IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1537 OF 2016

Yunus Khan Sardar Khan

-vs-

State o Maharashtra, thr.its Secretary, Deptt. of Home and others

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Mr. M.A.Qureshi, counsel for the petitioner.
Mrs.A.R.Kulkarni, counsel for the respondent Nos.1 to 3.

CORAM : SMT. VASANTI A. NAIK &
V. M. DESHPANDE, JJ.

DATE : 07.03.2016.

By this petition, the petitioner impugns the order of the Maharashtra Administrative Tribunal, Nagpur dated 24/07/2015 allowing the original application filed by the respondent No.4 and directing the State Government to appoint the respondent No.4 on the post of Police Constable.

The State of Maharashtra had advertised 248 posts of Police Constables by the advertisement dated 02/05/2014. Out of these posts, 13 posts were reserved for the Project Affected Persons. Of those 13 posts, 5 posts were earmarked for the Open Category. The petitioner had admittedly applied from the Project Affected Persons-Open category. The petitioner had secured 135 marks, whereas the respondent No.4 had secured 149 marks. Since the respondent No.4 belonged to the Other Backward Classes, the State Government did not appoint the respondent No.4 on the post reserved for the Project Affected Persons-Other Backward Class category as a candidate who had secured more marks than the respondent No.4 from the Other Backward Classes was selected on the post reserved for the Project Affected Persons–Other Backward Class category. The respondent

No.4, being aggrieved by his elimination, filed the original application challenging the appointment of the candidates, who had secured lesser marks than him, on the post of Police Constable. The petitioner was one of them. After hearing the parties, the Tribunal, by the impugned order dated 24/07/2015, allowed the original application filed by the respondent No.4 and directed that he should be placed in the list of appointed candidates, as he had admittedly secured more marks than the other candidates that were appointed from the Open-Project Affected Persons category. The order of the Maharashtra Administrative Tribunal is impugned in the instant petition.

On hearing the learned counsel for the parties and on a perusal of the impugned order, it appears that the Tribunal was justified in allowing the original application filed by the respondent No.4. The respondent No.4 had admittedly secured 149 marks and had applied from the Open-Project Affected Persons category. The petitioner had applied from Open-Project Affected Persons category and had secured only 135 marks. Since the respondent No.4 had admittedly secured more marks than the petitioner, the respondent No.4 was entitled to be appointed on the post of Police Constable. Even assuming that the respondent No.4 had applied on the post reserved for the Project Affected Persons-Other Backward Classes, still in view of the law laid down by the Hon'ble Supreme Court, it was necessary for the State Government to select the respondent No.4 from the Open-Project Affected Person category due to his superior merit over and above the Open-Project Affected candidates. Since the petitioner was the last one to be appointed on the post earmarked for the Open-Project Affected Persons category and since the petitioner had admittedly secured lower marks than the respondent No.4, the Tribunal committed no error in allowing the original application filed by the respondent No.4. There is no error whatsoever in the order of the Tribunal so as to interfere with the same, in exercise of the writ jurisdiction. The submission made on behalf of the petitioner that the

petitioner was affected by a project earlier in point of time than the respondent No.4, would have no relevance, since the appointment of the candidates is based only on merit and not on the basis of the date on which they were declared to be project affected persons.

For the reasons aforesaid, we dismiss the writ petition with no order as to costs.

JUDGE **JUDGE**

KHUNTE