

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

WRIT PETITION NO. 2703 OF 2005

Sukumar s/o Ganpatrao Bansode
Age 36 years, occup. service as
Police Constable, B. NO. 35,
Police Head Quarters, Osmanabad,
R/o Bharni Bldg., 3rd Floor,
Room No. 21, Near Devl Temple,
Police Line, Osmanabad

.. Petitioner

versus

- 1) The State of Maharashtra
 - 2) The Maharashtra Public Service
Commission, Mumbai,
through it's Secretary,
Bank of India Bldg., 3rd Floor,
M. G. Road, Mumbai
 - 3) The Director General of Police,
Maharashtra State, Mumbai
- .. Respondents

Mr. S. B. Bhapkar, Advocate for petitioner
Respondent no. 2 is served.

Ms S.S. Raut, Asstt. Govt. Pleader for respondents no.1 and 3

CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.

DATE : 27th September, 2017

ORAL JUDGMENT :

1. Petition has been preferred against the order passed by
the Maharashtra Administrative Tribunal, Aurangabad, dated

11-03-2005 in Original Application no. 835 of 2004, whereunder request of present petitioner seeking direction to respondent no. 2 - Maharashtra Public Service Commission ("MPSC") to recommend his name to respondent no.1 - State government for appointment as Police-sub-Inspector pursuant to his performance in limited departmental examination - 2002 as well as direction to respondent no. 3 - Director General of Police to send to respondent no. 2 MPSC the names of next-in-line candidates from the list of qualified candidates prepared in accordance with performance in limited departmental examination - 2002, has been turned down.

2. Learned counsel for petitioner submits that only 37 posts from 300 posts advertised had been reserved for scheduled caste category while pursuant to advertisement 13 per cent reservation is allotted and kept for scheduled caste category candidates to which petitioner belongs which in terms of number of posts comes to 39. In limited departmental performance examination-2002 about three (3) candidates from scheduled caste category including petitioner had secured equal marks but, only the two others from scheduled caste category had been recommended by respondent no. 2 MPSC. He submits that the petitioner was next-in-line in the performance in said limited departmental examination and in such a case, had there been

reservation in true sense of 13 per cent as referred to in the advertisement, total 39 posts would have been available for the scheduled caste category candidates and in that eventuality petitioner could certainly have been recommended. He, therefore, urges to this court to consider the request, contending that it is petitioner's constitutional right.

3. Learned counsel submits that in the face of such situation, the recommendation of rigid fixation only to 300 candidates, acts counter to intention underlying reservation and ought to be approached with leniency and petitioner ought to be allowed to assume the post of Police-sub-Inspector since he belongs to scheduled caste category or in the alternative, the directions as were sought before the Maharashtra Administrative Tribunal ought to have been issued.

4. Learned Assistant Government Pleader appearing on behalf of respondents no. 1 and 3 submits that the advertisement had been issued in respect of 300 posts making it clear in the same that 37 posts are reserved for scheduled caste category and upon such advertisement the petitioner without questioning its validity, had entered his appearance at the requisite examination and while he could not stand in competition and figure in the 300 recommended candidates, is

coming back and contending that reservation ought to have been of 39 posts. She submits that once the petitioner had submitted himself to the entire selection process pursuant to advertisement and if he is not selected, he would not be able to question the advertisement and the reservation of the posts as shown in the same.

5. Learned Assistant Government Pleader refers to paragraph 8 of the reply submitted on behalf of respondents no. 1 and 3 pointing out that though the petitioner had secured 269 marks equal to those of the two other scheduled caste category candidates recommended yet, his name did not figure in the list of recommended candidates according to the criteria and the standing order dated 28-08-2001 issued by MPSC - respondent no.2. In said standing order, there is stipulation about criteria to be considered for ranking of candidates securing equal marks and under its application, petitioner's name did not find place in the three hundred recommended candidates.

6. Learned Assistant Government Pleader relies on two decisions, however, only the decision in the case of *Bihar State Electricity Board vs Suresh Prasad and others*, AIR 2004 SC 1724 is relevant for present matter wherein it has been observed by the supreme court that the posts falling vacant for want of selected

candidates joining cannot be filled up by candidates who are qualified but are not placed in the final list. It has further been observed that a successful candidate does not get indefeasible right.

7. It appears that the petitioner is not a graduate and the two other recommended candidates were graduate and by application of criteria under standing order referred to earlier, the petitioner stood below said two recommended candidates albeit he has secured equal i.e. 269 marks in the limited departmental examination - 2002.

8. Perusal of impugned decision rendered by the Maharashtra Administrative Tribunal would show, it has been observed that cut off number of candidates had been 300 pursuant to the procedure adopted by the State government. The requisition of 300 candidates had been satisfied by 300 recommended candidates.

9. The tribunal further has referred to decision of *Bihar State Electricity Case* (supra) and found that the facts in the present case and those in cited case were almost identical and as such, the principle therein would also regulate and govern present case.

10. Having regard to aforesaid, we consider that while the petitioner had appeared at the concerned examination with understanding about reservation of only 37 posts for scheduled caste category and while he could not figure in the merit list of recommended candidates, he would not be able to come back and say that, in fact, the reservation ought to have been of 39 posts and not 37.

11. Having regard to observations of the apex court in the case of *Bihar State Electricity Case* (supra), we do not see that the petition carries any merits and the challenge supposedly posed to the order of the tribunal is thus unsustainable. The tribunal's order is proper and correct and does not call for any interference with.

12. Writ petition as such stands dismissed.

13. Rule stands discharged.

SANGITRAO S. PATIL
JUDGE

SUNIL P. DESHMUKH,
JUDGE

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