

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

WRIT PETITION NO. 3339 OF 2014

NISAR ALI RIYASAT ALI KAZI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.Avinash Deshmukh, Advocate for the petitioner
Mr.K.D.Mundhe, AGP for the respondent/State
Sujeet D. Joshi, Advocate for respondent Nos. 4 to 6, 8
to 10,15, 18 to 20,22 to 26, 28 to 30

**CORAM : S.V. GANGAPURWALA &
S.M. GAVHANE, JJ.
DATED : 22.11.2017**

P.C. :-

. The petitioner assails the judgment of the Maharashtra Administrative Tribunal dismissing his original application.

2. Pursuant to the advertisement dated 30.09.2011 respondents had undertaken selection process for filling total 228 posts of 'Police Constable'. From and out of 228 posts 185 posts were earmarked for open competition category. The last candidate selected in the open competition category secured 179 marks. The petitioner secured 178 marks.

3. The grievance of the petitioner is that many

candidates who had been granted benefit of age relaxation having applied from reserved category were also selected in the open competition category.

4. Mr. Deshmukh, learned Advocate for the petitioner submits that those candidates who have been given the benefit of age relaxation having applied from reserved category, though have secured more marks, could not have been considered in the open competition category. The maximum age permissible for candidates in open competition category is 25 years and the candidates i.e. respondent Nos. 4 to 13 are all above 25 years and are selected in open competition category on the basis of their marks. The same is not permissible. Learned Advocate relies on the judgment of the Apex Court in the case of Gaurav Pradhan and others Vs State of Rajasthan in Civil Appeal No.8351/2017 dated 18.08.2017, so also, on the judgment in the case of Vikas Sakhala Vs Vikas Kumar Agrawal reported in (2017) 1 SCC 350 and also in the case of Deepa E.V. Vs Union of India and others dated 06.04.2017 reported in 2017 (SCC Online SC 384).

The learned counsel further submits that 55 posts were to be filled in from open (Women) category. Only five were found eligible. Remaining 50 ought to have been filled in from open (Men) category. So also, persons

who had applied from project affected category could not have been considered for the post from open category. The horizontal reservation cuts across the vertical reservation and those candidates who had applied to the post from horizontal reservation are to be considered in their respective social reservation.

5. The learned AGP submits that the policy of the government does not bar consideration of the candidates who had applied from reserved category and have taken the benefit of age relaxation for being considered in open competition category on the basis of their merit. Learned counsel refers to the letter dated 23.07.2008 issued by the Secretary, Home Department, Maharashtra State. According to the learned counsel the State has not formulated any such policy which debars candidates who applied from the reserved category and having taken the benefit of age relaxation being considered from open competition category.

6. Mr. Joshi, learned counsel also supports the contention of the learned AGP.

7. We have considered the submissions.

8. There is no dispute that all the persons

appointed in the open competition category have secured more marks than the petitioner on merit. The contention of the petitioner is that the respondent Nos. 4 to 13 who were considered from open competition category on the basis of higher marks were ineligible to be considered on account of age relaxation claimed by them while applying from reserved category. In the case of Vikas Singh (Supra) the relaxation was with regards to the marks. In the case of Gaurav Pradhan (Supra) the Apex Court was considering the circulars issued by the State of Rajasthan dated 11.05.2011 and 24.06.2008. The circular dated 24.06.2008 specifically bars the candidates who had taken the benefit of age relaxation for being considered in open competition category though they may have secured more marks whereas circular dated 11.05.2011 permitted such candidates to be considered from open competition category. It was observed by the Apex Court that the circular dated 11.05.2011 was issued in the midst of the selection process and after the selection process had commenced and the circular dated 24.06.2008 specifically barred the candidates who had taken the benefit of age relaxation being considered from open competition category. In the case of Deepa E.V. (Supra) the same was the position. The relevant rules referred to in the said judgment specifically barred the candidates who had taken the benefit of age relaxation for being considered from

open competition category.

9. In the present case no such policy of the Government has been placed on record either permitting the candidates who have taken the benefit of age relaxation for being considered from open competition category or debar such candidate.

10. It is stated by the respondent that consistent policy followed by the Government is that the candidates who have secured more marks and /or are meritorious though have taken benefit of age relaxation and had applied from reserved category are being considered in the open competition category. Reliance is placed on letter dated 23.07.2008 issued by the Home Department, Mantralaya, Mumbai permitting such migration of the candidates who have taken benefit of age relaxation or to be considered in the open competition category on the basis of their merit and the same is consistently followed.

11. Each selection process would be governed by rules or the executive instructions/guidelines governing the selection process and followed consistently.

12. No policy of the Government is pointed out by

virtue of which restrain is placed on the candidates who have applied from reserved category and having taken benefit of age relaxation could not have been considered in open competition category on the basis of their merit. The appointment orders to the respondents are issued on 01.02.2012 and since then they are officiating.

13. Be that as it may, in absence of any policy being brought to the notice of this Court that debars candidates would apply from reserved category and have taken benefit of age relaxation for being considered in open competition category on the basis of higher marks, it would not be possible for this Court to set aside the said selection.

14. It is high time the State Government formulates a specific policy in that regard by way of executive instructions or otherwise.

. The other objection regarding seats filled up from PAP category is also unfounded. There is no dispute with the proposition that horizontal reservations cuts across vertical reservations. 5% seats are reserved for PAP category. There were no post meant for PAP category amongst the post meant for social reservation considering less number of posts, all the posts reserved for PAP were

in open category and the candidates from PAP category are appointed on the post reserved for them. No illegality is committed on that count.

As far as female reservations is concerned out of 55 posts only five female candidates were found eligible. Remaining fifty posts were filled in from open competition category as stated by respondent/State.

15. In the light of above no relief can be granted to the petitioner. Accordingly the writ petition stands disposed of.

[S.M. GAVHANE, J.]

[S.V. GANGAPURWALA, J.]