

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6631 OF 2017

Sushant Suresh Salvi,]
Age : 35 Years,]
R/at 201/A-2, Shreeji Residence,]
Near Amrut Angan, Parsik Nagar,]
Kalwa (West), Thane - 400 605.] Petitioner

Versus

1. The State of Maharashtra,]
Through the Principal Secretary,]
General Administration Department,]
Mantralaya, Mumbai - 400 032.]
]
2. The Chairman / Secretary,]
Maharashtra Public Service Commission,]
Maharashtra State, Mumbai.]
Having office at M.T.N.L. Building,]
Off. Cooperage Ground, Mumbai-400032.]
]
3. The Director General and Inspector]
General of Police, Maharashtra State,]
Mumbai.]
Having office at Old Council Hall,]
Shahid Bhagatsingh Marg,]
Mumbai - 400 039.]
]
4. The State of Maharashtra,]
Through the Principal Secretary,]
Home Department, Mantralaya,]
Mumbai - 400032.]
]
5. Pankaj Rajaram Borse,]
Occ.: Police Constable,]
R/at A-5, Bandra Police Station Quarter,]
Opp. Baba Hospital, Bandra (West),]
Mumbai - 400 050.]

6. Prajenshil B. Baladar,
Occ.: Police Naik,
R/at 1/39, New Police Line,
Near G.P.O., Thane (West).
7. Satish A. Desai,
Occ.: Police Constable,
R/at New BDD Chawl No.9/76,
G.U. Road, Naigaon, Mumbai-400014.
8. Vinayak P. Jagtap,
Occ.: Police Naik,
R/at Ekta Society, Plot No.D-125,
Room No.4, Swami Vivekanand Nagar,
MHADA Colony, Pawar Nagar, Thane.
9. Sanjeevan Lou Rane,
Occ.: Police Naik,
R/at 605, 'A' Wing, Shivpratap Building,
Almeda Road, Chandanwadi, Thane (W).
10. Santosh S. Tanavade,
Occ.: Police Constable,
R/at B-9/24, Second Floor,
Tardeo Police Colony, Mumbai-400034.
11. Ankush R. Patil,
Occ.: Police Constable,
R/at B-8/26, 2nd Floor,
Tardeo Police Colony,
Tardeo, Mumbai - 400034.
12. Damodar D. Lad,
Occ.: Police Constable,
R/at B-1/202, Aparnaraj C.H.S.,
Gholai Nagar, Kalwa (E), Thane.
13. Sachin M. Nikam,
Occ.: Police Naik,

- R/at Flat No.G-302, Saptarang Akash,]
 Bhokraji Nagar, Fursungi, Pune-412308.]
14. Nilesh G. Paranjpe,]
 Occ.: Police Constable,]
 R/at Shirbhate Layout, Plot No.11,]
 By-pass Road, Near Chaitanya Colony,]
 Amravati - 444606.]
15. Abdul Latif Sayyad Gous,]
 Occ.: Police Constable,]
 R/at 603/4, Ayman Palace,]
 Ashok Chouk, New Paccha Peth,]
 Solapur - 413 003.]
16. Santosh Nana Waghchaure,]
 Occ.: Police Naik,]
 R/at G-1/706, Nilkanthdhara Apartment,]
 Near Phadke Maidan, Adharwadi Road,]
 Lal Chauki, Kalyan (West).]
17. Suryakant Manshing Thorat,]
 Occ.: Police Constable,]
 R/at Building No.7, Book No.3,]
 Worli Police Camp, Mumbai-400030.]
18. Kushal R. Shimpi,]
 Occ.: Police Naik,]
 R/at Room No.6, Police Line,]
 Court Road, Chalisgaon,]
 Dist. Jalgaon - 424101.] Respondents

ALONG WITH

CIVIL APPLICATION NO.2172 OF 2017
IN
WRIT PETITION NO.6631 OF 2017

1. Devidas Laxman Damale,]
 Age : 29 Years,]

- R/at Room No.359, Sector 6,
Koper Khairane, New Mumbai-400709.]
2. Nivrutti Dilip Shinde,]
Age : 30 Years,]
R/at B/15, Room No.2,]
Vashi, New Mumbai - 400 703.]
3. Ganesh Vishnu Avhad,]
Age : 27 Years,]
R/at Sable Nagar, Near Railway Colony,]
Behind Building No.102, Kurla (East),]
Mumbai - 400 024.]
4. Deepak Subhash Tayde,]
Age : 33 Years,]
R/at 13/26, 'A' Wing,]
Railway Police Quarters,]
Pant Nagar, Ghatkopar (East),]
Mumbai - 400 075.] Applicants

In the matter between

Sushant Suresh Salvi,]
Age : 35 Years,]
R/at 201/A-2, Shreeji Residence,]
Near Amrut Angan, Parsik Nagar,]
Kalwa (West), Thane - 400 605.] Petitioner

Versus

1. The State of Maharashtra,]
Through the Principal Secretary,]
General Administration Department,]
Mantralaya, Mumbai - 400 032.]
2. The Chairman / Secretary,]
Maharashtra Public Service Commission,]
Maharashtra State, Mumbai.]
Having office at M.T.N.L. Building,]
Off. Cooperage Ground, Mumbai-400032.]

3. The Director General and Inspector
General of Police, Maharashtra State,
Mumbai.
Having office at Old Council Hall,
Shahid Bhagatsingh Marg,
Mumbai - 400 039.
4. The State of Maharashtra,
Through the Principal Secretary,
Home Department, Mantralaya,
Mumbai - 400032.
5. Pankaj Rajaram Borse,
Occ.: Police Constable,
R/at A-5, Bandra Police Station Quarter,
Opp. Baba Hospital, Bandra (West),
Mumbai - 400 050.
6. Prajenshil B. Baladar,
Occ.: Police Naik,
R/at 1/39, New Police Line,
Near G.P.O., Thane (West).
7. Satish A. Desai,
Occ.: Police Constable,
R/at New BDD Chawl No.9/76,
G.U. Road, Naigaon, Mumbai-400014.
8. Vinayak P. Jagtap,
Occ.: Police Naik,
R/at Ekta Society, Plot No.D-125,
Room No.4, Swami Vivekanand Nagar,
MHADA Colony, Pawar Nagar, Thane.
9. Sanjeevan Lou Rane,
Occ.: Police Naik,
R/at 605, 'A' Wing, Shivpratap Building,
Almeda Road, Chandanwadi, Thane (W).

10. Santosh S. Tanavade,
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Tardeo Police Colony, Mumbai-400034.
11. Ankush R. Patil,
Occ.: Police Constable,
R/at B-8/26, 2nd Floor,
Tardeo Police Colony,
Tardeo, Mumbai - 400034.
12. Damodar D. Lad,
Occ.: Police Constable,
R/at B-1/202, Aparnaraj C.H.S.,
Gholai Nagar, Kalwa (E), Thane.
13. Sachin M. Nikam,
Occ.: Police Naik,
R/at Flat No.G-302, Saptarang Akash,
Bhekraj Nagar, Fursungi, Pune-412308.
14. Nilesh G. Paranjpe,
Occ.: Police Constable,
R/at Shirbhate Layout, Plot No.11,
By-pass Road, Near Chaitanya Colony,
Amravati - 444606.
15. Abdul Latif Sayyad Gous,
Occ.: Police Constable,
R/at 603/4, Ayman Palace,
Ashok Chouk, New Paccha Peth,
Solapur - 413 003.
16. Santosh Nana Waghchaure,
Occ.: Police Naik,
R/at G-1/706, Nilkanthdhara Apartment,
Near Phadke Maidan, Adharwadi Road,
Lal Chauki, Kalyan (West).

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Occ.: Police Constable,]
R/at Building No.7, Book No.3,]
Worli Police Camp, Mumbai-400030.]
]
18. Kushal R. Shimpi,]
Occ.: Police Naik,]
R/at Room No.6, Police Line,]
Court Road, Chalisgaon,]
Dist. Jalgaon - 424101.] Respondents

ALONG WITH
WRIT PETITION NO.9242 OF 2017

1. Sandip Sudhakar Khade]
Age : 35 Years,]
R/at House No.74-A, Shivaji Nagar,]
Near Omkar Apartment,]
Shahpur, Vasind (W), Thane, Maharashtra]
]
2. Rajendra Nandkumar Chavan,]
Room No.31, Building No.19,]
New Mahim Colony, Mahim, Mumbai.]
]
3. Manurodh Natthusing Rathod,]
Krushna Complex, Devki Building,]
Room No.9, 2nd Floor, 'C' Wing,]
Chinchapada Road, Katemanivali,]
Kalyan (East).] Petitioners

Versus

1. The State of Maharashtra,]
Through the Principal Secretary,]
General Administration Department,]
Mantralaya, Mumbai - 400 032.]
]
2. The Chairman / Secretary,]
Maharashtra Public Service Commission,]
Maharashtra State, Mumbai.]
Having office at M.T.N.L. Building,]
Off. Cooperage Ground, Mumbai-400032.]

3. The Director General and Inspector
General of Police, Maharashtra State,
Mumbai.
Having office at Old Council Hall,
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Mumbai - 400 039.
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Mumbai - 400 032.
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Occ.: Police Constable,
R/at A-5, Bandra Police Station Quarters,
Opp. Baba Hospital, Bandra (W),
Mumbai - 400050.
6. Prajenshil B. Baladar,
Occ.: Police Naik,
R/at 1/39, New Police Line,
Near G.P.O., Thane (West).
7. Satish A. Desai,
Occ.: Police Constable,
R/at New B.D.D. Chawl No.9/76,
G.U. Road, Naigaon, Mumbai-400014.
8. Vinayak Pundalik Jagtap,
Occu.: Police Naik, A.C.B., Thane,
R/of Ekta Society, Plot No.D-125,
Room No.4, Swami Vivekanand Nagar,
MHADA Colony, Pawar Nagar, Thane.
9. Sanjeevan Lou Rane,
Occu.: Police Naik,
Thane City Police Head Quarter,
R/of 605, "A" Wing, Shivpratap Bldg.,
Almeda Road, Chandanwadi, Thane (W).

10. Santosh S. Tanavade,
Occ.: Police Constable,
R/at B-9/24, Second Floor,
Tardeo Police Colony, Mumbai-400034.
11. Ankush R. Patil,
Occ.: Police Constable,
R/at B-8/26, 2nd Floor,
Tardeo Police Colony,
Tardeo, Mumbai - 400034.
12. Damodar D. Lad,
Occ.: Police Constable,
R/at B-1/202, Aparnaraj C.H.S.,
Gholai Nagar, Kalwa (E), Thane.
13. Sachin M. Nikam,
Occ.: Police Naik,
R/at Flat No.G-302, Saptarang Akash,
Bhekraj Nagar, Fursungi, Pune-412308.
14. Nilesh G. Paranjpe,
Occ.: Police Constable,
R/at Shirbhate Layout, Plot No.11,
By-pass Road, Near Chaitanya Colony,
Amravati - 444606.
15. Abdul Latif Sayyad Gous,
Occ.: Police Constable,
R/at 603/4, Ayman Palace,
Ashok Chouk, New Paccha Peth,
Solapur - 413 003.
16. Santosh Nana Waghchaure,
Occ.: Police Naik,
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Occ.: Police Constable,
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18. Kushal R. Shimpi,
Occ.: Police Naik,
R/at Room No.6, Police Line,
Court Road, Chalisgaon,
Dist. Jalgaon - 424101.
19. Balasaheb Manohar Doke,
Police Constable,
Tardeo Traffic Division, Tardeo,
Mumbai - 400007.
20. Pundlik K. Joshilkar,
Assistance of Inspector,
Wireless Section,
Superintendent of Police Office,
Kolhapur.
21. Yogita V. Salunkhe,
Occ.: Police Naik,
Koregaon Park Police Station, Pune,
R/at 1315, Kasba Peth,
Pratibha Complex,
Near Surya Hospital, Pune.
22. Adimath Gulab Palve,
PC 1744, New Police Line,
Senapati Bapat Road,
Near S.L. Raheja Hospital, Mahim,
Mumbai - 400 016.
23. Date B. Gethe,
PC, Kranti Chowk Police Colony,
H. No.14/135, Aurangabad.

24. Sachin R. Choudhary,]
PC, 3/304, Chintamani,]
Gajanan Nagar, Thane-Belapur Rd.,]
Vitava, Dist. Thane.]
25. Harika V. Bhosale,]
PC, C/39, 3rd Floor, Bandra Police Line,]
Bandra (West), Mumbai - 400050.]
26. Motilal D. Patil,]
PC, Plot No.3, Kanchan Nagar,]
Near Vishal Provision, Jalgaon.]
27. Deepak Ware,]
Pleasant Park C.H.S.,]
'F' Wing, 103, Ground Floor,]
Mira Road (E), Dist. Thane.]
28. Dharmendra T. Bansode,]
Byculla Police Quarters,]
Old Building, Room No.23,]
Ground Floor, Hansraj Lane,]
Byculla (E), Mumbai - 400027.]
29. Pandit Pawar,]
Adarsh Nagar, Shrirampur,]
Tal. Pusad, Dist. Amravati.] Respondents

ALONG WITH
WRIT PETITION NO.10150 OF 2017

1. The State of Maharashtra,]
Through the Principal Secretary,]
Home Department, Mantralaya,]
Mumbai - 400 032.]
2. Principal Secretary,]
General Administration Department,]
Mantralaya, Mumbai - 400 032.]

3. The Director General and Inspector
General of Police, Maharashtra State,
Mumbai.
Having office at Old Council Hall,
Shahid Bhagatsingh Marg,
Mumbai – 400 039.] Petitioners
(Org. Respondents)

Versus

1. Pankaj Rajaram Borse,
Age : 36 Years,
Working as Police Constable,
D.N. Nagar Police Station,
Andheri, Mumbai.
R/of A-5, Bandra Police Quarters,
Opp. Bhabha Hospital, Bandra (W),
Mumbai – 400 050.
2. Prajneshil Bhimrao Baladar,
Age : 42 Years,
Working as Police Naik,
Anti-Encroachment Department,
Nitin Company, Thane (W).
R/of 1/39, New Police Line,
Near G.P.O., Thane (West).
3. Satish Ananda Desai,
Age : 36 Years,
Working as Police Constable,
Mumbai Sagari Police Station,
R/of New B.D.D. Chawl No.9/76,
G.U. Road, Naigaon, Mumbai-400014.
4. Vinayak Pundalik Jagtap,
Age : 41 Years,
Working as Police Naik, A.C.B., Thane,
R/of Ekta Society, Plot No.D-125,
Room No.4, Swami Vivekanand Nagar,
MHADA Colony, Pawar Nagar, Thane.

5. Sanjeevan Lou Rane,]
Age : 37 Years,]
Working as Police Naik,]
Thane City Police Head Quarter,] (*Respondent*
R/of 605, "A" Wing, Shivpratap Bldg.,] *Nos.1 to 5*
Almeda Road, Chandanwadi, Thane (W).] (*Org. Applicants*)
]
6. The Chairman / Secretary,]
Maharashtra Public Service Commission,]
Maharashtra State, Mumbai.]
Having office at M.T.N.L. Building,]
Off. Cooperage Ground, Mumbai-400032.] Respondents

Mr. Sandeep Dere for the Petitioner in WP/6631/2017.

Mr. Sandeep Dere, i/by Mr. Amit D. Hire, for the Petitioners in WP/9242/2017.

Mr. C.P. Yadav, A.G.P., for the Petitioners-State in WP/10150/2017.

Mr. Vishal Thadani, A.G.P., for Respondent No.6-M.P.S.C. in WP/10150/2017.

Mr. S.A. Sawant, a/w. Mr. H.S. Kadam, i/by Mr. H.V. Kode, for Respondent No.13 in WP/6631/2017 and for Respondent Nos.13, 21, 24, 26 and 29 in WP/9242/2017.

Mr. P.S. Dani, Senior Counsel, i/by Mr. Mohit P. Jadhav, for the Applicants in CAW/2172/2017 in WP/6631/2017.

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

RESERVED ON : 18TH SEPTEMBER, 2017.

PRONOUNCED ON: 28TH SEPTEMBER, 2017.

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. The Petitioners herein are challenging the Judgment and Order dated 27th September 2016 in Original Application No.695 of 2016 and connected Original Application No.856 of 2016 passed by the Maharashtra Administrative Tribunal, Mumbai, thereby allowing the said applications and further holding that the upper age-limit for the '*Limited Departmental Competitive Examination, 2016*' for selection to the post of "Police Sub-Inspector" has to be in accordance with the State Government Resolution dated 25th April 2016.
4. The first two Writ Petitions, bearing Writ Petition No.6631 of 2017 and Writ Petition No.9242 of 2017, are preferred by the candidates, who have been prejudicially affected on account of the interpretation of the said Government

Resolution, (*for short, “G.R.”*), by the Maharashtra Administrative Tribunal, (*hereinafter referred to as “Tribunal”*), as they are now loosing their chance for the promotion to the said post of “Police Sub-Inspector”, though they have obtained the qualifying marks; whereas, the third Writ Petition, bearing No.10150 of 2017, is preferred by the State Government itself, being aggrieved by the order of the Tribunal increasing the upper age-limit for the said post.

5. The necessary legal question, therefore, arising for our consideration in all these three Writ Petitions is *‘the interpretation and application of the Government Resolution dated 25th April 2016 issued by the State of Maharashtra’*.

6. Before we enter into the legal aspects of the question raised for our consideration in these Writ Petitions, it is necessary to mention few facts, which can be stated briefly as under :

7. The Government of Maharashtra, through its Principal Secretary, issued an advertisement on 27th June 2016 to fill up “822” posts of “Police Sub-Inspector” through *‘Limited*

Departmental Competitive Examination' under Rule 3(b) of Police Sub-Inspector (Recruitment) Rules, 1995, (*for short*, "*Rules, 1995*"). The said Recruitment Rules have been framed by the State of Maharashtra in exercise of the power conferred by clause (b) of Section 5 of the Bombay Police Act, 1951 (Maharashtra Police Act, 2014), (*for short*, "*Act, 1951*"), regulating recruitment to the post of "Police Sub-Inspector" in the Police Force under the Home Department of Government of Maharashtra. As per Rule 3(b) of the said Rules, the upper age-limit for the selection of "Police Sub-Inspector" by way of '*Limited Departmental Competitive Examination*' conducted by the Maharashtra Public Service Commission is "35" and "40" years, respectively, for the 'Open Category' and 'Reserved Category' candidates.

8. Respondent Nos.5 to 18 herein, however, relying on the G.R. dated 25th April 2016, issued by the General Administration Department, (*for short*, "*G.A.D.*"), increasing the age for competitive examination conducted for the nomination by direct recruitment, upto 38 years and 43 years, for 'open' and 'reserved' category candidates, respectively, sought to appear for the said competitive examination. Under the apprehension that

their applications might be rejected by the Maharashtra Public Service Commission, (*hereinafter referred to as “MPSC”*), on the count that they were age-barred, they approached the Tribunal by filing the two Original Applications, bearing Nos.695 of 2016 and 856 of 2016, seeking permission to appear for the competitive examination.

9. These Original Applications were resisted by Respondent Nos. 1, 3 and 4 therein by filing their affidavits-in-reply, contending, *inter-alia*, that G.R. dated 25th April, 2016, extending the age-limit upto “38” and “43” years, respectively, for the 'open' and 'reserved' category candidates is not applicable to this examination, as the said G.R. is applicable only for 'Direct Recruitment' and, that too, in other services and not to the services in 'Police Force'. It was submitted that the present recruitment was undertaken as per Rule 3(b) of the Police Sub-Inspector (Recruitment) Rules, 1995, which clearly provides the age-limit for the 'open' category candidates as “35” years for '*Limited Departmental Competitive Examinations*' and “40” years for the 'reserved' category candidates. It was

further submitted that when the Rules, 1995, framed by the Government, are occupying the field, there was no question of applying any executive order issued by way of G.R. dated 25th April, 2016, or, the said G.R. overriding, or, substituting the said Rules. It was categorically stated that G.R. dated 25th April, 2016 is applicable only to those candidates who appear for the competitive examinations at the time of entry level in the Government Service, and it cannot be made applicable to 'in-service' candidates appearing for examination conducted for promotion or selection on the basis of *'Limited Departmental Competitive Examinations'*.

10. In the present case, it was submitted that the recruitment was to fill up the posts of "Police Sub-Inspector" by promotion on the basis of *'Limited Departmental Competitive Examination'* and, hence, the G.R. dated 25th April, 2016, by which the age-limit was extended to "38" and "43" years, respectively, for the 'open' and 'reserved' category candidates, cannot be made applicable. The Applicants were, therefore, not entitled to get benefit of the said G.R. As the Applicants were

above the age of “35” and “40” years, respectively, which was the age-limit prescribed in the said advertisement, they are not eligible to apply for the post. Hence, their Applications need to be rejected.

11. Respondent No.2 herein, viz. MPSC, also resisted these Applications by their separate affidavit-in-reply, confirming and reiterating the above-said stand taken by the State Government and the G.A.D., submitting that vide G.R. dated 25th April, 2016, the Government had increased the upper age-limit by “5” years in respect of '*Competitive Examinations*' of those posts, whose earlier upper age-limit was “33” and “38” years, respectively, for 'open' and 'reserved' category candidates. However, as per the Recruitment Rules, 1995, framed for recruitment to the post of “Police Sub-Inspector”, the upper age-limit in respect of candidates to be recruited through the '*Limited Departmental Competitive Examinations*', was already enhanced and fixed at “35” and “40” years, respectively. Therefore, G.R. dated 25th April, 2016 is not applicable to the present examination, which was for

recruitment to the post of “Police Sub-Inspector”, through the *‘Limited Departmental Competitive Examinations’*. Accordingly, the upper age-limit was fixed at “35” and “40” years, respectively by the MPSC and it is correct. Further, it was urged that G.R. dated 25th April, 2016 was applicable only for initial entry in the Government Service and it cannot be made applicable to ‘in-service’ candidates, who are promoted through the Departmental Examinations. In respect of these candidates, it was submitted that, as per P.S.I. Recruitment Rules, 1995, the age-limit was already enhanced to “35” and “40” years and in such circumstances, there was no further scope for enhancing the age-limit to “38” or “43” years, as stipulated in the G.R. dated 25th April, 2016. The MPSC also, therefore, prayed for dismissal of these Original Applications.

12. The Tribunal, however, vide its order dated 10th August 2016, granted interim relief to the Applicants by permitting them to appear for the competitive examinations, interpreting G.R. dated 25th April 2016, issued by the G.A.D., State of Maharashtra, increasing the age upto “38” and “43”

years, respectively, for the 'open' and 'reserved' category candidates, in their favour and relying upon the decision of this Court in the case of *State of Maharashtra Vs. Ananda and Anr.*, in Writ Petition No.6212 of 2011 dated 9th November 2011, wherein the Division Bench of this Court was pleased to hold that,

'The decision of the General Administration Department would be binding on all other Departments of the State Government, including the Public Works Department'.

13. The distinction tried to be made on behalf of the State Government and also on behalf of the MPSC as regards the appointments to be made on the basis of *'Limited Departmental Competitive Examination'* and the appointments by nomination on 'Direct Recruitment', was not accepted by the Tribunal. The argument advanced by the Respondents therein that increase in the age-limit as per G.R. dated 25th April 2016 was applicable only for 'Direct Recruitment' and not for 'in-service' candidates, was thus rejected.

14. Their further argument that G.R. dated 25th April 2016 cannot override the Rules framed under the Police Sub-Inspector (Recruitment) Rules, 1995, also was rejected by the Tribunal by placing reliance upon the decision of the Apex Court in the case of *O.P. Lather and Ors. Vs. Satish Kumar Kakkar, (2001) 3 SCC 110*, holding that,

“Though the Rules framed under the Proviso to Article 309 of the Constitution cannot be amended by administrative instructions, the Government can fill the gaps and supplement the Rules.”

15. It was held that,

“In the State of Maharashtra, the upper age-limit for direct recruitment has been raised from time to time by issuing Government Resolutions for recruitment to various posts. Evidently, such relaxation in upper age-limit has been considered as supplementing the existing provisions of the Rules, which is correct, as relaxation in age does not cause any prejudice to any one, unlike the case where upper age-limit may be sought to be reduced.”

16. It was further held that,

“Generally, the age-limit for 'in-service' candidate is higher vis-a-vis candidates appearing in direct recruitment.”

17. For this proposition, the reliance was placed on the decision of this Court in the case of *Anil M. Nimbhore Vs. State of Maharashtra and Ors.*, 2008 (4) Mh.L.J. 824, holding that,

“Raising of upper age-limit should be considered in the background of fast developing and changing social scenario”.

18. Accordingly, it was held that,

“The Government Resolution dated 25th April 2017, which has been issued considering such facts, needs to be made applicable not only for 'Direct Recruitment', but also for 'Limited Departmental Competitive Examination', where the age-limit should be more than the age-limit for 'Direct Recruitment'.”

19. In the ultimate analysis, therefore, Respondent Nos.5 to 18 in Writ Petition No.6631 of 2017, who had approached the Tribunal, were, by the interim order dated 10th August 2016,

permitted to appear for the *'Limited Departmental Competitive Examination, 2016'* for selection to the post of "Police Sub-Inspector", holding that they were not age-barred in view of the G.R. dated 25th April 2016.

20. This interim order was, subsequently, confirmed by the Tribunal vide the impugned order dated 27th September 2016, thereby allowing the Original Applications filed by these Respondents, reiterating its earlier reasoning and findings.

21. It is a matter of record that, in pursuance of the interim relief granted to Respondent Nos.5 to 18, they appeared for the examination conducted by the MPSC. They have now cleared the said examination and are, therefore, expecting the selection orders and the orders for training.

22. Being aggrieved thereof, the Petitioners have approached this Court. According to learned counsel Shri. Sandeep Dere for the Petitioners in Writ Petitions Nos.6631 of 2017 and 9242 of 2017, the Petitioners are now, on account of this interpretation given to the G.R. dated 25th April 2016 by the

Tribunal, loosing their chance of getting selected to the post of “Police Sub-Inspector”. The interpretation given by the Tribunal to the said G.R. is not at all correct and legal on two counts. In the first place, it is submitted that G.R. dated 25th April 2016, cannot override the Police Sub-Inspector (Recruitment) Rules, 1995 framed under the Maharashtra Police Act; and, secondly, the said G.R., otherwise, is also applicable only to the 'Direct Recruitment' i.e. for the first time entry in Government service and not to 'in-service' recruitment by way of *'Limited Departmental Competitive Examination'*.

23. In Writ Petition No.10150 of 2017, learned A.G.P. Shri C.P. Yadav for the State Government and learned A.G.P. Shri Vishal Thadani for MPSC have supported these Petitioners by submitting that, as per the settled position of law, the G.R., which is an executive order, cannot override the Statutory Rules. In this case, when Statutory Rule 3(b) clearly provides the age-limit for the recruitment to the post of “Police Sub-Inspector”, there is no scope for filling up the gaps or supplementing the Rules.

24. It is further submitted that G.R. dated 25th April, 2016 being applicable only for recruitment at entry level in Government Service, the Tribunal has committed an error in applying the said G.R. to the 'in-service' recruitment by way of *'Limited Departmental Competitive Examinations'*. According to learned AGP, therefore, the impugned order of the Tribunal needs to be quashed and set aside, so that further process of selection and sending the selected candidates for training can be undertaken.

25. On behalf of Respondent No.13 in Writ Petition No.6631 of 2017 and Respondent Nos.13, 21, 24, 26 and 27 in Writ Petition No.9242 of 2017, who were the original Applicants before the Tribunal, learned counsel Shri S.A. Sawant, has supported the impugned Judgment and Order of the Tribunal. It is submitted that the Writ Petition Nos.6631 of 2017 and 9242 of 2017 are not maintainable, as the Petitioners therein were not party to the Original Applications filed before the Tribunal and, therefore, the Petitioners have no locus to file the Petitions. According to learned counsel Shri Sawant, as the

Petitioners have participated in the entire 'Selection Process', now they cannot challenge the 'Selection Process', merely because they have not become successful therein. To substantiate this submission, he has placed reliance on the judgment of the Apex Court in case of *Ashok Kumar and Anr. Vs. State of Bihar and Ors.*, in Civil Appeal No.9042 of 2012, dated 21st October, 2016, wherein it was held that,

“When the candidates have appeared and participated in the selection process, then they cannot subsequently turn round and contend that the selection process was unfair and/or there was lacuna therein, merely because the result is not palatable.”

26. A submission is also advanced that, after the results were declared, the Petitioner has filed Original Application No.406 of 2017 before the Tribunal to direct the MPSC to declare the total marks obtained by him to be “255”, as against the allotted marks of “253” in this examination. However, the said Original Application came to be dismissed by the Tribunal vide its order dated 12th May 2017. According to learned

counsel for Respondent No.13, therefore, as this Writ Petition is filed only to obstruct the 'Selection Process' and the said obstruction is raised by an unsuccessful candidate, who has participated in the 'Selection Process', the Writ Petition needs to be dismissed. According to him, therefore, the impugned order passed by the Tribunal holding G.R. dated 25th April, 2016 as applicable to this 'Selection Process' being perfectly legal and valid for the reasons stated in the impugned judgment, no interference is warranted therein in these Writ Petitions.

27. In the light of these submissions advanced on behalf of the Petitioners and the Respondents, as stated earlier, the only legal issue necessarily arising for our consideration in these Writ Petitions is, *'the applicability and interpretation of the G.R. dated 25th April, 2016'*, whereby the age-limit is enhanced to "38" and "43" years, respectively, for the 'open' and 'reserved' category candidates for entry into Government service. As this G.R. is issued under the Maharashtra Civil Services (Provisions of Upper Age-Limit for Recruitment by

Nomination) Rules, 1986, it is necessary to reproduce the relevant Rules ;

“No.SRV.1080/15-M/XII, dated 28th January 1986 - In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the governor of Maharashtra is hereby pleased to make the following rules, regulating the upper age-limit for recruitment by nomination in Class I, Class II, Class III and Class IV posts in the Maharashtra Civil Services, namely :-

1. (1) These rules may be called the Maharashtra Civil Services (Provision of Upper Age-Limit for Recruitment by Nomination) Rules, 1986.

(2) They shall be deemed to have come into force on the 17th November 1980.

2. In these rules, unless the context requires otherwise -

(a) “Class IV posts” means posts which are specifically classified as Class IV posts and such other unclassified non-gazetted posts the maxima of the scales of which are equal to or less than Rs.435;

- (b) *“Class III posts” means all non-gazetted posts other than Class IV posts;*
- (c) *“Class II posts” means all gazetted posts other than Class I posts;*
- (d) *“Class I posts” means posts which are specifically included in Class I service and those unclassified posts, the maxima of the scale of which are above Rs.1,150;*
- (e) *“Service” means a Civil Service of the State;*
- (f) *Words and expressions used in these rules but not defined shall have the same meaning respectively assigned to them in the Maharashtra Civil Service Rules.*

3. *Notwithstanding anything contained in any rule, order or instrument for the time being in force relating to recruitment by nomination to any posts, cadre or service in Class I, Class II, Class III and Class IV, the upper age-limit for the purpose of recruitment by nomination to the said post, cadre or service in Class I, Class II, Class III*

or Class IV shall be [30] years and in respect of persons belonging to Backward Classes, it shall be [35] years :

Provided that, where a recruitment rule for any particular post, cadre or service in Class I, Class II, Class III or Class IV provides the upper age-limit above [30] years, then the upper age-limit shall be as prescribed in that recruitment rule for that particular post, relaxable by 5 years in respect of persons belonging to Backward Classes.

4. *The upper age-limit for admission to competitive examinations held by the Maharashtra Public Service Commission for recruitment to various posts and service shall be [30] years and in respect of persons belonging to Backward Classes, it shall be [35] years.”*

28. These Rules, thus, make it clear that they are issued in exercise of the powers conferred by the proviso to Article 309 of the Constitution and, secondly, these Rules are for regulating the upper age-limit for recruitment by nomination. The words, “recruitment by nomination” are of significance, as

they imply that these Rules are applicable for 'Direct Recruitment' at the entry level.

29. The age-limit prescribed in these Rules was enhanced by the State Government vide G.R. dated 28th October 1992, which is produced at page No.107. It gives clear reference to the earlier Rules dated 28th January 1986, as referred above. The very title of this G.R. dated 28th October 1992 states that, it is for '*enhancement of the age-limit for entry into Government service*'. It is stated in this G.R. that the age-limit of "28" and "30" years, which was fixed, respectively, for 'open' and 'reserved' category candidates by G.R. 28th January 1986, is now enhanced to "30" and "35" years, respectively, for 'open' and 'reserved' category candidates, for entry into Government service.

30. The age-limit prescribed in this G.R. dated 28th October 1992 is further enhanced by G.R. dated 27th August 2004. This G.R. is produced at page No.106. It makes reference to the earlier G.R. dated 28th October 1992. The very title of this

G.R. is also for *“enhancement of the age-limit for entry into Government service”*. According to this G.R., the age-limit for the candidates of 'open' category is enhanced to “33” years and of 'reserved' category was enhanced to “38” years respectively, for their appointment, thereby meaning entry into the Government service.

31. The latest G.R. issued in this respect is that of 25th April 2016. This G.R. is also titled as “for enhancement of the age-limit for entry into Government service”. This G.R. gives a reference to the earlier G.R. dated 28th October 1992 and it further states that the age-limit prescribed in the G.R. dated 28th October 1992 of “30” years and “35” years, respectively, for 'open' and 'reserved' category candidates was enhanced to “33” and “38” years, respectively, by G.R. dated 17th August 2004 and now in view of the demand received from the various quarters, the said age-limit is now enhanced to “38” years and “43” years, respectively, for entry into Government service.

32. Thus, this G.R. dated 25th April 2016, which is issued

in pursuance of the Maharashtra Civil Services (Provision of Upper Age-Limit for Recruitment by Nomination) Rules, 1986, framed by the State Government in exercise of the powers conferred by the Proviso to Article 309 of the Constitution, abundantly make it clear that these Rules, which were for 'recruitment by nomination' are, therefore, applicable, as stated in this G.R. itself, for 'recruitment for entry into Government service'.

33. As a matter of fact, all these three GRs, which are, chronologically, dated 28th October 1992, 17th August 2004 and 25th April, 2016, make it clear that, these GRs were issued under the Maharashtra Civil Services (Provision of Upper Age-Limit for Recruitment by Nomination) Rules, 1986, framed by the State Government in exercise of the powers conferred by the Proviso to Article 309 of the Constitution. By these GRs, the age-limit of “28” and “30” years, respectively, is enhanced to “30” and “35” years; thereafter, to “33” and “38” years; and, lastly, to “38” and “43” years. However, this enhancement in the age-limit is only for 'Direct Recruitment' at the time of

initial entry in Government service. The very title of these GRs and their opening paragraphs make it clear that these GRs were issued for fixing the upper age-limit for entry into Government service. Hence, it necessarily follows that these GRs cannot be made applicable to the 'in-service' candidates, whose "selection" is made by '*Limited Departmental Competitive Examinations*'.

34. In this case, admittedly, the recruitment in question was only for the 'in-service' candidates by way of their promotion to the post of "Police Sub-Inspector" through '*Limited Departmental Competitive Examinations*'. The advertisement issued for the said recruitment, which is produced at page No.36 in Writ Petition No.6631 of 2017, is more than clear to that effect. It states that this '*Limited Departmental Competitive Examination*' is being held for the post of "Police Sub-Inspector" for selection from those who are working in the Police Department as 'Assistant Police Inspector', 'Police Constable', 'Police Naik', or, 'Police Constable'. Therefore, it is for 'in-service' candidates for their promotion by

'Limited Departmental Competitive Examination' and not for entry into Government service by way of 'Direct Recruitment'. Therefore, G.R. dated 25th April, 2016 cannot be made applicable to this recruitment.

35. In this respect, it would be useful to refer to Section 5 of the Maharashtra Police Act, 1951, which provides for *'Constitution of Police Force'*. Clause (b) of the said section provides that, *'the recruitment, pay, allowances and other conditions of service of the members of the Police Force shall be such, as may, from time to time, be determined by the State Government by general or special order'*.

36. In pursuance of Section 5(b) of the Act, the State of Maharashtra has, from time to time, framed the Rules for recruitment to the 'Police Force'. The relevant Rules are *"The Police Sub-Inspector (Recruitment) Rules, 1995"*, which are lastly amended on 9th March, 1999. Rule 3 thereof provides *'three modes for appointment to the post of "Police Sub-Inspector"*. Rule 3(a) provides for *'appointment by way of*

promotion from suitable persons on the basis of seniority'. Rule 3(b) provides for 'selection of persons working in 'Police Force' on the basis of result of the 'Limited Departmental Competitive Examination' held by the Commission for appointment to the post of "Police Sub-Inspector". Rule 3(c) provides for 'appointment by nominations on the basis of Competitive Examinations held by the Commission and for appointment to which candidates shall not be less than 19 years and/or more than 28 years'.

37. As regards appointment by promotion, under clause (a), or, by selection by way of *'Limited Departmental Competitive Examination'*, as provided in clause (b), the age-limit is prescribed to be not more than "35" years for 'open' category candidate, with relaxation of "5" years for candidates belonging to 'reserved' category.

38. In this case, as, admittedly, the recruitment is made under Rule 3(b) by way of promotion of 'in-service' police persons, like 'Assistant Sub-Inspector', 'Head Constable', 'Police

Naik' and 'Police Constable', on the basis of the results of *'Limited Departmental Competitive Examination'*, it follows that the prescribed age-limit is not more than “35” years for 'open' category candidates, with relaxation of “5” years for candidates belonging to 'reserved' category.

39. Now the question for consideration is, *'whether the G.R. dated 25th April, 2016, issued by the Government can be made applicable to this recruitment of “Police Sub-Inspector” from in-service candidates by 'Limited Departmental Competitive Examinations'; especially, when specific Rules are framed for their promotion prescribing certain age-limit?*

40. In our considered opinion, law in this respect is fairly well settled, as laid down by the Apex Court in its various judgments, including the judgment in the case of *Vijay Singh Vs. State of Uttar Pradesh, AWS (ALL) 2004-7-30*, relied upon by learned counsel for the Petitioners herein. In this judgment, after taking review of all its earlier decisions, the Apex Court has categorically held, in paragraph No.4, as follows :-

“It is settled legal position that executive instructions cannot amend or supersede the statutory Rules or add something therein, nor the orders be issued in contravention of the statutory rules for the reason that an administrative instruction is not a statutory rule nor does it have any force of law; while statutory Rules have full force of law provided the same are not in conflict with the provisions of the Act”.

41. In paragraph No.5 of this judgment, the Apex Court was pleased to reiterate that,

“Even if there is conflict between the executive instructions and the Rules framed under the proviso to Article 309 of the Constitution, the Rules will prevail”.

42. It is pertinent to note that, in this judgment of the Apex Court, exactly the same issue, which is raised in the present Writ Petitions, was agitated. *'The U.P. Recruitment of Service (Age-Limit) Rules, 1972'* were prescribing the age-limit for 'in-service' recruitment to the post of “Police Sub-Inspector”, like the Police Sub Inspector (Recruitment) Rules, 1995, in the

present case; whereas Government order or G.R. issued in pursuance of the Rules framed under the Proviso to Article 309 of the Constitution was prescribing different age-limit. Hence, the issue raised before the Apex Court was, *'whether the age-limit prescribed by the Rules framed under the Police Act or the age-limit prescribed by the G.R. issued in pursuance of the Rules framed under the Proviso to Article 309 of the Constitution will prevail'* and it was categorically held that, the Rules framed under the Police Act will prevail.

43. In paragraph No.24, the Supreme Court rejected the contention that, as the U.P. Government Service Criteria for Recruitment by Promotion Rules 1994 had been framed under the Proviso to Article 309, they will override the orders passed under the Police Act. It was held so, in spite of the fact that Rule 3 thereof provided for overriding effect on all other laws. It was further held that :-

“That Police Act 1861 is a complete Code insofar as police personnel are concerned. Service conditions which are referable to the Act are not

replaced by general service conditions for other civilian employees under Article 309 of the Constitution of India..... Police force has a special significance in the administration of State and the intent of the framers of the Constitution to empower the State Government to make Rules therefor has its due significance rather than being governed under a general omnibus Rule framed under Article 309 of the Constitution. When there is a special provision, unless there is a specific repeal of the existing law, question of an implied repeal would not arise.....The police force are to be governed by the provisions of the Police Act and no exception can be taken thereto”.

44. In paragraph No.50 of the judgment, it was held that, inconvenience is not a decisive factor in such matters. The Apex Court further observed that, the Court has no power to ignore the statutory provisions to relieve what it considers a distress resulting from its operation. A Statute must be given effect to whether a Court likes the result or not. In paragraph No.51 of the judgment, the Apex Court was further pleased to confirm that, hardship to any individual cannot be a ground of not giving the effect to the statutory provisions.

45. In this Judgment, the Apex Court was pleased to uphold the law laid down in its earlier decision of *Chandra Prakash Tiwari Vs. Shakuntala Shukla*, AIR 2002 SC 2322, by observing that, '*police forces are to be guided by the provisions of the Police Act and no exception can be taken thereto*'.

46. In this Judgment, while dealing with the provisions of U.P. Government Servants (Criterion for Recruitment by Promotion) Rules, 1994, framed under the Proviso to Article 309 of the Constitution, it was held as not applicable as the field stood occupied by a Government Order dated 5th November 1965 issued under Section 2 of the Act, 1861. Service conditions referable to the Act, 1861 could not be replaced by 'General Service Conditions' framed for 'Other Civilian Employees'.

47. In the ultimate analysis, the Hon'ble Supreme Court was pleased to hold that,

“Keeping in mind the interest of society and the nature of service, for which the appointments are to be made, no fault can be found if the Service Conditions for the Police Officers prescribes a lesser age-limit than the age-limit fixed for recruitment to other Civil Services. Such distinction in the age-limit for recruitment to 'Police Force' and for other Civil Services does not violate the fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India, nor it offends any other provision contained in Part III of the Constitution.”

48. This judgment of the Apex Court, thus, makes it very clear that statutory provisions, either contained in the Police Act and in the Rules framed thereunder, will prevail over the executive orders issued by way of G.R. in pursuance of the Rules framed under Proviso to Article 309 of the Constitution. In this case, the Police Sub-Inspector (Recruitment) Rules, 1995 are framed under the Maharashtra Police Act and they prescribe the age-limit of “35” and “40” years for appointment to the post of “Police Sub-Inspector” by selection of persons working in the 'Police Force'. As a result, this age-limit will

prevail over the G.R. dated 25th April, 2016, which is issued in pursuance of the Rules framed under Proviso to Article 309 of the Constitution, enhancing the age-limit to “38” and “43” years. In this case, when the field governing the recruitment to post of “Police Sub-Inspector” is already occupied by the Police Sub-Inspector (Recruitment) Rules, 1995, there is no question of invoking the G.R. dated 25th April, 2016, issued in pursuance of the Rules framed under Proviso to Article 309 of the Constitution. There are also no lacunae to be filled by invocation of said G.R., when the Rules are very clear to that effect. Hence, the reliance placed on the judgment in the case of *O.P. Lather (Supra)* by learned counsel for Respondent No.13 herein, cannot be of any help.

49. As regards the submission of learned counsel for Respondent No.13 that the G.R. issued by G.A.D. is binding on all the Departments of the State Government and in support of which reliance is placed on the judgment of this Court in the case of *State of Maharashtra and Ors. Vs. Ananda, (Writ Petition No.6212 of 2011)*, we have to state that, only when

there is no statutory provision, or, Legislation, or, Rules governing the field, the G.R. issued by G.A.D. can be binding. However, in the instant case, the field is already occupied by the Police Sub-Inspector (Recruitment) Rules, 1995, framed under the Maharashtra Police Act, and, therefore, as held above, the G.R., which is an executive fiat, issued in pursuance of the Proviso to Article 309 of the Constitution, cannot override the statutory provisions in the form of Rules herein.

50. Thus, in the first place, G.R. dated 25th April, 2016, is applicable only for 'Direct Recruitments' at the initial entry in the Government service. It is not applicable to selection of 'in-service' candidates by way of promotion, as in the present case. Secondly, having regard to the nature and condition of the Service Conditions of the 'Police Force', as the Police Sub-Inspector (Recruitment) Rules, 1995, framed under the Maharashtra Police Act, prescribe the age-limit for appointment to the post of "Police Sub-Inspector" by '*Limited Departmental Competitive Examination*' and these Rules prescribe the age-limit of "35" and "40" years, respectively,

therefore, the G.R. dated 25th April, 2016, which is an executive fiat and issued in pursuance of the Proviso to Article 309 of the Constitution, cannot override these Rules, which are statutory. Hence, on both these grounds, the impugned Judgment and Order of the Tribunal, applying this G.R. dated 25th April, 2016, for the present recruitment process, cannot be called as legal and valid. Hence, it needs to be set aside.

51. However, before doing that, it would be necessary to advert to the two submissions advanced by learned counsel for Respondent No.1. The first submission is that the Petitioners herein are unsuccessful candidates and, therefore, they cannot challenge the 'Selection Process'. However, as rightly submitted by learned counsel for the Petitioners, Petitioners are not challenging the 'Selection Process', but they are only challenging the interpretation and application of G.R. dated 25th April, 2016.

52. As regards the next submission that the Petitioner-Suresh Sushant Salvi has filed Original Application No.406 of

2017 seeking enhancement of his marks, which came to be rejected and, therefore, he cannot challenge the 'Selection Process' in this Petition, it is pertinent to note that the said Original Application was totally for different purpose, which was for enhancing the marks, and, therefore, dismissal of the Original Application cannot have any bearing on this Writ Petition.

53. Moreover, in this case, it is not only the Petitioners who are challenging the application and interpretation of G.R. dated 25th April 2016, but, even the State Government and M.P.S.C. are also challenging the application and interpretation of the said G.R., as made by the Tribunal. Hence, once it is evident that interpretation made by the Tribunal is not correct, even if not at the instance of these Petitioners, but, at the instance of the State Government, we have to set aside the impugned order of the Tribunal.

54. To sum up, therefore, we have no hesitation in holding that these Writ Petitions need to be allowed by setting

aside the impugned Judgment and Order of the Tribunal.

55. Accordingly, Writ Petitions are allowed.

56. It is held that, G.R. dated 25th April 2016, enhancing the age-limit to “38” and “43” years for 'open' and 'reserved' category candidates is not applicable for the present recruitment of 'in-service' candidates to the post of “Police Sub-Inspector” by way of *'Limited Departmental Competitive Examination'*.

57. Rule is made absolute in above terms.

58. In view of the above, Civil Application No.2172 of 2017, pending in Writ Petition No.6631 of 2017, having become infructuous, it also stands disposed off.

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