

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATIONS NO.247 & 589 OF 2018

ORIGINAL APPLICATION NO.247 OF 2018

DISTRICT : MUMBAI

Shri Shashikant Vishnu Kawathekar,)
Age 34 years, Occ. Nil, R/at 402, Konkan Ratna,)
Konkan Nagar, Jogeshwari (E), Mumbai 400060)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary, Revenue & Forest Deptt.,)
Mantralaya, Mumbai 400032)
2. The District Collector, Mumbai Suburban,)
10th Floor, Administrative Building, Govt Colony,)
Bandra (E), Mumbai 400051)
3. The Sub Divisional Officer,)
Mumbai West Suburb, 9th Floor,)
Administrative Building, Government Colony,)
Bandra (E), Mumbai 400051)
4. The Tahsildar,)
Andheri, D.N. Nagar, Andheri W, Mumbai 58)
5. The Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400032)..Respondents

WITH**DISTRICT : MUMBAI**

Shri Hanuman Dattu Nagolkar,)
 Age 38 years, Occ. Nil, R/at Paradkar Chawl,)
 Malpa Dongri No.3, Mahakali Caves Road,)
 Andheri (E), Mumbai 400093)..Applicant

Versus

1. The State of Maharashtra,)
 Through the Secretary, Revenue & Forest Deptt.,)
 Mantralaya, Mumbai 400032)
2. The District Collector, Mumbai Suburban,)
 10th Floor, Administrative Building, Govt Colony,)
 Bandra (E), Mumbai 400051)
3. The Sub Divisional Officer,)
 Mumbai West Suburb, 9th Floor,)
 Administrative Building, Government Colony,)
 Bandra (E), Mumbai 400051)
4. The Tahsildar,)
 Andheri, D.N. Nagar, Andheri W, Mumbai 58)
5. The Secretary,)
 General Administration Department,)
 Mantralaya, Mumbai 400032)..Respondents

Shri K.R. Jagdale – Advocate for the Applicants

Shri A.J. Chougule – Presenting Officer for Respondents in OA.247/2018

Smt. Archana B.K. – Presenting Officer for Respondents in OA.589/2018

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

RESERVED ON : 17th July, 2023

PRONOUNCED ON: 24th July, 2023

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicants, Shri A.J. Chougule, learned Presenting Officer for Respondents in OA.247/2018 and Smt. Archana B.K., learned Presenting Officer for Respondents in OA.589/2018.

2. As the facts are similar, both the above OAs are disposed off by this common order.

3. The applicants challenge their non selection to the post of Kotwal under Tahsildar, Andheri, Mumbai. It is an unclassified post.

4. Pursuant to advertisement dated 27.8.2015 the applicant in OA No.247 of 2018 Shri Shashikant Vishnu Kawathekar applied under Open category. After qualifying in the written examination he was called for interview on 2.11.2015. The applicant was in the waiting list at Sr. No.1 in the Open category. Ld. Advocate for the applicant states that respondents rely on para 7 of the GR dated 19.10.2007. Ld. Advocate for the applicants submits that as a natural corollary the GR dated 27.6.2008 was in continuation of the earlier GR dated 19.10.2007. Para 3(6) of the

GR dated 27.6.2008 provides for consideration of vacant post in the recruitment arising due to retirement of the employee before 31st December of the recruitment year. He further argued that in the case of the applicant one Mr. S.L. Dhuri of the Open category had retired on 31.10.2015 and it was incumbent on the part of the respondents to consider the prospective vacancy occurring at the end of December, 2015 due to retirement of Mr. Dhuri in pursuance of GR dated 27.6.2008 and appointed the applicant as he was next in the waiting list to be appointed as Kotwal under the Open category. He further stated that respondent no.3 published final select list in which the applicant's name was mentioned at Sr. No.14 and it was mentioned that applicant was at Sr. No.3 in the waiting list in the Open category. Ld. Advocate submits that the respondent no.4 forwarded the proposal for appointing the applicant who was the eligible candidate from the waiting list on the post of Kotwal which had fallen vacant due to retirement of Mr. Dhuri.

5. As regards applicant in OA No.589 of 2018 Shri Hanuman Dattu Nagolkar he had applied for the post of Kotwal under OBC category. He has sought appointment in place of one Mr. Nachare who resigned on 17.11.2016.

6. Ld. Advocate for the applicants has relied on the judgment and order dated 13.1.2009 passed by the Hon'ble Supreme Court in Union of India & Ors. Vs. Shantiranjn Sarkar (Civil Appeal No.103 of 2009) and the judgment and order dated 22.1.2014 passed by the Hon'ble Bombay High Court in W.P. No.4257 of 2013 Mr. Udaysing Jalamsing Valvi Vs. The Secretary, District Selection Committee & Anr.

7. Ld. POs opposes both the OAs. In both the OAs replies are filed by Subhash Keshavrao Kakade, Tahsildar, Andheri dated 6.12.2018 & 3.12.2018 respectively. Ld. PO pointed out that waiting list for the said

advertisement expired on 3.11.2016 and as such the provisions of GR dated 19.10.2007 and 27.6.2008 cannot be made applicable since the post for which the applicants had applied is a non-classified post and does not come in the category of Group-C. The advertisement for the said post dated 27.8.2015 made a reference to the Collector's order dated 20.8.2014 for recruitment to the post of Kotwal and therefore posts vacant upto 20.8.2014 were considered for recruitment.

8. We have considered the arguments advanced by both the sides. It is clear that the post of Kotwal is an unclassified one. They are not paid monthly salary but are given a consolidated monthly honorarium. Hence, the provisions of GR dated 19.10.2007 and 27.6.2008 are not applicable in the present cases. Moreover, one year period of waiting list has already expired on 3.11.2016.

9. The facts in the judgments relied on by the Ld. Advocate for the applicants are different than in the present cases. Hence, they are not applicable in the present cases.

10. In view of the above facts and circumstances of the case, we do not find any merit in the OAs. Hence, both the Original Application are dismissed with no orders as to cost.

Sd/-

(Medha Gadgil)
Member (A)
24.7.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
24.7.2023

Dictation taken by: S.G. Jawalkar.