

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

O.A.NOS. 887, 1099, 1107, 1120, & 1179 ALL OF 2024

(1) ORIGINAL APPLICATION NO. 887 OF 2024

DISTRICT : Chhatrapati Sambhajinagar

1. Vishal S/o Ashok Mundhe,
Age 23 years, Occu. Education,
R/o Pimpalkhute Tisari,
Tq. Yeval District Nashik.
2. Ramprasad S/o Dnyanoba Munde,
Age 27 years, Occu. Education,
R/o Chikhalbeed, Tq. Wadwani, District Beed..
3. Nikhil S/o Manoj Mokate,
Age 26 years, Occu. Education,
R/o House No.509,
Darji Bazar, Chavani,
Chhatrapati Sambhajinagar.
4. Susmita D/o Dinkar Jadhav,
Age 20 years, Occu. Education
R/o Majgaon, Tq. Panhala,
District Kolhapur.
5. Ulhas S/o Vinayak Rathod,
Age 29 years, Occu. Education,
R/o Waghoda, Tq. Mantha, District Jalna.
6. Vishnu S/o Bhaskar Magar,
Age 21 years, Occu. Education,
R/o Kekat Jalgaon, Tq. Paithan,
District Chhatrapati Sambhajinagar.
7. Shivprasad S/o Dattatraya Maind,
Age 21 years, Occu. Education,
R/o Malshimba, Tq. Chikhali, District Buldhana.
8. Mahesh S/o Baliram Rathod,
Age 22 years, Occu. Education,
R/o Maltondi, Tq. Mantha, District Jalna.

.. APPLICANTS.

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Home Department, Madam Cama Road,
Hutatma Rajguru Square,
Nariman Point Mantralaya Mumbai. 400032
2. The Additional Director General of Police,
(Training and Special Squad)
Maharashtra State, Mumbai.
Old Council Hall, Shaheed Bhagat Singh Marg,
Mumbai 400001.
3. The Police Commissioner,
Chhatrapati Sambhajanagar,
Mill Corner, Chhatrapati Sambhajanagar.
4. Deputy Commissioner of Police,
(Head Quarter), Police Commissionerate
Chhatrapati Sambhajanagar, Mill Corner,
Chhatrapati Sambhajanagar.

.. **RESPONDENTS***W I T H***(2) ORIGINAL APPLICATION NO. 1099 OF 2024**

Dist. : Aurangabad.

Bholenath Baburao Suryawanshi
Age: 28 years, Occ.: Student,
R/o Dongargaon,
Tq. Sillod, Dist. Aurangabad.

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APPLICANT*V E R S U S*

1. The State of Maharashtra,
Through its Principal Secretary;
Home Department, Mantralaya,
Mumbai - 32.
2. The Director General of Police,
Maharashtra State, Mumbai.
Police Head Quarter,
Old Council Hall, Saheed Bhagatsing Marg,
Mumbai-400001.
3. The Additional Director General of Police,

Training and Special Squads,
Maharashtra State, Mumbai,
4th Floor, D. D. building,
Nariman Circle, the old custom Hoose,
Mumbai. 400001,

4. The Commissioner of Police,
Aurangabad.
5. The Deputy Commissioner of Police,
(Head Quarter) Aurangabad. ... **RESPONDENTS**

W I T H

(3) ORIGINAL APPLICATION NO. 1107 OF 2024

Dist. : Chhatrapati Sambhajanagar

Sawapnil Rameshwar Hud
Age:22, Occu:- Student,
R/o. At Post Padali, Lakhegaon, Tq. Paithan,
Dist:- Ch. Sambhajanagar 431105. **APPLICANT**

V E R S U S

1. State of Maharashtra
through Director General of Police,
Maharashtra Police Headquarters,
Madam Cama Road, Fort, Mumbai.
2. Commissioner of Police,
Ch. Sambhajanagar City,
City Police Headquarters, Mill Corner, Ch. Sambhajanagar.
3. Dy.Commissioner of Police,
Ch. Sambhajanagar City,
City Police Headquarters, Mill Corner,
Ch. Sambhajanagar. **RESPONDENTS**

W I T H

(4) ORIGINAL APPLICATION NO. 1120 OF 2024

Dist. : Chhatrapati Sambhajanagar

Vijay Gokulappa Kshirsagar
Age:22, Occu:- Student,
R/o. At Post Charthana Tq. Jintur
Dist:- Parbhani 431509. .. **APPLICANT**

V E R S U S

1. State of Maharashtra
through Director General of Police,
Maharashtra Police Headquarters,
Madam Cama Road, Fort, Mumbai.
2. Commissioner of Police,
Ch. Sambhajinagar City,
City Police Headquarters, Mill Corner,
Ch. Sambhajinagar.
3. Dy. Commissioner of Police,
Ch. Sambhajinagar City,
City Police Headquarters,
Mill Corner, Ch. Sambhajinagar. ..

RESPONDENTS*W I T H***(5) ORIGINAL APPLICATION NO. 1179 OF 2024**

Dist. : Chhatrapati Sambhajinagar

Mahesh Subhash Kakade,
Age 24 yrs., Occu. Student
R/o:- Dhokbabulgaon, Tq. Mohal,
Dist. Solapur. ..

APPLICANT*V E R S U S*

1. The Director General of Police,
Maharashtra Police Headquarters,
Madam Cama Road, Fort, Mumbai.
2. The Commissioner of Police,
Ch. Sambhajinagar City,
City Police Headquarters, Mill Corner,
Ch. Sambhajinagar.
3. The Deputy Commissioner of Police,
Ch. Sambhajinagar City,
City Police Headquarters, Mill Corner,
Ch. Sambhajinagar. ..

RESPONDENTS

APPEARANCE : Shri S.S. Thombre, learned counsel for the applicant
in O.A. No. 887/2024.

- : Shri Vinod Patil, learned counsel for the applicant in O.A. No. 1099/2024.
- : Shri Vishal P Bakal, learned counsel for the applicants in O.A. Nos. 1107, 1120 all of 2024.
- : Shri S.R. Dheple, learned counsel for the applicant in O.A. No. 1179/2024
- : Shri Mahesh B. Bharaswadkar and Mrs. Deepali, S. Deshpande, learned Chief Presenting Officer and learned Presenting Officer for the respective respondents in respective matters.

CORAM : HON'BLE JUSTICE V.K. JADHAV, VICE CHAIRMAN
AND
: HON'BLE VINAY KARGAONKAR, MEMBER (A)

Reserved on : 01.04.2025

Pronounced on : 23.04.2025

O R D E R

(Per: Shri Vinay Kargaonkar, Member (A))

1. Heard Shri S.S. Thombre, learned counsel for the applicant in O.A. No. 887/2024, Shri Vinod Patil, learned counsel for the applicant in O.A. No. 1099/2024, Shri Vishal P Bakal, learned counsel for the applicants in O.A. Nos. 1107, 1120 all of 2024 & Shri S.R. Dheple, learned counsel for the applicant in O.A. No. 1179/2024 and Shri Mahesh B. Bharaswadkar and Mrs. Deepali, S. Deshpande, learned Chief Presenting Officer and learned Presenting Officer for the respective respondents in respective matters.

2. Since the issue involved in these five Original Applications (O.A. Nos. 887, 1099, 1107, 1120 and 1179 all of 2024) is interrelated and arises from the same recruitment process for Police Constable and Police Constable Bandsman positions conducted by the Commissioner of Police, Chhatrapati Sambhajanagar, we deem it appropriate to decide all these matters by this common order.

3. These batches of Original Applications raise significant questions pertaining to the recruitment process for Police Constable and Police Constable Bandsman positions in the Maharashtra Police. The primary issue stems from an advertisement dated 29.02.2024 issued by the Commissioner of Police, Chhatrapati Sambhajanagar, inviting applications for 212 posts of Police Constable, including 8 posts specifically earmarked for Police Constable Bandsman. The applicants in O.A. No. 887/2024 are candidates who applied specifically for the Bandsman posts and underwent a distinct selection process comprising physical tests, a specialized musical aptitude test, and a separate written examination due to different qualification requirements (10th pass for Bandsman versus 12th pass for regular Police Constables). Despite clearing all stages of this specialized selection process, none of these candidates were included in the final select list published on 10.08.2024, as the respondent authorities prepared a common merit list for all 212 posts without distinguishing between regular Police Constable and Bandsman positions.

4. Conversely, the applicants in O.A. Nos. 1099/2024, 1107/2024, 1120/2024, and 1179/2024 are candidates who were initially included in

this common merit list but were subsequently removed when, following a clarification dated 13.09.2024 from the Additional Director General of Police Training, the respondent authorities bifurcated the selection process and prepared separate merit lists for 204 Police Constable posts and 8 Bandsman posts. This bifurcation necessitated a reshuffling of candidates based on their marks and categories, resulting in the ousting of these applicants who had lower marks compared to certain candidates who were shifted from the open category to their respective reserved categories. The applicant in O.A. No. 1099/2024, belonging to the Orphan category, contends that if Bandsman posts are treated separately, the 1% Orphan reservation should not apply to them due to the small number of posts. The applicants in O.A. Nos. 1107/2024, 1120/2024, and 1179/2024, belonging to SEBC and OBC categories, challenge their displacement from the select list as arbitrary and violative of their legitimate expectations.

5. These Original Applications thus present a conflict between two competing interests: the right of Bandsman candidates to a separate selection process that acknowledges their distinct qualifications and skills, versus the legitimate expectations of candidates initially selected under a common merit list. The resolution of this conflict requires a careful examination of the legal principles governing recruitment processes, the specific provisions of the advertisement and guidelines, and the scope of administrative discretion in correcting errors in the selection process.

6. Pleadings and arguments on behalf of the Applicants in OA 887/2024

(i) The learned counsel for the applicants submitted that the respondent No. 4, Commissioner of Police, Chhatrapati Sambhajanagar, published an advertisement dated 29.02.2024 for filling up 212 posts of Police Constables, wherein 8 posts were specifically reserved for Police Constable Bandsman. The applicants referred to the detailed advertisement annexed as Annexure A-1 to substantiate their claim. It was contended that the respondent No. 2, Additional Director General of Police Training and Special Squad, Maharashtra State, issued comprehensive guidelines for the recruitment of Police Constable/Police Constable Driver/Police Constable Bandsman/Special Reserve Force/Prison Constable 2023, which clearly delineated distinct criteria for Bandsman positions.

(ii) The learned counsel emphasized that Clause 7.4 of these guidelines specified that the minimum educational qualification for Police Constable Bandsman was 10th pass, differing from the 12th pass requirement for regular Police Constables. Additionally, Clause 7.5 outlined specific physical criteria for Bandsman candidates, including relaxations in height and chest measurements. Most significantly, as per Criteria XIII Clause-C, candidates applying for Police Constable Bandsman were required to pass a specialized musical test after clearing the physical test, and only those who subsequently passed the written examination would be considered for appointment to the Bandsman posts.

(iii) All the applicants, possessing the requisite qualifications, submitted their applications specifically for the post of Police Constable Bandsman, copies of which were annexed as Annexure A-3 (Colly). The respondent authorities issued admit cards for physical

and written tests (Annexure A-4 Colly). The counsel highlighted that respondent No. 4 issued a press note on 04.07.2024 (Annexure A-5) stating that 631 candidates had cleared the physical test by securing 50% marks (25 out of 50), and were called for the musical test between 07.08.2024 and 10.07.2024. This press note explicitly mentioned that only candidates clearing the musical test would be called for the written examination in a 1:10 ratio.

(iv) It was further submitted that 45 candidates who cleared the musical test were called for the written examination scheduled on 24.07.2024 (Annexure A-6), and the list of these eligible candidates was annexed as Annexure A-7. The result of the written examination was declared on 29.07.2024, wherein 44 candidates appeared (Annexure A-8). However, when respondent Nos. 4 published the select list and waiting list on 10.08.2024 (Annexure A-9 Colly), not a single candidate from among the 44 who had appeared for the Bandsman written examination was included, despite 8 posts being reserved for Police Constable Bandsman.

(v) The learned counsel for the applicants vehemently argued that the respondent authorities, having conducted a complete separate selection process for the Bandsman posts, including specialized physical standards, a specific musical aptitude test, and a separate written examination, were duty-bound to prepare a separate merit list for these 8 posts. The failure to do so was characterized as arbitrary, illegal, and contrary to the very advertisement and guidelines issued by the respondents themselves.

(vi) To bolster their case, the applicants presented merit lists from other police divisions in Maharashtra (Annexure A-10 Colly) where separate merit lists were prepared for Police Constable Bandsman posts, and appointments were made accordingly. This differential

treatment meted out to the applicants by respondents No. 3 and 4 was argued to be discriminatory and violative of Articles 14 and 16 of the Constitution.

(vii) The learned counsel highlighted the individual merit of each applicant: applicant No. 1 secured 127 marks, applicant No. 2 secured 123 marks, applicant No. 3 secured 121 marks, applicant No. 4 secured 119 marks, applicant No. 5 secured 118 marks, applicant Nos. 6 and 7 secured 116 marks each, and applicant No. 8 secured 115 marks. Based on these scores and their successful completion of all stages of the selection process, the applicants claimed a legitimate right to be considered for appointment against the 8 reserved posts of Police Constable Bandsman.

(viii) In conclusion, the learned counsel for the applicants prayed that this Hon'ble Tribunal may direct the respondent Nos. 3 and 4 to publish a separate select/merit list for filling up the 8 posts of Police Constable Bandsman as per the advertisement, call the applicants for document verification, consider their candidature for further process, and issue appointment orders on the post of Police Constable Bandsman as per their merit.

7. Pleadings and arguments on behalf of the Respondents in OA 887/2024

(i) The learned Chief Presenting Officer for the respondents submitted that Police Constable Bandsman is not a separate cadre within the police force, but a specialized designation within the general cadre of Police Constables. This contention was supported by reference to the absence of a separate roster (Bindunamavali) for Bandsman posts. The respondents filed a detailed affidavit explaining that as per the recruitment rules, the criteria for both regular Police Constables and Bandsmen are the same, except for

certain relaxations in physical standards and educational qualifications, and the additional requirement of a musical aptitude test for Bandsmen.

(ii) Referring to the guidelines issued by respondent No. 2 (exhibited as Exh. R-1), the learned Chief Presenting Officer emphasized that after the written examination, a combined marks list of Bandsman/Police Constable candidates was to be published, and candidates called for document verification and physical counting based on this common merit list. He further relied on the clarification issued by respondent No. 2 on 16.08.2007 (Exh. R-3), which specifically stated that while the minimum qualification for Bandsman was 10th standard pass and a separate written examination was to be conducted for such candidates, the merit holders were to be included in the common merit list.

(iii) The learned Chief Presenting Officer acknowledged that respondent No. 2 had issued guidance on 25.06.2024 (Exh. R-4) regarding relaxation in physical standards for Police Constable Bandsman candidates, including a 2.5 cm relaxation in height requirements (resulting in minimum heights of 162.5 cm for males and 152.5 cm for females) and a 2 cm relaxation in chest measurement (resulting in a minimum of 77 cm without expansion).

(iv) In the first additional short affidavit filed on behalf of respondent Nos. 3 and 4, it was submitted that following the interim orders passed by this Hon'ble Tribunal on 09.08.2024 directing 8 posts to be kept vacant, respondent No. 2 issued a clarification dated 13.09.2024 (Annexure R-1) advising that a separate select list for Bandsman candidates should be prepared after they clear physical tests, skill tests, and the separate written examination. In compliance with this clarification, respondent Nos. 3 and 4 had prepared a separate merit list for the 8 Bandsman posts and a

revised list for the remaining 204 Police Constable posts (Annexure R-2 Colly).

(v) The affidavit further disclosed that appointments for 183 Police Constables had already been issued from the original common merit list of 212 posts, and the 8 posts for Bandsman were kept vacant in view of the orders passed by this Hon'ble Tribunal. The respondents sought permission to issue appointment orders based on the separate selection lists now prepared, noting that this would affect the last 8 candidates initially included in the select list of 212 candidates. Additionally, the affidavit explained that since the reservations were calculated based on 212 posts, the recalculation for 204 posts of Police Constable and 8 posts of Bandsman would affect the Orphan category, with one post already filled from Police Constable category and one post kept vacant in the Bandsman category (Annexure R-3).

(vi) In the second additional short affidavit, the respondents provided a more detailed explanation of the implications of accommodating the Bandsman candidates. It was submitted that the advertisement dated 29.02.2024 clearly specified different educational qualifications for Police Constable (12th standard pass) and Police Constable Bandsman (10th standard pass) under Clauses 5 and 7.4 respectively. The separate written test for Bandsman candidates was conducted specifically because of this difference in educational qualifications.

(vii) The affidavit then presented an extensive analysis of the cascading effect of accommodating each of the 8 applicants from the Bandsman category. If applicant No. 1 (Vishal Mundhe) who secured 127 marks from the open category were to be accommodated, the last candidate from the open category who secured 133 marks (the cut-off) would need to be shifted to the

SEBC category, displacing the last SEBC candidate to a waiting list position. This SEBC candidate, Swapnil Rameshwar Hud, had filed O.A. No. 1107/2024 challenging this potential displacement.

(viii) Similarly, detailed explanations were provided for each of the other applicants. For instance, accommodating applicant No. 3 (Nikhil Mokate) would displace a candidate scoring 133 marks from the open to the OBC category, which would in turn displace Mahesh Subhash Kakde, who had filed O.A. No. 1179/2024. Accommodating applicant No. 5 (Ulhas Rathod) would affect Vijay Gokulanna Kshirsagar, who had filed O.A. No. 1120/2024, and accommodating applicant No. 8 (Mahesh Baliram Rathod) would affect Bholanath Baburao Suryavanshi, who had filed O.A. No. 1099/2024.

(ix) The learned Chief Presenting Officer emphasized that despite these complex reshuffling requirements, the reservations provided in the advertisement, calculated based on 212 posts, would be maintained in the revised structure with 204 posts for Police Constable and 8 posts for Bandsman. However, the displacement of candidates who had secured higher marks than the applicants and had already been issued appointment orders would inevitably lead to further litigation and administrative complications.

(x) In conclusion, while acknowledging the subsequent clarification from respondent No. 2 and the preparation of separate merit lists, the learned Chief Presenting Officer prayed for dismissal of the applications on the grounds that the original common merit list was prepared in accordance with the established procedure and guidelines prevailing at the time. Alternatively, if this Hon'ble Tribunal were inclined to grant relief to the applicants, appropriate directions were sought to minimize disruption to the already

concluded selection process and to protect the interests of affected candidates.

**8. Pleadings and Arguments of Applicant in O.A. No. 1099/2024
(Bholenath Baburao Suryawanshi)**

(a) The learned counsel for the applicant, Shri Vinod P. Patil, submitted that the applicant belongs to the Orphan category and had applied for the post of Police Constable in response to the advertisement dated 29.02.2024 published by the respondent authorities. The advertisement announced 212 posts, of which 8 were reserved for Police Bandsman. The applicant successfully cleared all stages of the selection process, including document verification and examinations, and consequently, his name appeared in the select list published by the respondent authorities on 10.08.2024.

(b) It was argued that subsequent to interim orders passed by this Hon'ble Tribunal in related matters (O.A. Nos. 907/2024, 908/2024, 937/2024, and 887/2024), the respondent authorities published a modified select list on 09.09.2024, from which the applicant's name was inexplicably removed. This action, the counsel contended, was arbitrary, illegal, and without statutory basis.

(c) The counsel emphasized that as per the Government Resolution dated 06.04.2023, for every 100 posts, one post is reserved for Orphan candidates. In the present case, with 204 posts of Police Constable (excluding the 8 Bandsman posts), two posts were admissible for Orphan candidates. The G.R. further classified Orphan candidates into two categories: institutional Orphans (those who stayed in orphanages) and non-institutional Orphans (those who stayed with relatives). The applicant, being a non-institutional

Orphan, was initially selected along with another Orphan candidate named Geeta Sham Gharbude.

(d) It was vehemently argued that if the 8 Bandsman posts are treated separately, as they now are following the respondent No. 2's clarification dated 13.09.2024, then no reservation for Orphans would be applicable to these 8 posts, as the 1% reservation formula would not yield even one post for a group of just 8 positions. Consequently, the applicant's place in the main select list of 204 Police Constable posts should remain undisturbed.

(e) The counsel further submitted that the syllabus, written examination, eligibility criteria, skill test, and physical test for Police Constable and Bandsman positions are entirely different. The educational qualification for Bandsman is 10th pass, whereas for Police Constable it is 12th pass. Given these fundamental differences, the respondent authorities' decision to consider a common reservation pool for both positions, despite conducting separate selection processes, defies logic and is contrary to the established principles of administrative law.

(f) The counsel concluded by praying that this Hon'ble Tribunal direct the respondent authorities to reinstate the applicant's name in the select list and issue an appointment order in his favor for the post of Police Constable from the Orphan category.

9. Pleadings and Arguments of Applicant in O.A. No. 1107/2024

(Swapnil Rameshwar Hud)

(a) The learned counsel for the applicant, Shri Vishal P. Bakal, submitted that the applicant belongs to the SEBC (Socially and Economically Backward Class) category and had applied for the post of Police Constable in response to the advertisement dated

08.03.2024. The applicant cleared both the physical test conducted on 22.06.2024 and the written test conducted on 07.07.2024, securing a total of 131 marks (93 in written and 38 in physical), placing him at serial number 7 in the SEBC category in the select list published on 10.08.2024.

(b) It was contended that according to the advertisement, 7 posts were reserved for SEBC (open) out of a total of 21 posts allocated to the SEBC category (including parallel reservations). However, without any prior notice or opportunity of hearing, the respondent authorities subsequently published a tentative waiting list where the applicant's name inexplicably appeared at serial number 1, effectively removing him from the select list.

(c) The counsel argued that this removal was a direct consequence of the respondent authorities' decision to create a separate selection process for the 8 Bandsman posts following the interim orders of this Hon'ble Tribunal in O.A. No. 887/2024 dated 21.08.2024. This separation resulted in two candidates, Mr. Ganesh Vasant Jagdale and Mr. Sham Rameshwar Jawale, who were initially selected from the open category, being shifted to serial numbers 1 and 2 in the SEBC category. This reshuffling pushed out the candidates at serial numbers 6 and 7 (the applicant) from the SEBC select list.

(d) The counsel vehemently argued that this post-facto alteration of the selection process violated the principles of fair selection procedure guaranteed under Article 14 of the Constitution of India. The respondent authorities' action in mechanically reserving 8 posts for Bandsman without clarifying the social and parallel (horizontal) reservation implications was arbitrary and without rational basis.

(e) It was further submitted that the respondent authorities had vitiated the entire selection process by shifting candidates from one

category to another after the publication of the initial select list. Such tinkering not only created chaos and suspicion about the integrity of the selection process but also violated the legitimate expectations of candidates like the applicant who had already secured a place in the initial select list.

(f) The counsel concluded by praying that this Hon'ble Tribunal direct the respondent authorities to reinstate the applicant in the select list for the post of Police Constable from the SEBC category, and to declare the shifting of candidates from the general category to the SEBC category as arbitrary, unreasonable, and without application of mind.

**10. Pleadings and Arguments of Applicant in O.A. No. 1120/2024
(Vijay Gokulappa Kshirsagar)**

(i) The learned counsel for the applicant, Shri Vishal P. Bakal, submitted that the applicant belongs to the OBC (Other Backward Class) category and had applied for the post of Police Constable in response to the advertisement dated 29.02.2024 and 08.03.2024 published by the respondent authorities. The applicant cleared both the physical test conducted on 22.06.2024 and the written test conducted on 07.07.2024, securing a total of 128 marks (90 in written and 38 in physical), which placed him at serial number 28 in the OBC open category in the select list published on 10.08.2024.

(ii) It was contended that according to the advertisement, 26 posts were reserved for OBC open category out of a total of 83 posts allocated to OBC (including parallel reservations). The applicant, having secured the 28th position in the OBC open category list, was well within the selection zone. However, without any prior notice or opportunity of hearing, the respondent authorities subsequently published a tentative waiting list where the applicant's name

inexplicably appeared at serial number 2, effectively removing him from the select list.

(iii) The counsel drew attention to the fact that this removal was a direct consequence of the respondent authorities' decision to create a separate selection process for the 8 Bandsman posts following the interim orders of this Hon'ble Tribunal in O.A. No. 887/2024 dated 21.08.2024. This separation resulted in candidates who were initially selected from the open category being shifted to the OBC category, which consequently pushed the applicant out of the select list.

(iv) The counsel further highlighted that other districts such as Thane and Buldhana had clearly specified the reservation policy for Bandsman posts in their advertisements, whereas the respondents in the present case failed to clarify how the 8 posts for Bandsman would be filled vis-à-vis the reservation policy. This lackadaisical approach created a chaotic situation in the entire selection procedure.

(v) It was vehemently argued that this post-facto alteration of the selection process violated the principles of fair selection procedure guaranteed under Article 14 of the Constitution of India. The mechanical reservation of 8 posts for Bandsman without clarifying the social and parallel (horizontal) reservation implications was arbitrary and without rational basis. The counsel emphasized that tinkering with the already published select list not only created chaos and suspicion about the integrity of the selection process but also violated the legitimate expectations of candidates like the applicant who had already secured a place in the initial select list.

(vi) The counsel concluded by praying that this Hon'ble Tribunal direct the respondent authorities to reinstate the applicant in the select list for the post of Police Constable from the OBC open

category, and to declare the shifting of candidates from the general category to the OBC category as arbitrary, unreasonable, and without application of mind.

**11. Pleadings and Arguments of Applicant in O.A. No. 1179/2024
(Mahesh Subhash Kakade)**

(i) The learned counsel for the applicant, Shri S.R. Dheple, submitted that the applicant belongs to the OBC (Other Backward Class) category and had applied for the post of Police Constable in response to the advertisement dated 29.02.2024 published by the respondent authorities. The applicant cleared both the physical test conducted on 22.06.2024 and the written test conducted on 07.07.2024, securing a total of 128 marks (83 in written and 45 in physical), which placed him at serial number 29 in the OBC category in the select list published on 10.08.2024.

(ii) It was contended that according to the advertisement, 30 posts were reserved for OBC general out of a total of 83 posts allocated to OBC (including parallel reservations). The applicant, having secured the 29th position in the OBC category list, was well within the selection zone. However, without any prior notice or opportunity of hearing, the respondent authorities subsequently published a tentative waiting list where the applicant's name inexplicably appeared at serial number 3, effectively removing him from the select list.

(iii) The counsel pointed out that this removal was a direct consequence of the respondent authorities' decision to shift two candidates, Mr. Adinath Karanji Shendge and Mr. Hanuman Rambhaji Waman, who were initially selected from the open category (at serial numbers 15 and 17), to the OBC category following the creation of a separate selection process for the 8

Bandsman posts. This reshuffling pushed the candidates at serial numbers 29 and 30 (including the applicant) out of the select list.

(iv) The counsel vehemently argued that the respondent authorities had acted arbitrarily in reserving 8 posts for Bandsman without specifying any reservation policy for these positions in the advertisement. This mechanical reservation, without clarifying how these posts would be filled vis-à-vis the social and parallel (horizontal) reservation, created chaos in the entire selection process.

(v) It was further submitted that the interim relief granted by this Hon'ble Tribunal in O.A. No. 887/2024 dated 21.08.2024 had compelled the respondents to tinker with the entire selection process, moving candidates from the open/general category to the OBC category, which directly affected the applicant's selection. The counsel emphasized that this post-facto alteration of the selection process violated the principles of fair selection procedure guaranteed under Article 14 of the Constitution of India and vitiated the entire selection process.

(vi) The counsel concluded by praying that this Hon'ble Tribunal direct the respondent authorities to reinstate the applicant in the select list for the post of Police Constable from the OBC category, to declare the shifting of candidates from the open/general category to the OBC category as arbitrary, unreasonable, and without application of mind, and to restrain the respondents from proceeding with the selection process until a rational and sound selection policy is established.

12. **Reasoning and conclusions:**

Having heard the learned counsel for the applicants and the learned Chief Presenting Officer for the respondents, and after careful perusal of

the material placed on record, this Tribunal now proceeds to determine the issues that arise for consideration in these batches of Original Applications.

13. Issues for Consideration:

1. Whether the respondent authorities were obligated to prepare a separate select list for the 8 posts of Police Constable Bandsman as advertised, or whether a common merit list for all 212 posts was legally sustainable?
2. Whether the subsequent bifurcation of the selection process and creation of separate lists for Police Constable (204 posts) and Police Constable Bandsman (8 posts) is legally valid?
3. Whether the consequential reshuffling of candidates in the select list, which resulted in the ousting of certain candidates who were initially included in the provisional select list, is legally justifiable?

14. Analysis and Findings:

On the distinction between Police Constable and Police Constable Bandsman positions:

It is an undisputed position that the respondent No. 4 issued an advertisement dated 29.02.2024 for filling up 212 posts of Police Constables, out of which 8 posts were specifically earmarked for Police Constable Bandsman. The guidelines issued by respondent No. 2, the Additional Director General of Police Training and Special Squad, Maharashtra State, clearly prescribed distinct criteria for Bandsman candidates in several material aspects:

1. **Educational Qualification:** Clause 7.4 of the guidelines stipulated that the minimum educational qualification for Police Constable Bandsman was 10th pass, whereas the requirement for regular Police Constables as prescribed under Clause 5 of the advertisement was 12th pass.

2. **Physical Standards:** Clause 7.5 prescribed specific relaxations in physical standards for Bandsman candidates, including a 2.5 cm relaxation in height and a 2 cm relaxation in chest measurement.
3. **Selection Process:** Most significantly, the selection process for Bandsman candidates included an additional specialized musical aptitude test, which was not applicable to regular Police Constable candidates. Only candidates who cleared this musical test were eligible to appear for the written examination.
4. **Separate Written Examination:** The respondent authorities themselves conducted a separate written examination for Bandsman candidates on 24.07.2024, acknowledging the distinct educational qualification requirement.

15. These substantial differences in qualification requirements and selection methodology clearly establish that the post of Police Constable Bandsman, though within the broader category of Police Constable, constitutes a specialized position requiring distinct skills, aptitudes, and qualifications. This is further corroborated by the fact that out of 631 candidates who cleared the physical test for Bandsman posts, only 45 were found eligible after the musical test, underscoring the specialized nature of the position.

16. The contention of the respondents that Bandsman is not a separate cadre and that there is no separate roster (Bindunamavali) for such posts, while factually correct, does not detract from the distinct nature of the position and the specialized selection process adopted. The absence of a separate cadre or roster is an administrative arrangement and cannot override the substantive differences in qualification requirements and

selection methodology clearly prescribed in the advertisement and guidelines.

17. The respondents' reliance on the clarification dated 16.08.2007 issued by respondent No. 2, which purportedly mandated inclusion of Bandsman candidates in a common merit list, must yield to the specific provisions of the more recent guidelines issued for the current recruitment process, which clearly prescribed a separate selection process for Bandsman candidates.

18. Furthermore, the subsequent clarification dated 13.09.2024 issued by respondent No. 2, explicitly directing the preparation of a separate select list for Bandsman candidates, though issued during the pendency of these proceedings, essentially recognized and rectified the error in the initial approach.

19. On the validity of separate selection lists for Police Constable and Police Constable Bandsman:

i) Having established the distinct nature of the Police Constable Bandsman position, we now turn to the question of whether separate selection lists for the two positions are legally valid.

(ii) The sanctity of adhering to prescribed selection procedures is a cornerstone of our administrative jurisprudence. When examining the actions of the respondent authorities, we find guidance in the authoritative pronouncement of the Supreme Court in *Ramana Dayaram Shetty v. International Airport Authority of India* (1979) 3 SCC 489, wherein the Court observed:

"Where a statute, rule or policy statement confers power upon an authority to do something, it can do that only in accordance with the procedure prescribed by the statute, rule or policy statement. Such procedure cannot be deviated from even by the consent or acquiescence of parties. If the statute requires a certain procedure to be followed by an authority, even if the authority chooses a more stringent test than what is laid down under the statute, the result cannot be condoned."

(iii) Applying this principle to the present case, we find that the respondent authorities had unambiguously prescribed different qualification requirements, physical standards, and selection methodologies for Police Constable Bandsman positions, including a specialized musical aptitude test not applicable to regular Police Constable candidates. Having established this distinct selection process, the authorities were duty-bound to carry it to its logical conclusion by preparing a separate merit list for the 8 Bandsman posts. The initial failure to do so constituted a deviation from their own prescribed procedure, rendering the common merit list approach arbitrary and inconsistent with the principle of equality embodied in Article 14 of the Constitution. The subsequent bifurcation of the selection process was thus not an arbitrary action but a necessary correction aligned with the dictates of administrative law.

(iv) The fact that other police establishments in Maharashtra prepared separate merit lists for Police Constable Bandsman posts and made appointments accordingly further underscores the arbitrariness of the differential treatment initially meted out to the Bandsman candidates by respondents No. 3 and 4.

(v) Therefore, we find that the subsequent action of the respondent authorities in creating separate select lists for Police Constable (204 posts) and Police Constable Bandsman (8 posts), pursuant to the clarification dated 13.09.2024, was not only legally

valid but was a necessary correction of the earlier erroneous approach.

20. On the consequential reshuffling and its impact on candidates initially included in the provisional select list:

(i) This brings us to the third issue, which forms the crux of O.A. Nos. 1099/2024, 1107/2024, 1120/2024, and 1179/2024. The applicants in these matters were initially included in the provisional select list for 212 posts prepared on 10.08.2024 but were subsequently ousted when the respondent authorities prepared separate lists for 204 Police Constable posts and 8 Police Constable Bandsman posts.

(ii) The applicant in O.A. No. 1099/2024, Bholenath Baburao Suryawanshi, belongs to the Orphan category and was initially selected under this horizontal reservation. He contends that if the 8 Bandsman posts are treated separately, no reservation for Orphans would be applicable to these 8 posts due to the 1% reservation formula, and therefore his place in the main select list should remain undisturbed.

(iii) The applicant in O.A. No. 1107/2024, Swapnil Rameshwar Hud, was initially at serial number 7 in the SEBC category select list but was shifted to the waiting list when two candidates from the open category (with higher marks) were moved to the SEBC category following the bifurcation of the selection process.

(iv) Similarly, the applicants in O.A. Nos. 1120/2024 and 1179/2024, Vijay Gokulappa Kshirsagar and Mahesh Subhash Kakade respectively, were initially at serial numbers 28 and 29 in the OBC category select list but were shifted to the waiting list when candidates from the open category (with higher marks) were moved to the OBC category.

(v) All these applicants contend that the reshuffling of candidates after the publication of the initial select list violated their legitimate expectations and the principles of fair selection procedure. They argue that the respondent authorities acted mechanically in reserving 8 posts for Bandsman without clarifying the reservation policy, which led to chaos in the entire selection process.

(vi) While we sympathize with the plight of these applicants, we must note that their inclusion in the initial select list was predicated on an erroneous approach by the respondent authorities.

The correct approach, as we have held above, was to treat the Police Constable Bandsman position as distinct from the regular Police Constable position and to prepare separate select lists for the two positions.

(vii) The consequences of this correction, though unfortunate for the applicants in O.A. Nos. 1099/2024, 1107/2024, 1120/2024, and 1179/2024, were inevitable and legally justifiable. The reshuffling of candidates based on their marks and category was a necessary corollary of the bifurcation of the selection process.

(viii) Addressing the legitimate expectations of candidates who were initially included in the provisional select list but were subsequently removed, we must recognize the well-established legal position regarding the rights that accrue to candidates upon empanelment. The Supreme Court, in *State of Bihar V The Secretariat Assistant Successful Examinees' Union*, 1986 JT 1993 (6) SC 462 (1994), has clearly delineated these rights:

"It is now well settled that a person who is selected does not, on account of being empanelled alone, acquire any indefeasible right of appointment. Empanelment is at the best condition of eligibility for purposes of appointment, and by itself does not amount to selection or create a vested right to be appointed unless relevant service rule says to the contrary."

(ix) In the case at hand, the initial empanelment of the applicants in O.A. Nos. 1099/2024, 1107/2024, 1120/2024, and 1179/2024 was founded on an erroneous approach—treating all 212 posts as a homogeneous group despite clear differences in qualification requirements and selection methodologies for regular Police Constable and Bandsman positions. The initial select list prepared on 10.08.2024 was based on an erroneous approach of treating all 212 posts as a common pool. When this error was rectified through the creation of separate merit lists, the consequential reshuffling became inevitable. The correction of this error, though it resulted in the ousting of some candidates, was legally sound and cannot be faulted. The applicants cannot claim a vested right to appointment based on their initial inclusion in what was essentially a flawed select list. No service rule applicable to Maharashtra Police provides

for such a vested right in these circumstances. Therefore, while we acknowledge the disappointment of these applicants, their removal from the select list following the legitimate bifurcation of the selection process does not constitute a legal injury that warrants judicial intervention.

(x) The applicants' contention regarding the lack of clarity on reservation policy for Bandsman posts in the advertisement requires careful examination. As established by the evidence on record, there exists no separate "bindunamavali" (roster) for Bandsman positions, and the respondent authorities have appropriately applied the common roster for the entire recruitment process. This practice aligns with the administrative structure wherein Bandsman is not a separate cadre but a specialized designation within the broader Police Constable framework. The respondent authorities correctly calculated the reservation for the total 212 posts advertised, maintaining the integrity of the reservation percentages mandated by law. This unified calculation of reservation, while creating separate merit lists for the distinct positions based on their specialized requirements, represents a harmonious construction of reservation principles and specialized selection processes. The bifurcation of the selection process into separate merit lists for Police Constable and Bandsman positions does not necessitate separate reservation calculations. The respondents' approach of applying reservation to the total cadre strength of 212 posts is legally sound and administratively prudent, ensuring both compliance with reservation mandates and recognition of the distinct nature of specialized positions.

(xi) The contention that the respondent authorities should not have modified the select list after its publication requires careful examination. The power of administrative authorities to correct manifest errors in selection processes is well-established in

administrative jurisprudence. It is a settled principle that administrative authorities not only have the power but indeed the duty to rectify errors that come to their notice, particularly when such errors affect the fairness of the selection process and the rights of eligible candidates.

(xii) While administrative finality is an important consideration, it cannot be elevated to such a status that it perpetuates an apparent error or injustice. When the respondent authorities recognized that their initial approach of preparing a common merit list for distinctly different positions was erroneous, they were well within their authority to rectify this error by creating separate merit lists, even if it meant modification of the previously published select list. This correction was not arbitrary but necessary to ensure fairness to the Bandsman candidates who had undergone a specialized selection process reflective of their distinct qualifications and skills.

(xiii) The principle of administrative fairness demands that errors, once identified, should be rectified rather than perpetuated under the guise of finality. The modification of the select list in this case served the larger public interest of ensuring that candidates were selected through a process that properly acknowledged the distinct nature of the positions they had applied for, thus upholding both the letter and spirit of the recruitment process.

Conclusion:

21. In light of the above discussion, we find that the respondent authorities' action in creating separate select lists for Police Constable (204 posts) and Police Constable Bandsman (8 posts) was legally valid and necessary to correct the earlier erroneous approach. The consequential reshuffling of candidates, though it adversely affected the applicants in

O.A. Nos. 1099/2024, 1107/2024, 1120/2024, and 1179/2024, was an inevitable and legally justifiable consequence of this correction.

22. Accordingly, O.A. No. 887/2024 is allowed with the following directions:

1. The respondent Nos. 3 and 4 shall implement the separate select list for the 8 posts of Police Constable Bandsman, which they have already prepared pursuant to the clarification dated 13.09.2024 issued by respondent No. 2.
2. The applicants in O.A. No. 887/2024 shall be considered for appointment as Police Constable Bandsman as per their position in this separate merit list, subject to verification of their documents and fulfillment of all other eligibility conditions.
3. The respondent authorities shall issue appointment orders to the eligible applicants within a period of four weeks from the date of receipt of this order.

23. O.A. Nos. 1099/2024, 1107/2024, 1120/2024, and 1179/2024 are dismissed for the reasons stated above. However, we direct that if any vacancy arises in their respective categories in the future, the respondent authorities shall consider the candidature of these applicants based on their position in the waiting list before initiating a fresh recruitment process.

24. There shall be no order as to costs.

MEMBER (A)

VICE CHAIRMAN

25. Learned counsel appearing for the applicants in O.A. No. 1107 & 1120 both of 2024 submits that the interim order directing the respondents to keep 08 posts of Police Constable Bandsman category vacant may be continued since the applicants are intending to approach

the Hon'ble High Court of Bombay, Bench at Aurangabad. In the order pronounced today, we have allowed the O.A. No. 887/2024 and directed the respondent Nos. 3 & 4 to implement the separate list for 08 posts of Police Constable Bandsman and the applicants in O.A. No. 887/2024 shall be considered for appointment as Police Constable Bandsman as per their position in the separate merit list.

26. In this backdrop, it is pertinent that the learned counsel for the applicant in the aforesaid OAs is making the prayer to continue interim order. We are not inclined to do so. In fact, that is not required to be extended. Hence, the request is refused.

MEMBER (A)

VICE CHAIRMAN

PLACE : AURANGABAD

DATE : 23.04.2025

JUDGMENT IN O.A. NO. 887-2024-selection process-HDD-2025