

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6454 OF 2004

Rajesh S/o. Narayan Bhandare,
Age-29 years, Occu-Nil,
R/o. N-11, A-112/1 TV Centre,
HUDCO, Aurangabad.

...PETITIONER

VERSUS

1. The State of Maharashtra
(Through its Secretary
Home Department, Mantralaya,
Mumbai-32)
2. The Commissioner of Police,
Aurangabad

...RESPONDENTS

Mr.U.R.Awate h/f S.B.Talekar and Mr.P.V.Ambade, Advocates
for the petitioner
Mr.A.R.Kale, A.G.P. for the respondent/ State.

**CORAM : A.V.NIRGUDE &
V.K.JADHAV, JJ.**

DATED : 13.10.2015

ORAL JUDGMENT [PER: A.V.NIRGUDE, J.]

1. The petitioner was selected as a Police Constable in 1996 on condition that he should clear Departmental Examination in two attempts. Accordingly the petitioner appeared for Departmental Examination in October, 1997, but he could not succeed. On 09.10.1998 he

was relieved from service but he had one more opportunity to get through the Departmental Examination. Accordingly in 10th October, 1998 he appeared for Departmental Examination once again, but again he failed on 04.01.1999. It was informed to him that he had exhausted two attempts to get through the examination and therefore he would not stand any chance to enter in service.

2. In 2000 the State of Maharashtra took a peculiar decision. Vide letter dated 05.09.2000 they decided that those Constables who had failed even on two occasions to get through the Departmental Examination in the year 2000 would be given one more opportunity to appear for Departmental Examination, in other words third opportunity was given to them.

3. In 2001 the State of Maharashtra amended the Rules. Rules earlier provided two attempts for getting through Departmental Examination. The amendment provided three attempts. The petitioner asserted that his Batch of 1999 was discriminated as they were not given similar opportunity of third attempt. The learned Members of the Maharashtra Administrative Tribunal dismissed their applications holding that no discrimination cause to the petitioner and his Bachmates.

4. We are also of the view that the petitioner was not discriminated. What started in 2000 should be effective prospectively in September, 2000. For the first time the State of Maharashtra realized that the candidates should be given third opportunity to get through Departmental Examination. Had the petitioner failed in the year 2000 to get through Departmental Examination, he would have certainly got opportunity for third attempt. The change in the Rule is made prospectively and retrospective effect to such Rules cannot be given and could not have been given for obvious reasons. Such retrospective effect would have created lot of complications. The candidates who had passed in 1995 onwards etc. would have claimed opportunity of third attempt. This was not contemplated as said above. The change was brought about in 2000 and was permissible only prospectively therefore the petition would fail.

5. The petition stands disposed of. Rule discharged.

[V.K.JADHAV, J.]

[A.V. NIRGUDE, J.]