl f'ki kbZ pkyd
inkl kBh , dki §kk tkLr vtZHKjrk ; skj ukghr fdok jkT; jk[kho isyhl cykrhy
, dkp xVkr I 'kL= isyhl f'ki kbZ inkl kBh , dki §kk tkLr vtZHKjrk ; skj ukghr ½-
tj , dk menokjkus , dkp isyhl ?kVdkrhy , dkp inkl kBh , dki §kk vf/kd vtZ
dysysvkgR- vl svk<Gu vkysrj v'kh menokjkh menokjhjnA dsh tkbz-
, dkp inkl kBh fofo/k isyhl ?kVdkr vkosu vtZl knj djrk ; skj ukghr-"

6. For the sake of clarity we would divide clause 11.10 in the advertisement dated 30.11.2019 in following four parts:-

Part one refers to three posts – two of Police Constable Driver and one of Armed Police Constable in S.R.P.F. Out of two posts of Police Constable Driver one is jointly for the establishment of Police Commissioner and Police Superintendent. Presence of "/" between the description of these two separate establishments in the advertisement would strengthen this conclusion. Further conclusion which would follow, having regard to two prohibitions contained in this clause to which we will advert later on, is that the candidate had to choose between these two establishments before making an application for the post of Police Constable Driver and he could not make an application for the post of Police Constable Driver on both these establishments. The other post of Police Constable Driver was on the establishment of

Railway Police. The remaining and the third post was of Armed Police Constable in S.R.P.F.. Thus, in all, there were three distinct, separate posts for four distinct units. Mention of four separate units and three separate posts would also show that the candidates had to choose between the establishments of Police Commissioner and Police Superintendent before making an application for the post of Police Constable Driver. Had liberty to simultaneously apply for this post on the establishments of Police Commissioner as well as Police Superintendent both been given, there would have been four distinct, separate posts and not three. Thus, this part is enabling, rather than prohibitory, in nature.

Part 2 refers to the first prohibition. It lays down that for one post in a unit a candidate could not file more than one application. As per Rule 2(g) of the Maharashtra Assistant Police Sub Inspector Driver, Police Head Constable Driver, Police Naik Driver and Police Constable Driver (Recruitment) Rules 2019 "Police Unit" means office of the Commissioner of Police / Superintendent of Police.

Part 3 refers to the manner in which the first prohibition mentioned about shall operate, and the consequence of cancellation of candidature which breach thereof may entail.

Part 4 refers to the second prohibition. It lays down that it would not be permissible to make an application for the same post in more than one unit.

Thus, part 1 of Clause 11.10 is enabling in nature, parts 2 and 4 are prohibitory in nature and part 3 is clarificatory in nature.

7. Record shows that with regard to what the Clause 11.10 expressly prohibited there was no certainty in the mind of Unit Heads. Therefore, they sought guidance from their superiors. To set their doubts at rest respondent no. 2 issued a Circular dated - __-10-2021. In this Circular Clause 11.10 of advertisement dated 30.11.2019 was reproduced. In addition, it was stated-

“mijDr iæk.ksrjrm vl rkauk pkyd i kyhl f'ki kbZ i nkl kBh vkosu vtZ dSY; k 2897 menokjauh , dki s'kk vf/kd ?kVdka vkosu vtZ I knj dSYk vkgs R; kph ; knh ; kl kcr tMMyh vkgs

Rkjh mijDr rjrmP; k vk/kjstj rsmenokj v'ire fuoM ; knhe/; si k= gkr vl Y; kl R; kP; k fu; DR; k rkrdkG jna dj.; kr ; kos o dSY; k dk; Bkghckcrpk vuqkyu vgoky ; k dk; kzy; kl I knj djkok-”

8. On 27.12.2021 respondent no. 2 issued a Circular stating therein –

“2- dkgh ?kVd iæq'kkauh , dk i s'kk vf/kd ?kVd dk; kzy; kl kBh vtZ dj.kk&; k menokj kP; k ckr 'kdk mi fLFkr dSY; k vkgs- R; kckcr vl sdGfo.; kr ; rs dh gsQDr nq & ; k VII; krhy Hkjr h ifdz B; k tkfgjkrhl kBh ykxwvkgsR; kr i kyhl f'ki kbZpkyd vkf.k jkT; jk[kho i kyhl cy ; k Hkjr h ifdz pk I ekos k vkgs , dk i s'kk vf/kd ?kVd iæq'kka; k vLFki usj vtZdj.kk&; k menokjkauk vi k= dj.; kckcrpk fu.kz gk i fgY; k VII; krhy Hkjr h ifdz s kBh ykxwjkg.kkj ukgh- I njgwi zdj.kh I æf/kr vendor ; kP; k dMuu menokj kph ekfgrh i jr r i kl .; kr ; koh-

3- नद & k VII; krhy Hkjr h ifdz r ts menokj ik= >kys vl rhy R; k l ol
 menokj k d Mu ckMM d: u ?ks; kr ; kok tj R; kuh , dk i {kk vf/kd ?kV dkd kBh vtZ
 dyk vl y rj R; kph fuoM jn d j.; kr ; bly-"

9. It is a matter of record that there were two phases of recruitment process of Police Constables, 2019. The first phase began with the advertisement dated 03.09.2019 and the second phase began with the advertisement dated 30.11.2019. In both these advertisements Clause 11.10 finds place. Clause 11.10 in the advertisement dated 30.11.2019 replicates Clause 11.10 in the advertisement dated 03.09.2019 except the last sentence (part 4 mentioned above) which creates an additional prohibition on making an application for the same post in more than one unit. The only prohibition contained in the advertisement dated 03.09.2019 was in respect of making more than one application for the same post in a unit.

10. Shri Moon, Id. counsel for the applicants invited our attention to para no. 2 of Circular dated 27.12.2021 issued by respondent no. 2. In this para respondent no. 2 clarified that only the candidates belonging to the first phase who had applied for a post in more than one unit were not to incur disqualification on that count but the candidates belonging to the second phase who had done so were to incur such disqualification. According to the Advocate Shri Moon this is patently discriminatory and arbitrary and hence the applicants who participated

in the second phase (by responding to the advertisement dated 30.11.2019) could not be deprived of relaxation which was extended to the candidates who had participated in the first phase. To counter this submission Id. C.P.O. founded his argument on what is pleaded in para no. 8 of reply of respondent no. 3. Said para reads:-

"8. It is submitted that, after the publication of the first advertisement dated 03.09.2019 it was realized by the respondents that, many candidates had applied for the same post in more than one unit. Hence to avoid the duplicity and to fill all the vacancies it was decided to amend the next advertisement. Some of the candidates qualify for more than one place and later resign after completion of process and the said action on the part of the candidates creates delay and confusion in recruitment process. To avoid all the confusion and the delay in the recruitment process and to give chance to maximum number of candidates a conscious decision was taken to insert the last line in para 11.10 of the advertisement. In spite of that various complaints were received by the D.G. office that the various candidates have applied for same post in more than one unit. Therefore, the D.G. office vide communication dated 01.10.2021 have asked all the units to cancel the candidature of all the candidates who have applied

*for same post in more than one unit. A copy of which is filed herewith and marked as **Annexure-R-1.**"*

According to Id. C.P.O. this second prohibition incorporated in the advertisement dated 30.11.2019 (part 4 mentioned above) would non-suit the applicants, said prohibition was not there in the advertisement dated 03.09.2019, this was the main reason why disqualification based on the said contingency was not made applicable to the candidates who had participated in the first phase, the candidates who had participated in the second phase were, on the other hand, made aware that making applications for the same post in more than one unit could entail disqualification and for these reasons present applicants who had participated in the second phase cannot claim relaxation which was extended to the candidates who had participated in the first phase.

11. To properly appreciate rival contentions set out hereinabove it would be necessary to pinpoint in what respect nature of Clause 11.10 was altered by incorporating the second prohibition.

12. For the sake of clarity we sub-divided Clause 11.10 in the advertisement dated 30.11.2019 in four parts. Part 1 refers to four distinct units and three distinct posts. This para enables a candidate to make as many as three applications – one each for a post. Part 2 creates the first prohibition which places an embargo on a candidate making more than one application for a post in a unit. Part 3 is an illustration

which explains the first prohibition (which is in part 2). Part 4 creates an additional, second prohibition stating that for the same post a candidate could not make an application in more than one unit. It may be reiterated that this additional, second prohibition was not there in the first phase of recruitment which commenced with the publication of advertisement dated 03.09.2019.

13. Question which goes the root of the matters is whether Clause 11.10 of the advertisement dated 30.11.2019 is unambiguous to put the candidates applying in response to the same on guard as to what was permitted and what was prohibited. As mentioned earlier, part 1 of Clause 11.10 enables a candidate to submit three applications for three distinct, separate posts in 4 units which include two posts of Police Constable Driver – 1 each on the establishment of Police Commissioner/ Police Superintendent, and Railway Police. The third post is of Armed Police Constable under S.R.P.F.. When parts 1 & 4 of Clause 11.10 are juxtaposed, it becomes apparent that these two parts are irreconcilable. Clause 11.10 read as a whole, creates confusion. By extending benefit of relaxation to the candidates who had participated in the first phase, the respondent department tacitly conceded that Clause 11.10 of the advertisement dated 03.11.2019 certainly left something to be desired in terms of clarity and there was a loophole which needed to be plugged. This was sought to be remedied by incorporating the second prohibition

in Clause 11.10. As it transpires, mere addition of the second prohibition in Clause 11.10 was not sufficient to dispel confusion. To make the change workable and fruitful part 1 of the Clause was also required to be amended so that these two parts could be reconciled with each other and could stand together. It may be stated at the cost of repetition that part 1 of Clause 11.10 enables a candidate to apply for more than one post under different units and part 4 prohibits a candidate from applying for the same post in more than one unit.

14. Ld. C.P.O. relied on the Judgment of Hon'ble Apex Court **"Madras Institute of Development Studies and Another Vs. K. Sivasubramaniyan & Ors. (2016) 1 SCC, 454."** In this case it is held :-

"13. Be that as it may, the respondent, without raising any objection to the alleged variations in the contents of the advertisement and the Rules, submitted his application and participated in the selection process by appearing before the Committee of experts. It was only after he was not selected for appointment that he turned around and challenged the very selection process. Curiously enough, in the writ petition the only relief sought for is to quash the order of appointment without seeking any relief as regards his candidature and entitlement to the said post.

14. The question as to whether a person who consciously takes part in the process of selection can turn around and question the method of selection is no longer res integra."

(Emphasis supplied)

This rulings will not apply to the facts of the matters in hand as would become apparent from the main relief claimed in these applications. Main prayer made in these applications is:-

"1. Quash and set aside the letter dated 29.10.2021, issued by the respondent no. 2, whereby, the respondent no. 2 has directed the respondent no. 3 to cancel/ reject the candidature of the candidates who are qualifying in the final select list, with respect to the applicant only, being absolutely unreasonable and illegal in view of the factual and legal submissions made above."

It may be reiterated that the applicants, like the candidates who had participated in the first phase, are found entitled to relaxation from incurring disqualification because the advertisement to which they responded contains parts (1 & 4) which are irreconcilable. Under such circumstances not extending the relaxation to them which was extended to the candidates who had participated in the first phase, would be arbitrary. On account of lack of clarity in the advertisement the

applicants would be entitled to relief of declaration that they have not incurred disqualification.

15. The applicants have placed on record copy of letter dated 20.04.2016. Said letter states :-

“mijkdR l mHkKZ/ku i=kUo; si ksyhl vk; Ør] ukxiij ; kØ; k vLFFki uoijhy I u 2014 l kBh ?ks; kr vkyl; k i ksyhl Hkjrhe/; smenokjkuh , dki sLk tLr ?KVdkr vkonu vtZ HkjY; keGs i ksyhl vk; Ør] ukxiij ; kauh R; kauk vik= Bjouu R; kph fu; Ørh jna dj.; kr vkyh gsrk- v'kk menokjkuh R; kauk i Øgk l Ør l kekou ?ks; kckcr fuonu l knj dsygsr l njgwmenokjkuh 'kkl ukul mHkKZ/ku fn- 17-12-2015 jksthp; k i=kUo; sl Ør ?ks; kckcrpk fu.kZ ?ks; kr vkyk gsrk-

2- mijkdR fu.kZ kuq kj i ksyhl Hkjrhl I u 2014 e/khy brj menokjkuh Mugh i ksyhl vk; Ør] ukxiij 'kgj ; khy menokjka ek.kl Ør ?ks; kckcr fourh vtZ 'kkl ukl i klr >kys vkgr- R; kuq kj i ksyhl vk; Ør] ukxiij 'kgj ; kØ; k vLFFki uoijhy menokjkuh 'kkl u l Ør l kekou ?ks; kckcr ?kry; k fu.kZ kØ; k /krhbj i ksyhl Hkjrhl & 2014 e/khy brj ?KVdkrhy T; k menokjkuh , dki sLk tLr ?KVdkr vkonu vtZ Hkjysys vkgr- v'kk menokjkuh 'kkl u l Ør l kekou ?ks; kckcrpk i Lrko 'kkl ukl l knj dj.; kr vkyk gsrk- l njgwi Lrkokl 'kkl ukusekU; rk fnyh vkgs

3- i ksyhl Hkjrhl I u 2014 e/khy T; k menokjkuh , dki sLk tLr ?KVdkr vkonu vtZHkjY; keGsR; kauk vik= Bjouu R; kph fu; Ørh jna dj.; kr vkyh vkgr v'kk i ksyhl Hkjrhl I u 2014 e/khy menokjkuh i ksyhl f'ki kbzi nkoj fu; Ørh ns; kr ; koh- rRI adkhp vkgo ky menokjkuh; k ekfgrhl g 'kkl ukl l knj djkok-”

16. It was argued by Id. C.P.O. that in the advertisement a toll-free number was given, had the applicants contacted on this number their queries would have been answered and confusions allayed but

since they did not avail this avenue they cannot be allowed to take benefit of what they themselves failed, omitted to do. We have referred to the wording of Clause 11.10. Two distinct limbs of this Clause are mutually exclusive. This being the case it was primarily responsibility of the Respondent Department to draft the Clause in a manner easily comprehensible to the aspirants. For this reason aforesaid submission cannot be accepted.

17. Since the job of clearing ambiguity which had crept in the advertisement dated 03.09.2019 was only half done by incorporating part 4 in Clause 11.10 in advertisement dated 30.11.2019 by way of the second prohibition, the applicants who have participated in the second phase cannot be deprived of the same relaxation which was extended to those who had participated in the first phase of recruitment. As a result, we hold that the applicants cannot be held to have incurred disqualification on account of making more than one application for the same post in more than one unit. The respondents shall consider their candidature on its own merits and in accordance with Law. The applications are allowed in these terms with no order as to costs.

(M.A.Lovekar)
Member(J)

(Shree Bhagwan)
Vice Chairman

aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : A.P.Srivastava
Court Name : Court of Hon'ble Vice-Chairman and
Hon'ble Member (J).

Judgment signed on : 31/03/2022.
and pronounced on

Uploaded on : 01/04/2022.