

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.94 OF 2022**

**WITH**

**ORIGINAL APPLICATION NO.249 OF 2022**

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**ORIGINAL APPLICATION NO.94 OF 2022**

**DISTRICT : PUNE**

Shri Subhash Sundarrao Zade, )  
Age 33 years, Home Guard, R/at Tarde Wasti, )  
Mohamadwadi Road, Tal. Haveli, District Pune )..Applicant

Versus

1. The Commissioner of Police, Pune City, Pune )  
Police Commissioner Building, Church Path, )  
Camp, Near Sadhu Vaswani Chowk, Pune-1 )
2. Shri Yogesh Kailash Sonkamble, )  
C/o The Commissioner of Police, Pune )  
Police Commissioner Building, Church Path, )  
Camp, Near Sadhu Vaswani Chowk, Pune-1 )
3. The Additional Director General of Police, )  
Training & Special Squad, MS, Mumbai )  
Near Regal Theater, Colaba, Mumbai )
4. The District Commandant, )  
Home Guard, S.No.90/2, Line Bajar, )  
SPS, Near Rashmi High School, Alandi Road, )  
Pune 411006 )..Respondents

**WITH****ORIGINAL APPLICATION NO.249 OF 2022****DISTRICT : PUNE**

Shri Sandesh Sangram Kamble, )  
Age 32 years, Home Guard, R/at Vaibhav Niwas, )  
Balaji Colony, Kailas Nagar, Thergaon, District Pune )..Applicant

Versus

1. The Commissioner of Police, )  
Pimpri Chinchwad Commissionerate, )  
Premlok Park, Chinchwad, Pimpri-Chinchwad, )  
Pune )
2. Shri Samadhan Tukaram Kamble, )  
C/o The Commissioner of Police, )  
Pimpri Chinchwad Commissionerate, )  
Premlok Park, Chinchwad, Pimpri-Chinchwad, )  
Pune )
3. The Additional Director General of Police, )  
Training & Special Squad, MS, Mumbai )  
Near Regal Theater, Colaba, Mumbai )
4. The District Commandant, )  
Home Guard, S.No.90/2, Line Bajar, )  
SPS, Near Rashmi High School, Alandi Road, )  
Pune 411006 )..Respondents

Shri K.R. Jagdale – Advocate for the Applicants

Ms. S.P. Manchekar –Chief Presenting Officer for Respondents No.1, 3 & 4

Ms. Savita T. Suryavanshi – Advocate for Respondent No.2

CORAM : Smt. Justice Mridula Bhatkar, Chairperson

Smt. Medha Gadgil, Member (A)

DATE : 9<sup>th</sup> January, 2024

### **J U D G M E N T**

1. The applicants have filed the above OAs praying for appointment on the post of Police Constable under the Scheduled Caste Home Guard Category.

2. Ld. Advocate for the applicants submits that an advertisement dated 3.9.2019 was published for the post of Police Constable and applicants applied under the SC Home Guard category. The written examination was held and after publishing the select list, private respondent no.2 were appointed in both the above OAs. The applicants are challenging the selection of respondent no.2.

3. Ld. Advocate for the applicants points out Rule 8 of the Maharashtra Police Constable (Recruitment) Rules, 2011, which pertains to Reservation. Rule 8 specifies reservations under different categories viz. (i) Sports category (ii) Women (iii) Home Guards (iv) Ex-servicemen etc. The case of the applicants falls under Rule 8(iii). 5% reservation is provided for Home Guards. Rule (iii) reads as under:

*“(iii) Home Guards.- Out of the total posts available for recruitment to the post of Police Constable in the Police Force, 5% posts shall be filled in from amongst the members of Home Guards who have completed minimum three years service i.e. 1095 days of consolidated service as Home Guards and possess the requisite educational and physical qualifications and age limit as per these rules.”*

4. Ld. Advocate for the applicant pointed out letter dated 16.2.2016 written by Dy. Commandant, Home Guard, Mumbai to District Commandant, Home Guard, Aurangabad.

5. Ld. Advocate for the applicant submits that in the case of respondent no.2 in OA No.94/2022 his certificate is dated 16.9.2019 wherein it is mentioned that respondent no.2 was registered for training on 1.9.2016 and has completed his 3 years service in Home Guard on 16.9.2019. The advertisement dated 3.9.2019 was issued by the Additional Director General of Police (Training). Ld. Advocate for the applicant pointed out clause 16.2.7 regarding period of service certificate. He submits that on the date of advertisement the candidate should complete 3 years of consolidated service i.e. 1095 days. He submits that certificate of respondent no.2 falls short of 13 days. He states that the date of advertisement is 3.9.2019 and the certificate was issued on 16.9.2019. Ld. Advocate for the applicant submits that in the case of respondent no.2 in OA No.249 of 2022 he has also produced certificate of the period of 3 years consolidated service from 1.9.2016 to 16.9.2019. Thus, both of them fall short of 13 days.

6. Ld. Advocate for the applicants submits that the advertisement is dated 3.9.2019 and the certificate is of 16.9.2019 and it is violation of Rule 8(iii) of the Rules. He relies on the judgment of the Hon'ble Supreme

Court in **Bedanga Talukdar Vs. Saifudaullah Khan & Ors. AIR 2012 SC 1803** and submits that the condition in the advertisement cannot be changed.

7. Ld. CPO pointed out earlier letter dated 5.8.2015 from Chief Administrative Officer, Home Guard, Mumbai to Commandant, Home Guard of all the Districts. Ld. CPO also refers to letter dated 18.11.2017 from Commandant Home Guard, Mumbai specifying certain terms and conditions no.1 to 12 which are to be examined at the time of giving certificate of 3 years service.

8. Ld. CPO pointed out the affidavit in reply dated 30.3.2022 filed by Gorakh Dinkarrao Davekar, Police Inspector posted in Control Room in the office of Commissioner of Police, Pune City in OA No.94/2022. Ld. CPO submits that only after such posts are advertised a person from Home Guard who wants to seek such reservation under Rule 8(iii) will approach the office of the Commandant for issuance of certificate and thus it will be not possible for any candidate to acquire certificate of consolidated service of 3 years prior to the date of advertisement and therefore said condition is required to be read by fixing the last date of filing of the application so far as recruitment of constables under Home Guard category are concerned. In support of her submissions she relies on the judgment and order dated 25.2.2020 passed by this Tribunal in **OAs. No.309 & 937 of 2015 (Ankush S. Galande & Ors. Vs. The State of Maharashtra & Ors.)**.

9. Ld. Advocate for respondent no.2 pointed out that the period mentioned in the certificate of respondent no.2 in both the OAs shows that they have completed 3 years consolidated service prior to the date of the advertisement and the certificates are issued on 16.9.2019.

10. The issue involves of counting of the days and the period prescribed. The certificates issued to both the private respondents cannot be challenged and they are accepted for the purpose of counting 1095 days i.e. 3 years consolidated service. In both the certificates the authority has mentioned that respondent no.2 in both the matters have registered as Home Guard on 1.9.2016 and they continued in service as Home Guard till the date of issuance of certificate i.e. 16.9.2019. Thus respondent no.2 have completed 3 years and 13 days service on the date of issuance of the said certificates. Whether the applicants have completed 3 years of service i.e. 1095 days on the date of advertisement i.e. on or before 3.9.2019. As per the certificate both the respondent no.2 have joined on 1.9.2016 and thus they have completed 3 years consolidated service on 1095 days on 1.9.2019 and that period is covered in both the certificates.

11. In *Bedanga Talukdar* (supra) it is held that in the competitive examination terms and conditions of the advertisement cannot be relaxed unless power of relaxation is mentioned in the rules or in the advertisement. In view of the facts and circumstances of the case there is no change in the terms and conditions of the advertisement and the certificates issued to both the private respondent no.2 are as per advertisement. The argument of the Ld. Advocate for the applicants that there is change in the terms and conditions of the advertisement or service rules after the advertisement is published, is not maintainable and hence the judgment of the Hon'ble Supreme Court in *Bedanga Talukdar* (supra) is not applicable to the facts of the present case.

12. We do not find any substance in the objections raised by

the Ld. Advocate for the applicants. Hence, both the Original Applications are dismissed. No order as to costs.

**Sd/-**

**(Medha Gadgil)**  
**Member (A)**  
**9.1.2024**

**Sd/-**

**(Mridula Bhatkar, J.)**  
**Chairperson**  
**9.1.2024**

Dictation taken by: S.G. Jawalkar.

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