

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.210 OF 2022

DISTRICT : SOLAPUR

Dattatray Tukaram Devkar,)
Aged : 25 years, Occ. Retired.)
Residing at Marapur,)
Tal. Mangalwedha, Dist. Solapur) **...Applicant**

Versus

1. State of Maharashtra,)
Through its Secretary,)
Home Department,)
Mantralaya, Mumbai 400 032)
2. Assistant Police Commissioner)
Solapur City, Dist. Solapur)
3. Additional Director General of Police)
Training and Special Squad,)
Maharashtra State, Mumbai.) **...Respondents**

Mr. Chintamani Bhangoji i/b. Mr. Hamid D. Mulla –
Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)
RESERVED ON : 11th October, 2022
PRONOUNCED ON: 30th November, 2022
PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard Mr. Chintamani Bhangoji i/b. Mr. Hamid D. Mulla, Learned Advocate for the Applicant and Ms. S.P. Manchekar, Learned Chief Presenting Officer for the Respondents.

2. The Applicant, an ex-serviceman challenges order dated 29.10.2019 passed by Respondent No.2, Assistant Police Commissioner, Solapur on the ground that the applicant has not completed the tenure of minimum five years service in the Military.

3. Applicant appeared for the written examination held on 07.10.2021 pursuant to the advertisement issued by the Respondent No.3 on 03.09.2019 for the post of Police Sepoy, Class-III in various Districts. He has filed this O.A. in the category of ex-servicemen in military and as per the requirement he has completed minimum service of 6 months in the Armed forces. Applicant successfully cleared the written examination conducted on 07.10.2021. He was called for the verification of documents and interview on 19.10.2021. However, at the time of verification Respondent No.2, Assistant Police Commissioner, Solapur City, District Solapur declared him ineligible for the appointment on the ground that the applicant has not completed minimum 5 years of service in the military. The said remark in writing was put on the eligibility document. Hence, the O.A. is filed with a prayer for directions to the Respondent that Applicant be declared as

eligible for appointment to the post of Police Sepoy, Group-C and the Respondents be directed to give him appointment to the said post.

4. Learned Advocate for the Applicant has submitted that the applicant had joined Military service on 29.06.2016. He had put in service of 1 ½ years. However his leg was fractured and therefore he was declared medically unfit thereafter. Learned Advocate relied on the discharge book of military service, wherein, he was enrolled on 29.06.2016 and he was declared unfit on 23.01.2018. Learned Advocate relied on Clause 16.2.4 of the advertisement dated 03.09.2019 wherein it is stated that experience of 6 months in the armed forces is stated as the requisite period of experience. He submits that the decision of Respondent no.2 to hold him ineligible for want of minimum 5 years service in armed forces is illegal and contrary to the said clause 16.2.4 of the said advertisement. Learned Advocate further relied on Clause 14.9 of the said advertisement, wherein, it is stated that if the candidate is found ineligible he will be removed from the selection process and no complaint would be considered from any candidate.

5. Learned Advocate further submits that the stand taken by the Respondent No.2 in the affidavit-in-reply dated 16.06.2022 filed through Ms. Pranjali Navanath Sonavane, working as Assistant Commissioner of Police(Control) in the office of Commissioner of Police, Solapur City that when the candidate was declared ineligible at the time of selection process provision was made available to register complaint made for such ineligible candidates on the point of ineligibility and such desk was available. But the applicant did not approach it. This point is not sustainable in view of clause 14.9 of the said advertisement. Relying on paragraph 9 of the said affidavit learned Advocate further pointed out that there is admission on the part of Respondent-State that such remark was made by concerned Clerk and it is accepted by concerned authority. Learned Advocate further submits that the Government has

taken other ground that he was not registered under the said Zilla Sainik Welfare Office. The said ground cannot be considered to hold Applicant ineligible.

6. Learned Advocate for the Applicant further relied on the following judgments :

1. **Gaurav Pradhan and Others Versus State of Rajasthan and Others reported in (2018) 11 SCC 352.**
2. **Mohinder Singh Gill & Anr Versus The Chief Election Commissioner, New Delhi & Ors. reported in 1978 AIR 851.**
3. **Macharla Suresh Versus State of Telangana reported in 2020 0 Supreme (Telangana) 318.**
4. **Shri Vishal Manohar Salokhe Versus The State of Maharashtra & Anr. O.A.No.150/2017 dated 23.01.2019.**

7. Learned C.P.O. points out that sufficient opportunity was given to the applicant to prefer the appeal. She further pointed out that on the day of verification of the documents repeated announcements were made at the time of verification of documents and physical test that appeal is available before higher authorities in case of any dispute. The place, where appeal could be filed, was also indicated by boards. She further submitted that the representative of Zilla Sainak Welfare was also present who informed that applicant's name was not registered in the office as well as employment register i.e. proof of ex-serviceman document of enrolment in employment register at Zilla Sainak Welfare Office, Solapur. She further stated that applicant ought to have registered his objection immediately in the Appeal register.

8. In the case of **Gaurav Pradhan (supra)**, the Hon'ble Supreme Court has held that the candidate belonging to unreserved category who could not be appointed due to migration of candidates belonging to

SC/ST/BC were clearly entitled for appointment which was denied to them on the basis of the above illegal interpretation put by the State. They also took note of the fact that the reserved category candidates who had taken benefit of age relaxation and were migrated on the unreserved category candidates are working for more than last five years. Therefore, the Hon'ble Supreme Court directed that,

“51.1. The appellant-writ petitioners who as per their merit were entitled to be appointed against unreserved vacancies which vacancies were filled up by migration of SC/ST/BC candidates, who had taken relaxation of age, should be given appointment on the posts. The State is directed to work out and issue appropriate orders for appointment of such candidates who were as per their merit belonging to general category candidates entitled for appointment, which exercise shall be completed within three months from the date, copy of this order is produced.

(2) 51.2. The State shall make appointments against the existing vacancies, if available, and in the event there are no vacancies available for the above candidates, the supernumerary posts may be created for adjustment of the appellants which supernumerary posts may be terminated as and when vacancies come into existence.”

In the case of **Mohinder Singh Gill (supra)** the Hon'ble Supreme Court has held that,

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.”

In the case of **Macharla Suresh (supra)** the Hon'ble Telangana High Court has directed the Respondents to consider the case of the Petitioner for appointment to the post of Sub-Inspector of Police or Reserve Sub-Inspector of Police by duly taking into account the fact that the Petitioner was possessing NCC'C' Certificate. The Hon'ble Telangana High Court opined that since there were no vacancies injustice was done to the Petitioners and the Government was directed to consider the case of the Petitioners for appointment to the post of Sub-Inspector of Police

or Reserve Sub-Inspector of Police in any of the existing vacancies or by creating supernumerary posts by following law laid down by the Hon'ble Supreme Court in case of **Gaurav Pradhan (supra)**.

In **O.A.No.150/2017** the Respondents were directed to create one supernumerary posts to accommodate the applicant who is held,

“Respondent No.2 should taken action against the non-deserving candidate as per the procedure laid down by law and place the applicant in the select list and act upon it and appoint him if necessary by creating a supernumerary post.”

9. We have carefully considered the submissions and findings of both the sides. It is important to note that the applicant failed to record his objection to his disqualification on that very day, although repeated announcements were being made on the loudspeaker on that day. On enquiry it is informed by the Assistant Commissioner of Police that the said recruitment procedure is over and no vacant posts are available. It is clear that the applicant is a bonafide employee of army and he has cleared written examination. At the time of documents verification before the authority and his candidature was rejected on the ground that he did not have five years experience in army. The five years experience was not required as per terms of the advertisement dated 03.09.2019. The Respondents clearly erred in stating that the applicant was disqualified on the ground of not having 5 years of experience which was not at all mentioned in the Rules. However, it is a fact that the applicant has filed this O.A. late i.e. on 19.01.2022. The merit list of the candidates was published on 22.01.2021 and the provisional select list of candidates was published on the website on 11.01.2022. It is further to be noted that the process of selection of Constable is a huge exercise where thousands of candidates apply. Hence, if there was a mistake made by one of the Officers, it was important that the candidate should have made representation to the seniority authority immediately to redress his grievance. At this stage we are unable to grant any relief to the applicant as he approached the Tribunal late.

10. In view of the above fact, O.A. stands dismissed as the candidate did not approach the Tribunal in time.

Sd/-

(Medha Gadgil)
Member (A)
30.11.2022

Sd/-

(Mridula Bhatkar, J.)
Chairperson
30.11.2022

Dictation taken by: S.G. Jawalkar.

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