

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 13933 OF 2016

Maharashtra Public Service Commission	]	
(Through its Secretary)	]	
Having office at 5 1/2 th , 7 th & 8 th floor,	]	
Cooperage Telephone Nigam Building,	]	
Maharshi Karve Road, Cooperage,	]	
Mumbai – 400 021.	]	... Petitioner

V/s.

1.	Smt. Punam Balasaheb Madage	]	
	Occupation : Service,	]	
	Residing at Room No.13,	]	
	Building No.3,	]	
	Gokhalenagar Police Line,	]	
	Pune – 411 016	]	
2.	The Director General of Police	]	
	Maharashtra State,	]	
	Shahid Bhagatsing Marg,	]	
	Mumbai – 400 001	]	... Respondents

- Mr.Shrikrishna R. Ganbavale for the Petitioner.
- Mr.Sanjay Kshirsagar for Respondent No.1.
- Mr.Vishal Thadani, A.G.P. for Respondent No.2.

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

RESERVED ON : 26th SEPTEMBER, 2017.
PRONOUNCED ON : 28th SEPTEMBER, 2017.

JUDGMENT (PER : DR. SHALINI PHANSALKAR-JOSHI, J.) :-

- 1] Rule. Rule made returnable forthwith.
- 2] Heard finally with the consent of learned counsel for both the parties.
- 3] The Petitioner, Maharashtra Public Service Commission (MPSC), has filed this present petition under Article 226 of the Constitution of India, being aggrieved by the judgment dated 14/07/2016 in Original Application No. 379 of 2015 passed by the Maharashtra Administrative Tribunal, Mumbai (for short, "Tribunal").
- 4] By the said order, the Tribunal has directed the Petitioner to interview the Respondent No.1 within a period of three months and if found suitable, to recommend her name for the appointment to the State Government to the post of Police Sub-Inspector from the category that she would be found eligible.
- 5] Brief facts of the petition are as under :-

In response to the Advertisement for the post of Police Sub-Inspector (Pre) Examination, issued on 01/04/2014, Respondent No.1,

applied from OBC Female category. She cleared the (Pre) Examination. Thereafter, Notification for (Main) Examination was issued on 12/08/2014. She had also cleared the (Main) Examination and by the letter dated 04/03/2015 she was called for physical test and interview to be held on 16/03/2015. It was at this stage that, on 09/03/2015, she applied for “Non-Creamy Layer Certificate” (NCL Certificate) from Tahsil Office. The physical test for the said post was held on 16/03/2015 and she qualified therein. However, on that day, she could not produce the NCL Certificate. As a result, she was not interviewed. Subsequently, on 20/03/2015, she produced the said NCL Certificate and requested the Petitioner to conduct her interview. However, the said request was refused by the Petitioner. As a result, though, Respondent No.1 has secured 159 marks, while cut-off for OBC Female was 146 marks, her name could not be found in the selection list. Being aggrieved by the placement of her name in the non-eligible candidates list, she filed Original Application No.379 of 2015 before the Tribunal.

6] This Original Application came to be resisted by the Petitioner herein contending *inter-alia* that the functioning of the

MPSC is regulated by its Rules of Procedure framed by it in exercise of its function as stipulated under Article 320 of the Constitution. The Commission has to act in accordance with the provisions contained therein. Hence, instructions given by the Petitioner, in its Advertisement, were sacrosanct and could not have been lightly interfered with, as it would disturb the examination schedule. Secondly, it was submitted that, in the Advertisement issued for the said post, it was clearly mentioned that all the original documents, on which the candidates want to rely upon, should be produced at the time of interview. Respondent No.1, however, did not produce the original NCL Certificate in time or even till the interview process was over. In such situation, she could not be interviewed. The requirement of submission of NCL Certificate, according to the Petitioner, cannot be relaxed arbitrarily in favour of Respondent No.1 when it was binding on all the candidates.

7] The Tribunal, however, vide its impugned order allowed the Original Application of Respondent No.1 holding that there was delay of just one or two days in furnishing the NCL Certificate and there was also sufficient cause for the delay, as stated in the letter

written by Respondent No.1 to the Petitioner on 20/03/2015 and the said cause was the strike in the Tahsil Office at the relevant time. This cause was not controverted by the Petitioner. It was further held that earlier also, the Petitioner has condoned such delay of one or two days in submitting the documents in respect of other candidates appearing for other exams. Hence, there was no reason to reject the claim of Respondent No.1. Accordingly, her application was allowed and the Petitioner was directed to conduct her interview within three months and if she is found suitable, then recommend her for appointment to the post of Police Sub-Inspector from the category she would be found eligible.

8] This order of the Tribunal is challenged in the present Writ Petition by Mr.Ganbavale, learned counsel for the Petitioner, by submitting that in the Advertisement issued on 01/04/2014 for this said post, it was clearly stated that, it was mandatory for all the candidates to produce their original certificates and documents on the date of interview and in any case, the extension for production of documents will not be granted. It was further informed that on failure of the candidate to produce the documents and certificates, the

interview will not be taken. In the face of these clear instructions, it is submitted that Respondent No.1 has no case to contend that her NCL Certificate should have been accepted subsequently when admittedly she has failed to produce the same on the date of interview. According to learned counsel for the Petitioner, Respondent No.1 has produced the NCL Certificate on 23/03/2015, whereas her physical test and interview was on 16/03/2015 and in such situation, the Petitioner was justified in not considering her for interview and declaring her as ineligible for the post.

9] Per contra, Mr.Kshirsagar, learned counsel for Respondent No.1, has supported the impugned order of the Tribunal by submitting that when the delay is only of a day or two and it is also explained with satisfactory reason and especially when the delay was on account of the reasons beyond the control of Respondent No.1, as it was due to the strike in the office of Tahsil from where NCL Certificate was to be issued, Respondent No.1 should not be denied the opportunity of promotion as she has got the qualifying marks. According to learned counsel for Respondent No.1, therefore, the impugned order passed by the Tribunal calling upon the Petitioner to conduct her interview

being just, legal and correct; it need not be disturbed with.

10] In this case, as per admitted facts, the relevant Advertisement for the post of Police Sub-Inspector was issued on 01/04/2014. In the “General Instructions to the Candidates”, given on the official website of the Petitioner – MPSC, it is clearly stated in Clause 2.3.7 that, all the original documents were required to be produced by the candidate on the date of interview and if the candidate fails to produce the same, no further extension will be granted and his interview will not be taken. It was further stated that, for non production of the original documents, his candidature will be cancelled immediately and the entire responsibility for the same will lie on the concerned candidate.

11] Further, as per Clause No.2.3.8 of General Instructions to the Candidates, it was informed and instructed that, if on account of certain reason, production of original certificates was not possible at the time of interview, then it was necessary for the candidate to inform the same to the Petitioner at-least seven days in advance, in writing, with sufficient reason mentioned therein. If the reason was found to be proper, then such request will be considered on its own merits and if it

is accepted, then only, the interview of such candidate will be taken.

12] Thus, the General Instructions to the Candidates issued along with Advertisement, one year in advance, on 01/04/2014, were more than clear and sufficient, to make all the candidates aware that original documents were required to be produced, in any case, on the date of interview; and if it was not possible, to inform about the same in advance at-least seven days before the interview. It was also clarified that, if such original documents were not produced at the time of interview, the candidature will be cancelled and interview will not be taken. It is pertinent to note that even in the letter issued to Respondent No.1 on 04/03/2015 calling her for physical test and interview, in Clause No.7, it was stated that, “all the documents of eligibility will be verified and only if the candidate is found to be eligible, his interview will be taken”.

13] Thus, since beginning, Respondent No.1 was made aware that she has to produce the original documents at the time of interview. However, as per her case, she had applied for NCL Certificate only on 09/03/2015 i.e. after the interview letter was issued to her on 04/03/2015. If it is so, then, it goes without saying

that it was total inaction and callous negligence on her part, as a result of which, she could not produce the NCL Certificate at the time of interview. Hence, now she cannot contend that, on account of the alleged strike in the Tahsil Office, in respect of which no details are given, as to since when the strike was started and when it ended, she could not produce the NCL Certificate.

14] Further, it is pertinent to note that, as per her letter dated 20/03/2015, she has received the said NCL Certificate and hence, she requested that her case may be considered for interview. However, along with this letter dated 20/03/2015 she has not produced the NCL Certificate. The Inward Stamp of the receipt of this letter in the office of the Petitioner bears the date 23/03/2015, which is 3 days after 20/03/2015. It is a fact that, the letter which she has sent by fax is also received in the office of the Petitioner on 20/03/2015 at 17.27 p.m.. The most pertinent aspect is that NCL Certificate which she has produced in the case proves that, it was issued to her on 17/03/2015 itself; however, she has not produced the same either on that day itself or on the next day or even till 23/03/2015 that is after the interview process was over.

15] In such circumstances, in our considered view, Respondent No.1, who has shown utter callousness and negligence, does not deserve the sympathetic consideration. On facts she has failed to show her diligence in obtaining the NCL Certificate. Since 1st April, 2014, when the Advertisement was issued, she was aware about the necessity of this Certificate but she has not applied for it, though, it was clearly stated in the Advertisement that, the candidates will have to produce all the original documents at the time of the interview and if they failed to do so, their candidature will be cancelled and interview will not be taken. Respondent No.1 has not even applied for this NCL Certificate when the Notification of (Main) Examination was issued on 13/08/2014. She even did not apply for it, when the interview letter was received by her on 04/03/2015, again making it clear that, she will have to produce this original Certificate at the time of interview on 16/03/2015. Surprisingly, she has never informed the Petitioner in advance that there would be delay in getting the NCL Certificate. She has not made any written request to M.P.S.C. to that effect as per Clause No.2.3.8 of General Instructions. Even after the receipt of the NCL Certificate on 17/03/2015, she has not produced the same till

23/03/2015.

16] In our considered opinion, therefore, such candidate, who has utterly remained negligent throughout the selection process does not deserve the relief which is granted by the Tribunal. No case is made out at all by Respondent No.1 for direction to interview her, when the entire selection process is over.

17] As regards the decision on which the Tribunal has placed reliance that of *M.P.S.C. vs. Mrs.Sunita Ashish Amritsagar, dated 24/02/2016, in Writ Petition No. 12517 of 2015*, the facts of the said case were totally different, as in that case, the candidate has produced NCL Certificate of the year 2011-2012 at the time of interview on 07/01/2014. However it was not accepted by the M.P.S.C. on the ground that it was not of relevant fiscal year. This Court, however, found that it was of the relevant year and hence, it was held that rejection of her candidature by M.P.S.C. was not proper. Hence, the direction was given for conducting her interview. As against it, in the instant case, Respondent No.1 has not produced such NCL Certificate either at any time prior to interview or even at the time of interview and, thereafter, also till 23/03/2015; though she has received the

same on 17/03/2015. Not only that, she has not even applied for such NCL Certificate till 09/03/2015 though she has received the interview letter on 04/03/2015.

18] Thus, looked at it from any angle, in our considered opinion, no indulgence can be shown to such candidate, who remain negligent despite clear instructions. As rightly submitted by the Petitioner, showing indulgence to such candidates and that too in writ jurisdiction, which is extra-ordinary one and is normally to be exercised keeping in mind the principle of equity would be as good as acting arbitrarily against those candidates who have submitted the documents in time and acted diligently. Merely because in some cases which were found to be deserving, the Petitioner has granted some time for production of Certificates on receipt of the written request to that effect in advance, it cannot be said that the Petitioner should every time grant such extension even if the cause shown for the delay is not just; otherwise the very object of issuing the instructions and conducting the entire selection process as per the schedule would be disturbed. Such requirement of submission of Certificate, therefore, cannot be relaxed arbitrarily in favour of Respondent No.1 when it was

binding on all other candidates. The impugned order passed by the Tribunal, therefore, needs to be quashed and set-aside.

19] Writ Petition is, accordingly, allowed. The impugned order, passed by the Tribunal, is quashed and set-aside.

20] Rule is made absolute in above terms.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (SMT. V.K. TAHILRAMANI, J.)