

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,****NAGPUR BENCH, NAGPUR****ORIGINAL APPLICATION NO.99/2009.****(S.B.)**

1. Amardeep Ramesh Rao Wasankar,  
Aged about 29 years,  
Occ-Service,  
R/o Forest Colony, Akoli Road, Sai Nagar,.  
Amravati.
2. Ku. Shobna d/o Devanandji Wasnik,  
Aged about 24 years, Occ-Service,  
R/o Fezarpura, Amravati.

**Applicants.****-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-32.
2. The Dy. Director General of Police (Admn.),  
Police Headquarters, Mumbai.
3. The Special Inspector General of Police,  
Amravati Division, Amravati.
4. The Superintendent of Police (Rural),  
Amravati Division, Amravati.

**Respondents****ORIGINAL APPLICATION NO.452/2009.**

Archana Makhram Chauhan,  
Aged about 27 years,  
Occ-Service,  
R/o Rly. Police Quarters, Khamgaon,  
Distt. Buldhana.

**Applicant.****-Versus-**

1. The State of Maharashtra,

Through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-32.

2. The Special Inspector General of Police,  
Amravati Division, Amravati.
3. The Superintendent of Police,  
Buldhana.

**Respondents**

**ORIGINAL APPLICATION NO.454/2009.**

Sheela Bhagwan Jadhav,  
Aged about 27 years,  
Occ-Service,  
R/o Niwas Ward No.2, Bhimnagar, Buldhana,  
Distt. Buldhana.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-32.
2. The Special Inspector General of Police,  
Amravati Division, Amravati.
3. The Superintendent of Police,  
Buldhana.

**Respondents**

**ORIGINAL APPLICATION NO.455/2009.**

Anita Laxman Bharambe  
Aged about 32 years,  
Occ-Service,  
R/o C/o V.K. Patil Indian Technical,  
Near Hanuman Mandir, Sunderkhed, Buldhana,  
Distt. Buldhana.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-32.
2. The Special Inspector General of Police,  
Amravati Division, Amravati.
3. The Superintendent of Police,  
Buldhana.

**Respondents**

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**ORIGINAL APPLICATION NO.542/2009.**

Arvind Vitthalrao Thakre,  
Aged about 30 years,  
Occ-Service,  
R/o Yavatmal.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-32.
2. The Special Inspector General of Police,  
Amravati Division, Amravati.
3. The Superintendent of Police,  
Yavatmal.

**Respondents**

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**ORIGINAL APPLICATION NO.583/2009.**

1. Ku. Arti d/o Raviprasad Mishra,  
Aged about 27 years,  
Occ-Service,  
R/o Yavatmal.
2. Gajanan Vitthalrao Injalkar,  
Aged about 26 yrs, Occ-Service, At & Post-Salod,  
Dist. Yavatmal.

**Applicants.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-32.
2. The Special Inspector General of Police,  
Amravati Division, Amravati.
3. The Superintendent of Police,  
Yavatmal.

**Respondents****ORIGINAL APPLICATION NO.703/2009.**

Amol Ramesh Mahaley,  
Aged about 28 years,  
Occ-Service,  
R/o Waghpal Tekdi, Yavatmal.

**Applicant.****-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-32.
2. The Special Inspector General of Police,  
Amravati Division, Amravati.
3. The Superintendent of Police,  
Yavatmal.

**Respondents****ORIGINAL APPLICATION NO.704/2009.**

Shailesh Wasudeorao Dhone,  
Aged about 33 years,  
Occ-Service,  
R/o Talao Chowk,  
In front of Pawar House, Yavatmal.

**Applicant.****-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-32.
2. The Special Inspector General of Police,  
Amravati Division, Amravati.
3. The Superintendent of Police,  
Yavatmal.

**Respondents**

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**ORIGINAL APPLICATION NO.705/2009.**

Nilesh Dnyaneshwar Pakhale,  
Aged about 27 years,  
Occ-Service,  
R/o City Police Line,  
Netaji Chowk, Yavatmal.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-32.
2. The Special Inspector General of Police,  
Amravati Division, Amravati.
3. The Superintendent of Police,  
Yavatmal.

**Respondents**

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**ORIGINAL APPLICATION NO.706/2009.**

Santosh Dashrath Kanake,  
Aged about 29 years,  
Occ-Service,  
R/o Pimpalshenda, Po. Mouda,  
Tehsil-Kelapur, Distt. Yavatmal.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-32.
2. The Special Inspector General of Police,  
Amravati Division, Amravati.
3. The Superintendent of Police,  
Yavatmal.

**Respondents**

**ORIGINAL APPLICATION NO.543/2009.**

Amit Omprakash Joshi,  
Aged about 27 years,  
Occ-Service,  
R/o 159, Pimpalgaon Road,  
Yavatmal.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-32.
2. The Special Inspector General of Police,  
Amravati Division, Amravati.
3. The Superintendent of Police,  
Yavatmal.

**Respondents**

Shri S.P. Palshikar, the learned counsel for all the applicants.  
Shri P.N. Warjekar, the Ld. P.O. for all the respondents.

**ORIGINAL APPLICATION NO.658/2009.**

Rajesh Wamanrao Malkhede,  
Aged about 30 years,  
Occ-Service,  
R/o Sarnil Nagar, Yavatmal.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-32.
2. The Superintendent of Police,  
Yavatmal.

**Respondents**

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Shri S.S.Ghate, the learned counsel for the applicant is absent.  
Shri M.I. Khan, the Ld. P.O. for the respondents.

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**Coram:- Shri J.D. Kulkarni,  
Vice-Chairman (J).**

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### **JUDGMENT**

(Delivered on this 30<sup>th</sup> of November 2017).

Heard Shri S.P. Palshikar, the learned counsel for the applicants and Shri P.N. Warjekar, the learned P.O. for the respondents in O.A. Nos. 99, 452, 454, 455, 542, 543, 583, 703, 704, 705 and 706 of 2009. None appeared for the applicant in O.A. No.658/2009. Heard Shri M.I. Khan, the learned P.O. for the respondents in O.A. No.658/2009.

2. All these applications are being disposed of by this common order, since the subject matter of these applications and reliefs claimed is the same.

3. The applicants were appointed as Police Constables vide order dated 23.2.2005 and were posted at various places in Yavatmal District. They were working in the office of the Superintendent of Police, Yavatmal (R.3). Vide communication dated 21.5.2005, the options were called for filling the posts of Clerk-cum-Typists and Peons, since number of posts in those cadre were vacant. The respective applicants gave their options for working on the post of Clerk-cum-Typists in response to the said communication and vide appointment order dated 30.5.2008, the applicants were appointed as Clerk-cum-Typists from the posts of Police Constables on certain conditions. One of the conditions in the appointment order was that once the employee is appointed as Clerk-cum-Typist, he will have no lien over the post of Police Constable and his seniority will be taken into consideration in the cadre of Clerk-cum-Typist from the date on which he is appointed in that post. These two specific conditions enumerated in the order of appointment of the applicants are as under:-

१. ढ्यांची ढ्रामक सेवेत ढनयुती झायामुळे ढ्यांचा पोलस ढशापाई या पदावर कोणताहू ढधारणाढधकार (lien) राहणार नाहू
२. ढ्यांची ढयेठता ते अमरावती पढरेढात जिढहा ढ्रामक संवगाढ ढयाढवशी ढ्यांढया नेमणुकढया ढठकाणी ढ्रामक ढंकलेखक या पदावर हजार होईल ढ्यावेळी अमरावती पढरेढा जिढहा ढ्रामक संवगाढ जे ढ्रामक ढंकलेखक नेमणुकढस असतील ढया सवाढे खालढ लावढयात येईल.+



4. As already stated as per order dated 30<sup>th</sup> June 2008, the applicants were appointed in the cadre of Clerk-cum-Typists and since then they are working as such. However, on 23.7.2009, respondent No.3 i.e. Superintendent of Police, Yavatmal issued impugned order whereby it was stated that the order of appointment of the applicants as Police Constable is against the provisions of law and as such was invalid. The applicants were, therefore, again posted as Police Constables at their respective places as mentioned in their applications. The learned counsel for the applicants submits that once the applicants are posted as Clerk-cum-Typists, they have lost their seniority as well as lien over the post of Police Constables and they cannot be reposted again as Police Constables. The applicants may lose their seniority in the Police Constablesqcadre, since they were appointed as Clerk-cum-Typists. The applicants, vide their respective applications have claimed that the order dated 23.7.2009 whereby their appointment as Clerk-cum-Typists has been cancelled, be quashed and set aside, being illegal and bad in law and it be declared that the applicants still continue to work on the post of Clerk-cum-Typists where they were working earlier.

5. In all the O.As, respondent Nos. 2 and 3 have filed their affidavits-in-reply. It is admitted that the applicants were initially appointed as Police Constables and as per their options, they were

again appointed as Clerk-cum-Typists. It is, however, denied that they cannot be re-posted as Police Constables. It is stated that the appointing authority in respect of the applicants as Clerk-cum-Typists was respondent No.2 i.e. the Special Inspector General of Police, Amravati and without his consent, the applicants should not have been appointed as Clerk-cum-Typists by respondent No.3 i.e. S.P., Yavatmal and, therefore, the order of appointment of the applicants was *void ab initio* and when this fact came to the knowledge of respondent No.2, the respondent No.2 issued directions and thereby cancelled the appointments orders of the applicants as Clerk-cum-Typists.

6. The learned counsel for the applicants submits that the applicants have given consent for being appointed as Clerk-cum-Typists as their options were called when they were appointed by order dated 30.6.2008. The appointment order was issued by respondent No.3 i.e. S.P., Yavatmal and the said order clearly states that once the applicants are appointed as Clerk-cum-Typists, their lien on the post of Police Constable will cease and, therefore, the applicants cannot be re-posted or re-appointed as Police Constable. The learned P.O. has invited my attention to the instructions in this regard and various circulars. The circulars are in fact filed by the applicants themselves on record. Annexure A-4 dated 2.4.2004, pages 24 and 25 (both inclusive) shows that the options were called for transferring various cadre employees to

the clerical posts. The very introductory para of the said letter shows that it was under the jurisdiction of Special Inspector General of Police to call for such options to pass necessary orders. In view of this circular, instructions were also issued vide letter dated 6.8.2008 by the Additional Director General of Police (Administration), Mumbai. The said letter is at Annexure A-5 at pages 26 & 27. In para 2 of the said circular, it was specifically mentioned thus:-

स्थान पोलिस जन्यमावल १९७९, भाग-१ जन्यम ६१ (५) मध्ये पोलिस वभागातील लष्मक वग आस्थापना ह कायकार शाखांन पूणषणे भान आहे. आण संबंघत पोलिस उपमहाजण क यांया पूव परवानगीशवाय यांची एका संवगातून दुसऱ्यात बदल क नये, ह तरतूद ामुयाने लष्मकांया बलबातची तरतूद आहे. यामुळे पोलिसांमधून लष्मक पदामये बदया करणे शासकय ाटक्रोनातून योय ठरत नाह. पोलिस जन्यमावल १९९९, भाग-१, पऱशाट-६ मधील जन्यम ३६ मध्ये अपवादात्मक िथीत कायकार सेवेतून लष्मक सेवेत आणी याया उलट पदोनया ऋवा बदलणे अधिकार पऱोय पोलिस उपमहाजण क यांना होते. या तरतुदनुसार एखाया ववत ाकरणी पोलिस शपाई पदावन लष्मक पदावर बदल करयाचे अधिकार वऱहत केले गेले. आता दोह पदांचे सेवावेश जन्यम व जवड आण ाण या बाबींया तरतुद वऱभान आहेत. आण या जन्यमांमध्ये एक-दुसऱ्याया संवगात बदल ऋवा बदलने जन्युतीया तरतुद नाह. तरह अशाकारे, सहा पदे भरणे ाहणजे अधिकारांचा गैरवापर ठरतो. अशा जन्युया करताना पोलिस शपायांवर शासनाने पोलिस ाण कात खचाकडे पूणतः दुल होते.+

7. From both these letters, it seems that the transfer from the post of Police Constable or any other post to the clerical cadre was to be made with consent of Special Inspector General of Police

(Administration), Amravati Range, Amravati. Thus even though the applicants have give options for transferring them from the post of Police Constable to the post of Clerk-cum-Typist, the respondent No.3 i.e. S.P., Yavatmal did not obtain approval of respondent No.2 i.e. the Special Inspector General of Police (Administration), Amravati Range, Amravati for such transfer and when this fact came to the knowledge of respondent No.3, the respondent No.2 issued impugned order dated 23.7.2009 whereby applicantsq appointment order to the post of Clerk-cum-Typist, from the post of Police Constable has been cancelled on the ground that it was void and illegal. There is nothing on record to show that, respondent No.3 alone was having any jurisdiction to convert or appoint the Police Constables as Clerk-cum-Typist and, therefore, respondent No.2 has rightly cancelled the order passed by respondent No.3, whereby the applicants were appointed as Clerk-cum-Typists.

8. The learned counsel for the applicants submits that the applicants have lost their seniority, since they have worked as Clerk-cum-Typist as per order dated 30<sup>th</sup> June 2008 till said order was cancelled on 23<sup>rd</sup> July 2009. Once the applicantsq order as Clerk-cum-Typist has been cancelled, fact remains that the applicant will be deemed to be working as Police Constables from the date of their respective appointment and, therefore, by no stretch of imagination, their seniority can be disturbed because of their appointment as Clerk-cum-

Typists. The respondent Nos. 2 and 3, therefore, are expected to maintain the seniority of the applicants on the post of Police Constables. The learned counsel for the applicants submits that the applicants are, at present, serving as Police Constables in view of impugned order of cancellation of their appointment as Clerk-cum-Typists. Thus, admittedly even today the applicants are working as Police Constables and their seniority in the cadre of Police Constables will have to be maintained from the date of their appointment, as if they are continuously working as Police Constables.

9. In view of discussion in foregoing paras, following order is passed:-

**ORDER**

- (i) The O.A. Nos. 99, 452, 454, 455, 542, 543, 583, 703, 704, 705 and 706 of 2009 and O.A. No.658 of 2009 are dismissed with no order as to costs.
- (ii) The respondents, however, are directed not to disturb the respective seniority of the applicants as Police Constables since the date of their appointment as Police Constables in the cadre of Police Constables.
- (iii) No order as to costs.

Dt. 30.11.2017.

(J.D.Kulkarni)  
Vice-Chairman(J)

pdg