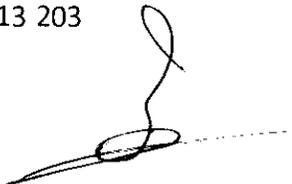


IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.394 OF 2018 WITH M.A.NO.472 OF 2018 WITH
M.A.NO.586 OF 2018
(Subject : Selection)

DISTRICT : MUMBAI

1. Mr. Santosh Bapurao Rathod,)
Add : E10/06, Marol Police Camp,)
Marol, Maroshi Road, Near Vijay Nagar,)
Andheri (E), Mumbai.)
2. Mr. Vishnu Gangadhar Giri,)
Add : 15A/203, MHADA Colony,)
Chandivali, Sakinaka, Andheri (E), Mumbai)
3. Mr. Vinod Bhaskar Pawar,)
Add : JN-237, A-8, Shraddha Apts 10,)
Vashi, Navi Mumbai.)
4. Mr. Sunil Amrut Bhamre,)
Add : Himmat Nagar Police Line,)
New Building No.4, Room No.2,)
Malegaon Camp, Malegaon, Dist. Nashik.)
5. Mr. Sandip Goraksh Parvate,)
Add : At Post Wangi, Post Wadala,)
Tal North Solapur, Dist. Solapur 413 222)
6. Mr. Amit Ramchandra Zanzane,)
Add : Santosh Niwas, Adarsh Vidhyalay,)
Near Datt Mandir, Datar Colony,)
Bhandup (E), Mumbai.)
7. Mr. Mayur Panjabrao Patil,)
Add : Room No.133, 4th floor,)
Best Marg, Colaba Police Line,)
Colaba, Mumbai 01.)
8. Mr. Rupesh Uttamrao Ingle,)
Add : Shiv Omkar Heights, Flat No.302,)
SR No.75/9, Raykar Mala, Dhayri, Pune.)
9. Mr. Abhijit Gorak Kanse,)
Add : At Post Kumbhargaon,)
Tal Karmala, Dist Solapur 413 203)



10. Mr. Siddeshwar Trimbak Gaikwad,)
Add : S.R.P.F. Gr.10, 504 quarter,)
Room No.10/4, Solapur.)
11. Mr. Anil Balu Nimbalkar,)
Add : At Post Khardi, Tal : Pandharpur,)
Dist. Solapur 413 317.)
12. Mr. Nitin Prabhakar Patil,)
Add : Flat No.309/B Wing, 3rd floor,)
Ustav Plaza, Madhuban Township,)
Gokhiware Vasai (E), Tal – Vasai, Dist – Palghar.)
13. Mr. Chetanlal Dhannulal Patle,)
Add : Sant Gadge Baba Nagar,)
Kamtha Road Amgaon, Tal : Amgaon,)
Dist. Gondia 441 902)
14. Mr. Kashinath Shankar Pawar,)
Add : Flat No.402/A Wing, 4th floor,)
Taniya Heritage CHS, Nallasopara (E),)
Tal. Vasai, Dist. Palghar.)
15. Mr. Imran Aslam Khan,)
Add : Flat No.04, Aman Paradise,)
Al-Madina Colony, Near JMCT College,)
Wadala Road, Nashik 422 006.)
16. Mr. Rahul Chandrakant Khandekar,)
Add : Saraswati Nagar,)
Saint Paul School Road, Akot 444 101)
17. Mr. Tatyanna Anna Bhosale,)
Add : SRPF Camp, 197 Quarter,)
Saraswati Building, Room No.5,)
Vijapur Road, Solapur)
18. Mr. Anant Vishnu Gholve,)
Add : Bidkin, Tal : Paithan,)
Dist Aurangabad.)
19. Mr. Shyam Rambhau Gaikwad,)
Add : Rajiv Gandhi Nagar, N-2,)
Aurangabad.)

20. Mr. Pankaj Suryabhanji Wasade,)
Add : At Post Bakhari,)
Tahsil Parsioni, Nagpur.)
21. Mr. Indrajit Shahaji Nemane,)
Add : SRPF Camp, 197 Quarter,)
Chandrabhaga Building, Room No.9,)
Vijapur Road, Solapur)
22. Mr. Lahu Ramchandra Navale,)
Add : SRPF Camp, 197 Quarter,)
Tapi Building Room No.5,)
Vijapur Road, Solapur.)
23. Mr. Sayyad Irfan Yunus,)
Add : Bachelor Barrack, F Coy,)
SRPF Camp, Jalna.)
24. Mr. Ashish Devidas Padole,)
Add : Police Head Quarter,)
Karanja Gondia, Saraswati Building No.6,)
Karanja, Gondia.)
25. Mr. Suraj Sanjay Patil,)
Add : 48/A, Bhageshwar Bhavan,)
Lt. Dilip Gupte Road, Mahim,)
Mumbai 400 016.)
26. Mr. Vikas Vilas Chavan,)
Add : Chintamani Sawant Niwas Chawl,)
R. No.5, Near Municipal School,)
Tembipada, Bhandup (W), Mumbai 78)
27. Mr. Atul Baliram Rathod,)
Add : 450/9/408 Police Line Takali,)
Katol Road, Nagpur 440 013.)
28. Mr. Dnyaneshwar Jagannath Ghadge,)
Add : Arvind Dham, Bldg No.1,)
Room No.37, Pune Naka, Solapur 413 001.)
29. Mr. Anna Madhukar Darade,)
Add : At Bhargaon, Post Bhogaon,)
Darade Waste, Tal : Barshi, Dist. Solapur.)



30. Mr. Santosh Shivraj Patil,)
Add : A-402, Krishana Residency,)
Sector 20, Roadpali, Kalamboli,)
Navi Mumbai 410 218.)
31. Mr. Hitesh Vinayak Chopade,)
Add : Chatrapati Shivaji Nagar,)
Chavan Layout, Washim 444 505.)
32. Mr. Shankar Ramrao Chavhan,)
Add : Quarter No.E/17/06,)
Patrighad Quarters, Police Line,)
Police Takli Rd., Katol Rd.,)
Near CID Office, Nagpur.)
33. Mr. Amit Rajendra Gaikwad,)
Add : Room No.16, Shivaji Nagar,)
Old Police Line, Near Modern College,)
Shivajinagar, Pune.)
34. Mr. Kiran Babarao Mahajan,)
Add : At Ramtirtha, Post Undri,)
Tal : Ralegaon, Dist. Yavatmal.)
35. Mr. Ramjan Madarso Shaikh,)
Add : Bldg No.1, Police Vasahat,)
New Police Line 1/25, Near Post Office,)
Thane (W).)
36. Mr. Raju Kumar Palve,)
Add : SES High School,)
Opp. Barrack No.85, Devaji Palace,)
Tal : Ulhasnagar, Dist. Thane 421 001.)
37. Mr. Dinesh Jagannath Ghuge,)
Add : Police Head Quarter, Katol Road,)
Quarter No.E/5/6, Nagpur.)
38. Mr. Anil Mahadev Tambade,)
Add : Police Station Kallam,)
Dist. Osmanabad.)
39. Mr. Amit Bharat Surve,)
Add : B-1/03, Kamala Residency,)
Sukhsagar Nagar 2, Kondhwa, Pune.)

40. Mr. Satish Vinayak Bavane,)
Add : Room No.38/4, SRPF Camp,)
Vijapur Road, Solapur.)
41. Mr. Pawansingh Ambarsingh Janghale,)
Add : At Pachpirwadi, Post Dongaon,)
Tal : Gangapur, Dist. Aurangabad.)

....APPLICANTS

VERSUS

1. The State of Maharashtra,)
Through Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. The Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400 032.)
3. The Secretary,)
Law and Judiciary,)
Mantralaya, Mumbai 400 032)
4. The Director General of Police,)
Shahid Bhagat Singh Road,)
Colaba, Mumbai 400 005.)
5. The Secretary,)
Maharashtra Public Service Commission,)
Floor 5-8, Cooprej Telephone Exchange Building,)
Maharshi Karve Road,)
Cooprej, Mumbai 21.)
6. Shri Bhawar Bhika Ashok,)
7. Shri Jogendra Dinkar Gavit,)
8. Shri Mavale Raju Phulchand,)
9. Shri Gaware Gokul Kashinath)
10. Shri Sandip Bhausahab Jadhav)
11. Shri Kamble Babasaheb Krishna)
12. Shri Jagatap Vishal Suresh)
13. Shri Bondle Shivaji Laxman)
14. Shri Kokate Dnyaneshwar Subhash)
15. Shri Khobragade Prashant Sudam)
16. Shri Chavan Hitendra Jagannath)
17. Shri Sona Wane Bhausahab Uttam)



18. Shri Annaldas Kailas Pandharinath)
19. Shri Lone Mahendrakumar Prakash)
20. Shri Rode Vishwadeep Ramchandra)
21. Shri Koule Sandip Amrut)
22. Shri Madhukar Chandrayya Samlawar)
23. Shri Ingole Prakash Pralhad)
24. Shri Bendkolee Manglu Kashinath)
25. Shri Karade Mangesh Rajkumar)
26. Shri Wagh Dhanraj Pralhad)
27. Shri Patil Surendra Ganpatrao)
28. Shri Solunke Yogesh Sudhakar)
29. Shri Sapkale Laxmi Gautam)
30. Shri Sapakale Narendra Madhukar)
31. Shri Manesh Tanaji Sable)
32. Shri Nikumbh Balasaheb Subhash)
33. Shri Sahare Sanjay Ravindra)
34. Shri Ashok Ramchandra Ingole)
35. Shri Kore Mahesh Ashokrao)
36. Shri Anil Ashok Mhaske)
37. Shri Tayde Deepak Subhash)
38. Shri Umale Sidheshwar Shatrughna)
39. Shri Junonkar Nishant Premanand)
40. Shri Sapate Jagan Damu)
41. Shri Chalurkar Dipak Narayan)
42. Shri Gavali Manilal Dayaram)
43. Shri Netake Rakesh Pralhad)
44. Shri Rakesh Chagan Shinde)
45. Shri Gawari Kalu Shankar)
46. Shri Panchmukh Vikas Janardan)
47. Shri Balaji Ram Gonarkar)
48. Shri Aashish Bhagavan Bhagat)
49. Shri Pradeep Shirishkumar Londhe)
50. Shri Bodele Rakesh Siddharth)
51. Shri Shikhare Bhimasen Haridas)
52. Shri Kamble Pravin Narayanrao)
53. Shri Darekar Shrikrishna Balasaheb)
54. Shri Bokefode Nilesh Ramesh)
55. Shri Lohekar Ajay Yadavrao)
56. Shri Bhise Sunil Ashok)
57. Shri Sharif Sandu Tadavi)
58. Shri Vite Akash Nivrutti)
59. Shri Birkhade Sunil Bhimrao)
60. Shri Chougale Pranil Maruti)
61. Shri Shashikant Dasharath Saindane)
62. Shri Tembhurne Chetan Mahipal)
63. Shri Ubale Rupali Shamrao)
64. Shri Bhalerao Pradip Motiram)
65. Shri Jadhav Anand Babruwan)
66. Shri Sudage Tarachand Dadu)

67. Shri Kirwale Balaji Hausaji)
68. Shri Warkade Lalit Punjaji)
69. Shri Kamble Sachin Mohan)
70. Shri Khatawkar Shriram Ramdas)
71. Shri Pawar Milind Dhanraj)
72. Shri Bandu Arjun Meshram)
73. Shri Jadhav Kailash Santosh)
74. Shri Bhawari Ravindra Prabhakar)
75. Shri Panhale Ravindra Sopan)
76. Shri Koli Rahul Appa)
77. Shri Vasudev Mallikarjun Laxman)
78. Shri Balaji Parmeshu Nagamwar)
79. Shri Kurewad Kunal Balaprasad)
80. Shri Suresh Prakash Bunde)
81. Shri Patel Nilesh Ramesh)
82. Shri Patange Nandkishor Gajanan)
83. Shri Bahiram Tanaji Raju)
84. Shri Ghadge Ajit Hanmant)
85. Shri Salve Bandu Changdev)
86. Shri Pathare Ashok Trymbak)
87. Shri Khobragade Dhiraj Ramdas)
88. Shri Koli Dhanraj Dagadu)
89. Shri Sapkale Jitendra Subhash)
90. Shri Padekar Anil Kashinath)
91. Shri More Dattatray Machindra)
92. Shri Jagzape Maruti Parshuram)
93. Shri Pujarwad Gangadhar Poshatti)
94. Shri Vaibhav Dilip Jamadar)
95. Shri Piwal Narendra Sanjay)
96. Shri Dummalwad Dipak Sudarshan)
97. Shri Bapu Maroti Jondhale)
98. Shri Bagade Sameer Balasaheb)
99. Shri Karangami Vilas Gomaji)
100. Shri Madhukar Popat Bhoir)
101. Shri Ghode Lahuji Sakharam)
102. Shri Undirwade Rajesh Vasanta)
103. Shri Ravindra Namdevrao Wagh)
104. Shri Holar Sunil Appa)
105. Shri Naik Prakash Damji)
106. Shri Dhanajee Sakharam Raut)
107. Shri Gomed Premchand Patil)
108. Shri Sonkamble Gautam Gangadhar)
109. Shri Tarde Namdeo Laxman)
110. Shri Chavan Nilesh Satyawan)
111. Shri Dive Ramnath Hiraman)
112. Shri Jivhare Madhav Eknath)
113. Shri Pankaj Sampatrao Masram)
114. Shri Sirsath Yuvraj Vasant)



115. Shri Bhimte Pravin Dharmdas)
 116. Shri Wankhade Mangesh Ravindra)
 117. Shri Kambale Mahavir Shopan)
 118. Shri Nimgade Pritam Bhaurao)
 119. Shri Waghmare Shrikant Digambar)
 120. Shri Milind Keshao Gedam)
 121. Shri Milind Madhukar Sonkamble)
 122. Shri Medhe Sumedh Pandurang)
 123. Shri Kamble Bapu Bhaskar)
 124. Shri Gajbhiye Ashwin Ashokrao)
 125. Shri Kakade Dhammdip Bhanudas)
 126. Shri Kadam Abhay Suryakant)
 127. Shri Sonkamble Anil Champatrao)
 128. Shri Ujwal Bhaskar Arke)
 129. Shri Vijay Pratap Jadhav)
 130. Shri Namdev Jalshing Talwade)
 131. Shri Savane Nitin Bajrang)
 132. Shri Sayam Premshaha Indrashaha)
 133. Shri Yelgulwar Rajesh Hanmantrao)
 134. Shri Vasant Nivrutti Adhari)
 135. Shri Parshee Deepak Uttamrao)
 136. Shri Magre Kalpesh Kaduba)
 137. Shri Bhadane Rahul Shaligram)
 138. Shri Shelke Prakash Dashrath)
 139. Shri Kharat Yogesh Bapurao)
 140. Shri Patil Pravin Babarao)
 141. Shri Kopade Sushil Dasharath)
 142. Shri Bhalerao Satish Baburao)
 143. Shri Salve Devidas Rohidas)
 144. Shri Jagne Arvindkumar Shamrao)
 144(a). Shri Dhule Ravindra Kailash)
 145. Shri Bambode Sanghmitra Rushi)
 146. Shri Ubale Sachin Sayaji)
 147. Shri Gaikwad Jalbaji Eknath)
 148. Shri Kamble Chetan Dhondiram)
 149. Shri Bhandge Harshal Shivaji)
 150. Shri Bharsat Ramdas Raghunath)
 151. Shri Kamble Maloji Baban)
 152. Shri Kamble Satpal Parasharam)
 153. Shri Mhaske Amol Tatyrao)
 153(a). Shri Kamble Raviraj Sayabanna)
 154. Shri Kudmethe Vishal Ramdas)
 155. Shri Kirti Kishor Waghdhare)
 156. Shri Naik Narendra Narayanrao)
 157. Shri Ahire Pandit Popatrao)
 158. Shri Maroti Laxman Madewad)
 158(a). Shri Manohar Ravi Bansi)

159. Shri Ohal Sandip Sahaji)
 160. Shri Khillar Marotti Hari)
 161. Shri Sunil Prakash Ranadive)
 162. Shri Ajay Bhagwanrao Panpatil)
 163. Shri Bhopale Tukaram Dattatray)
 164. Shri Gaikwad Murari Kishanrao)
 165. Shri Kadam Rupesh Vijaysinha)
 166. Shri Mane Ganesh Dattu)
 167. Shri Pradipkumar Shrikrishna Nitawane)
 168. Shri Londhe Budhawant Pandurang)
 169. Shri Vikas Dnyandeo Madake)
 170. Shri Parasharam Shivji Suryagandh)
 170(a). Shri Desai Sachin Ramesh)
 171. Shri Roshan Wasudeorao Khandekar)
 172. Shri Tayade Milind Jangalu)
 173. Shri Deshmane Ravi Gulab)
 174. Shri Nimbalkar Dipak Shaligram)
 175. Shri Nitnaware Pravin Ramesh)
 176. Shri Maheebub Rubab Tadv)
 177. Shri Pravin Devidasrao Hire)
 178. Shri Telkikar Vijay Hari)
 179. Shri Warthe Rajesh Ashokrao)
 180. Shri Lohare Maruti Kisan)
 181. Shri Kamble Bhairinath Sadashiv)
 182. Shri Vasava Dhirsing Lalsing)
 183. Shri Bhalerao Nilesh Andres)
 184. Shri Dattatray Shripati Kamble)
 185. Shri Bagde Abhishek Ashok)
 186. Shri Pawar Anil Gorakshnath)
 187. Shri Atram Nitin Charandas)
 C/o. Through the Director,)
 Maharashtra Police Academy,)
 Trimbak Road, Nashik 422 007.)Respondents.

Shri M. Bhandari, instructed by Shri K.R. Jagdale, the learned Advocate for the Applicants.

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

Dr. Jaishri Patil with Dr. Gunratan Sadavarte, the learned Advocates for the Respondents.

Shri D.B. Khaire, the Advocate for the Respondents No.69, 88 and 161.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

RESERVED ON : 02.11.2018.

PRONOUNCED ON : 06.11.2018



J U D G M E N T

1. Heard respective Advocates.
2. This Tribunal had passed order on M.A.No.472/2018 and issued certain directions.
3. M.A.No.586/2018 is filed by the State for modification of order passed in M.A 472/2018. During hearing of M.A.No.586/2018, it had transpired that it would be convenient and expedient to hear the Original Application itself for final disposal, by continuing same process of hearing.
4. Parties were called to state whether they concede for hearing of present O.A by Chairman, sitting singly, in the background that only Administrative Member available at Mumbai, namely, Shri P.N Dixit, has recused.
5. All advocates appearing in this O.A., as well as learned Chief Presenting Officer agreed for final hearing of the O.A..
6. Original Application is taken up for hearing and heard all parties at length.
7. Brief background of Original Application is as follows:-
 - (a) Government decided to fill in large number of posts in the cadre of Police Sub-Inspectors.
 - (b) These vacancies were sought to be filled in from the category of "Limited Departmental Competitive Examination" (LDCE).
 - (c) Posts which were to be filled in are 828.
 - (d) 154 posts out of 828 posts were to be filled in by allotment of seats to various reserved categories as follows:-

SC	–	102
ST	-	40
SBC	-	12
8. The Maharashtra State Public Services Reservation for Schedules Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and other Backward Classes Act, 2001 was quashed and set aside by this Tribunal in T.A.No.1 of 2014 & T.A.No.2 of 2014, which judgment was carried by State Government, before Hon'ble High Court, in W.P.No.2797/2015. The judgment of this

Reservation for Schedules Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and other Backward Classes Act, 2001 to be unconstitutional and by partly quashing of G.R dated 25.5.2004, in so far it was issued without having at hand the quantifiable data.

9. During the pendency of this Original Application, the Hon'ble Supreme Court delivered judgment in reference in Jarnail Singh & Others Vs. Lachhmi Narain Gupta & Ors in Special Leave Petition (Civil) No.30621/2011. By said Judgment, Hon'ble Supreme Court has partly overruled the directions contained in the judgment in M. Nagaraj's case (2006) 8 SCC 212. Honourable Supreme Court has held to the effect that requirement of quantifiable data qua the SC & ST as necessitated in M. Nagaraj is contrary to the judgment by 9 Judges in Indra Sawhani, and Article 16(4A) and 16(4B) of the Constitution of India.

10. In the present Original Application, the prayers of the applicants are as follows:-

"10(a) This Hon'ble Court may be pleased to call for record and proceeding in the case of present applicant and this Hon'ble Tribunal may further be pleased to issue appropriate direction to the Respondent no. 1 to recruit /select the candidates on the basis of merit in view of judgment dated 4.8.2017 passed by the Hon'ble High Court in Civil Writ Petition No. 2797/2015, against composite number of the posts of 982.

(b) This Hon'ble Tribunal may further be pleased to direct the Respondent no. 1 to implement the guidelines/opinion given by Ld. Advocate General, State of Maharashtra dated 23.11.2017 thereby the corrective measures and steps adopted by the Respondent no. 1 in case of the candidate short listed on the basis of merit."

(Quoted from pages 39 & 40 of O.A No.394 of 2018)

11. Learned Advocate for the applicant has argued and emphasized following points to canvass the prayers:

- (a) Applicants belong to open competition category within Limited Departmental Competitive Examination (LDCE), and they possess marks above benchmark fixed by MPSC for selection to the post of PSI in LDCE for open merit competition therein.
- (b) In view of Order of High Court in State Vs. Vijay Ghogre, now state has to take corrective measures.
- (c) Government has already taken some corrective measure and has created 154 additional and supernumerary posts, and now 828+154 posts are available.



- (d) Alternatively corrective measure would mean reversion of 154 candidates selected to fill in reservation quota, unless Government agrees to send for training applicants and similarly situated candidates, in addition, as their position in merit is above bench mark fixed for open competition category, by employing modalities whatsoever.
- (e) Directions of Honourable Supreme Court laid down in paragraph 21 of case of Jarnail Singh have to be read to mean that :-
- (i) Requirement of collection of quantifiable data is not to be applied for collection of the proof of backwardness of SC and ST category candidates.
 - (ii) The need of data as to due and adequate representation of SC & ST classes still continues to be warranted.
 - (iii) Therefore the order of Hon'ble High Court in State Vs. Vijay Ghogre continues to rule and govern the field.
- (f) Therefore, State Government can accommodate the candidates like applicants who have secured marks above the marks secured by 154 SC/ST candidates in addition to 828 + 154.
- (g) The bar resultant upon the judgment in case of Hon'ble Supreme Court in Hoshiar Singh Vs. State of Haryana & Ors AIR 1993 S.C 2606 as well as Prem Singh & Ors Vs. Haryana State Electricity Board & Ors, JT 1996 (5) 219, will not hinder because of other judgments of Hon'ble Supreme Court, in view that the posts which may be eventually created in addition to notified vacancies related to LDEC i.e. in-service category posts, and all these who have appeared for examination may get an opportunity and no outsider will be denied opportunity/ affected.
12. During oral submission, learned C.P.O has urged as follows :-
- (a) Total 982 posts cannot be considered as basis.
 - (b) 154 open merit candidates are sent to occupy the vacancies which may have eventually occurred upon calling back 154 SC & ST category candidates, (who had later on been actually called back) for obeying the mandatory directions contained in the judgment of the Hon'ble High Court in W.P.No.2729/2015, dated 4.8.2017.
 - (c) If 154 candidates filled in from the reserved category are continued, even then the present applicants do not have a chance, because :
 - (i) 154 candidates selected in reserved category, do have lesser merit than the applicants, have walked ahead against seats which are reserved, and

- (ii) Since admittedly, 154 candidates who are selected from open category do have higher merit than the applicants.
- (d) Therefore, in either situation applicants are not entitled for relief whatsoever.
- (e) Applicants' claim is based on a plea which is hypothetical and does not have any weightage.
- (f) For the present there does not exist any policy to fill in more than 828 posts of PSIs from Limited Departmental Competitive Examination category.
13. Learned Advocate Dr. Jaishri Patil as well as learned Advocate Shri D.B Khaire, for private Respondents have argued as follows:-
- (a) It is true that S.L.P filed by the State against the judgment and order of Hon'ble High Court in W.P.2797/2015 (State of Maharashtra Vs. Vijay Ghogre & Ors), is pending, however the order passed in W.P.No.2797 of 2015 has been impliedly overruled due to the constitution bench judgment of the Hon'ble Supreme Court in Jarnail Singh & Ors Vs. Lachhmi Narain Gupta & Ors.
- (b) Hon'ble Supreme Court has held in Jarnail Singh's case (supra) to the effect that the requirement of quantifiable data held necessary in judgment in M. Nagaraj's case is contrary to 9 Judge judgment in Indra Sawhney's case 1992 SCC (L & S) Supp 1, and Article 16(4A) and 16(4B) of the Constitution of India.
- (c) The mandatory need of requirement of quantifiable data, is now not open to contend, it being overruled.
- (d) Now there is no hurdle whatsoever in appointing on probation 154 SC/ST candidates.
- (e) Plea of the State that due to pendency of present O.A. and due to interim order passed therein the Government is not able to appoint the respondents is erroneous, rather it is based on confusion which has occurred or is created by the administrative machinery.
- (f) The submissions advanced by the applicants are not even worth hypothesis.
- (g) Present O.A. has no merit and be dismissed.



14. In view of rival submissions, this Tribunal has to decide as to what is the jurisdictional question which would decide the fate of the applicants.

15. For the sake of convenience of adjudication, the questions which have emerged are framed as follows :-

- (i) What is the exact dictum of the judgment in Jarnail Singh & Others Vs. Lacchmi Narain Gupta & Others, S.L.PO (Civil) No.30621/2017?
- (ii) What is the effect of the said judgment on the fate of 154 candidates from reserved quota selected and sent for training of P.S.I's posts?

16. In order to address and decide on the aforesaid questions, this Tribunal has minutely perused the judgment of Their Lordships of Hon'ble Supreme Court in Jarnail Singh (supra).

17. On reading said judgment, it is seen that, their lordships have dealt with and discussed the scheme of Constitution of India qua reservations, discussed about the scheme of reservation as applied in State of Uttar Pradesh as seen in U.P Power Corporation's case etc. and recorded in para no. 19 of the judgment as follows: -

"19. Since the object of Article 16(4-A) and 16(4-B) is to do away with the nine-Judge Bench in Indra Sawhney's (1) (supra) when it came to reservation in promotions in favour of the Scheduled Castes and Scheduled Tribes, that object must be given effect to, and has been given effect by the judgment in Nagaraj (supra). This being the case, we cannot countenance an argument which would indirectly revisit the basis or foundation of the Constitutional amendments themselves, in order that one small part of Nagaraj (supra) be upheld, namely, that there be quantifiable data for judging backwardness of the Scheduled Castes and the Scheduled Tribes in promotional posts. We may hasten to add that Shri Dwivedi's argument cannot be confused with the concept of "creamy layer" which, as has been pointed out by us hereinabove, applies to persons within the Scheduled Castes or the Scheduled Tribes who no longer require reservation, as opposed to posts beyond the entry stage, which may be occupied by members of the Scheduled Castes or the Scheduled Tribes."

(Quoted from page 54 of judgment)

18. Their Lordships of Hon'ble Supreme Court, after negating the appellants' submission (in Jarnail Singh's case) considered the request of Learned Attorney General "to lay down that the proportion of Scheduled Castes and Scheduled Tribes to the population of India should be taken to be the test for determining whether they are adequately represented in promotional posts for the purpose of Article 16(4A) of the Constitution of India.

19. After considering the learned Attorney General's submissions and upon discussing the scheme of Article 330 of the Constitution of India and effect of Indra Swahney's case, Their Lordships of Hon'ble Supreme Court in para 20 and 21 held and ordered as follows: -

"20..... It can be seen that when seats are to be reserved in the House of the People for the Scheduled Castes and Scheduled Tribes, the test of proportionality to the population is mandated by the Constitution. The difference in language between this provision and Article 16(4-A) is important, and we decline the invitation of the learned Attorney General to say any more in this behalf.

21. Thus, we conclude that the judgment in Nagaraj (supra) does not need to be referred to a seven-Judge Bench. However, the conclusion in Nagaraj (supra) that the State has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes, being contrary to the nine-Judge Bench in Indra Sawhney (1) supra is held to be invalid to this extent."

(Quoted from page 57 & 58 of the Judgment in Jarnail Singh's)

20. The operative order of the judgment in Jarnail Singh's case namely, paragraph 21, at page 58, has to be read jointly with paragraphs 19 & 20 thereof. Paragraph 21 cannot be read in isolation to construe that though quantifiable data cannot be asked for assessment of backwardness, however it can be asked for extent of reservations to be provided.

21. In the result, the requirement of quantifiable data for either backwardness or adequate / fair representation of S.C & S.T. in the services which is mandated in the judgment of Hon'ble High Court of Bombay in W.P 2729/2015 stands completely overruled by necessary implication.

22. The uncertainty of the fate of 154 candidates may have existed until 26.9.2018, i.e. the date when the judgment of Hon'ble Supreme court in Jarnail Singh & Ors vs. Lachmi Narain Gupta & Ors was pronounced. However no ambiguity is now, prevalent due to dictum of Hon'ble Supreme Court in Jarnail Singh's case.

23. In view of the finding recorded in foregoing paragraphs, which this Tribunal has arrived as regards questions framed in foregoing paragraph No.15, the fate of 154 candidates is no more hazy or in suspended animation, and is concretized. Now it is the turn of the State Government to abide by the judgment of the Hon'ble Supreme Court in Jarnail Singh's case.



24. It shall be open to the applicants to make suitable representations to the Government if they are so advised, and in case any representation is made Government may consider in due course and on its own merit.

25. In the result, following order is passed :-

- (a) Original Application is dismissed.
- (b) Interim order passed by this Tribunal shall stand vacated by merger into final order.
- (c) Parties are directed to bear their own costs.



Sd/-

(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 06.11.2018
Dictation taken by : A.K. Nair.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p data-bbox="602 407 802 433">Date : 06.11.2018.</p> <p data-bbox="678 460 1203 522">M.A.No.586 of 2018 with M.A.No.472 of 2018 in O.A.No.394 of 2018</p> <p data-bbox="602 559 959 590">The State of Maharashtra & Ors.</p> <p data-bbox="850 601 1211 632">...Applicants (Ors. Respondents).</p> <p data-bbox="602 661 683 687">Versus</p> <p data-bbox="602 698 1208 734">S.B. Rathod & Ors.Respondents.(Org. Applicants)</p> <p data-bbox="602 760 1289 1088">1. Heard Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Applicants (Org. Respondents), Shri M. Bhandari, instructed by Shri K.R. Jagdale, the learned Advocate for the Respondents (Org. Applicants). Dr. Jaishri Patil, with Dr. Gunratan Sadavarte, the learned Advocates for Pvt. Respondents and Shri D.B. Khaire, the learned Advocate for Respondents No.69, 88 and 161 (M.A.No.586/2018).</p> <p data-bbox="602 1130 1295 1457">2. Shri M. Bhandari, instructed by Shri K.R. Jagdale, the learned Advocate for the Applicants, Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Respondents Dr. Jaishri Patil with Dr. Gunratan Sadavarte, the learned Advocates for the Respondents and Shri D.B. Khaire, the Advocate for the Respondents No.69, 88 and 161 (M.A.No.472/2018).</p> <p data-bbox="602 1499 1300 1634">3. In view of the judgment and order passed in O.A.No.394/2018, M.A.586/2018 and M.A.472/2018 does not survive and is disposed.</p> <p data-bbox="1089 1676 1154 1707">Sd/-</p> <p data-bbox="1036 1738 1182 1800">(A.H. Joshi) Chairman</p> <p data-bbox="630 1849 667 1871">prk</p>

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date : 06.11.2018.</p> <p>O.A.No.394 of 2018</p> <p>S.B. Rathod & Drs. ...Applicants. Versus The State of Maharashtra & Ors.Respondents.</p> <p>1. Heard Shri M. Bhandari, instructed by Shri K.R. Jagdale, the learned Advocate for the Applicants, Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Respondents, Dr. Jaishri Patil with Dr. Gunratan Sadavarte, the learned Advocates for the Respondents and Shri D.B. Khaire, the Advocate for the Respondents No.69, 88 and 161.</p> <p>2. After pronouncement of Judgment on 06.11.2018, the learned Advocate for the Applicant Shri M. Bhandari holding for Shri K.R. Jagdale orally prays for staying the Judgment and Order passed in O.A.No.394 of 2018.</p> <p>3. Ordinarily considering the prejudice to respective parties, such request can be considered, however on the facts of the matter it is evident that earlier order passed in M.A.No.472/2018 directs the Government to follow the order passed by the Hon'ble High Court in W.P.No.2797/2015, with further reference to the judgment of Hon'ble Supreme Court in Jarnail Singh's case.</p> <p>4. The order passed in M.A.No.472/2018 is already in the field. What this Tribunal has done while deciding the O.A. is to reaffirm what was already the part of interim order after detail hearing and full discussion.</p> <p>5. Therefore, this Tribunal sees no reasons to grant any order of stay to the judgment / order passed in O.A.No.394/2018.</p> <p>6. Hence, oral prayer for stay of Judgment is rejected.</p> <p style="text-align: center;">Sd/-</p> <p style="text-align: center;">(A.H. Joshi) Chairman</p>