

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO.1118 OF 2024

1. Samadhan Dattatray Patil)
Add : Uplai Budruk,)
Taluka : Madha,)
District Solapur 413209)
2. Dhiraj Dashrath Gunjal)
Add : A3, 106, Madhav Snasar,)
Khadakpada, Kalyan (West),)
Pin 413 130)
3. Samarjit Dinkar Patil)
Add : Patil Galli, Dhamanwadi)
Tal. Radhanagari, Dist. Kolhapur)
Pin 416 212)
4. Dhiraj Nandlal Jadhav,)
Add : Plot No.31, Ganeshnagar,)
Kokani Hill, Nandurbar 425 412)

....APPLICANTS

VERSUS

1. Maharashtra Public Service)
Commission,)
through the Secretary,)
Trishul Gold Field,)
Plot No.34, Section 11,)
Opp. Sarovar Vihar,)
Belapur CBD,)
Navi Mumbai 400 614)
2. The State of Maharashtra,)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032)
3. The State of Maharashtra)
Through the Secretary,)
General Administration)
Department, Mantralaya,)
Mumbai 400 032)

....RESPONDENTS

Mr. Sandeep Dere a/w. Mr. Sachin Ambulkar, Ms. Sonali Pawar and Ms. Pooja Mankoji, learned Counsel for the Applicants.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar, Chairperson**
Mr. Debashish Chakrabarty, Member(A)

DATE : **06.02.2025**

J U D G M E N T

1. These four Applicants aspiring for the post of Police Sub-Inspector pray that Respondent No.1 be directed to prepare a fresh list of qualified candidates for the post of PSI in the ratio of 1:4 after taking preferences of already selected candidates as per Clauses 11 and 11.2 of the Main Advertisement dated 15.09.2023 for the Maharashtra Non-Gazetted Group-B Services, Main Examination. It is also prayed that the MPSC-Respondent No.1 be directed to follow the similar process in preparation of the main qualified list for the post of PSI as per the directions given by this Tribunal in O.A.No.569/2024.

2. Learned Counsel for the Applicant has submitted that pursuant to the Advertisement dated 20.01.2023, the Non-Gazetted Group-B and Group-C Services Combined Preliminary Examination 2023 was conducted on 30.04.2024. The Advertisement for the Main Examination was published on 15.09.2023 and on 05.11.2023, the Main Examination of Group-B Services Non-Gazetted was conducted. The General Merit List for the posts of Sub Registrar, State Tax Inspector and Assistant Section Officer was declared and Opting Out Link was made available by the MPSC in the month of April and May, 2024. Learned Counsel has submitted that the names of the Applicants did not appear in this list. Learned Counsel has pointed

out that as per Clauses 11, 11.1.2 and 11.2, it was necessary for the Respondent-MPSC to ask the preferences to all the candidates who are selected for other posts like, State Tax Inspector, Assistant Section Officer and Sub Registrar. This is essentially to be done to avoid duplication of the candidature for more than one post. He explained the name of particular candidate is appearing in the list of candidates for the post of State Tax Inspector and Assistant Section Officer and also appeared in the list of candidates for the post of Sub-Registrar. Some of them choose not to appear in the physical examination because they have opted for other services, such as in Revenue Department or Mantralaya. However, as their names are also shown in the list of eligible candidates for physical test for the post of PSI and thus, the candidates who have cleared the Main Examination and wants to enter Police Services cannot be called by maintaining the ratio of 1:4. He has also submitted that the MPSC be directed to follow the instructions in the Advertisement so that the Applicants will be able to get in the merit list for the physical test.

3. Learned CPO while contending the OA has relied on the Affidavit-in-Reply dated 11.11.2024 filed by Respondent No.1 through Mr. Dilip Waghe, Under Secretary in the Office of MPSC. Learned CPO has submitted that the prayers made by the applicants are completely misconceived and misplaced. I submit 4 that, the said order of the Hon'ble Tribunal is not applicable to this recruitment in issue as it has dealt in the matter regarding the cadres of Assistant Section Officer, State Tax Inspector, Sub-Registrar (Grade 1)/Stamp Inspector only. The process of recruitment stipulated for the cadre of Police Sub Inspector is completely different in every context from other cadres i.e. stages of physical test and interview are stipulated only for cadre of Police Sub Inspector. Learned CPO then submitted that the Commission has scrupulously followed the rules as set in the

advertisement and the scheme of examination of the present recruitment in issue. Learned CPO further submitted that the applicants have confused themselves of the concept of "preference" and "opting out". It is to note that, preference is available to the candidates who are appearing for the examination of Maharashtra Group-C cadres and not to candidates who are appearing for Maharashtra non-gazetted Group-B cadres. In so far as recruitment process to Maharashtra non-gazetted Group-B cadres is concerned, those participating candidates who have given choice for more than one cadre while filing the examination form and from amongst the said candidates, the candidates who get selected to multiple cadres, are given a choice of "opting out" meaning thereby the said candidates will have option of opting out of the cadres for which they do not want to be considered. Considering these facts, the contentions raised by the applicants regarding preference to be taken from the candidates who are qualified in the main examination of Police Sub Inspector are misplaced and misconceived. Learned CPO lastly submitted that the entire procedure adopted by the Commission while conducting the recruitment process in issue is perfectly legal and valid and the same is in accordance with the policy framed by the Commission. Ultimately, it ought to be appreciated that, the author of the policy, i.e. the Commission in the present case, is the appropriate authority to interpret the same, since it is the author who is presumed to be aware of its requirement and therefore a third party, the applicants in the present matter, cannot be allowed to thrust its interpretation of a policy. It is also settled position of law that, if two views of a Clause are possible then the one that furthers the intention of the author has to be adopted and the one which leads to pure perversity and vagueness has to be ignored. In the present case, the interpretation of the applicants would certainly lead to perversity and vagueness and therefore the said interpretation ought

to be rejected and the one adopted by the Commission will have to be accepted.

4. In this matter, the large number of such candidates were eliminated in Physical Test as they could not perform to meet up to the physical requirement. Moreover, many candidates did not turn up to give physical test as they were already appointed as State Tax Inspector, Assistant Section Officer and Sub-Registrar and they have decided to continue with those services and not to join the Police Service. However, their names appeared in the list of the candidates eligible for the Physical Test only because they have not communicated about opting out. Resultantly, the number of vacant posts were much more than the eligible candidates for interview. The entire submission of learned Counsel for the Applicants is based on the interpretation of Clauses 11, 11.1.2 and 11.2. We reproduce the same as follows :-

“११. निकाल प्रक्रिया :-

११.१ सर्वसाधारण गुणवत्ता यादी :-

११.१.१ शारीरिक चाचणी व मुलाखतीनंतर पोलीस उपनिरीक्षक संवर्गाकरीता मुख्य परीक्षा (पेपर क्रमांक-१ व पेपर क्रमांक-२) तसेच मुलाखतीमध्ये प्राप्त एकूण ११.१ सर्वसाधारण गुणवत्ता यादी :- गुणांच्या आधारे गुणवत्ताक्रमानुसार यादी (Merit List) तयार करण्यात येईल.

११.१.२ सहायक कक्ष अधिकारी, राज्य कर निरीक्षक, पोलीस उपनिरीक्षक तसेच दुय्यम निबंधक (श्रेणी-१)/ मुद्रांक निरीक्षक संवर्गाच्या निवडीकरीता मुख्य परीक्षेमध्ये प्राप्त केलेल्या एकूण गुणांच्या आधारे गुणवत्ताक्रमानुसार सर्वसाधारण गुणवत्ता यादी (General Merit List) तयार करण्यात येईल.

११.२ संवर्ग/पदांचा पसंतीक्रम:-

(एक) सर्वसाधारण गुणवत्ता यादीच्या आधारे उमेदवारांना विषयांकित परीक्षेमधून भरावयाच्या संवर्ग/पदांचा पसंतीक्रम सादर करण्यासाठी ७ दिवसाचा कालावधी उपलब्ध करून देण्यात येईल.”

Thus, to give preference to all the selected candidates about their service is a step in between required to be followed by the MPSC to arrive at number of candidates and vacant seats. The arguments of learned Counsel that when the candidates have cleared the Main

Examination, they were to be called if the seats were available and the seats can be available only if a step of opting out is followed scrupulously by the MPSC. This also saves the burden on the MPSC to carry out the recruitment process.

5. The 263 candidates who were already recommended by MPSC for appointment to posts of Three Cadres i.e. Assistant Section Officer (ASO), State Tax Inspector (STI) and Sub-Registrar (SR) were called for qualifying Physical Test for appointment to posts of Police Sub Inspector (PSI). However, only 6 candidates from amongst these 263 candidates appeared for qualifying Physical Test. Thus; 257 candidates, including 4 Applicants, who have qualified 'Main Examination' and seeking appointment to posts of PSI could not get an opportunity to appear for qualifying Physical Test.

6. The 257 candidates could thus have been included within list of 1558 candidates prepared by M.P.S.C. by maintaining the ratio of 1:4 to appear for qualifying Physical Test. Admittedly; M.P.S.C. had not sought 'Preferences' of shortlisted candidates in 'General Merit List' published separately for Three Cadres i.e. Assistant Section Officer (ASO), State Tax Inspector (STI) and Sub-Registrar (SR); but still yet went ahead to prepare respective Recommendation Lists. Thus had M.P.S.C. done so; then it would have provided opportunity to more candidates who have given option for PSI in the Common Pool at time of appearing for 'Preliminary Examination' and subsequently have also qualified 'Main Examination'. Therefore, as it is necessary to provide maximum opportunity in Public Employment to meritorious candidates; we find it just to direct M.P.S.C. to call these 257 candidates from Common Pool who have qualified 'Main Examination' and had given option for posts of PSI to also appear for qualifying Physical Test. Thus, we pass the following order :-

ORDER

- (A) OA is Partly Allowed.
- (B) MPSC shall call these 257 candidates based on their merit from Common Pool of candidates who have passed 'Main Examination' and had given option of PSI to also appear for qualifying Physical Test.
- (C) MPSC to conduct the qualifying Physical Test for these 257 candidates at the earliest possible and in any case before 31st March, 2025.
- (D) MPSC further informed to go ahead with the present Schedule of Interviews of candidates who have already qualified Physical Test for PSI. However, the final result for all posts of PSI shall not to be declared till these 257 candidates appear for qualifying Physical Test and those who pass it thereupon undergo Interview to be conducted separately by MPSC.

(Debashish Chakrabarty)
Member (A)

(Mridula Bhatkar, J.)
Chairperson

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