

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.551 OF 2020**

DISTRICT : SANGLI

1. Pratap R. Shinde,)
R/at A/P Bhavachi, Ai Niwas,)
Mane Patil Mala Road, Navin)
Navin Vasahat, Walwa, Sangli.)
2. Shri Laxman Sudam More)
Age : Adult, Occ. Student,)
R/at. 46, Kachare Galli, More Niwas))
Indira Nagar, Barshi Solapur)
3. Sujata Pandurang Rathod)
Age : Adult, Occ. Student,)
R/at. A/o. Kismat Chowk, Bhuyar)
Wada, Tal. Jat. Dist. Sangli)
4. Saipan Maula Nadaf,)
Age : Adult, Occ. Student,)
R/at. Pundiwadi, P19, Punadi,)
Ward No.3, Palus, Sangli)
5. Madhuri Uttam Patil,)
Age : Adult, Occ. Student,)
R/at. A/p. Limb, Tasgaon, Sangli)

6. Archana Suadhakarrao Thakare,)
Age : Adult, Occ. Student,)
R/at. A/p. Surwadi KH, Amravati)
Road, Tal. Teosa, Dist. Amravati)
7. Sarika Mama Gavade,)
Age : Adult, Occ. Student,)
R/at. A/p. Bhilawadi, CHQ,)
Padewadi Road, Mahavirnagar,)
Tal. Palus, Dist. Sangli)
8. Shirish Baban Sanap,)
Age : Adult, Occ. Student,)
R/at. Post Sinishi, Maldad Road,)
Sangamner, Ahmednagar)
9. Vinod Vasant Tawar,)
Age : Adult, Occ. Student,)
R/at. Post. Belwade, Kadegaon,)
Sangli.)
10. Tushar Tatoba Nikam,)
Age : Adult, Occ. Student,)
R/at. Nikamwadi, Tal. Post Panhala)
Nikam Lane, Panhala, Kolhapur)
11. Anil Dattatray Kaingade,)
Age : Adult, Occ. Student,)
R/at. Ganga Tara Colony, Kodoli,)
Yashwant, Panhala, Kolhapur.)
12. Prajyot Jayesh Patil,)
Age : 27 years, Occ. Student)
Tal. Alibag, Dist. Raigad.)

13. Roshan Dilip Deore,)
Age : Adult, Occ. Student,)
R/at. C/o. Prajyot Jayesh Patil,)
Karle, Post Khandale, Tal : Alibag,)
Dist. Raigad.)
14. Maruti Shivaji Thaware,)
Age : 30 years, Occ. Student,)
R/at. Khudus, A/p. Khudus,)
Tal. Malshiras, Dist. Solapur)...**Applicants**

Versus

1. The Secretary,)
Through the Maharashtra Public)
Service Commission,)
Floor 5-8, Cooperage, MTNL Bldg,)
M.K Road, Cooperage,)
Mumbai 400 021.)
2. The State of Maharashtra,)
Through the Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai.)...**Respondents**

Shri S.S Dere – Advocate for the Applicants

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

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

DATE : 04.03.2022

PER : Smt. Justice Mridula Bhatkar, Chairperson

J U D G M E N T

1. The applicants, who have who cleared and Preliminary and Main Examination for the post of Police Sub-Inspector, 2019 batch, have approached this Tribunal with a prayer that the Respondent no.1, M.P.S.C. be directed to call them for the physical test in place of candidates who remained absent for physical test so that ratio of 1:4 can be maintained.

2. The advertisement for the post of Police Sub Inspector (PSI) was issued by the Respondent, M.P.S.C on 9.1.2019. The applicants applied pursuant to the said advertisement. The Preliminary Examination was conducted on 24.3.2019. The result of the said examination was declared on 19.6.2019. The Main Examination was held on 28.7.2019 and 4.8.2019. The result of the Main Examination was declared on 23.2020. The applicants have cleared the Preliminary as well as the Main Examination as they have secured marks above the percentile fixed by the Respondent, M.P.S.C. For the physical test and interview which were to commence thereafter, the M.P.S.C. is required to call the successful candidates by maintaining the ratio of 1:4 of the number of posts. The applicants were not called for the physical test barring the long span from November, 2021 till February, 2022. The applicants were not called for the physical test because the applicant could not reach up to the list of the candidates for physical test as per the ratio 1:4. Hence this present Original Application is filed.

3. Learned counsel for the applicants Mr. Dere, submitted that the applicants have been preparing for the examination for the

post of P.S.I. since 3-4 years and they have successfully cleared the Preliminary and Main Examination having scored more percentile fixed by the M.P.S.C. However, the candidates were not called for the physical test because their names were below the ratio of 1:4. Learned counsel submitted that for physical test out of 2087 selected candidates, 811 remained absent and thus 1276 candidates appeared. Learned counsel for the applicants substantiated his arguments on the basis of the short affidavit in reply dated 3rd March, 2022 filed by Dilip A. Waghe, Under Secretary in the office of the Secretary, M.P.S.C. Learned counsel for the applicant relied and pointed out The Maharashtra Public Service Commission Rules of Procedure, 2014 (hereinafter referred to as 'Rules of Procedure, 2014' for the sake of brevity) dated 16th May, 2014, wherein how much ratio of the candidates required to be maintained at the time of interview and physical test, is mentioned. Sub rule (viii) of Rule 8 of the Rules of Procedure, 2014 is reproduced below:-

“8. Recruitment based on Competitive Examination:-

.....
*(viii) For certain recruitment, the physical test may have to be held. Passing the physical test in accordance with the scheme shall be obligatory. Where such physical test is to be conducted, the number of candidates shortlisted for physical test, shall be **four times** the number of vacancies. The candidates who do not pass the physical test shall not be called for the interview.”*

4. Learned counsel for the applicants relied on some portion of sub rule (vi) of Rule 8, wherein the total number of candidates to be called for interview for a category shall not exceed three times the number of vacancies reserved for that particular category is mentioned. Learned counsel for the applicants pointed out that sub rule (viii) is worded differently wherein it is stated that the number of candidates short listed for the physical test shall be four

time of the number of vacancies. Thus, it is not worded negatively putting strict cap like the number of candidates to be called for the interview, i.e. three. Learned counsel for the applicants relied on para 6.12 of his Original Application, wherein he has given the chart of the facts and figures of the candidates who were found eligible for the physical test and interview for the post of P.S.I. and also the candidates who remained absent for the physical test and interview in the preceding three years from 2016, 2017 and 2018. The said chart is reproduced below:-

| Year of Examination | The candidates eligible for physical test and interview | The candidate remain absent for physical test and interview. |
|---------------------|---|--|
| 2016 | 3085 | 540 |
| 2017 | 2763 | 1014 |
| 2018 | 1659 | 571 |

Thus, in the process of selection of 2019 examination also large number of candidates, i.e. 811 remained absent for the physical test. Thus, the ratio of 1:4 is not fulfilled, and has gone down in view of the absence of large number of the candidates. Thus, the candidates have fundamental right under Article 16 of the Constitution of India to have equality in opportunity in public employment. 811 candidates remained absent, and therefore, there is a place of 811 candidates who are qualified above the percentile, but whose names could not be covered in the list when the ratio of 1:4 was maintained. Thus, there is injustice caused to the applicants who have rightful claim to be called for physical test in view of the absence and the ratio is incomplete.

5. Learned counsel for the applicants further submitted that the case of the applicants stand on a special footing as they have filed this Original Application on 5.10.2020, much before the number of absenteeism of the candidates for physical test was

available. Learned counsel for the applicants submitted that the Respondent no.1, M.P.S.C provides one more opportunity to the candidates who remained absent on medical grounds and on a particular date by scheduling the physical test for them. The present applicants are 14 in number who are to be called for the physical test and if they clear the same, they be called for interview along with those candidates who are given the benefit of medical extension. Learned counsel for the applicants submitted that thus the physical test of these applicants is very much feasible without causing any inconvenience to M.P.S.C. He, therefore, submitted that under such circumstances the applicants are to be called and their physical test is to be conducted.

6. Learned C.P.O relied on the detailed affidavit in reply dated 2.2.2021 filed by Under Secretary, M.P.S.C., wherein the contentions raised by learned counsel for the applicants are denied. Learned C.P.O. has submitted that the M.P.S.C. has followed the proper procedure in this examination. If the applicants have objections to the procedure and the Rules of Procedure, 2014, they should have raised these objections before participating in the selection process. After participating in the selection process, the applicants cannot raise such objections and it cannot be entertained on the ground of estoppel. She submitted that holding the physical test is not an easy process, and the presence of Medical Officers, Sports Officers, Senior Superintendent of Police and representatives from the office of M.P.S.C. are required to be present for the physical test which is time consuming. The ratio of 1:4 was maintained by M.P.S.C while short listing and this ratio of 1:4 is basically specified in the Recruitment Rules. Learned C.P.O. further submitted that the applicants were not called because they were below the candidates who were more meritorious in the select list of the candidates. She further relied on sub rule (iii) of Rule 9

of the Rules of Procedure, 2014, wherein it is mentioned that when the candidate do not turn-up for the interview or are found ineligible on verification of their original documents the M.P.S.C. can conduct the interview of only the eligible candidates from amongst those were called for the interview. She submitted that the same analogy is applicable to the candidates called for the physical test. M.P.S.C. thus proceeded with the candidates who appeared for the physical test. She admitted that 811 short listed candidates were absent at the time of physical test, so the actual ratio of the candidates was 2.57 times and less than 4 times. She further submitted that if the applicants are allowed then there will not be end to the process of selection. No guarantee can be given that if next 811 fresh candidates in the merit list are called, all of them shall appear for the physical test. If not, then the persons who are further next will come before the Tribunal and ask for similar relief when they are also to be called. Thus, maintenance of the ratio will render the process impossible.

7. In this case the issue is short. Whether applicants are to be given opportunity to appear for the physical test when they were not shortlisted? Rule 8 of the Rules of Procedure, 2014 pertains to 'Recruitment based on Competitive Examination'. Many candidates appear for the examinations conducted by MPSC for various posts. The number is huge and therefore in the rules a method of short listing is adopted, by fixing a particular limit of the marks or the percentile. Thus, the method of short listing of the candidates, who are successful in crossing the bench mark, is legally recognized in view of the unmanageable ratio of the total number of candidates and the less number of vacant posts. Few hundred candidates may appear for only 10 available posts. Therefore, only the meritorious are allowed to enter a narrow path of short listing.

8. Sub-rule (viii) of Rule 8 of Rules of Procedure, 2014 reproduced earlier states that for physical test the ratio of the shortlisted candidates shall be four times the number of vacancies. This ratio is not challenged by the applicants. However, they dispute not maintaining the said ratio throughout till physical test is over. As per Sub-rule (vi) of Rule 8 the total number of candidates to be called for interview for each category shall not exceed three times the number of vacancies reserved for that particular category. Thus, for interview there is a cap of number three but for physical test the ratio is 1:4. In the present case admittedly 811 candidates remained absent for the physical test. Therefore, the ratio as pointed out by Ld. CPO has come down from 1:4 to 1:2.57. This is the point of agitation by the applicants as they insisted that ratio of 1:4 is to be maintained throughout that is up to physical test. The submissions made by Ld. Advocate for the applicants cannot be accepted mainly on the ground that maintenance of said ratio throughout till physical test is not correct and not feasible. The ratio in fact was truly maintained by MPSC by declaring the list of candidates which was four times more than the existing number of available posts. Thus, respondent-MPSC has shortlisted the candidates as per Rule 8(viii) and there is no deviation from the said rule.

9. The names of the applicants could not appear in the said list because the candidates were shortlisted and called on the basis of their merit in the entire list. The applicants have secured lesser marks than the candidates who were shortlisted. It is unfortunate that though the applicants have crossed the benchmark of the percentile due to less number of available posts they could not be shortlisted when the ratio of 1:4 was maintained. Every unfortunate situation cannot be said illegal or unjust.

10. We advert to Article 16 of the Constitution of India as relied by the Ld. Advocate for the applicant by saying that the applicants are denied equality of opportunity in matters of public employment assured under Article 16 of the Constitution of India. This argument is not convincing because MPSC has provided equal opportunity to all the candidates to appear for the preliminary examination when they cleared preliminary examination they appeared in the main examination. Thus, opportunity provided to all the candidates was equal. It is the task of the candidates to secure more marks and be at a higher number in the merit list. We do appreciate the applicants worked hard since last 2-3 years and have successfully scored the above percentile. It is a competition; a person who runs faster is selected. A starting point provided was same to all the candidates. Thus, equal opportunity in public employment, as assured under Article 16 of the Constitution of India, was given by the State.

11. The number of the candidates appearing for the examination of the public employment conducted by MPSC is always large. On taken into account the disproportion between the number of posts and the number of candidates, and the practical problem of calling every candidate, who has passed the preliminary examination, for the physical test and interview, MPSC has rightly adopted short listing. The number 4 is fixed in anticipation by the rule makers. Firstly, that the sufficient number of candidates should be available for choice and secondly, there is always likelihood that some candidates may not be eligible for some reason or may remain absent. The MPSC has anticipated such possibility and therefore by increasing the number of candidates in the ratio i.e. 1:4 enough care of choice of selection is provided by the rule makers.

12. We note the last point. Assuming, we allow next 811 candidates to fill up the gap of candidates who remained absent and to maintain the ratio of 1:4 and fixed dates are given for these 811 candidates to appear, still nobody can give guarantee that there won't be any dropout amongst 811 candidates. Suppose 50 candidates remain absent for the said physical test, then again next 50 will come forward on the ground of parity before the Tribunal and again a particular date will have to be fixed to conduct physical test for the same and similar possibility of further absenteeism cannot be overruled. Thus, there will be unending process.

13. Similarly, prayer made by the Ld. Advocate for the applicants that only the applicants be allowed to appear for the physical test as they have taken legal recourse, cannot be entertained. Ld. Advocate for the applicants has relied on the judgment of the Hon'ble Supreme Court in **Alok Kumar Singh & Ors. Vs. State of Uttar Pradesh & Ors. (2019) 2 SCC (L&S) 265 : (2018) 18 SCC 242**, where the Hon'ble Supreme Court has dealt with the issue of physical efficiency test where the faulty chips were provided to the complainants. In the said case the Hon'ble Supreme Court has granted relief limiting only to the petitioners who have raised the said challenge. In the said case the Hon'ble Supreme Court has also expressed that it did not find it appropriate to consider the matter on merits at that stage. The Hon'ble Supreme Court directed the respondents to appoint an expert committee and the committee was to consider the grievance and took appropriate decision in view of the judgment and orders passed by the Hon'ble High Court. Thus, the facts in the present case are distinguishable.

14. It is pointed out by the Ld. Advocate for the applicants that result of the main examination was declared on 2.3.2020 and the shortlisted candidates appeared in the physical test from November, 2021 till January, 2022. Ld. Advocate for the applicants submitted that however the OA was filed on 5.10.2020. Thus, Ld. Advocate for the applicants argued that OA was filed nearly one year before the physical test was conducted. Thus, the applicants have taken legal recourse immediately after results were declared when the applicants were unaware about the future absence of 811 candidates and therefore they deserve legal remedy prayed by them. The submissions are tricky. The result of the main examination was declared on 2.3.2020. The rules of MPSC are known to all the candidates. Thus, by applying a criterion mentioned in Rule 8(viii) of the Rules of Procedure, 2014, every candidate had clear idea whether his name is going to be shortlisted when the ratio of 1:4 is required to be maintained.

15. At the time of opening his submissions, Ld. Advocate for the applicants has referred to relief (a) of para 10 of the OA and withdrew his prayer of maintaining ratio of 1:6 for short listing candidates for interview and has maintained the portion of prayer (a) that respondent no.1 shall call the next meritorious candidates in place of the candidates remained absent.

16. Our attention was drawn to para 6.12 of the OA wherein the applicants have demonstrated the number of candidates who remained absent in preceding 3 years i.e. 2016, 2017 and 2018. Thus, the applicants by taking into account the history of preceding 3 years have made a calculated application with anticipation that few numbers of candidates are going to remain absent. So the next candidates, who are meritorious, should be shortlisted further.

17. Thus, the submissions of Ld. Advocate for the applicants though are apparently found logical, however, after deliberation and analysis and application of legal reasoning, it do not stand.

18. Original Application No.551 of 2020 is dismissed.

Sd/-
(Medha Gadgil)
Member (A)
4.3.2022

Sd/-
(Mridula Bhatkar, J.)
Chairperson
4.3.2022

Dictation taken by : S.G. Jawalkar.