

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****REVIEW APPLICATION No. 15 of 2017 (D.B.)****IN ORIGINAL APPLICATION No.429 of 2015**

Sanjay Madharao Sirsath,
Aged about 25 years, Occ. Nil,
R/o Sirsath Niwas, Gangakhed Road,
Sirsathwadi, Tq. Ahmadpur, Latur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary Department of Home,
Mantralaya, Mumbai-32.
- 2) Superintendent of Police,
Akola.
- 3) Alam R. Pyarewale,
Aged Major, C/o Superintendent of Police,
Akola.
- 4) Pandurang R. Shirshikar,
Aged Major, R/o C/o Superintendent of Police,
Akola.
- 5) Jivan U. Landge,
Aged Major, R/o C/o Superintendent of Police,
Akola.
- 6) Deleted.
- 7) Gorakh S. Bhavar,
Aged Major, R/o C/o Superintendent of Police,
Akola.
- 8) Datta S. Bondre,
Aged Major, R/o C/o Superintendent of Police,
Akola.

9) Yogesh K. Hodgir,
Aged Major, R/o C/o Superintendent of Police,
Akola.

Respondents

Shri R.V. Shiralkar, Advocate for the applicant.

Shri A.M. Ghogre, Id. P.O. for the respondents.

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

JUDGEMENT

(Delivered on this 4th day of October,2017)

Heard Shri R.V. Shiralkar, Id. Counsel for the applicant and Shri A.M. Ghogre, Id. P.O. for the respondents. The O.A. is heard finally with consent of Id. counsel for parties.

2. This Tribunal has delivered a Judgment in O.A. 429 of 2015 on 16th June, 2017 whereby the petition was dismissed with no order as to costs. The applicant has filed this Review Petition of the said Judgment and order. The petitioner submits that there is an error apparent on the face on record while interpreting the G.R. 27/6/2008 by this Tribunal. The Tribunal ought to have seen that the question of preference will come only when all the other things are equal and Tribunal was considering placement of applicant as well as respondents in the select list of open category and therefore the caste becomes irrelevant. The Clause 6 (2) of the G.R. dated 27/6/2008

was not at all applicable as it will not operate in case of open category. The Tribunal wrongly came to the conclusion that respondent nos. 3 to 9 belongs to reserved category and failed to consider that though they belongs to different reserved category, they in fact were considered from Open category and therefore the Judgment is required to be reviewed.

3. From the admitted facts on record it is clear that the applicant Shri Sanjay M. Sirsath responded to the advertisement dated 2/5/2014 for the post of Police Constable. The advertisement was for 248 posts. Out of which 92 posts were reserved for open category and out of these 92 posts, 24 posts were for open general category, 28 posts for ladies, 5 posts for sport persons, 5 posts for project affected persons, 2 posts for earthquake affected category, 14 posts were for ex-serviceman, 9 posts were for part time employees and 5 posts were for Home Guard category. The dispute was between the applicant and respondent nos. 3 to 9.

4. Admittedly the applicant as well as respondent nos. 3 to 9 got 162 marks each and their qualification was also same and therefore as per Clause 6 of the G.R. dated 27/6/2008 they should have been considered as per Clause 6 (6), i.e., on the point of seniority in age. The said clause says that if all the candidates have got equal marks then one who is older shall be given preference.

5. Perusal of the order passed by this Tribunal on 16th June,2017 shows that in para-6&7 of the order which is observed as under :-

“(6) In the present case, the applicant though belongs to reserved category has admittedly applied for the post from open category. The candidate at sr.nos. 83 to 89 in the final select list i.e. respondents nos. 3 to 9 belong to different categories other than open. The said category of respondents nos. 3 to 9 is as under :-

| Sr. No | Chest no. | Name | Agency | Sex | Category | Birth date | Education | Grand Total |
|--------|-----------|----------------|--------|------|----------|------------|-----------|-------------|
| 83. | 2992 | A.R. Pyarewale | Gen | Male | NT-B | 6/6/92 | HSC | 162 |
| 84. | 1664 | D.S. Bondre | PAP | Male | NT-C | 4/5/90 | HSC | 162 |
| 85. | 2977 | Y.K. Hodgir | PAP | Male | NT-C | 15/5/93 | HSC | 162 |
| 86. | 3721 | S.P. Ramrao | Gen | Male | OBC | 1/4/87 | HSC | 162 |
| 87. | 1315 | J.U. Landge | Gen | Male | OBC | 18/5/88 | HSC | 162 |
| 88. | 3447 | P.G. Deshmukh | Gen | Male | OBC | 12/6/90 | HSC | 162 |
| 89. | 4406 | G.S. Bhavar | Gen | Male | OBC | 18/10/90 | HSC | 162 |

(7) From the aforesaid Chart it will be cleared that the aforesaid candidates, i.e., respondent nos. 3 to 9 belong to category other than open, whereas the applicant who stands in waiting list is from open category. If therefore makes no difference as to which caste the applicant belongs. The applicant has applied from open category and therefore the criteria of age in clause 6 of the G.R. dated 27/6/2008 only would not be applicable to the applicant since the respondent nos. 3 to 9 were rightly given preference as per sub clause 2 of clause 6 of the said G.R.”

6. I have perused the record and particularly the reply filed by the respondents again. In para-3 of the reply-affidavit filed by respondent no.2 on 4/1/2016 it is stated that the applicant and other candidates at sr.nos. 86 to 89 of the final select list possesses similar marks i.e. 162 and they were selected. It is submitted that the said candidates at sr. nos. 86 to 89 have applied for the post of Police Constable from Other Backward Class (OBC) category but as per procedure and recruitment rules they were considered for the post reserved for open category as per G.R. dated 27/6/2008.

7. The respondents nos. 3,5,8 & 9 have also placed on record the affidavit-in-reply and the said affidavit-in-reply makes the facts further clear. In the reply-affidavit it is stated that respondent no.3 belongs to Muslim Gavli caste and has applied from NT (B) category and he belongs to Non-Creamy Layer. He got 162 marks but was appointed in open competition category on merit. It is further stated that the respondent no.5 Jeevan Uttam Landge belongs to Kunbi caste in OBC category, but was appointed in open competition category on merit. As regards respondent no.8 Dutta Suresh Bondre it is stated that he is Project Affected Person and has applied for horizontal category reserved for NT (c) category, but was taken in open category. Similarly the respondent no.8 belongs to Shegar caste which is NT (c) category and respondent no.9 Yogesh Kailash Hodgil

is Project Affected horizontal category candidate but belongs to NT (c) category but was taken from open category.

8. If these contentions are taken into consideration it will be clear that respondent nos. 3 to 9 have been selected from open category though they belong to reserved category. This can be seen from the final merit list also. The final merit list for open category is at P.B. page nos. 18 & 19 (both inclusive). In this list the respondent nos. 3 to 9 have been shown in open category at sr.nos. 83 to 89 and all of them got 162 marks. The applicant has been shown in the wait list of open general candidate and also got 162 marks. Thus this comparison is to be done in respect of open category candidate i.e. the applicant and respondent nos. 3 to 9. In short even though respondent nos. 3 to 9 belong to different categories, their selection is in the open category as like that of applicant who was shown on the wait list. In such circumstances irrespective of their castes or categories the facts remain that the applicant as well as respondent nos. 3 to 9 all were selected in the open category and therefore Clause 6 (6) of the G.R. dated 27/6/2008 shall come into force. The said clause 6 reads as under :-

6- menokjuk l eku xqkfeGW; kl &

lkjh{kpk fudky r; kj djrkuk ijh{kr T; k menokjuk l eku xqk
vl rhy v'kk menokjuk xqkorrk dæ [kkyhy fud"kkj dæokj ykoyk tkbzy %&

- 1- vtZl knj dj.; kP; k vfire fnukadkl mPp 'kqkf.kd vgzrk /kkj.k dj.kkjs
menokj; R; kurj
- 2- ekxkl oxh; menokj; k ckrhr iEke vut phr tekrl e/khy urj
vut for trhj fo'k'k ekxkl iox] foedpr trhj ¼14 o rRI e trhj] HKVD; k
tekrh tkuskh 1990 ioh; k 28 o rRI e tekrl½] HKVD; k tekrl ¼/kuxj o
rRI e½] brj ekxkl oxL; k dækus; R; kurj
- 3- 'kkjhjd n"V; k viæ vl ysysmenokj ; R; kurj
- 4- Ekth I sud vl ysysmenokj ; R; kurj
- 5- Lokra; I sudkpsi kY; vl ysysmenokj ; R; kurj
- 6- Ok; ¼o; kustSB vl yY; k menokjpk dæ ojrh ykxy-½
ojhy iR; d l oxkè/; sefgykuk vxæ ns; kr ; bly-**

9. The aforesaid Clause 6 (6) thus shows that when the candidates got equal marks the one who is older in age is to be given preference.

10. Perusal of the final merit list and the wait list for open category candidates clearly shows that the date of birth of the applicant is dated 1/1/1990. However he has been kept in the wait list at sr.no.1 for General (open) category. However, respondent nos. 3 to 9 who are at sr.nos. 83 to 89 in the said list some candidates seems to be younger than the applicant for example the date of birth of candidates at sr.nos. 83 to 89 is as under :-

| Sr. No. | Name | Birth date |
|---------|----------------|------------|
| 83. | A.R. Pyarewale | 6/6/1992 |
| 84. | D.S. Bondre | 4/5/1990 |
| 85. | Y.K. Hodgir | 15/5/1993 |
| 86. | S.P. Ramrao | 1/4/1987 |

| | | |
|-----|---------------|------------|
| 87. | J.U. Landge | 18/5/1988 |
| 88. | P.G. Deshmukh | 12/6/1990 |
| 89. | G.S. Bhavar | 18/10/1990 |

11. Thus it will be clear that those candidates at sr.nos.83,84,85,88 & 89 are younger in age than the applicant and therefore if the clause 6 (6) of the G.R. dated 27/6/2008 is applied, the applicant should have got preference in appointment and his name should not have been kept on wait list.

12. The learned counsel for the applicant has placed reliance on the Judgment reported in W.P. 4723/2013 delivered by Hon'ble High Court of Judicature at Bombay Bench at Nagpur on 5/5/2015. Admittedly, this Judgment was not placed before this Tribunal when the matter was considered on merits. In the said Judgment the only question framed by the Hon'ble High Court was *"If for a vacancy for open category, two candidates have secured equal marks and one of them is belonging to a backward category, how their entitlement to the post can be worked out?"*, and the Hon'ble High Court has observed in para 12 and 13 as under :-

"12] The only relevant norm which can be looked into as per the Government Resolution dated 27.6.2008 is clause 6(6), i.e. about age. Candidate who is more in age, therefore, needs to be appointed. The petitioner and also respondent no.5 are open category candidates and as petitioner appears to be more in age, he ought to have been appointed.

13] In this situation, we find that appointment given to respondent no.5 by extending him preference only because of his status as S.B.C. candidate is arbitrary and unsustainable. It is quashed and set aside. The respondent no.2 employer shall verify the age of petitioner as also respondent no.5 and one who is more in age shall be given appointment. Similarly, we grant respondent no.5 liberty to make appropriate representation to respondent no.2 pointing out that as he may be the backward class candidate, who has secured highest marks, he should have been selected and appointed against appropriate backward class post. If such representation is made, the respondent no.2 shall consider it in accordance with law at the earliest.”

13. In view of the aforesaid observations, it will be now clear that the applicant being a open category candidate and older in age should have been considered first for appointment as against the persons who are younger than him and respondent nos. 3 to 9 should not have been given weightage by extending them preference only because of their status as belonging to particular caste category. Thus there was error apparent in delivering the judgment by this Tribunal on 16/6/2017 in O.A. 429/2015.

14. The learned counsel for the applicant submits that one of the selected candidates Shri P.G. Deshmukh has not joined the services and nobody is yet appointed in his place. In fact said Shri P.G. Deshmukh was joined as respondent no.6 but subsequently his name was deleted. If so is the fact the respondent authority may take recourse to give appointment to the applicant without disturbing the list also. However it will be at the risk of the respondents. The said

2015

Judgment is therefore required to be reviewed and hence the following order :-

ORDER

The Judgment and order passed in O.A.429/2015 on 16/6/2017 is reviewed. The O.A.429/2015 stands allowed. The respondents are directed to include the applicant in the final merit list in the category of open candidates considering his age and the respondent no.2 is directed to issue appointment order in favour of applicant accordingly by modifying the final select list so as to adjust the applicant in between sr.nos. 83 to 89. No costs.

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

dnk.