

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**TRANSFER APPLICATION NO.13/2023
(WRIT PETITION NO.10387/2022)**

DISTRICT:- AHMEDNAGAR

Digambar s/o. Baburao Mule,
Age: 32 years, Occu: Service,
R/o. At Kakadwadi, Post Nannaj,
Dhumala, Tq. Sangamner,
Dist. Ahmednagar.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32.

2. The State of Maharashtra,
Through its Secretary,
Department of Excise,
Maharashtra State,
Mantralaya, Mumbai-32.

3. Maharashtra Public Service Commission,
3rd Floor, Bank of India Building,
Fort, Mumbai-01.

...RESPONDENTS

APPEARANCE :Shri Jiwan J. Patil, Counsel for Applicant.
:Shri V.R.Bhumkar, Presenting Officer for
the respondent authorities.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

**Reserved on : 19-06-2024
Pronounced on : 28-06-2024**

ORDER**[Per : Shri Vinay Kargaonkar, M (A)]**

1. Heard Shri Jiwan J. Patil, learned Counsel for the Applicant and Shri V.R.Bhumkar, learned Presenting Officer for the respondent authorities.

In this application applicant is challenging G.R. dated 29-07-2021 and subsequently requesting to consider his online application form dated 15-08-2022 filled by applicant in response to the advertisement dated 29-07-2022 i.e. Maharashtra Public Service Commission's Preliminary Examination from reserved category of Handicapped, specifically from One Arm(O.A.) category.

2. Prayer clauses "B" & "EE" in the O.A. are not pressed by the applicant as those have become infructuous since preliminary examination is already over. Learned Counsel for applicant has therefore insisted for considering prayer clauses C, D & DD. Prayer clauses C, D & DD are reproduced as follows from paper book pages 14 & 14-A of Transfer Application:

"C. It may be held and declared that, the Government Resolution dated 29.07.2021 published by the Home Department, Maharashtra State is illegal and be set aside.

D. By issuing writ of mandamus or any other appropriate writ, order or directions in the like nature, the respondent No. 1 to 3 may kindly be directed to include all the sub-category of handicap reservations in view of Notification dated 04.01.2021 Published by the Union of India through Ministry of Social Justice and 'E Amendy Empowerment. per onder dt. 23/01/2023 by Any other appropriate relief, which this Hon'ble Court deems fit and proper may kindly be granted.

DD. By issuing writ of mandamus or any other appropriate writ, order or directions in the like nature, the respondent No. 3 may kindly be directed to include all the sub-categories of handicap in Advertisement No. 1/2023, more particularly (a) LV, (b) D, HH, (c) OA, OL, OAL, CP, LC, DW, AAV (d) MI, (e) MD involving (a) to (c) above.”

3. Pleadings of the Applicant and brief facts :-

[a] Applicant has challenged the advertisement issued by the respondent no.3 i.e. Maharashtra Public Service Commission (MPSC) and Government Resolution (GR) dated 29-07-2021 wherein the reservation for the post of Sub Inspector, Excise Department (Handicapped) is not as per the guidelines of the Ministry of Social Justice and Empowerment due to which right of the applicant to claim

the reservation from handicapped category is frustrated. The applicant claims that, respondent nos. 1 to 3 have not followed the guidelines issued by the Ministry of Social Justice and Empowerment vide notification dated 04-07-2021 which speaks about the reservation in view of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

[b] Applicant has submitted that, Advertisement No.77/2022 was published by respondent no.3 on 29-07-2022. The applicant was interested in the post of Sub Inspector, State Excise Department. While issuing the advertisement, the said post should have been meant for filling from handicapped category and the reservation for the said handicapped category is only for three sub categories. That is, (i) L.C. (Leprosy Cured), (ii) SLD, MI (Special Learning Disability, Mental Illness) and (iii) MD involving into 1 and 2 (Multiple Disability). The Notification dated 04.01.2021 published in the Gazette of India by the Ministry of Social Justice and Empowerment mentions five sub- categories in the Handicapped category and specifically for the post of Excise Inspector. Applicant has further submitted that, the advertisement issued by the respondent No. 3 dated 29-07-2022 is violative of the

Notification dated 04.01.2021 and deprives the other handicapped sub categories from appearing in the MPSC preliminary examination.

[c] Applicant has further submitted that, he filled the online form in view of the guidelines issued by the respondent no.3 on 15.08.2022 and there should have been five sub-categories for handicapped persons but the respondent nos.1 to 3 have wrongly given only three sub-categories for handicapped, therefore, the applicant although a handicapped person but had to fill his form from Open category. The reservation fixed by the respondents for the handicapped persons has been wrongly calculated and only three sub categories of handicapped persons are shown in the G.R. dated 29-07-2021. As the said G.R. is not in consonance with the Notification dated 04-01-2021, many deserving handicapped persons have been left out due to non-inclusion of their handicapped category in the G.R. dated 29-07-2021.

[d] Applicant submitted that the Government should have included all the sub categories of handicapped persons for filling the posts from Group-A to Group-D in State Excise Department. Applicant further submitted that

due to non-inclusion of other sub categories of handicapped persons, they are deprived of their fundamental rights and ultimately they had to appear in the preliminary MPSC examination from Open category.

[e] It is submitted that, the Union of India through its Ministry of Social Justice and Empowerment wanted to extend the benefits of reservation to the persons with benchmark disabilities. It is submitted that, Government of India want to include all the categories of disabilities for the handicapped persons, therefore, Notification dated 04.07.2021 was published by the said Department. Said Notification was published by taking abundant precaution and as per the views of expert committees involved by the Ministry of Social Justice and Empowerment. In the said Notification sub-categories mentioned for the post of Excise Department are five in number, i.e. (1) LV (Low Vision), (2) D, HH (Deaf, hard of hearing), (3) OA, OL, OAL, CP, LC, DW, AAV (One Arm, One Leg, One Arm and One Leg, Cerebral Palsy, Leprosy Cured, Dwarfism, Acid Attack Victim), (4) MI (Mental Illness) and (5) MD involving 1 to 5 (Multiple Disabilities). The applicant submits that, the Central Government has given five sub handicapped categories but the State Government vide issuing

Government Resolution dated 29.07.2021 has only included three handicapped sub-categories which is illegal and contrary to the Notification dated 04.07.2021. Maharashtra Government's G.R. dated 29.07.2021 also refers to notification dated 04.07.2021 published by Ministry of Social Justice and Empowerment, Government of India. Accordingly, the applicant has prayed for allowing the O.A.

4. Submissions of the Respondents:-

[a] Respondent nos.2 and 3 have filed their separate affidavits in reply. Learned P.O. submitted that, MPSC i.e. Respondent no.3 has no role in identification of categories of Divyang persons suitable for a particular post and this issue comes exclusively under the purview of the Government. Respondent no.2 has submitted that, the reservations maintained in the G.R. dated 29-07-2021 are as per the recommendation of the Expert Committee formulated by the Social Justice Department, Government of Maharashtra. Learned P.O. further submitted that, according to Seventh Schedule of Constitution of India the subject Excise is mentioned at Sr.No.51 in the said subjects list, which is as follows:

“Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India -

(a) alcoholic liquors for human consumption

(b) opium, Indian hemp and other narcotic drugs and narcotics but not including medicinal and toilet preparations containing alcohol or any substance included in sub- paragraph (b) of this entry.”

Learned P.O. further submitted that, as mentioned in above subject list, duties and responsibilities of the officers working in State Excise Department are different vis-a-vis the officers working in the Department of Excise, Government of India.

[b] It is further submitted by the respondents that, there are various posts in the State Excise Department, out of which Sub Inspector of State Excise (Group-C) is one of the posts. It is a uniform service, for which Recruitment Rules of 2009 are framed vide Notification dated 17-07-2009. As per the Recruitment Rules the candidate appointed on the post of Sub Inspector, State Excise has to

complete physical training, which includes indoor as well as outdoor training, such as P.T., various types of drills, weapon training, yoga, running; etc. The duties and responsibilities of Sub-Inspector, State Excise is to monitor and inspect licenses, crime detection, revenue collection, investigation, to keep strict vigilance on illegal/illicit liquor activities, vigilance and enforcement work related to NDPS Act, 1985; etc. According to respondents, it is therefore clear that mobility of both hand activities are important factors to fulfill the duties and responsibilities assigned to the post of Sub-Inspector, State Excise.

[c] Learned P.O. further submitted that, Notification dated 04-01-2021 issued by the Central Government identifies various posts of Central Government only (including Inspector of Excise and Customs) for reservation for the Persons with Disabilities. These various posts of Central Government were notified/identified on the recommendation of Expert Committee formed for the same. Inspector of Central Excise and Customs and Sub Inspector, State Excise are two different posts having different duties and responsibilities. Therefore, it is submitted by the learned P.O. that, the say of the applicant is not corrected that the same reservation should be there

for the post of Central Government and the State Government.

[d] Provisions of Section 33 and 34(1) of the Rights of Persons with Disabilities Act, 2016 are reproduced as follows:

“33. Identification of posts for reservation. The appropriate Government shall-

(i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;

(ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and,

(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

34. Reservation- (1) Every appropriate Government shall appoint in every establishment, not less than four per cent, of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent, each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and

(c) and one per cent, for persons with benchmark disabilities under clauses (d) and (e), namely:

(a) blindness and low vision:

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy:

(d) autism, intellectual disability, specific learning disability and mental illness:

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

Section 33 & 34(1) of the Act do not specify reservation for the persons with disabilities Act for all the posts in every establishment but it depends upon the type of work carried out/ duties & responsibilities of that particular post.

[e] Learned P.O. submitted that, considering the nature of duties to be performed by officers in the State excise, this department was of the view that there should not be any reservation for persons with disabilities. Accordingly, the department had submitted the proposal to the Expert Committee formulated by Social Justice Department for exemption to the posts of State Excise Department from reservation for persons with disabilities in specific cadre mentioning their work profile. However, after a detailed deliberation on the proposal of the department the Expert Committee recommended to identify the posts of the State Excise department considering the work profile/tasks to be performed by that post, which can be held by respective category of persons with different disabilities.

[f] Learned P.O. further submitted that, therefore, on the recommendation of the Expert Committee dated

08.06.2021 and 07.07.2021, this department had issued the Government resolution dated 29.07.2021. Hence the respondents have denied the contention of the applicant that this department has wrongly mentioned the sub categories of persons with disabilities. Learned P.O. submitted that, this department has issued the G.R. dated 29-07-2021 by following due procedure, considering the recommendations of the Expert Committee formulated by the Social Justice Department and the nature of work/task assigned to the post of Excise Sub-inspector which is totally different from the post of Inspector, Central Excise. Therefore, the reservation mentioned for the subcategory of persons with disabilities is correct. Respondents have, therefore, prayed for dismissal of O.A.

5. Analysis of facts and conclusions:-

[a] We have heard the learned Counsel for the applicant as well as learned Chief Presenting Officer for respondent authorities. We have also gone through the documents placed on record by the parties. Learned Counsel for the applicant has argued that respondents should have followed the Government of India Resolution/ Notification dated 04.01.2021 as it is meant for Excise

Department and the advertisement in issue is also for Excise Sub-Inspector. Learned Counsel for the applicant has vehemently argued that, since both the departments are Excise Departments, provisions in Government of India resolution dated 04.01.2021 should have been followed in *toto* by the State Government.

[b] Central Excise Duty is an indirect tax imposed by the Government of India and is administered under the authority of Entry 84 of Union List of the Seventh Schedule read with Article 226 of the Constitution of India. State Excise is at Sr. No. 51 in the State Subject List of the Seventh Schedule of the Constitution of India. Submissions of the learned counsel for the applicant that both Central Excise Department and State Excise Department are same is erroneous as these are two different departments and the subjects are included in two different lists of Seventh Schedule. Central Excise is in Union List whereas State Excise is in State List.

[c] Job contents of Inspector Central Excise are as follows (paper book page 46 of O.A.):

“Inspector Excise detects, prevents, organize on production, smuggling, sale and use of suitable

goods and assesses excise duty on them. Surveys plant producing dutiable goods for verification at various stages of manufacture, visits store room for verification of final products with manufacturers account. Checks weight or counts number of packages of excisable commodities and verifies daily production with factory accounts relating to raw materials and final products. Inspects excisable commodities, assesses excise duty and allows clearance of commodities after adjusting amount in accounts. Maintains records regarding production of commodities, levy of excise duties, permits for clearance of commodities from factories, etc., as required.

Job contents of State Excise Sub Inspector are as follows (paper book page 85 of O.A.):

“The duties and responsibilities of Sub-Inspector, State Excise is to monitor and inspection of licenses, crime detection, revenue collection, investigation, to keep strict vigilance on illegal/ illicit liquor activities, vigilance & enforcement work related with NDPS Act, 1985 etc. Hence it is clear that mobility and both hand activities are important factors to fulfill the duties and responsibilities assigned to the post of Sub-Inspector, State Excise.”

[d] Central Excise Department and State Excise Department are two different departments and are dealings

with subjects listed in Central List and State List respectively, and therefore, provisions of Government of India Resolution/Notification dated 04.01.2021 cannot be applied in *toto* by the State Government for State Excise Sub-Inspector. Sec 33 of the “The Rights of Persons with Disabilities Act, 2016” is relevant in the present matter, is reproduced below:

“33. Identification of posts for reservation. The appropriate Government shall-

(i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;

(ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and,

(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

As per provisions of Sec 33, on the recommendation of the Expert Committee, State Government issued resolution dated 29.07.2021 for identification of posts for persons with disabilities.

[e] The reservation of seats and jobs for persons with disabilities is aimed at promoting inclusivity and providing equal opportunities in education, employment, and public life. The formulation of reservation policies typically involves consultations with experts in the fields of disability rights, social justice, and administrative feasibility. Expert committees provide crucial insights into the needs, capabilities, and integration strategies for persons with disabilities, ensuring that policies are effective and sustainable. The decisions to introduce, modify, or revoke reservation quotas for persons with disabilities rests primarily with the Elected Representatives and Administrative Authorities of the Government. This discretion allows Policymakers to consider broader societal impacts, economic factors, and the evolving needs of the disabled community.

[f] While judicial review is essential for upholding Constitutional values, Courts/Tribunals generally refrain from substituting their judgment for that of the Executive in matters of Policy Formulation. The principle of separation of powers dictates that policy decisions, including those related to reservations, are primarily within the domain of the Executive and Legislative Branches of

Government. Tribunals, typically accord a presumption of validity to Governmental actions, including reservation policies, unless they are shown to be arbitrary, discriminatory or in violation of Constitutional provisions. Tribunals are cautious not to encroach upon policy decisions that involve complex socio-economic considerations, unless there is clear evidence of Constitutional infringement or procedural irregularity.

[g] In conclusion, reservation policies for persons with disabilities represent a crucial aspect of social justice and inclusivity in Indian Society. The formulation and implementation of these policies are best entrusted to the discretion of Elected Representatives and Expert Committees who can assess the nuanced needs of the disabled community. While judicial review serves as a safeguard against arbitrariness and discrimination, Courts/Tribunals should exercise restraint in interfering with policy decisions that fall squarely within the domain of the Executive and Legislative Branches. This balanced approach ensures that reservation policies remain effective tools for promoting equality and empowering persons with disabilities in society. As per provisions of Sec 33 of the “The Rights of Persons with Disabilities Act, 2016”, on the

recommendation of the Expert Committee, State Government has issued resolution dated 29.07.2021 for identification of posts for persons with disabilities.

In view of above discussion, in this case, resolution dated 29.07.2021 issued by the State Government is not arbitrary, discriminatory or in violation of constitutional provisions.

6. In view of the above facts and circumstances of the case, we find no merit in the Original Application. Hence, the following order.

ORDER

Transfer Application is dismissed without any order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)
Place : Aurangabad

(P.R.BORA)
VICE CHAIRMAN

Date : 28-06-2024.