

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12530 OF 2015**

The Commissioner
State Excise, (M.S.), Mumbai
and anr.

.. Petitioners.

vs.

Rakesh V. Salunke and ors.

.. Respondents.

Mr. P.G. Sawant, AGP for State-Petitioners.

Mr. Sandeep Dere for Respondent Nos.1 to 15.

**CORAM: D.H. WAGHELA, C.J. AND
M.S.SONAK, J.**

DATE : 15 MARCH 2016.

P.C.:

1] The challenge in this petition is to the order dated 4 August 2015 made by the Maharashtra Administrative Tribunal (MAT) in Original Application No. 431 of 2014.

2] Mr. P.G. Sawant, learned AGP for the petitioners, submitted that the MAT has failed to consider that 1993 Rules and 2004 Rules have been substituted by 2009 Rules and therefore, no directions could have been issued to effect promotions as per 1993 or 2004 Rules, which are no longer in existence. Mr. Sawant further submitted that the MAT has issued the directions to promote, notwithstanding the circumstance that the persons from clerical cadre may not have been passed the departmental examination as prescribed.

3] There is no merit in either of the contentions raised by and on behalf of the petitioner. The contentions in all probabilities, proceed on the basis of misreading or misinterpretation of the order made by the MAT.

4] The MAT has nowhere issued directions for effecting promotions as per 1993 or 2004 Rules. Even the contention of the respondents that earlier vacancies were filled-in terms of Recruitment Rules 1993 has not been accepted. The MAT has taken cognizance of the circumstance that Rules 2009 are presently in operation and directions have been issued to the petitioner to ensure that the promotions from the clerical cadre and the constabulary cadre are effected as per the said recruitment rules, both in promotion quota as well as in nomination quota.

5] The 2009 Rules, no doubt, contemplate appointment to the post of Sub-Inspectors in the State Excise Department by selection on the basis of common merit list, prepared by the Commissioner from amongst the clerical cadre and the constabulary of the State Excise Department, on the basis of limited competitive departmental examination. However, in the affidavit-in-reply filed by one Mr. Pravin S. Tambe, Deputy Commissioner (Admin.) before the MAT, it is stated that the respondents have, in fact, appeared for the limited competitive departmental examination in terms of 2009 Rules. This position has been made clear in paragraphs 2 and 9 of the said affidavit-in-

reply dated 25 July 2014. Even the learned counsel appearing for the respondents, who had instituted Original Application No. 431 of 2014, has stated that the said respondents have not only appeared for the limited competitive departmental examination, but also duly passed the same.

6] Mr. Sawant, learned counsel for the petitioner, then made an attempt to contend that presently, there are no vacancies. This was clearly, not an issue raised before the MAT when the impugned order was made. Besides, there is no material placed on record in support of such submission. We may only observe that the orders made by the MAT cannot be frustrated on the basis of such pleas.

7] In view of the aforesaid, there is no case made out to interfere with the impugned order made by the MAT. Accordingly, this petition is dismissed. There shall, however, be no order as to costs.

CHIEF JUSTICE

(M.S.SONAK, J.)