

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI****ORIGINAL APPLICATION NO. 1392 OF 2024****DISTRICT : MUMBAI**

Shubham Sanjay Mortale &amp; 9 Ors.

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**APPLICANTS****Versus**The Maharashtra Public Service Commission,  
Mumbai & 05 Ors.**... RESPONDENTS****APPEARANCE** : Shri S.S. Dere along with S.A. Ambalkar,  
learned counsel for the applicants.: Ms. S.P. Manchekar, learned Chief Presenting  
Officer for respondent Nos. 1 & 2.: Shri K.P. Jagdale, learned counsel for  
respondent Nos. 3 to 6.**CORAM** : **Hon'ble Shri A.N. Karmarkar, Member (J)**  
**and**  
**Hon'ble Shri A.M. Kulkarni, Member (A)****Reserved on** : **28.11.2024****Pronounced on** : **10.12.2024****ORDER**

1. Heard Shri S.S. Dere along with S.A. Ambalkar, learned counsel for the applicants, Ms. S.P. Manchekar, learned Chief Presenting Officer for respondent Nos. 1 & 2 and Shri K.P. Jagdale, learned counsel for respondent Nos. 3 to 6.

2. The applicants have claimed interim relief in the form of stay to the publishing of recommendation list and/or overall posts pursuant to the State Civil Recruitment, 2022.

3. The respondent No. 1 published an advertisement dated 11.05.2022 for selection of 161 vacancies of Group-A and Group-B Gazetted posts. Subsequently, number of posts increased from 161 to 623. The applicant have duly applied and appeared for the examination and also declared to be successful in the result declared on 11.10.2023. General Merit List was published by respondent No. 1 on 18.01.2024. The respondent No. 1 also called for the post preferences to be submitted within seven days. As per the Announcement and Circular dated 26.08.2022, certain procedure is to be followed for declaration of multi-cadre recruitment process and it is mentioned in para No. 7 of the Original Application. After publication of Provisional Selection List (PSL), some of candidates challenged it, which delayed the declaration of Final Recommendation List. Pursuant to the said litigation and its result, Provisional Selection List was modified and it is to the extent that seven candidates from earlier PSL belonging to Physically Handicap, Sports Quota and Female NCL got removed. Now Revised Provisional Selection List is published on 27.09.2024, but the respondents have not given the option of Opting Out.

4. Respondent No. 1 has declared General Merit List (GML) of State Services Examination-2023 on 26.09.2024 i.e. just

one day prior to publication of Revised Provisional Selection List for the year 2022. So, more than 100 candidates from PSL of the year 2022 are repeated in the GML of the year 2023.

The applicants have raised ground that the Revised Provisional Selection List for the year 2022 without giving option of Opting Out is deviation from the stipulated procedure. Secondly, the result of selection process for the year 2022 and for the year 2023 are going to be declared in short interval and so there is possibility of duplication of more than 100 candidates. Many candidates, who are selected in Revised Provisional Selection List for the year 2022 and those who got higher rank in General Merit List for the year 2023, have communicated their willingness of Opting Out of the selection process for the year 2022 exam.

5. The respondent No. 1 has filed affidavit in reply and denied the contents of the applicants except those admitted specifically. State Services Main Examination, 2022 was conducted from 21<sup>st</sup> to 23<sup>rd</sup> January, 2023 and its result was declared on 11.10.2023. On 18.01.2024, General Merit List has been published by the Commission. Then the Commission invited preferences of various related posts. Thereafter on 20.03.2024, Provisional Selection List considering the post preferences was

published along with PSL and a web link was provided for submitting Opting Out option from 21.03.2024 to 27.03.2024.

6. In the meantime, some Original Applications relating to Sports Reservation, Disability Reservation and NCL for Open Female Candidates were filed before this Tribunal. In the matter of Sports Reservation and NCL, Tribunal directed the Commission to revise Provisional Select List. The Commission has challenged the said order before the Hon'ble High Court by way of Writ Petitions. So as to avoid the further delay, the Commission published Revised Provisional Select List subject to outcome of W.Ps. filed before the Hon'ble High Court. On 25.10.2024, the Commission has declared Final Recommendation List of the said recruitment process and recommendation letter is sent to the Government. There is no deviation from the stipulated procedure as alleged, because the procedure in Circular dated 26.08.2022 is followed. The Revised Provisional Selection List is published as per the orders of the Tribunal. According to the respondents, the recruitment process of the year 2023 is still in process. Only General Merit List is declared on 27.09.2024. Further procedure calling the post preferences, checking overall eligibility of candidates and then declaration of Provisional Select List is yet to

be completed. So the contention of applicants that more than 100 posts may go vacant is based on hypothetical analysis.

7. Learned counsel for the applicants and learned Chief Presenting Officer have submitted as per their respective contentions. During the course of arguments, learned counsel for the applicants has relied in a case of ***Bedanga Talukdar Vs. Saifudullah Khan and Others, (2011) 12 Supreme Court Cases 85*** and also in a case of ***Tej Prakash Pathak and Others Vs. Rajasthan High Court and Others, 2024 SCC OnLine SC 3184***. During the course of arguments, learned counsel for the applicants has also made available a copy of the order passed by this Tribunal in M.A. 402/2024 in O.A. No. 383/2024 with M.A. 403/2024 in O.A. 383/2024 with M.A. 404/2024 in O.A. 493/2024 with M.A. 405/2024 in O.A. 493/2024.

Learned counsel for respondent Nos. 3 to 6 has submitted that the only question is whether the option of Opting Out can be applied to Revised Selection List. According to them, the respondent No. 2 has already forwarded recommendation list on 25.10.2024. Names of these respondents are in the said list. There would be documents verification in the near future. If the interim relief as prayed for by the applicants is granted, then the

process of recruitment would be delayed and they would suffer loss.

8. The applicants have raised ground that the act of respondent No. 1 declaring the Revised Provisional Selection List for the year 2022 State Services Examination without giving option of Opting Out is deviation from the stipulated procedure. Learned Advocate for the applicants has referred para No. 29 in a case of ***Bedanga Talukdar Vs. Saifudullah Khan and Others*** (cited supra), wherein the Hon'ble Supreme Court has held as under :-

*“29.....In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure.”*

In connection with the same aspect, the applicants have relied in a case of ***Tej Prakash Pathak and Others Vs. Rajasthan High Court and Others*** (cited supra). The applicants have referred to Circular of respondent No. 1 dated 26.08.2022 which gives stage wise procedure, which is to be followed for declaration of multi-cadre recruitment process and same is mentioned in para No. 7 of O.A. as follows :-

- “i. General Merit List (GML)*
- ii. Post Preference form (to be filled within 7 days)*
- iii. Provisional Selection List (PSL)*

- iv. *Opting Out*
- v. *Final Recommendation List.*”

The respondents have not disputed the said procedure. It is not disputed that result of State Services Main Examination, 2022 was declared on 11.10.2023. It is also not disputed that on 18.01.2024, General Merit List for the Recruitment-2022 has been published by the Commission. It is not disputed that the respondent No. 1 called for the post preferences to be submitted within seven days by all the candidates from the General Merit List. The respondent No. 1 has contended that after the said stage of Opting Out option, the Provisional Select List was published on 20.03.2024. It is not disputed that in the meantime, some Original Applications pertaining to Sports Reservation, Disability Reservation and NCL for Open Female Candidates were filed before this Tribunal, in which this Tribunal has passed the order. The respondent No. 1 has also contended that the said order of Tribunal is challenged before the Hon’ble High Court by way of filing different W.Ps. and subject to outcome of the same, Revised Provisional List is also published by the Commission.

9. The applicants have just made available a copy of the order passed by this Tribunal dated 24.07.2024 in M.A. 402/2024 in O.A. No. 383/2024 with M.A. 403/2024 in O.A.

383/2024 with M.A. 404/2024 in O.A. 493/2024 with M.A. 405/2024 in O.A. 493/2024. The said order shows that MPSC (respondent No. 1 herein) was directed to take necessary steps and revise Merit List, as well as, Provisional Select List as per Rules. There is no specific direction of the Tribunal that after preparation of Revised Provisional Select List, option of "Opting Out" is to be given. It cannot be ignored that already option of "Opting Out" is followed by the Commission and they have only modified the Provisional List as per the orders of this Tribunal. So it will be difficult to accept the contention of applicants that declaration of Revised Provisional List is deviation from the stipulated procedure.

The applicants have also placed on record Announcement / Circular of respondent No. 1 dated 27.09.2024. There is a reference of order passed by this Tribunal in Original Application, which is as under :-

*"The respondents to consider their candidature and prepare and revise the Provisional Select List and thereafter the Recruitment process to continue."*

The applicants have not made it clear that in those petitions the Tribunal has also directed to give option of Opting Out again. So it is difficult to accept that there is substance in the submissions of the applicants that the act of respondent No. 1



declaring Revised Provisional Selection List was deviation from stipulated procedure.

10. The applicants have raised ground that the selection process for the year 2022 and for the year 2023 are going to be declared in short interval to each other and there is a possibility of duplication of more than 100 candidates.

11. Learned counsel for the applicants has invited our attention to the list of overlapping candidates (Exhibit-F, page No. 146 of paper book). Learned counsel submits that the General Merit List for the year 2023 is declared just one day prior to publication of Revised Provisional Selection List for the year 2022 and more than 100 candidates from Provisional Selection List-2022 are repeated in General Merit List-2023. It appears that the said list of overlapping candidates (Exhibit-F) is prepared by the applicants. It would be difficult to accept that the said list being authentic. According to applicants, the result of Selection Process for the years of 2022 and 2023 are going to be declared in short interval to each other. It cannot be said that there is substance in this contention of the applicants, as further stages like calling the post preferences, checking eligibility of candidates according to their claims and documents need to be completed. So certainly

the ground raised by the applicants about possibility that more than 100 posts may go vacant, can be said to be hypothetical view.

12. Learned counsel for the applicants has also submitted that some candidates, who are in the Provisional Select List for the year 2022 and also in the General Merit List of the year 2023, have communicated to respondent No. 1 for not considering their candidature for final recommendation list of Selection Process of the year 2022. For that purpose, the applicants have placed on record copies of some text mail (Exhibit-G, page Nos. 149 to 152 of paper book). But these documents cannot be stated to be authentic, particularly when those concerned candidates are not the party respondents to the present Original Application. Even if the contention of the applicants is accepted for a moment, still a possibility cannot be ruled out that those candidates may change their mind in future. Thus, the discussions above lead me to say that there is no substance in this submission of the applicants.

13. In case the interim relief as prayed for by the applicants is allowed, then there is possibility of filing of other petitions and the selection process for the year 2022 will be delayed and the procedure would be endless. For this reason also

applicants cannot be said to be entitled for interim relief. The nature of interim relief claimed is stay to the publishing of recommendation list and/or overall posts pursuant to the State Civil Recruitment, 2022. The respondent No. 1 has already made final recommendation on 25.10.2024. Recommendation letter dated 25.10.2024 (Exhibit R-2) is also placed on record along with affidavit in reply of respondent No. 1, which is addressed to the Additional Chief Secretary, General Administration Department, Mumbai. So the prayer made by way of interim relief become infructuous. Therefore, the prayer of interim relief needs to be rejected. Hence, the following order :-

**ORDER**

- (i) The prayer for interim relief stands rejected.
- (ii) No order as to costs.

**(A.M. Kulkarni)**  
**Member (A)**

**(A.N. Karmarkar)**  
**Member (J)**

**PLACE : Mumbai**

**DATE : 10.12.2024**

**KPB** D.B. O.A. No. 1391 of 2024 ANK