

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.21 OF 2021**

DISTRICT : SANGLI

Shri Sandip Suresh Mali & 5 Ors. ..Applicants
Versus
M.P.S.C. & 18 Ors. ..Respondents

Shri A.A. Desai & Shri S.D. Patil – Advocates for the Applicants
Ms. S.P. Manchekar – Presenting Officer for Respondents No.1 to 6
Shri S.S. Ghumare – Advocate for Respondents No.7, 8, 10, 12, 14 to 19

CORAM : Smt. Justice Mridula R. Bhatkar (Chairperson)
Shri P.N. Dixit, Vice-Chairman (A)
DATE : 06.07.2021.
PER : Shri P.N. Dixit, Vice-Chairman (A)

ORDER

1. Heard Shri A.A. Desai in person and through Video Conference & Shri S.D. Patil, learned Advocates for the Applicants, Ms. S.P. Manchekar, learned Presenting Officer for Respondents No.1 to 6 and Shri S.S. Ghumare, learned Advocate for Respondents No.7, 8, 10, 12, 14 to 19 through Video Conferencing.

2. The applicants claiming through O.B.C & other reserved categories aspire to become Police Sub Inspector (PSI), but could not join the same.

They are pressing for interim relief and demand that they should be sent for training in the next immediate batch.

3. The applicants demand that the candidates Kiran M. Mahamuni, Ganesh A. Sheta and Avinash A. Kolhe, who have been selected in reserved category due to overage, need to be migrated to open category. Consequently, the applicants should be declared as eligible for selection from their category. The applicants are pressing for interim relief to stay the training by Respondents no 7 to 19 with Respondents no 5 & 6 for the post of Police Sub-Inspector.

Brief facts are as under:

4. On 26.4.2017 respondent no.1 (MPSC) published advertisement inviting applications for the post of PSI by Combined Pre-Examination, 2017. The main examination was conducted on 2.8.2018 and the results were declared accordingly. The applicants qualified for the main examination and participated in the physical test and interview from the month of September 2018 till February 2019. On 8.3.2019 the merit list was published. The applicants obtained 231 marks but were not found eligible for recommendation as they had less marks than cut-off meant for their respective category.

5. On examination of the merit list dated 8.3.2019 the applicants noticed certain discrepancies such as the candidates who had secured more marks than the cut-off of the open category have been selected in their respective category. On 3.1.2020 the applicants sought the details regarding the same by way of RTI. The respondent no.1 (MPSC) did not reveal the information. Applicant filed this OA on 7.1.2021.

6. In support of the above prayers the applicants drew out attention to the amendment to the Rules of Procedure issued by MPSC on 6.12.2017 and which came into effect from 25.9.2017. The amendment reads as under:

“3. In Rule 8, sub-clause (ii) shall be substituted as under:-

(ii)(a) While shortlisting candidates for the Main Examination from the Preliminary Examination, the cut-off line of marks shall be fixed in such a manner that the number of candidates available for the Main Examination shall be 12 times of the number of posts available for recruitment.

(b) After fixing the cut-off line of marks at (a) above, it should be ensured that the available candidates for each category are 12 times the number of posts advertised in the respective category. If the number of candidates is short of 12 times of the posts advertised, the cut-off line of marks so fixed shall be brought down so as to have 12 times candidates in each respective category.

(c) The additional candidates so qualified for the Main Examination by relaxing the cut-off line, as per clause (b) above shall be eligible only for the post of their respective category.”

(Quoted from pg.109 of OA)

7. In the opinion of the applicants clause (c) quoted above needs to be quashed. In support of the same the applicants pointed out that even though the candidates belonging to Reserved Category have taken advantage of age relaxation still they should be considered from the Open General Category and not from the Reserved Category. Learned counsel for the applicants submitted that the selected candidates in Merit List no. 100, 142 and 208 are recommended from their respective category though they are meritorious in open category. These recommended candidates have availed of age relaxation and concession in fees and as per the observations by the Hon'ble Supreme Court in the case of **Jitendra Kumar Singh & Anr Vs. State of Uttar Pradesh & Ors (2010) 3 SCC 119** and **Vinod D. Dhore & Anr Vs. The Secretary, M.P.S.C & Ors, W.P**

11970/2017. Thus candidates should have migrated from their respective category to open category. That would enable the present applicants no. 1, 2 & 5 to secure their placement in the respective category.

8. Regarding the delay in filing the Original Application, the applicants in their written submissions mentioned that the results were declared on 8.3.2019, and the applicants filed the application under R.T.I regarding the discrepancies, however, on 3.2.2020, Respondent no. 1 refused to give any details to the applicants under the R.T.I. The applicants thereafter approached the Respondent no. 1 with a request to verify the details. But from March, 2020 lockdown was declared due to Covid-19 Pandemic situation. The applicants claim that they have filed the present Original Application on 5.1.2021 and as per the orders of the Hon'ble Supreme Court dated 23.3.2020 and 8.3.2021, the period of limitation has been extended. Therefore, there is no delay in filing the present Original Application.

9. On instructions Ld. CPO submits that final merit list was published on 8.3.2019. The applicants have filed this OA on 7.1.2021 and thus there is delay of 11 months. The Ld. CPO therefore opposes the OA on the ground of non filing of MA for condonation of delay. She further submits that private respondents have already completed their training in March, 2021. Ld. CPO further states that this OA is an afterthought as the advertisement for the Preliminary Examination as well as Main Examination had made categorical statement. In this behalf she refers to advertisement dated 26.4.2017. Relevant portion of the same reads as under:

“४.१७ परीक्षेच्या कोणत्याही टप्प्यावर मागासवर्गीयासाठी विहित केलेली वयोमर्यादा, शुल्क तसेच इतर पात्रता विषयक अटी/निकषांसंदर्भात कोणताही सूट/सवलत घेतली

असल्यास अशा उमेदवारांची अमागास (सर्वसाधारण) पदावर शिफारस करण्यात येणार नाही.”

(Quoted from page 41 of OA)

10. Similarly, the advertisement for Main Examination dated 3.10.2017 on page 44 para 3.11 reads as under:

“३.११ परीक्षेच्या कोणत्याही टप्प्यावर मागासवर्गीयासाठी विहित केलेली वयोमर्यादा, शुल्क तसेच इतर पात्रता विषयक अटी/निकषांसंदर्भात कोणताही सूट/सवलत घेतली असल्यास, अशा मागासवर्गीय उमेदवारांची अमागास (सर्वसाधारण) पदावर शिफारस करण्यात येणार नाही-”

(Quoted from page 44 of OA)

11. According to the Ld. CPO, the applicants were fully aware of the relevant clauses while participating in the examination for Preliminary as well as Main and after their non-inclusion in final merit list they have approached this Tribunal. In this regard she relies on the judgment of the Hon'ble Bombay High Court Bench at Nagpur in **2015 Dr. Vipul Namdeorao Ambade Vs. MPSC, Mumbai & Anr, Writ Petition No.3574** dated 1.9.2016. The relevant portion is as under:

“It is well settled that a challenge to the selection criteria, after participating in the selection process, is not permissible. If a candidate is aggrieved by any clause or condition in the advertisement, it would be necessary for the candidate to challenge that clause or condition before applying for the post in pursuance of the advertisement. The petitioner applied for the post and participated in the selection process.”

12. Ld. CPO further submits that the MPSC had effected amendment to the Rules of Procedure on 6.12.2017 which came into effect from 25.9.2017. The amended portion in Rule 8 is reproduced below:

“3. In Rule 8, sub-clause (ii) shall be substituted as under:-

(ii)(a) While shortlisting candidates for the Main Examination from the Preliminary Examination, the cut-off line of marks shall be fixed in such a manner that the number of candidates available for the Main Examination shall be 12 times of the number of posts available for recruitment.

(b) After fixing the cut-off line of marks at (a) above, it should be ensured that the available candidates for each category are 12 times the number of posts advertised in the respective category. If the number of candidates is short of 12 times of the posts advertised, the cut-off line of marks so fixed shall be brought down so as to have 12 times candidates in each respective category.

(c) The additional candidates so qualified for the Main Examination by relaxing the cut-off line, as per clause (b) above shall be eligible only for the post of their respective category.”

(Quoted from pg.109 of OA)

13. She mentions that this amendment is consistent with the legal provisions and therefore is valid. She further relies on the judgment of the Hon'ble High Court in **Dr. Dhananjay Vithal Hange Vs. The State of Maharashtra & Ors, Writ Petition No.9117 of 2016**, dated 4.8.2017. The relevant portion reads as under:

11. That once a candidate from reserved category competes for a post from open category, he cannot assert privileges attached to his case and claim he would be governed by experience as prescribed in advertisement. This claim of original applicant is illogical and sounds absurd. That once candidate irrespective of

category and caste competes and lays claim from open category, he has to fulfill all required criteria either short-listed or otherwise, to qualify himself for the said post.

In the case in hand, the original applicant was not possessing required experience. On the other hand, the petitioner herein had secured 57 marks and was possessing required experience as short-listed by the MPSC.”

14. On instructions from the MPSC, Ld. CPO mentions that the facts of the case are as under:

Private Respondent-Kiran M. Mahamuni belongs to OBC. In the written examination he secured 121 marks and whereas the cut-off for OBC was 109 and for open category it was 116. According to the Ld. CPO there are 3 candidates who belong to OBC. The details are given below:

	Candidate's Name	Written Exam Marks	Total Marks
1	Kiran M. Mahamuni	121	244
2	Ganesh A. Shete	119	242
3	Avinash A. Kolhe	119	239

15. The above candidates were overage but were given relaxation as they belonged to OBC. Therefore, they were considered from OBC category by giving them advantage of age. The following are 10 candidates who had secured less marks than cut-off for General Open category in main examination. However, they had scored more marks than cut-off of their respective category and therefore they have been selected from their particular category. The details are as under:

	Name	Category	Main Examination			Pre Examination
			Written Exam Marks	Total Marks	Reasons for Standard 'J'	Reasons for Standard 'J'
1	Nalavade Rakesh S.	OBC	115	244	Marks obtained less than open general cut-off	-
2	Mahajan Ganesh P.	OBC	114	244	-do-	-
3	Jadhav Suresh G.	DT(A)	115	240	-do-	-
4	Deore Vishal P.	OBC	112	240	-do-	-
5	Jadhav Sarthak K.	OBC	112	240	-do-	-
6	Khair Sunil T.	OBC	114	240	-do-	-
7	Khade Sagar D.	NT(D)	113	240	-do-	-
8	Galange Sandip J.	NT(C)	111	239	-do-	-
9	Chavan Vishvanath E.	OBC	110	238	-do-	-
10	Mahajan Rahul A.	OBC	112	238	-do-	-

Category	Main cut-off (Written)	Final cut-off (Recommendation)
Open	116	237
OBC	109	232
DT(A)	115	240
NT(D)	113	236
NT(C)	111	234

16. The above details underline the facts that these candidates have obtained marks less than the open general category which was 116.

However, they have secured more marks than their respective category cut-off marks and hence they have been given the advantage by relying on the amendment to the Rules of Procedure referred above introduced from 25.9.2017. Thus, they were given advantage of their category, even though they were not meritorious and hence not eligible for migration to open category.

17. Ld. CPO further pointed out that as far as applicant no.1 (Shri S.S. Mali) is concerned, he secured 116 marks in the written examination therefore was in the zone of open category. In the final calculation applicant no.1 secured 231 marks however the last candidate who was selected has secured 232 marks from OBC category therefore he could not be made eligible. His contention that if the abovementioned selected candidates migrate, he would be eligible for selection is therefore not valid.

18. Ld. CPO submits that thus the candidates who have been selected have been properly selected and they could not be migrated to the open category as they had secured less marks in the written examination and thus were given advantage of being considered in their respective category. She, therefore, demands that no interim relief be granted.

19. Learned C.P.O refers to the judgment of the Hon'ble Supreme Court in **Niravkumar D. Makwana's case (supra)** and particularly to paras 26, 30, 32, 33 & 34, which are reproduced below:-

26. Now, let us consider the judgment in Jitendra Kumar Singh (supra). In this case, this Court was considering the interpretation of Sub—section (6) of Section 3 of U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (for short "1994 Act") and the Government Instructions dated 25.03.1994. Sub— section (6) of Section 3 of this Act provided for reservation in favour of Scheduled Castes, Scheduled Tribes and other Backward

Classes which is as under:

"(6) If a person belonging to any categories mentioned in sub—section (1) gets selected on the basis of merit in an open competition with general candidates, he shall not be adjusted against the vacancies reserved for such category under sub— section (1)."

30. *The judgment in Jitendra Kumar Singh (supra), was pressed into service in support of the contention that when a relaxed standard is applied in selecting Scheduled Castes, Scheduled Tribes and Other Backward Classes candidates, the same cannot be treated as a bar on such candidates for being considered for general category vacancies. This Court did not agree with the said proposition. It was held that Jitendra Kumar Singh (supra) was based on the statutory interpretation of the U.P. Act, 1994, and the GO dated 25.03.1994 which provides for an entirely different scheme. Therefore, the principles laid down in Jitendra Kumar Singh (supra) cannot be applied to the said case.*

32. *Taking into consideration the above circular, this Court held that the ratio of the judgment in Jitendra Kumar Singh (supra) has to be read in the context of statutory provisions and the GO dated 25.03.1994 and the said observation cannot be applied in a case where the Government Orders are to the converse effect. It was held as under:*

"32. We are of the view that the judgment of this Court in Jitendra Kumar Singh which was based on statutory scheme and the Circular dated 25.3.1994 has to be confined to scheme which was under consideration, statutory scheme and intention of the State Government as indicated from the said scheme cannot be extended to a State where the State circulars are to the contrary especially when there is no challenge before us to the converse scheme as delineated by the Circular dated 24.6.2008."

33. *The judgments in Deepa (supra) and Gaurav Pradhan (supra) fully support the case of the respondents.*

34. *The judgment in Ajithkumar (supra) relied on by the*

learned senior counsel for the appellant has no application to the facts of the instant appeal. In that case, this Court was not examining the effect of a statutory provision/circular granting age relaxation to the candidates belonging to the reserved category.”

20. On the basis of this, she pointed out that the judgment of the Hon'ble Supreme Court in **Jitendra Kumar Singh's case (supra)** is therefore not relevant in the instant case and therefore the provisions made by M.P.S.C in amendment to the Rules and Procedure No. 3(c) and the provisions at para 3.11 made in the advertisement dated 26.4.2017 are valid and the action taken by the M.P.S.C is legally sound. Learned C.P.O, therefore, states that the interim relief may not be granted.

21. The private respondents have filed their affidavit in reply dated 30.3.2021. The learned counsel or private Respondents pointed out that the judgments relied upon by the applicants are not relevant as the facts in the said cases are different. In case of Vinod Dadasaheb Dhore (supra) it only pertains to the extent of determining the concept of reservation for the candidates who have taken concession in fees only. In the present case on the other hand applicants are seeking relief to migrate the reserved category candidates against open category who has taken the concession of age relaxation. In the judgment referred above there is a reference to candidates who have taken concession in fees as distinct from the present case and hence that judgment is not relevant. The private respondents further submitted that the amended provisions of rules of procedure of MPSC Rule 3(b)(c) which reads as under:-

“The additional candidates so qualified for the Main Examination by relaxing the cut-off line, as per clause (b) above shall be eligible only for the post of their respective category.”

(Quoted from page 187 of OA)

22. The affidavit further mentions that:

“This amended provision is carried out as power conferred by the Constitution of India which is still in existence and not set aside by any of the Court in India. The reflection of this rule can be seen in the notification bearing ref no. ADV-3117/CR-16/2017/3 and advertisement no. 23 of 2017 dated 26.4.2017 and notification bearing ref no. NOT-3617/CR-22/207/3 and advertisement no.66 of 2017 dated 3.10.2017 there is clause nos.4.17 and 3.11 respectively. The clause nos.4.17 and 3.11 are in consistence with amended provision of the Rule 3(b)(c) of Rule of Procedure. The applicants came with the story that they came to know about the said amendment from the reply of RTI application. It is well settled principle of the law that “ignorance of law is no excuse”. Applicant is trying to excuse the same which is against the principles of law and natural justice.”

(Quoted from pg.187-188 of OA)

23. In addition to the affidavit in reply, the learned counsel for the private Respondents further mentions additional developments in the recent past during the course of hearing. He submits that the training by the private Respondents is completed on 31.3.2021 and the private Respondents have now joined their present assignment on 7.4.2021. He therefore, submits that the prayer made for grant of interim relief are no longer relevant and are infructuous. He relied on the judgment of the Hon’ble Supreme Court in **Niravkumar D. Makwana Vs. Gujarat Public Service Commission, Civil Appeal No. 5185/2019 arising out SLP (C) 3938/2018**. Learned counsel for the private Respondents also relies on the judgment of the Hon’ble Bombay High Court in **Vinod D.Dhore & Anr Vs. The Secretary, M.P.S.C & Ors, W.P 11970/2017**. The relevant paras of the judgment read as under:-

“22. The core issue in the present petition which we are called upon to examine is whether the concession in examination fee availed by the respondents nos 4 to 51 would fall within definition of “reservation” so as to exclude the reserved category candidates from open competition meant for general category candidates. In the

background that the respondent nos 5 to 41 have availed of only the concession in payment of examination fees and no other concession, we may usefully refer to the decision of the Apex Court in the case of Jitendra Kumar Singh & anr. Vs. State of Uttar Pradesh & Ors (supra). Para 48, 49 and 75 of the Apex Court's decision read thus:-

“48. In view of the aforesaid facts, we are of the considered opinion that the submissions of the appellants that relaxation in fee or age would deprive the candidates belonging to the reserved category of an opportunity to compete against the General Category Candidates is without any foundation. It is to be noticed that the reserved category candidates have not been given any advantage in the selection process. All the candidates had to appear in the same written test and face the same interview. It is therefore quite apparent that the concession in fee and age relaxation only enabled certain candidates belonging to the reserved category to fall within the zone of consideration. The concession in age did not in any manner tilt the balance in favour of the reserved category candidates, in the preparation of final merit/select list.

49. It is permissible for the State in view of Articles 14, 15, 16 and 38 of the Constitution of India to make suitable provisions in law to eradicate the disadvantages of candidates belonging to socially and educationally backward classes. Reservations are a mode to achieve the equality of opportunity guaranteed under Article 16(1) of the Constitution of India. Concessions any relaxations in fee or age provided to the reserved category candidates to enable them to compete and seek benefit of reservation, is merely an aid to reservation. The concessions and relaxations place the candidates on a par with General Category candidates. It is only thereafter the merit of the candidates is to be determined without any further concessions in favour of the reserved category candidates.

75. In our opinion, the relaxation in age does not in any manner upset the “level playing field”. It is not possible to accept the submission of the learned counsel or the appellants that relaxation in age or the concession in fee would in any manner be infringement of Article 16(1) of the Constitution of India. These concessions are provisions pertaining to the eligibility of a candidate to appear in the competitive examination. At the time when the concessions are availed, the open competition has not commenced. It commences when all the candidates who fulfill the eligibility conditions, namely, qualifications, age, preliminary written test and physical test ae

permitted to sit in the main written examination. With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit. Once the candidate participates in the written examination, it is immaterial as to which category, the candidate belongs. All the candidates to be declared eligible had participated in the preliminary test as also in the physical test. It is only thereafter that successful candidates have been permitted to participate in the open competition.”

24. Learned counsel for the private Respondents pointed out that the 13 persons who would be adversely affected in case the prayers are conceded and as they have not been added as Party Respondents and they have not been heard, any decision contrary to their selection is against the principles of natural justice. Learned counsel for the Respondents therefore mentions that the prayer made by the applicants are not tenable and the same be dismissed.

Assessment:

25. The applicants are not directly impacted by the selection following the advertisement for the post of Police Sub Inspector. Their contention that if the selected candidates were shifted to general category instead of their respective reserved category, that could have resulted in vacancies. In these vacancies, the applicants would have had a chance to get selected. The applicants, therefore, concede that they are indirectly impacted by the present selection. The chronological developments need to be reiterated for immediate appreciation. The merit list of the selected candidates was published on 8.3.2019. The applicants did not make any effort to agitate against their non-selection. On 3.1.2020, i.e. nearly after 10 months, the applicants submitted an R.T.I application to M.P.S.C. M.P.S.C did not give them details asked by them. The applicants have approached this Tribunal on 7.1.2021, i.e. nearly after a period of 22 months. No satisfactory explanation is furnished by the applicants for

their inaction from 8.3.2019 onwards. Learned C.P.O has sought dismissal of the Original Application on the ground of non-condonation of this delay. Secondly, the applicants are not directly impacted by the merit list published by M.P.S.C. Their contention is that the selection of private candidates, namely, Kiran M. Mahamuni, Ganesh A. Sheta and Avinash A. Kolhe, from the O.B.C category by giving them advantage of age relaxation is erroneous. The applicants contend that they should have been selected from general non-reserved category. Similarly, 16 candidates who had secured less marks than the cut-off marks with general open category in main examination but more marks than their respective category and hence were selected is also erroneous and they should have been shifted to general category.

26. The reliance placed by learned counsel for the applicants on the judgment of the Hon'ble Supreme Court in the case of **Jitendra Kumar Singh's case (supra)** is challenged by the learned C.P.O. According to learned C.P.O, the observations made by the Hon'ble Apex Court in Jitendra Kumar Singh's case (supra) are not relevant in the present case as there was a specific provisions by the M.P.S.C, namely, the additional candidates so qualified for the Main Examination by relaxing the cut-off line, as per clause (b) above shall be eligible for the post of their respective category. We accept these submissions. The demand of the applicants to declare this provision as ultra vires will be considered during final hearing.

27. We find the ratio of the Hon'ble Supreme Court in the case of **Niravkumar D. Makwana's case (supra)** as quoted earlier is relevant in the present case. We find for the above reasons there is no prima facie case being made out by the applicants to interfere with the merit list published by the M.P.S.C. We, therefore, reject the prayer for grant of

interim relief. Moreover, the training for which the applicants aspire to join is already completed and the private Respondents have already joined service. Therefore, the interim relief is no longer tenable.

28. We direct the Respondents to file their say in detail within a period of six weeks.

29. Adjourned to 14.9.2021.

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
06.07.2021

Sd/-

(Mridula R. Bhatkar, J.)
Chairperson
06.07.2021

Dictation taken by: A.K Nair.