

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.6372 OF 2017

Rajubhai Ramabhai Bhusara,	]	
Age : 27 years,	]	
S/o. Ramabhai Kakadbhai Bhusara,	]	
Working as Police Sub Inspector,	]	
UT of Dadra and Nagar Haveli,	]	
Silvassa - 396 230.	]	
	]	
R/o. : At & Post Khanvel Patalipada,	]	
U/T of Dadra & Nagar Haveli,	]	
Silvassa - 396 230.	]	 Petitioner

Versus

1. Union of India,	]	
Through the Administration of Union	]	
Territory of Dadra & Nagar Haveli,	]	
Silvassa - 396 230.	]	
	]	
	]	
2. The Inspector General of Police,	]	
Administration of Union Territory of	]	
Dadra & Nagar Haveli,	]	
(Police Department), PHQ,	]	
Silvassa - 396 230.	]	
	]	
	]	
3. Suraj Babubhai Raut,	]	
Aged 26 years,	]	
Son of Babubhai Raut,	]	
R/at Room No.12, Block-I,	]	
Type-II, Sec. IV, Police Line,	]	
Ultan Faliya Road, Silvassa,	]	
UT of Dadra & Nagar Haveli 396 230	]	 Respondents

Mr. Sandeep V. Marne for the Petitioner.

Mr. Shrishailya S. Deshmukh for Respondent Nos.1 and 2.

Mr. G.K. Masand, i/by Mr. Himanshu Shukla, for Respondent No.3.

CORAM : SMT. V.K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 8TH AUGUST, 2017.

ORAL JUDGMENT : [Per Dr. Shalini Phansalkar-Joshi, J.]

1. Rule. Rule made returnable forthwith.
2. With consent of learned counsel for the parties, heard finally at the stage of admission itself.
3. By way of present Writ Petition, the Petitioner is challenging the Judgment and Order dated 24th April 2017 passed by the Central Administrative Tribunal, Mumbai, in Original Application No.838 of 2016. The said application was preferred by the Petitioner for a declaration that he has been validly appointed to the post of '*Police Sub-Inspector*' vide appointment order dated 16th August 2016 and Respondent No.2 has no legal right or authority to cancel the said appointment, without following the prescribed procedure of law. As the said application came to be dismissed, the Petitioner has approached this Court.
4. Facts, which are necessary for deciding this Petition, can be stated as follows :-

. Petitioner belongs to 'Scheduled Tribe' category and is resident of Union Territory of Dadra and Nagar Haveli. Initially, he was appointed as '*Police Constable*' in the Police Department of U.T. Administration of Dadra and Nagar Haveli by order dated 1st June 2011. In response to the advertisement issued by Respondent No.2 on 14th March 2016 for filling up the post of '*Police Sub-Inspector (Male)*', from open market for direct recruitment for the Union Territory of Dadra and Nagar Haveli, Petitioner applied for the said post. In all, 6 posts were notified by the said advertisement; out of them, 4 posts were for the candidates from 'Open' category; 1 post was for candidate belonging to 'Scheduled Tribe' category and 1 post was reserved for candidate belonging to 'Scheduled Caste' category. Since the Petitioner fulfilled eligibility criteria, he applied for the said post.

5. After successfully undergoing the physical endurance test, followed by written test, name of the Petitioner was included in the list of provisionally selected candidates for the post of '*Police Sub-Inspector*' on 29th July 2016 on the official website of Respondent No.2. His name was included in the category of the candidates belonging to 'Scheduled Tribe'. Thereupon, after due verification of

the documents submitted by him on 6th August 2016, the letter of offer of appointment was issued to him on 8th August 2016, by which he was offered temporary appointment to the post of '*Police Sub-Inspector*'. Petitioner accepted the said offer of appointment by his letter dated 10th August 2016 and tendered his technical resignation on 10th August 2016 from the post of '*Police Constable*' for the purpose of joining the post of '*Police Sub-Inspector*'. Thereafter, Respondent No.2 issued an order dated 12th August 2016 appointing Petitioner to the post of '*Police Sub-Inspector*' w.e.f. 16th August 2016. Petitioner was put on probation for two years from the date of joining. His technical resignation from the post of '*Police Constable*' was accepted on 16th August 2016 and on the same day, Petitioner joined the post of '*Police Sub-Inspector*'. Initially, Petitioner was imparted basic training at Silvassa for two months and thereafter he was directed to join the Police Training College at New Delhi. Accordingly, he joined the said College from 14th October 2016. As per the case of the Petitioner, from the date of his appointment as '*Police Sub-Inspector*' on 16th August 2016, he was being paid salary for the said post.

6. However, all of a sudden, on 13th December 2016, the Petitioner was handed over the order of the same date informing

him that, as upon the detailed cross-verification of documents of all the candidates in the merit-list, an anomaly in caste category, as reflected in the list, was detected, hence, the revised merit-list was prepared. As per the said list, the seat belonging to 'Scheduled Tribe' category was to be allotted to the candidate belonging to the said 'Scheduled Tribe' category, who has secured highest marks in the merit-list. It was informed that, as Petitioner has not secured highest marks in the said category, his provisional candidature to the post of '*Police Sub-Inspector*' stands cancelled.

7. On receipt of this letter, Petitioner, immediately on 15th December 2016, made representation to Respondent No.1 requesting for cancellation of the said order. Moreover, since the order was extremely confusing and vague, Petitioner presented himself at the Police Training College, New Delhi, on 16th December 2016 to continue his training. As he was advised there to challenge the order dated 13th December 2016, Petitioner approached the Central Administrative Tribunal, Mumbai, by filing Original Application No.838 of 2016 challenging the order dated 13th December 2016 and seeking a declaration that he has been validly appointed to the post of '*Police Sub-Inspector*'.

8. In the said application, an interim order was passed on 21st December 2016 directing Respondent Nos.1 and 2 not to restrain the Petitioner from attending the training course for the post of '*Police Sub-Inspector*' and the said interim order was continued from time to time till final disposal of the Original Application.

9. This application of the Petitioner came to be resisted by Respondent Nos.1 and 2 vide affidavit-in-reply filed on 3rd January 2017. It was contended therein that before uploading the final merit-list, when cross-verification of documents of all the provisionally selected candidates was done, an error was detected in the caste category of some of the candidates in the provisional select-list dated 28th July 2016. It was found that the caste category of some of the candidates was wrongly reflected in the said merit-list and upon correcting the caste category of the candidates, it was revealed that candidate at Serial No.8, who is now joined as Respondent No.3 in the present Petition, and candidate at Serial No.13 also belong to 'Scheduled Tribe' category. However, through oversight, they were shown against 'Unreserved/Open' category and 'Other Backward Class' category, respectively. It was also found that Respondent No.3 has secured highest marks i.e. 58.10 and since he

also belong to 'Scheduled Tribe' category, his name should have been included in the select-list, instead of the name of the Petitioner. It was further found that the candidate at Serial No.13 was also belonging to 'Scheduled Tribe' category and he has secured second position in merit having obtained 56.02 marks. It was revealed that the marks secured by the Petitioner were only 55.66 and hence he could not have been selected for the post of '*Police Sub-Inspector*' from the 'Scheduled Tribe' category. This mistake was, accordingly, rectified by issuing the impugned order. It is submitted that since provisional candidature of the Petitioner was cancelled, his appointment to the post of '*Police Sub-Inspector*' also stands terminated and he is reverted to his original post of the '*Police Constable*'. According to Respondent Nos.1 and 2, therefore, the application filed by the Petitioner could not be entertained and the same needs to be dismissed.

10. During pendency of the said application, Respondent No.3 preferred Miscellaneous Petition No.59 of 2017 on 17th January 2017 seeking to implead himself as party-Respondent on the ground that he was issued offer of appointment dated 20th December 2016, after the impugned order dated 13th December 2016 was passed.

According to him, on account of the issuance of appointment letter dated 20th December 2016, he had tendered technical resignation from his services as '*Administrative Assistant*' in the State run hospital at Silvassa and has joined the post of '*Police Sub-Inspector*'. Only on account of the interim order passed by the Tribunal, he was not in a position to join training programme and hence, considering that his interest was likely to be prejudicially affected, the Tribunal allowed his Petition for impleadment.

11. Thereafter, upon hearing submissions advanced by learned counsel for the parties and after going through the original record relating to the selection process, the learned Tribunal was pleased to dismiss Original Application of the Petitioner vide its impugned Judgment and Order dated 24th April 2017. The Tribunal was also pleased to vacate the interim order dated 21st December 2016 and directed the Respondents to call back the Petitioner from the training and giving him liberty to join as '*Police Constable*'.

12. Aggrieved by the impugned order of the Tribunal, the Petitioner has approached this Court, under Article 226 of the Constitution of India, raising two fold contentions. In the first place,

it is submitted that the impugned order dated 13th December 2016 was passed in gross violation of the provisions of Central Civil Services (Temporary Service) Rules, 1965, as Petitioner was not given any notice before passing of the said order. It was submitted that in the appointment letter, it was clearly stated that his services will be terminable only on one month's notice from either side in accordance with Central Civil Services (Temporary Service) Rules, 1965. However, no such notice was issued to him and he was terminated from the services without following due process of law or without giving him an opportunity of hearing. It is submitted that the Tribunal has completely ignored this important aspect raised by the Petitioner in his Original Application and rejoinder.

13. Secondly, it was submitted that the reason given by Respondent Nos.1 and 2 for cancellation of the provisional select-list was not true and correct. It was contended that, in addition to the caste category, several changes were made in the date of birth as well as marks in respect of many candidates in the final merit-list published by Respondent Nos.1 and 2. The provisional select-list and the final revised merit-list are completely at variance with each other and the Tribunal has not considered this aspect also. It was

submitted that for no fault on the part of the Petitioner, his appointment is being cancelled and that order being wrongly upheld by the Tribunal, it needs to be quashed and set aside.

14. Per contra, learned counsel for Respondent Nos.1 and 2 and learned counsel for Respondent No.3 have supported the said order by pointing out that the appointment of the Petitioner was not only provisional, but it was also found to be not a valid appointment and hence, Respondent Nos.1 and 2 were fully justified in cancelling the said appointment. Therefore, according to them, no fault can be found in the impugned order of the Tribunal.

15. We have given our thoughtful consideration to the submissions advanced at bar and in our opinion, the issue involved in the present Petition stands fully covered in the Judgment of the Hon'ble Apex Court in the case of *Man Singh Vs. Commissioner, Garhwal Mandal, Pauri and Ors.*, (2009) 11 SCC 448, and, therefore, we do not intend to dwell at length on other legs of arguments advanced before us.

16. Admittedly, in this case, the Petitioner was appointed on the basis of the provisional select-list published by Respondent No.1. His appointment letter makes it very clear that the appointment was

purely on a temporary basis and until further orders. The affidavit-in-reply filed by the Respondents makes it clear that, on account of an error crept in entering the caste category of the candidates properly in the merit-list, there was error in the provisional select-list and hence, that error was required to be rectified. It was clearly stated that in respect of some candidates, their caste category was wrongly reflected in the provisional select-list. For e.g., it was stated that the candidate at Serial No.8, i.e. Respondent No.3 herein, and candidate at Serial No.13 belong to the 'Scheduled Tribe' category. However, through oversight, they were shown against 'Unreserved/Open' category and 'Other Backward Class' category, respectively. On cross-verification of the documents, before publishing final merit-list, their proper category was revealed and at that time, it was found that Respondent No.3 has secured the highest marks of 58.10; whereas the candidate at Serial No.13 Surendrabhai Prabhubhai Patel has secured the second highest marks of 56.02, and the Petitioner has secured the third highest marks of 55.66. Hence, as the candidate securing highest marks in the said category of 'Scheduled Tribe' was entitled to get the reserved post of that category, Respondent No.3 was entitled to get the appointment and, accordingly, the candidature of the Petitioner,

who was securing third highest marks, needs to be cancelled. It was submitted that Respondent No.1 has only corrected and rectified the said mistake. It has not made any changes in the marks secured by the candidates. There is no allegation on the part of the Petitioner also, that Respondent No.1 has, in this case, acted in any way *mala fide* manner or with ulterior object or motive. The affidavit-in-reply filed by Respondent Nos.1 and 2 on this aspect is not seriously challenged and it is also supported with the documents produced on record, including the break-up of marks obtained by all the three candidates, which is produced before this Court also.

17. In such circumstances, the issue for consideration is, '*whether the termination of the appointment of Petitioner, as a result of rectification of the provisional select-list to correct a mistake, is illegal or void ?*'

18. In our opinion, the answer to this issue has to be in the negative, in the light of the view taken by the Hon'ble Supreme Court in the above referred case of *Man Singh (Supra)*. In this case also, the Appellant had been appointed as a '*Peon*' on a short term vacancy from time to time for a fixed period. Thereafter, during his

period of appointment, the names were called for from the Employment Exchange for filling up the post of 'Peon' in regular way. Appellant applied for the said post. The Selection Committee was constituted. Appellant appeared before the Selection Committee. The name of the Appellant was placed at Serial No.3 in the 'General' category. However, thereafter, the name of the Appellant was deleted and in his place, the name of one Mohan Lal was inserted. The Appellant's services were then terminated. Aggrieved by and dissatisfied therewith, Appellant had filed Writ Petition before the High Court of Uttaranchal, which came to be dismissed. He has challenged the said order before the Apex Court on the ground that his services could not have been terminated; particularly, in view of the fact that he was selected for regular appointment by the Selection Committee. On behalf of the Respondent, it was brought on record that the name of the Appellant was wrongly placed at Serial No.3 in the wait-list, as another candidate Mohan Lal had secured higher marks than the Appellant. As there were only three vacancies, it was held that Appellant's name had to be deleted; especially when Appellant has not attributed any *mala fides* to the Respondent and when it was not his case that Mohan Lal, in fact, had not secured higher marks than

him. It was held by the Apex Court that, if a mistake was committed, the Respondents were entitled to rectify the same. According to the Apex Court,

“All persons similarly situate under our Constitutional Scheme are required to be treated equally. Some mistakes were found in the select-list. If those mistakes have been rectified and the irregularities have been removed by preparing the select-list strictly in accordance with rules, no exception thereto can be taken. Mohal Lal was wrongly placed in the category of reserved candidates, as he has competed with the 'General' category candidates.”

19. It was held that, merely because Appellant had continued to work on the said post for a long time, by that reason, he cannot acquire indefeasible right to become a permanent employee of the Department. Thus, his Appeal came to be dismissed by the Hon'ble Supreme Court.

20. In the present case also, the name of the Petitioner came to be included in the provisional select-list, on account of the error crept in entering the caste category of some of the candidates. When that error was noticed at the time of cross-verification of documents, Respondent Nos.1 and 2 had to rectify the said error and upon

correcting the caste category of the candidates, they had to appoint Respondent No.3, who had secured highest marks. As the Petitioner has secured third highest marks, it is clear that his name was wrongly included in the provisional select-list, on account of the fact that the caste category of Respondent No.3 was wrongly shown, through oversight, against 'Unreserved/Open' category in the provisional select-list. Therefore, it cannot be said that any illegality or impropriety is committed by Respondent Nos.1 and 2 in cancelling the candidature of the Petitioner for the post of '*Police Sub-Inspector*'. There is not a whisper in the entire submissions or in the Petition attributing any *mala fides* to Respondent Nos.1 and 2. It is also not the case of the Petitioner that Respondent No.3 had not secured higher marks than him. Therefore, as held in the above-said authority of *Man Singh (Supra)*, if a mistake was committed by the Respondents, they were entitled to rectify the same by preparing the select-list strictly in order of merit and in preparing such select-list, if the name of the Petitioner cannot find in the merit-list, his candidature has to be cancelled. As is well-said, '*mistakes are to be rectified and not perpetuated*'.

21. Therefore, the contention raised by the Petitioner that, as per the letter of appointment, he should have been given one month's

notice or an opportunity of hearing before terminating him, cannot be accepted. Such notice of one month or an opportunity of hearing is contemplated when appointment of the candidate is valid and regular. Here in the case, when the appointment of the Petitioner itself was not valid and legal and hence it had to be cancelled or terminated, the Petitioner has no right to challenge the said order.

22. In our considered opinion, therefore, the Tribunal has rightly rejected the Petitioner's application. In our writ jurisdiction, no interference is warranted in the said order. The Petition is dismissed.

23. Rule, therefore, stands discharged.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K. TAHILRAMANI, J.]