

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NOS 513 & 815 OF 2017

DISTRICT : RATNAGIRI

1. ORIGINAL APPLICATION NO. 513 OF 2017

1. Hanumant B. Sonawane,)
Occ-Service, R/at P-12, Gramin)
Police Quarter, Behind Gramin Police)
Station, Kharwanchiwadi,)
Post-Khedashi, Dist-Ratnagiri.)
2. Madne Rajiv P.)
Occ-Service, R/at P-12,)
Gramin Police Quarter,)
Behind Gramin Police)
Station, Kharwanchiwadi,)
Post-Khedashi, Dist-Ratnagiri.)
3. Pankaj Gotiram Ohekar,)
Occ-Service, R/at P-12,)
Gramin Police Quarter,)
Behind Gramin Police)
Station, Kharwanchiwadi,)
Post-Khedashi, Dist-Ratnagiri.)
4. Vairage Vijay B.)
Occ-Service, R/at P-12,)
Gramin Police Quarter,)
Behind Gramin Police)
Station, Kharwanchiwadi,)
Post-Khedashi, Dist-Ratnagiri.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. The Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400 032.)
3. Spl. Inspector General of Police,)
Motor Transport, Pune,)
State of Maharashtra, Pune,)
Office at Aundh, Pune.)...**Respondents**

2. ORIGINAL APPLICATION NO. 815 OF 2017

1. Shri Santosh Manohar Patil,)
Occ-Service,)
R/o: Uran Kegaon-Danda,)
Tal-Uran, Dist-Raigad 400702.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. Spl. Inspector General of Police,)
Motor Transport, Pune,)
State of Maharashtra, Pune,)
Office at Aundh, Pune.)
3. The Dy. Superintendent of Police,)
[Admn], having office at)

- Spl Inspector General of Police,)
M.S, Aundh, Pune.)
4. Rohan Dilip Lad,)
Occ-Service, R/at Post Karambawane)
Tal-Chiplun, Dist-Ratnagiri 451628.)...**Respondents**

Shri R.G Panchal, learned advocate for the Applicants.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents No 1 to 3.

Shri V.V Berde, learned counsel for Respondent No. 4.

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

RESERVED ON : 11.06.2024

PRONOUNCED ON : 21.06.2024

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicants pray that this Tribunal be pleased to quash and set aside the impugned proviso to Rules 3(c) & (d) and 5(c) & (d) of Police Sub-Inspector Second Class Master and Police Sub-Inspector First Class Engine Driver (Group B), (Non-Gazetted) Recruitment Rules 2016, holding that the same are discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India.

2. Learned counsel submits that the applicants No 1 to 3 in O.A 513/2017 are working as Police Constables, Khalashi (Engine Side) and applicant No. 4 as Police Constable, Khalashi (Deck Side) and applicant in O.A 815/2017 is working as Lashkar in Indian Navy. Learned counsel has submitted that Respondent No. 4 in

O.A 815/2017 is appointed as P.S.I in Second Class Master. Learned counsel submitted that the recruitment was initiated in the year 2017 for filling up the 54 posts of P.S.I, First Class Engine (Driver) and 50 posts of P.S.I, Second Class Master. At that time no interim relief was granted keeping the posts vacant or the result will be subject to the outcome of the present Original Applications. Unless the persons hold Certificate of Second Class Master, then only he can apply for First Class Engine Driver and for Second Class Master he should hold the Certificate of Sarang. Learned counsel has submitted that the candidates who are selected they do not hold Certificate either of Sarang or Second Class Master. Learned counsel for the applicant submitted that the applicant in O.A 815/2017 was informed that he is ineligible for appointment as he did not possess the Second Class Master's Certificate.

3. Learned counsel for the applicants challenges the Constitutional Validity of proviso to Rules 3(c) & (d) and also 5(c) & (d) of the Recruitment Rule dated 19.1.2016. At the outset, we make it clear that the Rules which are produced before us they are in English and Marathi. They are not the same as the numbering is concerned. However, the script in the body is the same. Thus, we reproduce proviso to Rule 3(c) & (d) as under:-

“(तीन) ज्यांनी इंग्लंड व्हेसल अधिनियम, १९९७ (१९९७ चा १) नुसार सेकन्ड क्लास मास्टर म्हणून आवश्यक असलेले कॉम्पेटन्सी प्रमाणपत्र किंवा महासंचालक, शिपिंग, भारत सरकार यांनी प्रदान केलेले मचैट शिपिंग अँक्ट, १९५८ (१९५८ चा ४४) नुसार नेव्हीगेशन ऑफिसर (NWKO) निअर कोस्टल व्होयाज (NCV) उच्च कॉम्पेटन्सी सर्टिफिकेट धारण केले आहे.

(क) या नियमातील नियम ३ (ब) मधील उपखंड (i), (ii), (iii) व (v) मधील अर्हता पूर्ण करणा-या भारतीय नाविक दलातील Seaman Petty Officer/ Chief Petty Officer या पदावरील २ वर्षांचा अनुभव धारण करणा-या माजी सैनिकामधून नामनिर्देशनाने :

परंतु, या नियमातील नियम ३ (ब) उपखंड (iii) मधील अर्हता धारण करणारे माजी सैनिक पुरेशा संख्येने उपलब्ध होत नसल्यास, सदर अर्हता धारण न करणारे उमेदवार या पदासाठी अर्ज करण्यास पात्र ठरतील, परंतु असे माजी सैनिक नियम ३ (ब) उपखंड ;पपपद्ध मधील

अर्हता ;कॉम्प्यूटन्सी प्रमाणपत्रद्ध नियुक्तीच्या दिनांकापासून १८ महिन्यांच्या कालावधीत नियुक्ती प्रधिका-यांना सादर करतील व या कालावधीत सदर अर्हता धारण न केल्यास त्यांची सेवा समाप्त करण्यात येईल.

(ड) या नियमांतील नियम ३ (ब) मधील उपखंड (i), (ii), (iii) व (v) मधील अर्हता पूर्ण करणा-या भारतीय तटरक्षक दलातील Adhikari (Seaman) किंवा Pradhan Navik (Seaman) या पदावरील २ वर्षांचा अनुभव धारण करणा-या माजी सैनिकांमधून नामनिर्देशनाने :

परंतु या नियमांतील नियम ३(ब) उपखंड (iii) मधील अर्हता धारण करणारे माजी सैनिक पुरेशा संख्येने उपलब्ध होत नसल्यास, सदर अर्हता धारण न करणारे उमेदवार या पदासाठी अर्ज करण्यास पात्र ठरतील, परंतु असे माजी सैनिक नियम ५(ब) उपखंड (iii) मधील अर्हता ;कॉम्प्यूटन्सी प्रमाणपत्रद्ध नियुक्तीच्या दिनांकापासून १८ महिन्यांच्या कालावधीत नियुक्ती प्रधिका-यांना सादर करतील व या कालावधीत सदर अर्हता धारण न केल्यास त्यांची सेवा समाप्त करण्यात येईल”.

“५. पोलीस उपनिरीक्षक फर्स्ट क्लास इंजिन ड्रायव्हर या पदावरील नियुक्ती खालील मार्गाने करण्यात येईल:-

(क) या नियमांतील नियम ५(ब) मधील उपखंड (i), (ii), (iii) व (v) मधील अर्हता पूर्ण करणा-या भारतीय नाविक दलातील Leading Mechanical Engineer या पदावरील किमान १ वर्षांचा अनुभव धारण करणा-या माजी सैनिकांमधून नामनिर्देशनाने :

परंतु या नियमांतील नियम ५(ब) उपखंड (iii) मधील अर्हता धारण करणारे माजी सैनिक पुरेशा संख्येने उपलब्ध होत नसल्यास, सदर अर्हता धारण न करणारे उमेदवार या पदासाठी अर्ज करण्यास पात्र ठरतील, परंतु असे माजी सैनिक नियम ५(ब) उपखंड (3) मधील अर्हता ;कॉम्प्यूटन्सी प्रमाणपत्रद्ध नियुक्तीच्या दिनांकापासून १८ महिन्यांच्या कालावधीत नियुक्ती प्रधिका-यांना सादर करतील व या कालावधीत सदर अर्हता धारण न केल्यास त्यांची सेवा समाप्त करण्यात येईल

किंवा

(ड) या नियमांतील नियम ५(ब) मधील उपखंड (i), (ii), (iii) व (v) मधील अर्हता पूर्ण करणा-या भारतीय तटरक्षक दलातील Uttam Yantrik किंवा Pradhan Navik (M.E.) या पदावरील किमान १ वर्षांचा अनुभव धारण करणा-या माजी सैनिकांमधून नामनिर्देशनाने

परंतु या नियमांतील नियम ५(ब) मधील उपखंड (3) मधील अर्हता धारण करणारे माजी सैनिक पुरेशा संख्येने उपलब्ध होत नसल्यास, सदर अर्हता धारण न करणारे उमेदवार या पदासाठी अर्ज करण्यास पात्र ठरतील, परंतु असे माजी सैनिक नियम ५(ब) उपखंड (3) मधील अर्हता ;कॉम्प्यूटन्सी प्रमाणपत्रद्ध नियुक्तीच्या दिनांकापासून १८ महिन्यांच्या कालावधीत नियुक्ती प्रधिका-यांना सादर करतील व या कालावधीत सदर अर्हता धारण न केल्यास त्यांची सेवा समाप्त करण्यात येईल”.

4. These rules are repugnant to Articles 254 and 256 of the Constitution of India, which reads as under:-

“254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States

(1)If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2)Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

256. Obligation of States and the Union

The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.”

5. Learned counsel for the applicants relies on Section 21, 22 & 59 of the Inland Vessels Act, 1917. Learned counsel has submitted that in Maharashtra Maritime Board has granted Certificate under

Section 21 of the Indian Vessels Act, 1917. The said Sections 21, 22 & 59 is reproduced below:-

21. Grant of masters', serangs', engineers', and engine-drivers' certificates of competency.—(1) The State Government or such officer as it may, by notification in the Official Gazette, appoint in this behalf, shall grant to every person who is reported by the examiners to possess the prescribed qualifications, a certificate of competency to the effect that he is competent to act as a first-class master, second-class master or serang, or as an engineer, first-class engine driver or second-class engine-driver, as the case may be, on board an inland 1[mechanically propelled vessel

Provided nevertheless that, before granting a certificate of competency under this Act, the authority empowered to grant such certificate may, if it considers the report of the examiners regarding any applicant for such certificate to be defective, or has reason to believe that such report has been unduly made, require a further examination or a re-examination of the applicant.

(2) Every certificate granted under this section shall be in the prescribed form.

22. Grant of masters', serangs', engineers' and engine-drivers' certificates of service.—(1) The State Government may, 2[if it thinks fit], grant without examination to any person who has served as a master, or as an engineer, of 3[a vessel of the Coast Guard, Indian Navy or regular Army for a period as may be prescribed by the State Government in this behalf], a certificate (hereinafter called a certificate of service) to the effect that he is, by reason of his having so served, competent to act as a first-class master, second-class master or serang, or as an engineer, first-class engine-driver or second-class engine-driver, as the case may be, on board an inland 1[mechanically propelled vessel.....

59. Penalty for serving, or engaging a person to serve, as master or engineer, without certificate. If any person— (a) proceeds on any voyage in an inland [mechanically propelled vessel] as the master or engineer of such vessel without being at the time entitled to, and possessed of, a master's or serang's or an engineer's or engine-driver's certificate [or a master's or engine-driver's licence as the case may be, as required under this Act, or

(b) employs as the master or engineer of an inland [mechanically propelled vessel] any person without ascertaining that he is at the time entitled to, and possessed of, such certificate [or licence],

he shall be punishable with fine which may extend to five hundred rupees.”

6. Learned counsel for the applicants submitted that the Certificate of Service of Competence should be as per the requirement issued by the Maharashtra Maritime Board and not by the Commodore Bureau of Sailors.

7. Learned C.P.O relied on the affidavit in reply dated 9.6.2022 filed through Shaikh Ayaj Rukhnoddin, having additional charge of Dy. Superintendent of Police, Launch Maintenance Office, Thane in the office of Special I.G.P, Motor Transport, M.S, Pune. Learned C.P.O submitted that the applicant in O.A 815/2017 does not possess the Certificate issued by the competent authority. But the persons who are selected are having the Certificate of Service Extract issued by the Commodore Bureau of Sailors. Learned C.P.O also relied on the short affidavit in reply dated 2.5.2024 filed by Shri Anant D. Mali, Dy. Superintendent of Police, Launch Marine Officer, (LMO), in the office of the Inspector General of Police, Motor Transport, M.S., Pune, along with the Chart showing the list of persons working as P.S.I, Second Class Master, in Police Launch Department. Learned C.P.O further submits that the persons who are appointed are from the Ex-servicemen, Army Coast Guard & Navy and they are given Trade Certificate and the applicants do not have the basic rule of experience.

8. As per Rule 3(c) or 5(c) of the Recruitment Rules, 18 months breathing time is given to acquire the Competency Certificate. The grievance of the learned counsel for the applicants is that giving 18

months breathing time to acquire the Competent Certificate is illegal because you cannot Sail a Second Class Masters even for a minute without the Competency Certificate and therefore the particular clause is illegal.

9. Learned counsel though has challenged the relevant provision of giving relaxation to the Ex-servicemen from Indian Coast Guard or from Indian Navy to obtain the Competency Certificate within a period of 18 months from the date of the appointment, as giving relaxation is contrary to Section 59 of the Inland Vessels Act, 1917. Indian Vessels Act is of the year 2017 and the Recruitment Rules of the post of Police Sub-Inspector Second Class Master and Police Sub-Inspector First Class Engine Driver are of the year 2016. The Certificate of Competency is granted as per Sections 21 & 22 of the Act by the Government. It is granted without any examination. Under Section 22 that Certificate is to be given to a person who has served as a Master or Engineer of a Coast Guard, Indian Navy or regular Army and for a period which is prescribed by the State Government. So the Section 22 itself arranges and states that Government is required to prescribe a particular period to give a Certificate. Let us advert to Section 59 of the Act. It says that if any person proceeds on any voyage as a Master or Engineer of such vessel without the Competency Certificate which is required under the Act, then he will be penalized by saddling him fine to the extent of Rs. 500/-. The provisions of relaxation of 18 months in Rules 3 & 5 of the Recruitment rules may appear contrary but after reading Sections 21, 22 & 59 of the Inland Vessels Act, 1971, and the relevant provisions of the Recruitment rules collectively and after close scrutiny, one understands that there is no repugnancy and no contradictions.

10. Section 59 which is a penalizing section, the term used is if Master or Engineer proceeds on any voyage in an Inland. The term 'Voyage' is used which meaning by Oxford Dictionary is 'a long journey involving travel by sea or in space. Thus, voyage means necessarily a long journey in a sea. The Legislature has not used the term a person who sails in an Inland. It means if a person learning and sailing for the purpose to get the experience for a short distance, then it cannot be called a voyage and therefore persons cannot be covered under this penal clause. The impugned Rules 3(c) or 5(c) of the Recruitment Rules under challenge thus giving time of 18 months to obtain the Competency Certificate while on the Ship is not contrary to the penal clause. It is to be noted that the persons who are Ex-servicemen from Navy or Coast Guard have sufficient experience to their credit of sailing. However, as per the rules the Competency Certificate is also required and they have to fulfill the criteria. Such candidates though they possess the Certificate in Trade about their competency, yet they need to have the Competency Certificate as prescribed under the law. Considering this peculiar situation and the experience of these candidates and so also the requirement of the Coast Guards for the safety of the Sea Borders of the Nation, this concessional period itself is provided under Sec 2 of the Act and so it is appearing in the respective rules which are under challenge. No repugnancy or contradiction is found under Articles 254 and 256 of the Constitution of India.

11. Hence, the challenge on the ground of repugnancy, holding that the same are discriminatory and violative of Arts 14, 16 and 21 of the Constitution of India and therefore null and void as per Article 254 of the Constitution of India fails.

12. In view of the above, we find no merit in the Original Applications and they stand dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 21.6.2024
Dictation taken by : A.K. Nair.