

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 937 OF 2024

DISTRICT : Chhatrapati Sambhajinagar

Kalyani d/o. Sunil Bhopale,
Age 20 years, Occ.: Student,
Chest No. 7944 R/o. Bhokargaon,
Tq. Vaijapur,
Dist. Chhatrapati Sambhajinagar.

..APPLICANT

V E R S U S

1. The State of Maharashtra,
Through the Additional Chief Secretary,
Home Department, Mantralaya,
Hutatma Rajguru Chowk,
Madam Kama Road, Mumbai-400032
2. The Director General of Police (M.S.)
State Police Headquarter,
Shahid Bhagatsing Marg,
Kulaba, Mumbai - 400 001
3. The Commissioner of Police,
Near Bhadkal Gate, Mill Corner,
Chhatrapati Sambhaji Nagar-431001
4. The Deputy Commissioner of Police (HQ)
Office of Commissioner of Police,
Bhadkal Gate, Mill Corner,
Chhatrapati Sambhaji Nagar-431001

APPEARANCE : Shri O.D. Mane, learned counsel for the
applicant.

: Shri Mahesh B. Bharaswadkar, learned Chief
Presenting Officer for the respondent authorities.

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

Reserved on : 15.04.2025

Pronounced on : 25.04.2025

ORDER

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

Heard Shri O.D. Mane, learned counsel for the applicant and Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officer for the respondent authorities.

2. This Original Application has been filed by Ms. Payal Raju Pithale challenging the provisional selection list and waiting list for the post of Police Constable published by the Deputy Commissioner of Police (Headquarters), Chhatrapati Sambhajnagar on 10.08.2024. The applicant, who belongs to the Other Backward Class (OBC) category and is female, secured 128 marks in the selection process but was placed at Serial No. 15 in the provisional waiting list under the OBC general category. The applicant contends that despite being eligible for consideration under the OBC female category, where the cut-off was 115 marks, she was not selected because she had not opted for the female reservation quota at the time of application. Through this Original Application, she seeks directions to the respondents to consider her candidature under the OBC female category and to revise the selection list accordingly.

3. **Pleadings and Arguments on behalf of the Applicant**

(i) The applicant, Ms. Payal Raju Pithale, has approached this Tribunal aggrieved by her non-selection for the post of Police Constable under the OBC female category, despite securing 128 marks in the selection process. The applicant contends that due to an arbitrary condition imposed by the

recruiting authority, she was unable to apply under the OBC female category and was instead considered under the OBC general category, resulting in her placement at Serial No. 15 in the provisional waiting list rather than selection under the OBC female category.

(ii) The learned counsel for the applicant, Shri A.O. Mane, submits that the advertisement for recruitment of Police Constables was published by the Police Commissionerate, Chhatrapati Sambhajanagar on 08.03.2024, with the last date for applications being 15.04.2024. The applicant filed her online application on 07.04.2024. The recruitment procedure was concluded on 10.08.2024, with the Deputy Commissioner of Police (Headquarters) publishing the provisional selection list. The cut-off marks for selection under the 'OBC general' category was 128 marks, while for the 'OBC female' category, it was 115 marks.

(iii) It is the specific grievance of the applicant that while filling the online application form on 07.04.2024, she attempted to apply under the OBC female category but encountered a condition requiring her to enter a female reservation certificate number. Not possessing such a certificate at that time, she was compelled to submit her application under the 'parallel reservation - none' category, effectively placing her in the OBC general category.

(iv) The learned counsel for the applicant vehemently argues that the recruiting authority rectified this arbitrary condition after 07.04.2024, and candidates who applied from 08.04.2024 onwards were not required to provide any female reservation certificate number to avail of the female reservation benefit. The authority, however, did not publish any intimation regarding

this change in the application form, nor did they provide an opportunity to candidates who had applied before the updation to correct their applications.

(v) The applicant contends that female candidates of OBC category who applied after 08.04.2024 automatically received the benefit of consideration under the OBC female category and were selected with marks as low as 115, whereas the applicant, despite belonging to the OBC female category and securing 128 marks, was deprived of selection due to her non-consideration under the parallel reservation of OBC female category.

(vi) Upon discovering this discrepancy after the declaration of results, the applicant filed a complaint application before the DCP (HQ) requesting consideration under the OBC female category. However, the respondent No. 4 rejected her request vide communication dated 16.07.2024, stating that the parallel reservation category cannot be changed post-application.

(vii) The applicant places reliance on the recruitment process conducted by the Superintendent of Police, Gadchiroli, where female candidates who filed applications in the 'parallel reservation - none' category were treated as candidates of the female category within their respective social reservation categories, without any requirement of feeding a female reservation certificate number. The applicant submits that this demonstrates the arbitrary and discriminatory nature of the condition imposed by the DCP (HQ), Chhatrapati Sambhajinagar.

4. The applicant has raised several grounds to challenge the provisional selection and waiting lists:

1. The imposition of an arbitrary condition requiring female candidates to provide a female reservation certificate number to avail of the female reservation benefit, which was not imposed in recruitment procedures in other districts of the state.
2. The subsequent removal of this condition after 08.04.2024 without any notification or opportunity for rectification to earlier applicants.
3. The discriminatory treatment meted out to the applicant compared to female candidates who applied after the condition was removed.
4. The contradiction in the application of parallel reservation rules between the Police Commissionerate, Chhatrapati Sambhajanagar and the Superintendent of Police, Gadchiroli.
5. The applicant prays for the quashing of the impugned provisional selection list and provisional waiting list dated 10.08.2024, with directions to the respondent No. 4 to consider the applicant's candidature under the OBC female category, revise the lists accordingly, and include the applicant's name in the revised selection list based on her merit.

6. **Pleadings and Arguments on behalf of the Respondents**

(a) The respondents, represented by Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officer, have vehemently opposed the reliefs sought by the applicant. The affidavit in reply has been filed by Shri Manoj Dhondiram Pagare, Assistant Police Commissioner (Administration), on behalf of respondents No. 3 and 4.

(b) The respondents submit that applications for filling up the posts of Police Constables were invited by advertisement dated 29.02.2024. The advertisement specifically reserved 30% of posts for female candidates. Clause 10.2(II) of the general

instructions accompanying the advertisement explicitly provided that female candidates were required to specifically mention in their applications if they wished to apply under the 30% quota reserved for female candidates. The clause further stipulated that once an option is selected by the candidates, they cannot subsequently change it.

(c) The respondents categorically state that the applicant specifically opted for her candidature from the general category and not from the 30% reservation provided for females in her respective category. In accordance with Clause 10.2(II) of the advertisement, the applicant's case was considered from the general merit and not from the quota reserved for females.

(d) It is the submission of the respondents that the applicant secured 128 marks and was considered from the Other Backward Class (OBC) category in general merit, consequently being placed at Serial No. 5 of the waiting list. The respondents argue that the applicant has approached this Tribunal only after the results were declared and she was placed in the waiting list, rendering the Original Application untenable.

(e) The respondents further submit that in compliance with the interim order passed by this Tribunal on 21.08.2024, one post was kept vacant. Due to similar interim orders in other Original Applications raising comparable issues, the seniority was required to be reshuffled. Candidates who had opted and applied from the 30% seats reserved for females were included in the selection under the Open female category at Select List Sr. No. 27, which remains subject to the decision of this Tribunal.

(f) The respondents contend that the final selection list was published on 12.09.2024, with the respective posts kept vacant as per the orders of this Tribunal. The rest of the recruitment process was completed, and 183 candidates joined the Police Training School.

(g) The respondents emphasize that a separate selection list on the basis of merit for female reservation was prepared in accordance with the advertisement and the reservation provisions. They argue that the very purpose of providing reservation for females would be frustrated if candidates who have not opted for the reserved seats for females were to be considered under that quota. The respondents maintain that the Original Application is contrary to the provisions of reservation as well as the clause specifically mentioned in the instructions which were part and parcel of the advertisement.

(h) In view of the aforementioned facts and circumstances, the respondents pray that the Original Application be dismissed with costs, being devoid of merit and substance.

7. Analysis and Findings

(i) The present controversy pertains to horizontal reservation for women within different vertical categories. The advertisement dated 29.02.2024 issued by the Commissioner of Police, Chhatrapati Sambhajnagar clearly provided for 30% horizontal reservation for women across all vertical categories. Out of the total 212 posts of Police Constables, 64 posts were reserved for women, with specific allocation for each vertical category.

(ii) The applicant, Ms. Payal Raju Pithale, has challenged her non-selection under the OBC female category for the post of

Police Constable despite having secured 128 marks, which is higher than the cut-off of 115 marks for the OBC female category. The central contention of the applicant revolves around her claim that she was unable to opt for the female reservation quota due to an alleged requirement of submitting a female reservation certificate number. However, upon scrutiny of the records, we find no documentary evidence to substantiate this claim. There is no material on record to establish that there was any such condition imposed by the respondents requiring submission of a female reservation certificate number for female candidates.

(iii) The applicant's contention that the condition was removed from 08.04.2024 onwards, allowing other female candidates to automatically get the benefit of female reservation, is not supported by any concrete evidence. The respondents have categorically stated that the applicant's case was considered in accordance with the option exercised by her in the application form, as per the terms of the advertisement.

(iv) The respondents have contended that as per Clause 10.2(II) of the general instructions accompanying the advertisement, candidates were required to specifically opt for the 30% quota reserved for female candidates at the time of application, and once an option was selected, it could not be changed. The respondents assert that the applicant did not opt for the female reservation category but rather opted for the 'parallel reservation - none' category, effectively placing herself in the OBC general category. This was a conscious choice made by the applicant at the time of filling the application form.

(v) It is pertinent to note that several other Original Applications have been filed in connection with women's

reservation, where the applicants, like the present applicant, had not opted for the 30% quota reserved for female candidates at the time of application, but are now seeking consideration under that quota after the declaration of results.

8. **Legal Framework of Reservation:** It is pertinent to understand the legal framework governing reservation in public employment. The concept of reservation operates at two levels - vertical and horizontal. As explained by the Hon'ble Supreme Court in *Indra Sawhney v. Union of India* (1992 Supp (3) SCC 217) and reiterated in various subsequent judgments, vertical reservations are compartmentalized reservations for specified categories such as Scheduled Castes, Scheduled Tribes, and Other Backward Classes. Horizontal reservations, on the other hand, cut across the vertical categories and provide for specified reservations for sub-categories such as women, persons with disabilities, etc. within each vertical category.

9. **Strict Compliance with Terms of Advertisement**

1. It is a well-established principle that the terms and conditions of an advertisement constitute the law of selection. In *State of Bihar v. Mithilesh Kumar* (2010) 13 SCC 467, the Hon'ble Supreme Court held that the terms and conditions of an advertisement are binding on both the recruiting authority and the candidates. Any deviation from these terms would render the selection process arbitrary and illegal.
2. In the present cases, Clause 10.2(II) of the advertisement specifically mandated that female candidates seeking to avail the

benefit of 30% horizontal reservation must explicitly indicate this preference in their application forms. The clause further stipulated that this option, once selected, could not be changed subsequently. This condition was clear, unambiguous, and brought to the notice of all potential applicants.

10. Post-Result Challenge to Selection Process

1. It is noteworthy that the applicant approached this Tribunal only after the results were declared and she found herself in unfavorable position. The Hon'ble Supreme Court has consistently held that candidates who participate in a selection process without any protest and raise objections only after the results are declared, are guilty of acquiescence and are estopped from challenging the selection process. In *Chandra Prakash Tiwari v. Shakuntala Shukla* (2002) 6 SCC 127, the Court observed that "a candidate who consciously takes part in a selection process without protest and subsequently finds himself to be unsuccessful, cannot turn around and challenge the selection process."
2. In the present cases, the applicant participated in the entire selection process, including document verification, physical tests, and written examination, without raising any objection to her categorization. She approached this Tribunal only after discovering that she had not been selected. This belated challenge to the selection process is impermissible.

11. On the Reliance placed on Gadchiroli Recruitment:

The applicant's reliance on the recruitment conducted by the Superintendent of Police, Gadchiroli, is misplaced. This Tribunal finds the contention unconvincing for several reasons. Firstly, while the principle of consistency is important, it cannot override the clear

terms of the advertisement or the mandate of statutory provisions. The Hon'ble Supreme Court, in *State of Bihar v. Kameshwar Prasad Singh*, (2000) 9 SCC 94, has categorically held that, "No court can grant relief to a citizen by applying the concept of negative equality. Merely because the Government had erroneously granted Brij Bihari Prasad Singh seniority with effect from 27-07-1971 as Inspector and, under the threat of contempt, promotion with effect from 25-10-1975, others claiming to be similarly situated cannot compel the Government to repeat the same mistake and, upon refusal, seek directions from the High Court." In the present case, even assuming that candidates in other districts were mistakenly allowed to rectify their errors, the applicant cannot claim a similar benefit merely on the ground of parity. An error or irregularity committed in another case does not confer a right to identical treatment, especially when such treatment is contrary to the applicable rules or advertisement conditions. Secondly, even if some irregularity occurred in other districts, it cannot be a ground for perpetuating that irregularity. If a wrong has been committed in a few cases, such wrong cannot be perpetuated.

12. **Conclusion and Order**

(i) In light of the foregoing discussion, we find no merit in the contentions raised by the applicant. The crux of this Original Application is that the applicant did not opt for the female reservation quota at the time of application and is now seeking to be considered under that quota after the declaration of results, which cannot be permitted.

(ii) The respondents have acted in accordance with the terms and conditions of the advertisement, and there is no illegality or infirmity in their actions. The applicant, having not opted for

the female reservation quota, cannot now claim consideration under the OBC female category after the declaration of results.

(iii) Accordingly, the Original Application stands dismissed. The interim order dated 21.08.2024 stands vacated. There shall be no order as to costs.

MEMBER (A)

VICE CHAIRMAN

PLACE : AURANGABAD

DATE : 25.04.2025

O.A. NO. 937-2024-appointment-HDD-2025