

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1025 OF 2022

DISTRICT : THANE

Shri Ajay Dashrath Gangawane,)
Assistant Police Inspector,)
Chitalsar Police Station, Thane.)
R/o: Ravi Building, Room No. 901,)
Opposite S.P Office, Thane [Rural].)
Near Thane Police School,)
Thane [W] 400 601.)...**Applicant**

Versus

1. Government of Maharashtra)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. Director General of Police,)
M.S, having office at Old Council Hall)
Colaba, Mumbai.)
3. Maharashtra Public Service)
Commission, through its Secretary,)
Having office at MTNL Bldg,)
Mumbai.)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Ms Archana B.K, learned Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Mrs Medha Gadgil (Member) (A)

DATE : **01.10.2024**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. The Applicant prays to hold and declare that the impugned order dated 6.6.2022 passed by Respondent No. 2 as unconstitutional, illegal and bad in law and the same be quashed and set aside with directions to the Respondents to accord deemed date in favour of the Applicant in the cadre of PSI of the Batch 104 instead of Batch 107.

2. Facts of the case in brief are as follows:-

Learned Counsel for the Applicant has submitted that the Applicant belongs to S.T category and he appeared for the Limited Departmental Competitive Examination conducted by Respondent No. 3 on 31.5.2001, for the Batch of 104 and he was selected in the said Examination from the said S.T category. The name of the Applicant was recommended for appointment by Respondent No. 3 to Respondent No. 1 on 9.12.2010. Learned counsel further submitted that the Applicant was sent for training in the Batch of 104 on the ground that he was not holding a valid Caste Certificate. The Respondents have taken the action of not sending him for training on the basis of Condition No. 7 of G.R dated 5.11.2009, wherein it was mentioned that unless the candidates possess the Caste Validity Certificate, he is not eligible to be sent for training. However, some of the candidates other than the Applicant challenged the said Condition No. 7 of the G.R dated

5.11.2009 before the Hon'ble Bombay High Court, Aurangabad Bench in W.P No. 2136/2011. By order dated 25.8.2011 the Hon'ble High Court struck down the said Condition no. 7 of G.R dated 5.11.2009. Resultantly, the Applicant became eligible and was sent for training on 1.11.2011 in the Batch of 107. The Applicant in due course completed his training and joined the post of P.S.I, after completion of his training on 21.7.2012. Learned Counsel further submitted that the Caste Scrutiny Committee invalidated the Caste Certificate of the Applicant on 4.3.2015. Thereafter, the Applicant challenged the said decision of the Caste Scrutiny Committee before the Hon'ble Bombay High Court in W.P 3105/2015. The Hon'ble Bombay High Court by order dated 3.3.2017 directed the Caste Scrutiny Committee to issue Caste Validity Certificate within a stipulated period. Accordingly, the Applicant secured valid Caste Certificate of belonging to S.T category in the year 2017. Learned Counsel further submitted that the Applicant submitted representation to Respondent No. 2 on 24.4.2017 that he be given deemed date of Batch of 104. The said request made was declined by order dated 26.9.2017. However, the Applicant received vital information wherein similarly situated Police Officer, viz. Shri Sachin H. Powar, was granted deemed date and therefore he again made representation to the Respondent No. 2 on 9.11.2017. The same was again rejected on 25.4.2019. Thereafter, again on 18.8.2021, the applicant submitted representation to Respondent No. 1 for grant of deemed date. The said representation was again rejected by Respondent No. 2, on 6.6.2022, referring to the provisions of Clause 89 of the Bombay Police Manual, denying deemed date of Batch 104.

3. Learned Counsel for the Applicant submitted that the Applicant originally belonged to Batch No. 104 and therefore the date when Batch No. 104 completed the training and his

batchmates were given the date of their appointment after completion of successful training period is to be given to the Applicant. Learned counsel has further submitted that the Applicant is to be treated necessarily from Batch No. 104 as he was not allowed to go for training on account of the policy decision taken by the State Government as per G.R dated 5.11.2009. However, the said G.R was struck down by the Hon'ble High Court by order dated 25.8.2011 in W.P 2136/2011. Learned counsel for the Applicant therefore submitted that when the said Condition No. 7 of G.R dated 5.11.2009 was struck down by the Hon'ble High Court, the situation was restored and he is to be given the deemed date of appointment when his batchmates of Batch No. 104 were sent for training and they completed the training successfully and given appointment. Learned counsel has further submitted that the Applicant had successfully completed the training and joined the Police Force and therefore he is entitled for grant of deemed date of the Batch of 104.

4. Learned P.O while opposing the Original Application has relied on the short affidavit in reply dated 7.7.2023 filed by Respondent No. 2, through Shrishail C. Imade, Dy. Assistant in the office of D.G.P (Estt-II), and also short affidavit in reply dated 3.1.2023 of Respondent No. 3, through Shri B.P Mali, Under Secretary in the office of Secretary, M.P.S.C, Mumbai. Learned P.O submitted that the Applicant cannot be given the deemed date as the Applicant does not belong to Batch No. 104 and as per Clause 89(3) of the Bombay Police Manual the date of seniority of a Police Personnel has to be reckoned from the date on which they are sent for training. Learned P.O has submitted that Batch of the candidates is to be considered who have passed out in the same recruitment process and when they were sent for training. The Applicant was not sent for training with Batch No 104 and he has

completed the training with Batch No. 107. Learned P.O further relied on Rule 89(3) of the Bombay Police Manual.

5. Learned P.O relied on the following decisions:-

- (i) Judgment of the Hon'ble Supreme Court in K. Meghchandra Singh & Ors Vs. Ningam Siro & Ors, Civil Appeal No 8833-8835/2019.
- (ii) Decision of this Tribunal dated 7.6.2017 in O.A 918 & 1094/2015, Shri S.B Shingte & Ors Vs. The Government of Maharashtra & Ors.
- (iii) Decision of this Tribunal dated 19.9.2024 in O.A No. 983/2017, Shri K.J Shinde Vs. The Government of Maharashtra & Ors.

6. Learned P.O further submitted that the Applicant did not take training in the Batch of 104 and was not borne in the said Batch and therefore he is not at all eligible to be treated as Batchmate of 104 Batch and the said date of appointment of Batch No. 104 cannot be granted by way of deemed date to the present Applicant.

7. The relevant Rule 89(3) of the Bombay Police Manual which is relied by learned P.O is reproduced for ready reference as under:-

“89(3) The seniority of Sub-Inspectors recruited directly on the basis of competitive examination and Head Constables passing the Sub-Inspector's course should be reckoned from the date of their appointment as Police Sub-Inspectors on probation, their inter-seniority being determined by the order of merit in which they pass out from the Police Training College. A Sub-Inspector who has failed in the final examination at Police Training College and is given an extension shall if he passes the next examination, be placed below those S.I's who joined the Police Training College in his batch and above those who joined the Police Training

College in the subsequent batch but passed the final examination him. In case, the period of probation is extended up to six months, the position of the officer concerned on the Gradation List of Sub-Inspectors will be below that of any Sub-Inspector, who passed out at the same time as himself and where the period of probation is extended by more than six months, the officer will be placed below all the Sub-Inspectors who complete their probation period successfully earlier than him.”

8. In the case of **K. Meghachandra Singh & Ors. Versus Ningam Siro & Ors, Civil Appeal No.8833-8835 of 2019** the Hon'ble Supreme Court while determining seniority of direct recruits vis-a-vis promotes and inter-se seniority has held that for determination of seniority has relied on the earlier judgments of Jagdish Chandra Patnaik Vs. State of Orissa (1998) 4 SCC 456, Suraj Prakash Gupta & Ors. vs. State of J&K & Ors (2000) 7 SCC 561 and Pawan Pratap Singh and Ors. Vs. Reevan Singh & Ors 3 (2011) 3 SCC 267 and has further held that:-

“These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under Service Jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre.”

9. In the case of **Shri Suresh B. Shingte & Ors Vs The Government of Maharashtra & Ors, O.A 918/2015 & Ors**, the two Original Applications were filed by two sets of Applicants, i.e., by promotes who were promoted on 30.4.2001 and confirmed as per their quota in the year 2002, 2003 and 2004 challenge the seniority of the P.S.Is who have been promoted after passing out the Limited Departmental Competitive Examination and they joined on 1.6.2004, were granted deemed as 22.3.2000. In other Original Application the Applicants were appointed after selection through MPSC in the year 1998 and sent for training on 22.3.2000. Then some candidates were sent out of the said batch

on 16.4.2001 and some candidates of the same batch was sent on 1.6.2004. They all were given the deemed date 22.3.2000 by order dated 31.8.2015 on account of the orders passed by the Tribunal. So the said orders were challenged by the second set of Applicants that the order of giving deemed date has adversely affected on them. While deciding the said two Original Applications, by a detailed judgment, the Tribunal held that:-

“Deemed appointment from a date different from actual appointment can be granted only by the State Government under rule 5(1) of Seniority Rules. The Respondent No. 2, has no legal authority to pass any such order. There are various judgments of Hon’ble Supreme Court, wherein it is clearly held that a person cannot be given retrospective appointment/seniority in the cadre from a date on which he was not even borne on that cadre.”

In the present case the Applicant was not sent for training for not having the valid Caste Certificate at the relevant time and which was not his fault. Hence the cases relied by the learned P.O is not applicable to the present case.

10. The present case is distinguishable on facts from the cases of **K. Meghchandra Singh (supra)** and **S.B. Shingte (supra)**. The Applicant was selected for the post of PSI based on Limited Departmental Competitive Examination, 2007 for which results was declared on 31.05.2010. The name of Applicant was recommended for Batch No,104 on 09.12.2010. The said Batch No.104 was sent for training on 02.06.2011. However, the Applicant was not sent for training for want of Caste Validity Certificate. It is to be noted that subsequently the Applicant was sent for training but after Five Months i.e. on 02.11.2011 along with Batch No.107. Thus, from June 2011 to November, 2011 in Five Months the Batche No.105 and Batch No. 106 had already been sent for PSI training. The Applicant completed the training of

the said post with Batch No. 107 on 31.07.2012. Thus, as his batchmates from Limited Departmental Competitive Examination, 2007 have completed training before the Applicant, thus the applicant prays for grant of deemed date of the batchmates of Batch No.104. Thus, it shows that during the period of Five Months i.e. from June, 2011 to November, 2011 the Batch No.104, Batch No 105, Batch No 106 and Batch No 107 were sent for training for the post of PSI so there is not much time gap. So far as time gap about completion of training is concerned it is not much as Applicant had completed training on 21.07.2012 and Batch No.104 had completed training in June or July, 2012. Though there is less time gap for asking deemed date, nonetheless there are many candidates of Batch No.104, Batch No. 105 and Batch No. 106 who had undergone training prior to the Applicant.

11. It is necessary to consider the reason for what the applicant was not sent for training. Admittedly, he did not possess the valid Caste Validity Certificate. The Applicant had applied from Schedule Caste Category. The State Government had adopted a policy at the relevant time that the candidates who are not having Caste Validity Certificate should not be sent for training even though the candidates are selected and so the applicant was not sent for training. It is not the case that the name of Applicant was dropped from Select List of Batch No.104. The Applicant would have missed the bus may be permanently on the ground of not having Caste Validity Certificate. The Applicant had applied to the Caste Scrutiny Committee much earlier and the decision was pending. However various Writ Petitions came to be filed by many such candidates like the Applicant who were not sent for training on the ground that they were not having the Caste Validity Certificate. In **Writ Petition No.2136 of 2011 Shrikant**

Chandrakant Saindane Vs. State of Maharashtra & 14 Ors, wherein validity of G.R. dated 05.11.2009 was challenged; the Hon'ble Division Bench of the Bombay High Court, Aurangabad Bench by Judgment dated 25.08.2011 had struck down the 'Condition No.7' of the said G.R. dated 05.11.2009 holding it unnecessary. The operative part of the said Judgment dated 25.08.2011 is reproduced as follows:-

(i) We allow the petitions and hold that condition No. 7 in Government Resolution dated 5th November, 2009 is unreasonable and therefore, is struck of.

(ii) Since it is not in dispute that all the petitioners are duly selected against a post reserved for particular reserved category, we direct the Respondent-employers to forthwith issue provisional appointment orders in favour of the petitioner, which shall be subject to validation of their caste/tribe claims. The same shall be done within a period of one month from today.

(iii) The respective Respondent-Scrutiny Committees are directed to decide claim of the petitioners as expeditiously as possible and in any case within a period of six months from today.

(iv) It is directed that no coercive action shall be taken against the petitioners on the ground of non-submission of validity certificate till the Respondent-Committees decide claims of the petitioners.

(v) It is further directed that in the event any order adverse to the interest of the petitioners is passed by the Respondent-Committees, the same shall not be given effect for a period of four weeks from the date of receipt of communication by the petitioners."

12. Thus, as the 'Condition No. 7' of G.R dated 05.11.2009 was held unnecessary and was struck down by the Hon'ble Bombay High Court, Aurangabad Bench the said policy of the State Government also became 'non-est'. Thereafter the Applicant was

sent for training on 02.11.2011 with Batch no. 107. The name had neither been dropped from Select List nor the Applicant of his own held himself back or withdrawn from going for the training along with Batch No.104. Thus, the Applicant was prevented only on account of the policy of the State Government which was held invalid and unreasonable. Thus, while appreciating these circumstances the Tribunal has to imagine the situation, viz 'Condition No. 7' in the said G.R dated 05.11.2009 was not to be in existence, the Applicant would certainly have been sent for training with Batch No. 104. However, on account of the said policy of State Government he was kept back from joining training with Batch No. 104. Thus, the Applicant though was born in the Select List along with his batch mates of Batch No 104 he was not allowed to breath. Therefore, we are of the considered view that the ratio laid down in the cases of **K. Meghchandra Singh (supra)** and **S.B. Shingte (supra)** are not applicable to the present case in view of the short distinguishable facts. Hence our indulgence is required However, it is made clear that when the Select List is published though the candidate is recommended for appointment based on merit yet the said Merit List is always subject to the successful completion of training for the post of PSI. The performance of the candidates at the time of 11 months training thus has important bearing over the final merit of the candidates and therefore although the Applicant is given Deemed Date of his Batch No.104 his name will be shown at the bottom of Batch No.104. i.e., as the last amongst PSI of the Batch No.104.

13. In view of the above, we pass the following order:-

ORDER

(i) The Original Application is allowed.

- (ii) The impugned Order dated 6.6.2022 passed by Respondent No. 2 is hereby quashed and set aside.
- (iii) The Respondent No. 2 is directed to grant Deemed Date to the Applicant in cadre of P.S.I based on Batch No. 104 instead of Batch No. 107.
- (iv) The Applicant will be shown in the Seniority List of PSI based on placement at the bottom of Batch No. 104.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 01.10.2024
Dictation taken by : A.K. Nair.