

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

WRIT PETITION NO. 11802 OF 2016

1. Ganesh s/o. Vasant Rasave, .. Petitioners
Age. 23 years, Occ. Nil,
R/o. Dhawan Vasti, Topwan Road,
Savedi, Ahmednagar.
2. Sainath s/o. Arjun Salunke,
Age. 25 years, Occ. Nil,
R/o. Dhawan Vasti, Topwan Road,
Savedi, Ahmednagar.
3. Nitin s/o. Dnyandeo Kale,
Age. 25 years, Occ. Nil,
R/o. Nirmal Nagar, Savedi,
Ahmednagar.

Versus

1. The State of Maharashtra .. Respondents
Through the Secretary,
Home Department, Mantralaya,
Mumbai – 32.
2. The General Commandant (Mahasamadeshak)
Home Guard, Maharashtra State,
Mumbai – 32.
3. The Additional Superintendent of Police or
The District General Commandant
Home Guard, Ahmednagar,
District Ahmednagar.
4. The Police Commissioner,
Commissioner Office, Thane (City)
District : Thane.

5. The Police Commissioner,
Nashik City, Nashik,
District : Nashik.

**WITH
WRIT PETITION NO. 7269 OF 2016**

1. Sushant s/o. Sonyabappu Gore, .. Petitioners
Age. 22 years, Occ. Nil,
R/o. Shiral, Tal. Pathardi,
Dist. Ahmednagar.
2. Sudam s/o. Vishnu Shirsat,
Age. 26 years, Occ. Nil,
R/o. Shirsatwadi, Tal. Pathardi,
Ahmednagar.
3. Narhari s/o. Machindra Shirsat,
Age. 26 years, Occ. Nil,
R/o. Shirsatwadi, Tal. Pathardi,
Ahmednagar.
4. Rajendra s/o. Jagannath Pawar,
Age. 28 years, Occ. Nil,
R/o. Pathardi, Tal. Pathardi,
Dist. Ahmednagar.
5. Sanjay s/o. Popat Dhaytadak,
Age. 22 years, Occ. Nil,
R/o. Dhaytadakwadi, Tal. Pathardi,
Dist. Ahmednagar.
6. Vijay s/o. Babasaheb Kachare,
Age. 23 years, Occ. Nil,
R/o. Padali, Tal. Pathardi,
Dist. Ahmednagar.

Versus

1. The State of Maharashtra .. Respondents
Through the Secretary,
Home Department, Mantralaya,
Mumbai – 32.
2. The General Commandant (Mahasandeshak)
Home Guard, Maharashtra State,
Mumbai – 32.
3. The Additional Superintendent of Police or
The District General Commandant,
Home Guard, Ahmednagar,
District Ahmednagar.
4. The Director General of Police,
Maharashtra State, Mumbai.
5. The Superintendent of Police,
Ahmednagar, Dist. Ahmednagar.
6. The Assistant Police Commissioner,
(Administration) Mumbai.
7. The Police Commissioner,
Naigaon, Mumbai.
8. The Superintendent of Police,
Nashik, Dist. Nashik.
9. The Police Commissioner,
Pune, Dist. Pune.
10. The Superintendent of Police,
Aurangabad, Dist. Aurangabad.
11. The Superintendent of Police,
Thane, Dist. Thane.

12. The Police Commissioner,
Palghar, Dist. Palghar.
13. The Superintendent of Police,
Satara, Dist. Satara.
14. The Superintendent of Police,
Sangli, Dist. Sangli.

**WITH
WRIT PETITION NO. 7270 OF 2016**

1. Gorakh s/o. Vijay Gore .. Petitioners
Age. 24 years, Occ. Nil,
R/o. Balikashram Road,
Ahmednagar.
2. Amit s/o. Limbaraj Jadhav,
Age. 28 years, Occ. Nil,
R/o. Pipeline Road, Shivajinagar,
Ahmednagar.
3. Kanchankumar s/o. Sudhakar Badadhe,
Age. 29 years, Occ. Nil,
R/o. Bhushannagar, Kedgaon,
Ahmednagar.
4. Amol s/o. Sahebrao Salwe
Age. 28 years, Occ. Nil,
R/o. Bhushannagar, Kedgaon,
Ahmednagar.
5. Gorakh s/o. Asaram Redekar,
Age. 25 years, Occ. Nil,
R/o. Shivaji Nagar, Kedgaon,
Ahmednagar.

6. Amit s/o. Gulab Girawale,
Age. 23 years, Occ. Nil,
R/o. Shashrinagar, Kedgaon,
Ahmednagar.
7. Amol s/o. Dnyandeo Godse,
Age. 25 years, Occ. Nil,
R/o. Mohininagar, Kedgaon,
Ahmednagar.
8. Prashant s/o. Chilla Mali,
Age. 25 years, Occ. Nil,
R/o. Police Head Quarter,
Sarjepura, Ahmednagar.
9. Nandkumar s/o. Shivaji Dani,
Age. 24 years, Occ. Nil,
R/o. Aurangabad Road, Shendi,
Ahmednagar.
10. Abhijit s/o. Arun Hushar
Age. 25 years, Occ. Nil,
R/o. Irrigation Colony,
DSP Chowk, Ahmednagar.
11. Jijaba s/o. Lahu Holkar,
Age. 28 years, Occ. Nil,
R/o. Nepti, Tal. Nagar,
Dist. Ahmednagar.

Versus

1. The State of Maharashtra
Through the Secretary,
Home Department, Mantralaya,
Mumbai – 32.

.. Respondents

2. The General Commandant (Mahasandeshak)
Home Guard, Maharashtra State,
Mumbai – 32.
3. The Additional Superintendent of Police or
The District General Commandant,
Home Guard, Ahmednagar,
District Ahmednagar.
4. The Director General of Police,
Maharashtra State, Mumbai.
5. The Superintendent of Police,
Ahmednagar, Dist. Ahmednagar.
6. The Assistant Police Commissioner,
(Administration) Mumbai.
7. The Police Commissioner,
Naigaon, Mumbai.
8. The Superintendent of Police,
Nashik, Dist. Nashik.
9. The Police Commissioner,
Pune, Dist. Pune.
10. The Superintendent of Police,
Aurangabad, Dist. Aurangabad.
11. The Superintendent of Police,
Thane, Dist. Thane.
12. The Police Commissioner,
Palghar, Dist. Palghar.
13. The Superintendent of Police,
Satara, Dist. Satara.

14. The Superintendent of Police,
Sangli, Dist. Sangli.

**WITH
WRIT PETITION NO. 7271 OF 2016**

1. Pravin s/o. Bhagwan Bhandare, .. Petitioners
Age. 24 years, Occ. Nil,
R/o. VRD Wahannagar, Ahmednagar.
2. Pratik s/o. Satish Thombare,
Age. 25 years, Occ. Nil,
R/o. 21, Punam Moti Nagar,
Maret Yard, Ahmednagar.
3. Akash s/o. Gorakh Nemane,
Age. 27 years, Occ. Nil,
R/o. Bhosale Akhada, Burudgaon Road,
Chandan Estate, Ahmednagar.
4. Goraksha s/o. Kisan Karande,
Age. 27 years, Occ. Nil,
R/o. Kolheshwari Nagari,
Nagar-Aurangabad Road,
Ahmednagar.
5. Sachin s/o. Asaram Palwe,
Age. 26 years, Occ. Nil,
R/o. Maliwada, Katwan Khandoba Road,
Datta Nagar, Ahmednagar.
6. Ketan s/o. Maykal Patekar
Age. 25 years, Occ. Nil,
R/o. Saurabhnagar, Pathardi Road,
Bhingar, Ahmednagar.

7. Gangadhar s/o. Raosaheb Walhekar,
Age. 30 years, Occ. Nil,
R/o. Milind Colony Alamgir,
Bhingar, Ahmednagar.
8. Vicky s/o. Sudhakar Sathe,
Age. 24 years, Occ. Nil,
R/o. Bhingar Talim, Patil Galli,
Ahmednagar.
9. Vishal s/o. Ambadas Kakade,
Age. 26 years, Occ. Nil,
R/o. Behind Z.P.School, Mohininagar,
Kedgaon, Ahmednagar.
10. Mohommad Gufran Saadat Hussain Gowda,
Age. 25 years, Occ. Nil,
R/o.204, Mulan Galli, Bhingar,
Ahmednagar.
11. Santosh s/o. Laxmannarayan Pardeshi,
Age. 23 years, Occ. Nil,
R/o. DSP Chowk, Government Quarter,
D Building, Ahmednagar.
12. Pramod s/o. Shankar Palve,
Age. 26 years, Occ. Nil,
R/o. Mehakari, Tq. & Dist. Ahmednagar.
13. Raju s/o. Chhabu Pawar,
Age. 24 years, Occ. Nil,
R/o. Nepti, Tq. & Dist. Ahmednagar.
14. Mahesh s/o. Sanjay Khomane,
Age. 25 years, Occ. Nil,
R/o. Kawadgaon, Tq. & Dist. Ahmednagar.

Versus

1. The State of Maharashtra .. Respondents
Through the Secretary,
Home Department, Mantralaya,
Mumbai – 32.
2. The General Commandant (Mahasamadeshak)
Home Guard, Maharashtra State,
Mumbai – 32.
3. The Additional Superintendent of Police or
The District General Commandant,
Home Guard, Ahmednagar,
District Ahmednagar.
4. The Director General of Police,
Maharashtra State, Mumbai.
5. The Superintendent of Police,
Ahmednagar, Dist. Ahmednagar.
6. The Assistant Police Commissioner,
(Administration) Mumbai.
7. The Police Commissioner,
Naigaon, Mumbai.
8. The Superintendent of Police,
Nashik, Dist. Nashik.
9. The Police Commissioner,
Pune, Dist. Pune.
10. The Superintendent of Police,
Aurangabad, Dist. Aurangabad.
11. The Superintendent of Police,
Thane, Dist. Thane.

12. The Police Commissioner,
Palghar, Dist. Palghar.
13. The Superintendent of Police,
Satara, Dist. Satara.
14. The Superintendent of Police,
Sangli, Dist. Sangli.

**WITH
WRIT PETITION NO. 4455 OF 2018**

Amol s/o. Sahebrao Salve .. Petitioner
Age. 29 years, Occ. Nil,
R/o. Bhushannagar, Kedgaon,
Ahmednagar.

Versus

1. The State of Maharashtra .. Respondents
Through the Secretary,
Home Department, Mantralaya,
Mumbai – 32.
2. The General Commandant (Mahasandeshak)
Home Guard, Maharashtra State,
Mumbai – 32.
3. The Superintendent of Police,
Superintendent Office, Ahmednagar,
District Ahmednagar.
4. The Additional Superintendent of Police or
The District General Commandant
Home Guard, Ahmednagar,
District Ahmednagar.

**WITH
WRIT PETITION NO.5372 OF 2018**

Amit s/o. Gulab Girawale, .. Petitioner
Age. 26 years, Occ. Nil,
R/o. Shashrinagar, Kedgaon,
Ahmednagar.

Versus

1. The State of Maharashtra .. Respondents
Through the Secretary,
Home Department, Mantralaya,
Mumbai – 32.
2. The Director General of Police,
Maharashtra State, Mumbai.
3. The General Commandant (Mahasamadeshak)
Home Guard, Maharashtra State,
Mumbai – 32.
4. The Superintendent of Police,
Superintendent Office, Pune Rural,
District Pune.
5. The Additional Superintendent of Police or
The District General Commandant
Home Guard, Ahmednagar,
District Ahmednagar.

Mr.Hemant Surve, Advocate for the petitioners in Writ
Petition No.11802 of 2018.

Mr.D.A. Bide, Advocate for the petitioners in Writ
Petition Nos.7269, 7270, 7271 of 2016 and 4455 and 5372
of 2018.

Mr.S.B. Pulkundwar, AGP for the respondent/State.

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.
RESERVED ON : 25.09.2018
PRONOUNCED ON : 21.12.2018**

JUDGMENT [PER : S.M.GAVHANE, J.] :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. Since the common question involved in these petitions is in respect of certificate of 5% reservation to Home Guards for recruitment to the post of police constable to be issued by the Additional Superintendent of Police, Ahmednagar or the District General Commandant, Home Guard, Ahmednagar and in respect of office orders/communications dated 21.01.2015, 17.07.2015 and 05.08.2015 issued by the Deputy Commandant General, Home Guard and Commandant General, Home Guard, Maharashtra State, these petitions are being disposed of by this common judgment.

3.(i) In Writ Petition No.11802 of 2016, following substantive reliefs are claimed :-

C) The communication bearing outward No.623/PS/2016 dated 15.07.2016 as well as outward No.624/PS/2016, dated 15.07.2016 issued by respondent No.3 to the respondent No.4 and 5 may kindly be quashed and set aside.

D) x x x x

E) The respondent No.3 may kindly be directed to issue the positive verification of the reservation certificates dated 04.03.2016 to the respondent No.4 and 5 holding that, the petitioners are qualified for taking benefits of such reservation certificates.

F) The official communication dated 21.01.2015, 17.07.2015 as well as 05.08.2015 may kindly be quashed and set aside to the extent of petitioner's case.

G) The respondent No.4 and 5 may kindly be directed to issue appointment orders as well as joining orders in favour of petitioner's as per the selection list dated 10.05.2016 within two weeks.

(ii) In writ petition Nos.7269 of 2016, 7270 of 2016 and 7271 of 2016, following substantive reliefs are claimed :-

C) The respondent Nos.2 and 3 may kindly be directed to issue the reservation certificates

in favour of the petitioners as per the Government Notification dated 14.07.2003.

D) The respondent Nos.2 and 3 may kindly be directed to decide the representations dated 27.10.2015, 12.02.2016, 26.05.2015 and 25.11.2015 in accordance with the provisions of Notification dated 14.07.2003 and to issue the reservation certificates in favour of the petitioners.

E) The official order outward No.MS/Office-3/2015/372 dated 21.01.2015, official order No. MS/Office-5/2015/3055 dated 17.07.2015 and also official order No. MS/Office-3/2015/3290 dated 05.08.2015 may kindly be quashed and set aside to the extent of petitioner's case is concerned.

F) By appropriate directions or order to hold and declare that, the effect of official order outward No. MS/Office-3/2015/372 dated 21.01.2015, official order No. MS/Office-5/2015 dated 17.07.2015 and also official order No. MS/Office-3/2015/3290 dated 05.08.2015 is not having retrospective in nature and also not affecting the petitioners rights for getting reservation certificates.

(iii) In Writ Petition No.4455 of 2018, following substantive reliefs are claimed :-

C) The respondent No.3 may kindly be directed to proceed with recruitment process in view of the selection of the petitioner [Exh."H"] page No.87 & 88 under the Home Guard [SC] category and issue the appropriate appointment orders/joining order in favour of the

petitioner.

D) The respondent No.3 may kindly be directed not to fill-up the post of Police Constable under Home Guard Category, wherein the petitioner is selected in view of selection list [Exh."H"] page no.87 & 88 as well as cut off marks list published by the respondent No.3.

E) The respondent No.4 may kindly be directed to issue the Positive Certificate in favour of petitioner under the Home Guard Reservation Category in view of the Circular/Ordinance dated 14.07.2003.

F) The official order dated 21.01.2015, 17.07.2015 and 05.08.2015 may kindly be quashed and set aside to the extent of the case of the petitioner.

G) The respondent No.3 and 4 may kindly be directed to comply the order dated 12.08.2016 and 21.02.2018 passed by this Hon'ble Court in Writ Petition No.7270 of 2016 and to proceed with the recruitment of the petitioner as a Police Constable in view of the selection list prepared by the respondent No.3 and to issue the joining/appointment order in favour of petitioner within 4 weeks.

(iv) In Writ Petition No.5372 of 2018 following substantive reliefs are claimed :-

C) The respondent No.4 may kindly be directed to proceed with recruitment process in view of the selection of the petitioner [Exh."H"] under

the Home Guard [OBC] Category and issue the appropriate appointment order/joining order in favour of petitioner within stipulated period.

D) The respondent No.4 may kindly be directed not to fill-up the post of Police Constable under Home Guard Category, wherein the petitioner is selected in view of selection list [Exh."H"] as well as cut off marks list published by the respondent No.4.

E) The recruitment process of Police Constable conducted by the respondent No.4 wherein the petitioner is selected as a Police Constable under the category of Home Guard may kindly be stayed till the final disposal of the instant writ petition.

F) The Reservation Certificate bearing outward No.77/PS/JS/A.Nagar/dated 19.08.2016 issued by respondent No.5 may kindly be quashed and set aside and the respondent No.5 may kindly be directed to issue the Positive Reservation Certificate in favour of petitioner under the Home Guard Category in view of the Circular/ Ordinance dated 14.07.2003.

G) The official order dated 21.01.2015, 17.07.2015 and 05.08.2015 may kindly be quashed and set aside to the extent of case of the petitioner.

H) The respondent Nos.2 and 4 may kindly be directed to comply the order dated 12.08.2016 & 21.02.2018 passed by this Hon'ble Court in Writ Petition No.7270 of 2016 and to proceed with the recruitment of the petitioner as a Police Constable in view of the selection list prepared by the respondent No.4 and to issue the

joining/appointment order in favour of petitioner within four weeks.

4. There is no dispute that all the six petitioners in Writ Petition No.7269 of 2016, petitioner Nos.2 and 6 in Writ Petition No.7270 of 2016, petitioner Nos.2,4,7,8,11 and 13 in Writ Petition No.7271 of 2016 and the petitioner in Writ Petition No.5372 of 2018 were appointed as Home Guards on 22.05.2012, and rest of the petitioners, except petitioner No.10 – Abhijit Arun Hushar in Writ Petition No.7270 of 2016 was appointed on 15.05.2010, in all these petitions were appointed as Home Guards on 07.04.2012 with the Department i.e. the District General Commandant, Home Guard, Ahmednagar and they have completed three years service as Home Guards from the date of their respective appointments. On 14.07.2003, the Government had issued a Notification/ Ordinance in respect of issuance of reservation certificate in favour of those candidates, who have completed three years service without any break with the Home Guard Department that they are entitled to 5%

reservation in the police recruitment and accordingly, Rule 8(iii) of the Maharashtra Police Constable (Recruitment) Rules, 2000 is amended.

5. The case of the petitioners in Writ Petition Nos. 11802 of 2016 is that in 2016 there was an advertisement to recruit police constables and as they have served for three years as Home Guards, they had applied to respondent No.3 department to issue reservation certificate of 5% reservation in view of notification dated 14.07.2003 as well as the Maharashtra Police Constables (Recruitment) Rules, 2000, on 30.03.2015, 09.10.2015 and 05.01.2016. However, respondent No.2 by office order/communication dated 21.01.2015 received by office of respondent No.3 on 05.05.2015 showed inability to issue reservation certificate and by the said communication respondent No.2 has prescribed certain conditions like revision camp, exercise (PT) as well as bandobust. The said order dated 21.01.2015 was again modified by respondent No.2 on

17.07.2015 and 05.08.2015. According to the petitioners, said three orders of respondent No.2 are contrary to the Government Notification dated 14.07.2003 and the Maharashtra Police Constable (Recruitment) Rules 2000. Therefore, the petitioners filed Writ Petition No.2334 of 2016. By interim order dated 04.03.2016, respondent No.3 was directed to issue reservation certificates to the petitioners and accordingly on the same date reservation certificates were issued to the petitioners. Thereafter, as respondent No.3 did not verify the said reservation certificates, the petitioners filed Civil Application No.9706 of 2016 in this Court and by order dated 11.07.2016, this Court directed respondent No.3 to verify the certificates and disposed of writ petition as well as the aforesaid civil application. By communication dated 15.07.2016, respondent No.3 informed respondent Nos. 4 and 5 that the reservation certificates issued in favour of the petitioners in pursuance of order dated 04.03.2016 of this Court are invalid. On the basis of reservation certificates issued to the petitioners as per order dated

04.03.2016, the petitioners participated in the recruitment process of police constable of 2015/16 and selected as police constable in the office of respondent Nos.4 and 5.

6. The case of the petitioners in Writ Petition Nos. 7269, 7270 and 7271 of 2016 is that since they have completed three years service as Home Guards, they had applied on 30.03.2015, 12.04.2015 and 22.08.2016 for reservation certificates as per rules and regulations prescribed by the Government Notification dated 14.07.2003. However, the respondents informed them by office order/communication dated 21.01.2015, which is received by respondent No.3 on 05.05.2015 that certain conditions were not fulfilled about attendance of bandobust, revision training camp and attendance of drill/parade as detailed in the said communication, which is contrary to the Government Notification dated 14.07.2003 and also contrary to the Act of 2003. So also, the respondent-department issued office

order/communication dated 17.07.2015 and modified some part of earlier order dated 21.01.2015, again by office order/communication dated 05.08.2015 reduced conditions in office order dated 21.01.2015. According to the petitioners all the above three office orders are contrary to notification dated 14.07.2003. Said act of the respondents is against the principles of natural justice. The appointments of the petitioners are of the year 2012. The office order dated 21.01.2015 is not applicable to the petitioners' case. The respondent No.3 has deliberately denied certificate of 5% reservation in police recruitment to the petitioners, when they had applied for such certificates after advertisement dated 02.02.2015, for recruitment of police constable issued by the police department. About 70 other Home Guards have been issued reservation certificates and certificates have not been issued to the petitioners.

7. The petitioners in Writ Petition No.4455 and 5372 of 2018 contended about their appointments as Home

Guard and entitlement of 5% reservation certificate as per Government Notification dated 14.07.2003 and Rule 8 (iii) of the Maharashtra Police Constable (Recruitment) Rules, 2011 as detailed earlier while referring the pleadings in other petitions. They have further contended that as they were not issued reservation certificate for recruitment of police constable by the respondent-department, they had filed Writ Petition No.7270 of 2016 along with other petitioners and as per order dated 12.08.2016 in the said petition, respondent No.4 was directed to issue reservation certificate in their favour. However, on 19.08.2016, respondent No.4 had issued certificates stating that the petitioners are not entitled to take benefit of reservation of Home Guards in the recruitment of police constable. Thereafter, after advertisement dated 05.02.2018, the petitioners again approached this Court and this Court directed the respondent authority to accept the form of the petitioners under the Home Guard category and to proceed further subject to outcome of writ petitions, as per

order dated 21.02.2018. In view of the certificate dated 19.08.2016 and also order dated 21.02.2018, the petitioners appeared in the police recruitment in view of advertisement dated 05.02.2018 and they were selected as police constable. However, the respondent authority is not accepting certificate dated 19.08.2016. There was no condition of drill, revision and bandobust in the advertisement dated 05.02.2018. The stand taken by respondent No.3 in reply dated 13.12.2016 in particular in paragraph Nos.7 and 8 is contrary to the office record of respondent No.3, which is collected by the petitioners under the Right to Information Act, in which the case of Mr. Pitekar is shown different and also stated that he has fulfilled criteria laid down in office order dated 21.01.2015. The respondents contended that the petitioners are not fulfilling the criteria laid down in office order dated 21.01.2015 and 05.08.2015. Respondent No.3-Office has received office order dated 21.01.2015 on 05.05.2015. After receipt of said order, they have started to implement said order. The petitioners have

served as Home Guard from 07.04.2015 to 06.04.2016, prior to issuance and communication of office order dated 21.01.2015. Said office order cannot have retrospective effect as petitioners have already served as Home Guard prior to issuance of said office order. However, ignoring the said facts, deliberately and intentionally respondent No.3-Department has issued negative verification by avoiding the orders dated 04.03.2016 and 11.07.2016 passed by this Court. It is stated that though certificates are issued in favour of the petitioners, in view of order of this Court and initially the petitioners have been selected as police constables, then there is no question of negative verification which is certainly deliberate and intentional. Therefore, office communication dated 15.07.2016 issued by respondent No.3 is required to be quashed and set aside directing respondent No.3 to issue positive verification to respondent Nos.4 and 5 – department. The office order dated 21.01.2015 is not having retrospective effect to the petitioners' case and they are entitled to

certificate while other similarly situated Home Guards, who have received the reservation certificate and verification thereof, otherwise they will suffer great irreparable loss, which would be hardship and injustice with the petitioners.

8. In Writ Petition No. 11802 of 2016, on behalf of respondent Nos. 1 to 3, affidavits-in-reply and additional affidavits-in-reply dated 07.12.2016, 09.03.2017, 31.03.2017, 07.12.2017 and 22.07.2018 of respondent No.3-Additional Superintendent of Police and District Commandant, Ghansham s/o. Manohar Patil have been filed.

A) It is contended in affidavit dated 07.12.2016 that the writ petition is not maintainable as there is efficacious alternate remedy available to the petitioners to approach the Maharashtra Administrative Tribunal, Bombay, Bench at Aurangabad, by filing Original

Application for seeking relief for which they have filed writ petition. The circular dated 21.01.2015 issued by the Dy.Commandant General, Maharashtra State, Home Guard, after referring to the notification dated 14.07.2003, states that in a casual manner 5% reservation certificate to home guard shall not be issued without rendering their services with the department. Therefore, certain guidelines were issued by the Commandant General of the State of Maharashtra (Home Guard). It is directed that while issuing 5% reservation certificates to the candidates (Home Guards), concerned District Officer should verify record of the said candidate and he should ascertain that the said candidate must have served for a period of three years and in the said three years of service, he must have attended 50% Bandobast as well as said candidate must attend weekly parade of 75% and thereafter certificate in respect of reservation

would be considered. Respondent No.2 has again issued circular dated 05.08.2015, thereby modifying guidelines issued in circular dated 21.01.2015 prescribing the guidelines while issuing 5% reservation certificates to the candidates who have worked as Home Guard with the deponent's office. It is mentioned in the said circular that the candidate must have served for a period of three years and during these three years period he must have attended minimum 50% attendance in aggregate as well as candidates must have attended 40% parade during said three years. Only after verifying the above conditions, the candidates should be issued 5% reservation certificate and if candidate does not comply above conditions, he is not entitled to get 5% reservation certificate. It is stated that circular dated 21.01.2015 issued by respondent No.2 is received by the office of the deponent on 05.05.2015. After receipt of said

circular the deponent's office has not issued a single certificate of 5% reservation to any candidates who have not fulfilled criteria and conditions prescribed in circular dated 21.01.2015 and 05.08.2015. The certificates issued to one Mr. Pitekar and others as stated in the writ petition are issued before receipt of circular dated 21.01.2015 to the office of the deponent. So also the office of the deponent has not issued any reservation certificate to any candidate after 05.05.2015 i.e. after receipt of circulars dated 21.01.2015 to the office of respondent No.3. The case of Mr. Pitekar is different than the case of the petitioners. Mr. Pitekar has fulfilled the criteria in circular dated 21.01.2015.

(B) It is stated in the affidavit dated 09.03.2017 that there were certain objections in first circular dated 21.01.2015 and hence second

circular dated 05.08.2015 came into force, by which the percentage of drill and bandobast is reduced. The circular No.3290 dated 05.08.2015 was received by the office of the Home Guard, Ahmednagar on 01.09.2015. Since issuance of first circular dated 21.01.2015 till receipt of subsequent circular dated 05.08.2015, no application was made by the petitioners for receiving certificate of 5% reservation. The application of Rajendra Jagannath Pitekar was received on 13.03.2015. The petitioners have directly made application dated 09.10.2015 before the Commandant General (Home Guard), Maharashtra State, Mumbai and have not made application before the District Commandant, Home Guard. The application of the petitioners dated 09.10.2015 came to be rejected by the Commandant General of Home Guard by order dated 19.10.2015. The said fact of rejection of their application was brought to the notice of the petitioners.

The petitioners did not fulfill eligibility criteria as mentioned in circular dated 05.08.2015 for the reasons that they have not completed refresher training, revision camp within three years of joining as Home Guard. They ought to have completed refresher training within three years, starting from the date of enrollment as Home Guard on 07.04.2012 to 06.04.2015. In the said period the petitioners did not complete their training. In the said period even the camps were organized for the refresher training but the petitioners did not participate in the said training and thus failed to take benefit of said training. The petitioners have filed Writ Petition No.2334 of 2016, wherein one Civil Application No. 9706 of 2016 was filed and while deciding the said Civil Application, vide order dated 11.07.2016, respondent No.4 therein i.e. present deponent was ordered to take steps to verify the

certificate as expeditiously as possible, however on or before 14.07.2016. Hence, the certificates were issued in favour of the petitioners by the deponent and after due scrutiny of the record of the petitioners, present deponent has rightly awarded present petitioners ineligibility for the reason that the petitioners have not completed three years refresher training and 40% drill (parade). Mr. Pitekar has received 5% reservation certificate dated 10.04.2015 issued to him by the District Commandant, Ahmednagar as per recommendation of Taluka Commandant Unit, Newasa as per notification dated 14.07.2003. In case of other candidates, as mentioned by the petitioners, there was no question of verifying whether they have fulfilled condition of 40% drill, 40% bandobast, duties and refresher camp. 5% reservation certificate was issued in favour of Pitekar and others on the basis of notification

dated 14.07.2003 and not on the basis of circulars dated 21.01.2015 or 05.08.2015. The application for 5% reservation certificate was made by Pitekar and others and same was decided much prior to receipt of circular dated 21.01.2015 as per the notification dated 14.07.2003. The petitioners did not make any application before their respective Taluka Commandant on or before the issuance of circulars dated 21.01.2015 and 05.08.2015. The petitioners have not fulfilled criteria mentioned in circulars dated 21.01.2015 and 05.08.2015 and therefore 5% reservation certificate in their favour is rightly rejected. Therefore, the impugned letter dated 15.07.2016 is rightly issued by respondent No.3.

(C) In the short additional affidavit dated 31.03.2017 submitted pursuant to the order dated 14.03.2017 of this Court it is stated in

paragraph Nos.5,6,7 and 8 as under :-

"5. I say and submit that as per letter dated 05.08.2015 information of the petitioners is collected from their respective unit commandant and as per the said service book, the petitioners do not complete the conditions of 40% drill and 40% bandobast and revision camp.

6. I say that it is not the case that there were not enough training camps and bandobast duties organized in Ahmednagar District. During the 3 years period from April, 2012 to April, 2015, the chart of yearly bandobast ranging from 2012 to 2015 showing the total requirements of the Home Guards and the attendance there to and the shortage of the Home Guards is annexed herewith and marked as Exhibit P-3.

7. I say and submit that, since year 2012-2015, time and again refresher/revision camps were organized by the District Commandant at 2 different places for various times. The chart of various revisions camps is annexed herewith and marked at Exhibit P-4. I say and submit that the petitioners have not attended even a single revision camp after joining as Home Guards.

8. I say and submit that, on going through record available with the Unit Commandant with regard to the petitioners as well as the requisitions sent for Bandobast from the District Commandant to the Unit Commandant, it is clear that the petitioners do not fulfill conditions of

40% bandobast, 40% drill and attending revision camp. Chart showing the performance of petitioners during their service as Home Guards for 3 years is annexed herewith and marked at Exhibit P-5. Petitioner No.1, Rasve fulfills only condition of 40% Bandobast but other two conditions he does not fulfill.

(D) In the affidavit in reply dated 07.12.2017, filed as per order dated 21.11.2017 of this Court whereby the respondents were directed to file additional affidavit along with service book of the candidates to whom the District Commandant has issued 5% reservation certificate, it is stated that circular dated 05.08.2015 was received to the office of Home Guard, Ahmednagar on 01.09.2015. Though the circular was issued on 05.08.2015 up to 01.09.2015, office of the District Commandant, Home Guard was not aware of the change in the policy and therefore all the earlier applications submitted by the candidates were decided pursuant to circular dated 21.01.2015

and prior circulars, so far as present petitioners are concerned, they had not made application for 5% certificate prior to 01.09.2015 and as the petitioners made applications after 01.09.2015, the applications of the petitioners came to be rejected by applying new criteria declared in circular dated 05.08.2015. Therefore, there is no substance in the contentions of the petitioners that they are similarly situated to other candidates and the respondents have committed discrimination in not issuing certificate to the petitioners. As the petitioners made application after 01.09.2015, the date on which office of the District Commandant, Home Guard, came to know about change in criteria in pursuance of the circular dated 05.08.2015, the respondents have rightly rejected applications of the petitioners for issuance of 5% reservation certificate.

(E) In additional affidavit in reply dated 22.07.2018, it is stated that as per circular dated 28.04.2005 the parade (kawayat) is held every Sunday and this is known to every candidate of Home Guard. For attending this parade, honorarium is paid to the said candidates, which is upgraded from time to time by the State Government, by issuing Government Resolutions. By circular dated 26.09.2013, it has been prescribed that the Home Guards should fulfill criteria laid down therein, so as to claim reservation in the appointment in the Department of Police, Forest etc. This circular states that the concerned candidate should have attended parade 75% in the year, badobast 75%, basic training is compulsory and also fresh training once in three years. Thus, even in the year 2013, the criteria for claiming the certificate for obtaining reservation was mandatory, as per above circular. In the

present matter, the parade and bandobast were put on the notice board of the office and also communicated to the concerned candidate. However, the candidates in the present matters did not attend the required bandobast and parade, as mentioned in the chart Exh.Z-4.

(F) In Writ Petition No.11802 of 2016, on behalf of the petitioners, an affidavit-in-rejoinder of petitioner No.1 – Ganesh Rasve dated 16.12.2016 is filed to the affidavit-in-reply filed by respondent Nos. 1 to 3, contending that they have served as a Home Guard for three years and as per rule 8 (iii) of the Maharashtra Police Constable (Recruitment) Rules, 2011, they are entitled to get certificate of 5% reservation under the Home Guard category to the recruitment of the Police Constable, Forest Guard as well as fire brigade. They had joined as Home Guards on 07.04.2012

like other candidates i.e. Pitekar Rajendra Jagannath and others who have been already issued reservation certificates which are annexed to the petition from page Nos.27 to 45 and the petitioners have been orally told that they are not entitled to get certificate under the said category as per office order dated 21.01.2015. Further, petitioner No.1 has stated about filing of Writ Petition No.2334 of 2016 in this Court, about the order dated 04.03.2016 passed in said petition directing respondent No.2 to issue certificate to the petitioners and that on the same day i.e. on 04.03.2016 the certificates were issued in favour of the petitioners as per the contentions of the petitioner referred earlier in detail. It is stated that in view of the certificates dated 04.03.2016, the petitioners appeared for the police recruitment of the year 2015-16 and initially succeeded in the said recruitment.

However, petitioner Nos.1 and 3 in Writ Petition No.11802 of 2016 are selected as police constable with respondent No.4-Department and petitioner No.2 is selected as police constable with the respondent No.5-department. Respondent Nos.4 and 5 – department asked about verification of such certificate. However, same was kept pending due to pendency of Writ Petition No.2334 of 2016. The petitioners filed Civil Application No.9706 of 2016 seeking verification of the certificates dated 04.03.2016. By order dated 11.07.2016 this Court directed respondent No.3 to issue verification to the respective department. In view of order dated 11.07.2016 passed by this Court, respondent No.3 without any legal formality being followed, issued negative certificate showing petitioners as disqualified. Therefore, the petitioners are before this Court challenging said communication dated 15.07.2016.

(G) Moreover, in Writ Petition No.11802 of 2016 on behalf of the petitioners, additional affidavit-in-rejoinder of petitioner No.1 – Ganesh Rasve dated 06.02.2018 is filed and it is stated that respondent Nos.1 to 3 have filed affidavit-in-rejoinder by way of additional information on 05.02.2018 in pursuance of order of this Court dated 21.11.2017. Said respondents have placed on record service particulars of 18 candidates. Though 5% experience certificate is issued to these candidates, the rigor applied to the present petitioners is not at all applied to all these 18 candidates. All these candidates have also not fulfilled the conditions prescribed by communication dated 21.01.2015. The stand of the department that the circular dated 21.01.2015 came to be implemented from 05.05.2015 if taken to its right spirit, would ultimately mean that

all these 18 candidates who are issued with 5% experience certificates prior to 05.05.2015 are held to be valid, since they are sans completing conditions prescribed in communication dated 21.01.2015. This itself remains discriminatory to the petitioners. Only because a circular is received by the office at later point of time the earlier certificates cannot be said to be valid one and necessarily the same criteria which is applied to hold those certificates to be valid, is required to be applied to the petitioners also. Article 14 of the Constitution of India would not permit any discrimination in between similar set of candidates, by making a distinction of the date of receipt of circular. The circular dated 05.08.2015 is also inapplicable as regards the petitioners are concerned. Said circular is made applicable from 01.09.2015 and on the basis of the same, invalidity is given to the

petitioners. The circular dated 21.01.2015 as well as circular dated 05.08.2015 cannot have any retrospective effect and if at all retrospective effect is given, then the fitness certificate issued to the earlier candidates also cannot be said to be proper and valid.

(H) Moreover, it is stated in paragraph Nos.3,4,5,8 & 9 as under :-

"3. The petitioners respectfully submit that for better appreciation, the petitioners beg to place on record a chart under which the criteria of performing 40 percent of Bandobust, 40 percent drill and the revision, is placed on record, which is annexed and marked as Exhibit - K. The said chart would reveal that there are 19 other candidates, who are given validity certificate, though they have not fulfilled the conditions expected under the circular, which are made applicable to the petitioners. The petitioners respectfully submit that the department cannot be choosy to adopt one set of criteria to the petitioners, and other set of criteria to the respondents, and that too on the basis of date of receipt of the circular in their office. The petitioners are thus required to comment that the petitioners are deliberately discriminated by the

respondent authorities.

4. The petitioners respectfully submit that in the affidavit in reply submitted by the respondents - State on 05.02.2018, it has placed on record the service book of Rahul Ramdas Mhaske which is available at page No. 275. The Petitioners beg to point out further that there is another service book of the very same candidate, namely Rahul Mhaske, also available at page No.323. Tendering of the service book of the very same candidates twice, itself reflects the haphazard manner of record maintained by the respondent authorities. Details of the drill, bandobast, review, of the very same candidate is also available at page No.280 and 328. If both these pages are seen, there is variation in the details. Now imagine of circumstance, wherein the same candidate has two different records touching the drill! The petitioners thus say that the entire record maintained by the respondent authorities is exceptionally faulty and do not show true reflection of the events.

5. I respectfully submit that under the Right to Information Act, 2005, the petitioners are communicated that the criteria for issuance of 5% experience certificate is also done in respect of Rajendra Pattekar and others issued in between 01.03.2015 and 04.05.2015. According to this information, it is stated that the validity issued to these candidates, is reckoned without applying any standards. A copy of this communication dated 01.08.2016 is available on record at

Page No.79 of the paper book.

6. The petitioners respectfully submit that from amongst the 18 candidates, whose service books are tendered by the respondent authorities, 4 candidates from them, are issued with validity certificate by the very same respondent. Copies of their relevant validity reports issued by the respondent authorities in favour of these four candidates, is placed on record for the kind perusal of this Honourable Court and marked as Exhibit-L.

7. xxxx

8. The petitioners respectfully submits that in the communication available at page No.62(Exh.F) dated 28.09.2015, the department has itself communicated that they do not have the necessary infrastructure to complete the drill and Bandobust, as stipulated in the circular dated 09.09.2015. For that reason, the expectation of fulfilling of the conditions by the Petitioners, does not arise. The Petitioners have to obey the commands. They, on their own, cannot go and complete the drill/bandobast or review. The Respondents have to depute them for a particular task, and then they could complete the said task by rendering their participation. Now the Petitioners are faulted for not completing the task, and the basic issue as to whether such tasks were ever afforded to the Petitioners and others, is not at all spoken of. The communication at Exh. F, thus throws light on the reality that the Respondent itself

has not conducted the number of drills and bandcbast duties, so as to now claim, that the Petitioners have not fulfilled the criteria.

9. There is another facet which is required to be considered. The rules stipulating reservation, are admittedly amended as per the mandates of Article 309 of the Constitution of India. The notification at Exh.B dated 14.07.2003 specifies that under Rule 8(a) the candidates ought to complete 3 years of service so as to get benefited with the 5% experience certificate. The said notification does not prescribe about the particular standards of drills or Bandobust to be done by the candidates in these three years of duty. The circular dated 21.01.2015, which is implemented from 05.05.2015, cannot have an over riding effect on the notification dated 14.07.2003. The notification dated 14.07.2003 available at Exh.B, has more strength and the subsequent circular dated 21.01.2015, cannot circumvent or add further conditions to those, which are available in the public notification. The petitioners thus are required to say that the authorities have exceeded their command by issuing the circular dated 21.01.2015 and prescribing the conditions over and above the notification at Exh.B.

9. In Writ Petition No.7269, 7270 and 7271 of 2016 on behalf of respondent No.3 affidavit-in-reply dated

19.08.2016 and on behalf of respondent Nos.1 to 3 affidavit-in-reply dated 22.07.2018 of Gansham Manohar Patil, Additional Superintendent of Police and District Commandant of Home Guard, Dist. Ahmednagar, raising similar contentions are filed. It is contended that the present petitions are not maintainable as there is efficacious remedy available to the petitioners to approach the Maharashtra Administrative Tribunal by filing original application for seeking the reliefs which are claimed in these petitions. The petitioners are not entitled to reservation certificates as they are not fulfilling the condition Nos.5 and 6 in office order/circular dated 21.01.2015 issued by the Dy. Commandant General, Maharashtra State, Home Guard and they have not completed refresher camp during three years period and they have not attended at least 40% parade. In all six conditions have to be followed as per circular dated 21.01.2015 while issuing reservation certificate. The conditions laid down in Circular dated 21.01.2015 have been subsequently modified as per circular dated

17.07.2015 and 05.08.2015. Crime No.166 of 2013 is registered against petitioner No.5-Sanjay Popat Dhaytadak in Writ Petition No. 7269 of 2016, so also Crime No.412 of 2010 is registered against petitioner No.6-Vijay Babasaheb Kachre in the said petition. Respondent No.3 made proposal to respondent No.2 on 28.09.2015 for relaxation of the conditions, but said proposal is not sanctioned and hence circulars dated 05.08.2015 and 21.01.2015 are in existence and in force and they are required to be followed by the department as well as candidates. The certificates to other candidates have been issued prior to circulars dated 21.01.2015 and 05.08.2015 and therefore there is no discrimination committed by the respondents. It is contended in affidavit dated 22.07.2018 that as per circular dated 28.04.2005, parade is held every Sunday and it is known to every candidate of Home Guard for attending this parade. Honorarium is paid to said candidate and honorarium is upgraded from time to time by the State Government as per Government Resolution dated 14.02.2018

and 27.04.2016. There is also circular dated 26.09.2013 which has prescribed that the Home Guard should fulfill the criteria in respect of attending 75% parade in a year, 75% bandobast, basic training and also fresh training once in three years.

10. In Writ Petition No.4455 and 5372 of 2018 affidavit-in-reply and additional affidavit-in-reply of Ghansham Manohar Patil on behalf of respondent Nos. 1 to 3 are filed respectively on 27.07.2018 and 22.07.2018 raising almost all the contentions raised in the affidavits filed in Writ Petition No.7269 of 2016 and other two petitions referred earlier. It is stated in the affidavit dated 27.07.2018 that respondent No.4 received application of the petitioner in Writ Petition No.5372 of 2018 for 5% reservation certificate on 06.05.2015, but prior to that some conditions were issued by circular dated 21.01.2015 and 05.08.2015 in this respect. As per order dated 04.03.2016 in Writ Petition No. 2334 of 2016 in this Court, respondent No.5 issued

certificate to the petitioner – Sachin Annasaheb Bachkar that he is a member of Home Guard and he has completed preliminary training camp only. Using said certificate said Sachin Bachkar appeared in police recruitment in 2015-2016 and he was selected as police constable. But said selection was for temporary period. Along with said Sachin Bachkar other certificate holders namely Nitin Dnyandeo Kale and Ganesh Vasant Rasave were also selected for temporary period as police constable at Police Commissioner, Thane City. Respondent No.5 has done verification of reservation certificate as per order in Civil Application No.9706 of 2016 of Ganesh Vasant Rasave, Nitin Dnyandeo Kale, Takaram Machindra Gaikwad and Sainath Arjun Saluke as per terms and conditions mentioned in ordinance dated 05.08.2015 and declared said certificates as invalid but at that time certificate of Sachin Annasaheb Bachkar was never given for verification by Ahmednagar District Police Head Quarter and hence his certificate was not verified along with certificates of aforesaid four persons. As the petitioners never

fulfilled criteria of 40% attendance in parade, they are not entitled for getting benefits of 5% reservation certificate. Though certificates of 5% reservation are issued to other Home Guards by respondent No.4, but when said certificates came for checking validity of the said certificates, the validity of that certificates was decided as per the terms and conditions mentioned in the circular by respondent No.3. The petitioners have also filed Writ Petition No.7270 of 2016 and therefore they are not entitled to claim equitable relief in these petitions.

11. The learned Advocates for the petitioners in the respective petitions made following submissions :-

A) The petitioners were appointed as Home Guards in 2012 on the dates referred earlier in detail and they have completed three years service as a Home Guard in the year 2015. Therefore, they are entitled to reservation for

the recruitment of police constables as 5% posts are reserved for the Home Guards in view of Rule 8 (iii) of the Maharashtra Police Constables (Recruitment) Rules, 2011 and as per Government Notification dated 14.07.2003.

B) When the petitioners have completed three years service as a Home Guards in 2015, the office order/communication dated 21.01.2015, which was issued after completion of three years of service by the petitioners as Home Guards imposing conditions of attending 50% bandobast, primary and revision training and weekly drill/parade cannot be retrospectively made applicable to the case of the petitioners while issuing reservation certificates to them. Similarly, the office order/communications dated 17.07.2015 and 05.08.2015 modifying the conditions in office order/ communication dated 21.01.2015 while issuing reservation

certificates are not applicable to the case of the petitioners.

C) The Maharashtra Police Constable (Recruitment) Rules, 2011 are the rules framed under Article 309 of the Constitution of India and there is statutory provision in Rule 8 (iii) of the Maharashtra Police Constable (Recruitment) Rules, 2011 about 5% reservation to the Home Guards, in recruitment of Police Constables and eligibility is given in said rule. The Executive i.e. Dy. General Commandant, State of Maharashtra, who has issued office order dated 21.01.2015, which office order/circular has been subsequently modified by the office orders dated 17.07.2015 and 05.08.2015, has no power to modify, amend or reduce the force of statutory rules.

D) Similarly situated persons i.e.

Rajendra Jagannath Pitekar and others are given certificates as per the Maharashtra Police Constable (Recruitment) Rules, 2011 and non issuance of such certificate to the petitioners, violates equal treatment to them.

12. The learned Advocates for the petitioners to support their submission that existing rules cannot be taken by amendment with retrospective effect, relied upon a decision in the case of **R.S. Ajara & Ors. Vs. State of Gujarat & Ors., (1997) 3 SCC 641.** Further, learned Advocates in support of their submission that statutory rules cannot be overridden by executive orders or executive practice, relied upon decision in the case of **K. Kuppusamy & Ors. Vs. State of T.N. & Ors., (1998) 8 SCC 469.** Moreover, the learned Advocates for the petitioners to support their submission that no Government Order, Notification or Circular can be substitute of the statutory rules framed with the authority of law, relied upon the case of **Dr. Rajinder**

Singh Vs. State of Punjab (2001) 5 SCC 482. Moreover, the learned Advocates for the petitioners have relied upon the decisions of the Apex Court in the case of **Maharashtra Forest Guard & Foresters Vs. State of Maharashtra, Civil Appeal No.17974 of 2017,** decided on 03.11.2017 and in the said decision Rule 7 (ii) of the Recruitment Rules, in the said case to the extent that it imposes requirement of being a graduate is declared unconstitutional. Further, it was directed that said judgment shall not affect the promotions already made. For further promotions, LDCE i.e. Limited Departmental Competitive Examination shall be held afresh granting opportunity to all eligible Forest Guards.

13. Learned AGP appearing for the respondents in all the petitions made submissions in the light of reply and additional reply filed by the respondents in the respective petitions. More particularly it is submitted that as per Notification dated 14.07.2003 issued by the Police Department, in Police Constable Recruitment Rules,

2000, Rule 8(iii) is included thereby providing 5% reservation to Home Guards in recruitment of Police Constables, who completed three years service as Home Guards. Circular dated 21.01.2015 issued by the Commandant General, Home Guards was received to Ahmednagar office on 05.05.2015. The application form of Shri Pitekar was received to the office on 13.03.2015 before receiving circular dated 21.01.2015 and hence 5% reservation certificate was issued to him as per earlier notification dated 14.07.2003. After receipt of circular dated 21.01.2015 to Ahmednagar Office on 05.05.2015 not a single certificate of 5% reservation was issued to any candidate, who does not fulfill norms/guidelines issued as per notification dated 21.01.2015. The petitioner – Ganesh Rasave filed application on 09.10.2015 directly to the Commandant General and said application was not made to the Taluka Commandant before issuing circular dated 21.01.2015 and 05.08.2015 and therefore it was rejected. The chart Exh. Z-4 shows that during the period of three years i.e. from 2012 to 2015 the petitioners have not

participated in camps. They did not fulfill the criteria as per circular dated 05.08.2015 and that they have not completed refresher/revision camp within three years of joining. The respondent – Home Guard authority has issued guidelines pursuant to the provisions of rule 8 © of the Bombay Home Guards Rules, 1947 and said provision permits Commandant General to issue suitable guidelines. These guidelines are not contrary to any rules.

14. We have carefully considered the submissions made by the learned Advocates appearing for the petitioners and the learned AGP appearing for the respondents in all the petitions. With their assistance, we have perused the pleadings of the parties and the documents produced in all the petitions.

15. Considering the submissions and the reliefs claimed in the petitions, the points which are required to be considered are :-

(I) Whether the petitioners are entitled

to reservation certificate for recruitment to the post of police constable, in view of Government Notification dated 14.07.2003 and Rule 8 (iii) of the Maharashtra Police Constable (Recruitment) Rules, 2011?

(II) Whether the office order/communication / circular dated 21.01.2015, 17.07.2015 and 05.08.2015 respectively issued by the Dy. Commandant General of Home Guard, Maharashtra State and the Commandant General, Home Guard, Maharashtra, are beyond power of the said authorities?

(III) Whether the communications dated 15.07.2016 issued by the Additional Superintendent of Police and the District General Commandant, Ahmednagar to the Police Commissioner, Thane and the Police Commissioner, Nashik informing that the concerned petitioners in Writ Petition No.11802 of 2016 are not entitled to benefit of reservation certificate dated 04.03.2016, when said certificates were sent to said authority for verification as per Court's order dated 11.07.2016 in Writ Petition No. 2334 of 2016 is valid?

16. Since copies of communications/orders impugned in all the petitions and the Government notification dated 14.07.2003 are produced in Writ Petition No.11802 of 2016, we are referring to the said copies for convenience.

17. The Government notification dated 14.07.2003 (Exh."B") shows that amendment was made in the Maharashtra Police Constables (Recruitment) Rules, 2000 and said rules were to be considered as Police Constable (Recruitment) (Amended) Rules, 2003 and Rule 8 (a) was added in the said rules giving 5% reservation in the recruitment of police constables, to the Home Guards who have completed minimum three years service and who were fulfilling the criteria of educational and physical eligibility and age limit for the post of Police Constable. Rule 8 (iii) of the Maharashtra Police Constable (Recruitment) rules, 2011 is in respect of reservation to Home Guards in the recruitment of Police Constables and it runs as under :-

"8. Reservation

(i) xxx

(ii) xxx

(iii) Home Guards - Out of the total posts available for recruitment to the post of Police Constable in the Police Force, 5% posts shall be filled in form amongst the members of Home Guards who have completed minimum three years

service i.e. 1095 days of consolidated service as Home Guards and possess the requisite educational and physical qualifications and age limit as per these rules.

xxxxxx"

18. As per Rule 8 (iii) above, the Home Guards who have completed minimum three years service i.e. 1095 days of consolidated service as Home Guards and who possessed the requisite educational and physical qualifications and age limit, as per these rules, are entitled to claim benefit of 5% reservation in recruitment to the post of Police Constable in the police force. There is no dispute that the petitioners in Writ Petition No. 11802 of 2016 were appointed on 07.04.2012 as Home Guards and they have completed three years on 06.04.2015, while petitioners in Writ Petition No.7269 of 2016 were appointed as Home Guards on 22.05.2012 and they have completed three years' service on 21.05.2015. Petitioner Nos.2,6,10 and 11 were respectively appointed on 22.05.2012, 22.05.2012, 15.05.2010, 25.05.2012 and rest of the petitioners in the said petition were appointed on

07.04.2012 and they have completed three years service respectively on 21.05.2015, 21.02.2015, 14.05.2013, 24.05.2015 and 06.04.2015. In Writ Petition No.7271 of 2016, petitioner Nos.1,3,5,6,9,10,12 and 14 were appointed on 07.04.2012 and rest of the petitioners were appointed on 22.05.2012 and they have completed three years respectively on 06.04.2015 and 21.05.2015. The petitioner in Writ Petition No.4455 of 2018 was appointed on 07.04.2012 as Home Guard and he completed three years on 06.04.2015 and petitioner in Writ Petition No.5372 of 2018 was appointed on 22.05.2012 and he completed his three years service as Home Guard on 21.05.2015. Thus, as the petitioners have completed three years service on the dates as mentioned above, as Home Guard, they are entitled to 5% reservation in the recruitment of Police Constables provided they are fulfilling criteria of educational and physical qualification and age limit, in view of the Government notification dated 14.07.2003 and rule 8 (iii) of the Maharashtra Police Constables (Recruitment) rules, 2011. Naturally, therefore, the

petitioners are entitled to reservation certificate in the light of said provision and the Government notification.

19. As regards point Nos.2 and 3 referred to above, there is no dispute that the Maharashtra Police Constable (Recruitment) Rules, 2011 have been framed under Article 309 of the Constitution of India and Rule 8(iii) of the said Rules is statutory provision. Here it is relevant to refer to the Rule 8 of the Maharashtra Home Guards Act, 1947. Said rule runs as under :-

"8. Rules.

The State Government may make rules consistent with this Act, -

(a) providing for the exercise by any officer of the Home Guards of the powers conferred by section 4 on the Commandant and the Commandant General;

(b) providing for the exercise of control by officers of the police force over members of the Home Guards when acting in aid of the police force;

(c) regulating the organization, appointment, conditions of service, functions, discipline, arms, accoutrements and clothing of members of the Home Guards and the manner in which they may be called out for service;

(d) regulating the exercise by members of

the Home Guards of any of the powers exercisable under section 5 of this Act;

(e) generally for giving effect to the provisions of this Act."

. Above Rule does not specifically empowers the executive i.e. the Deputy Commandant General and the Commandant General of Home Guards, Maharashtra to issue circular or order or to amend rule or rules of the Maharashtra Police Constables (Recruitment) Rules, 2011 providing reservation to the Home Guards in the recruitment of police. The petitioners had completed three years service as Home Guards prior to receipt of office order/communication dated 21.01.2015 by the concerned office of the respondent on 05.05.2015 or were on the verge of completing three years on 05.05.2015.

20. Another aspect to be noted is that as per the advertisement dated 02.02.2016 in Writ Petition No.7269 of 2016 and the advertisement dated 05.02.2018 in Writ Petition No. 5372 of 2018, in case of recruitment of police constables, 5% posts would be reserved for Home

Guards as per Rule 8 (iii) of the Maharashtra Police Constables (Recruitment) Rules, 2011 and the concerned candidates will have to fulfill the criteria of three years service i.e. 1095 days, education and physical eligibility and criteria of age as per rule as referred earlier in detail and that said candidate will have to produce certificate of competent authority of the date prior to filing application and the said advertisements do not state about the condition of attending parade/drill, revision camp and bandobast by the Home Guard/candidate in the light of office orders/communications dated 21.01.2015, 17.07.2015 and 05.08.2016. In-fact, when both these advertisements were published after office order/communication dated 21.01.2015, the conditions mentioned in the said order were required to be reflected in the said advertisements. Non-mentioning of said conditions in the advertisements goes to show that said conditions are not required to be fulfilled by the candidate claiming reservation in the recruitment of police constables under the Home Guard

category.

21. Admittedly petitioner No.1 – Ganesh Rasave, petitioner No.2 – Sainath Salunke and petitioner No.3 – Nitin Kale in Writ Petition No.11802 of 2016 and two others had filed Writ Petition No.2334 of 2016 and as per order dated 04.03.2016 in the said petition respondent authority i.e. respondent No.4 – Additional Superintendent of Police and the District General Commandant, Home Guard, Ahmednagar was directed to issue certificates in favour of the petitioners like in the case of Pitekar Rajendra Jagannath and certificates were accordingly issued on the same day i.e. on 04.03.2016. Said Writ petition No.2334 of 2016 was admittedly disposed of on 11.07.2016 as certificates were issued in favour of the petitioners and while disposing of the said petition, it was observed that petitioner Nos. 1 to 4 in the said petition were selected. As per said order dated 11.07.2016 directions were issued to respondent No.4 in that petition to verify the certificates issued in favour

of the petitioners in the said petition. It appears that after decision in the said writ petition as per office order/communication dated 15.07.2016 of respondent No.3 in the present Writ Petition No.11802 of 2016, the certificates of the petitioners in this petition have been declared invalid in view of office order/communication dated 21.01.2015 and 05.08.2015 of Dy. General Commandant and General Commandant, Home Guard, Maharashtra. When communication dated 21.01.2015 which was received by respondent's office on 05.05.2015 had no retrospective application, the order/communication dated 15.07.2016 impugned in Writ Petition No.11802 of 2016 is liable to be set aside. When order/communication dated 21.01.2015, 17.07.2015 and 05.08.2016 have no retrospective application to case of petitioners, we are not inclined to consider the aspect whether the authority had power to issue said three orders/communications. Naturally, therefore, when said three orders/communications are not applicable to the case of the petitioners, they need not be quashed and set aside, as

requested by the petitioners in the respective petitions.

22. In Writ Petition No.11802 of 2016, this Court by order dated 23.05.2017, directed the respondents to file affidavit specifically on the following points :-

"(i) Whether the appointments to other candidates were given after verifying that they had fulfilled the condition of 40% drill.

(ii) Whether it was confirmed by the appointing authority that such condition is fulfilled by those candidates.

(iii) Whether, after getting the amendment to the circular, the certificates were again sent for getting validity to the Home-guard Authority."

. In pursuance of above order, on behalf of respondent Nos. 1 to 3 additional affidavit dated 09.03.2017, which is referred earlier in detail in paragraph Nos.8(B), of Ghansham Manohar Patil, Additional Superintendent of Police and District Commandant, Home Guard, Ahmednagar, is filed stating that certificates of 5% reservation which were given to Rajendra Jagannath Pitekar and others were issued on the basis of

notification dated 14.07.2003, as per recommendation of Taluka Commandant, Unit Nevasa, prior to receipt of circular dated 21.01.2015 in the office of above said authority on 05.05.2015 and hence there is no question of verifying whether they have fulfilled condition of 40% drill, 40% bandobast duties and refresher camp. Thus, it appears that appointing authority has not sent reservation certificate issued in favour of Shri Pitekar and others, for verification, while appointing them and that said authority has not confirmed whether condition of 40% drill is fulfilled by candidates in the light of above order of Court. Therefore, in light of above discussion, communication dated 15.07.2016, invalidating reservation certificates issued in favour of petitioner Nos. 1 to 3 in Writ Petition No. 11802 of 2016 is not valid and it amounts to discriminatory treatment to the petitioners who are similarly situated to Shri Pitekar and others.

23. There is no dispute that as per order dated

12.08.2016 in Writ Petition No.7269 of 2016 with Writ Petition No.7270 of 2016 in paragraph No.3, directions were issued to the respondents as under :-

"3. In the circumstances, by way of ad-interim relief, we direct respondents to verify the service record of the petitioners and keeping in view the Government Resolutions/circulars and guidelines issued on 21st January, 2015 by the Head Office of the Home Guard and keeping in view the assertion of the petitioners that, similarly situated Home guards have been granted certificates like in case of Pitekar Rajendra Jagannath and take appropriate decision in case of the petitioners. In case the petitioners' cases are found like other candidates in whose favour the certificates are issued, issue the certificates in favour of the petitioners subject to outcome of the Petitions. However, we make it clear that we have not expressed any opinion on merits."

. Similarly in Writ Petition Nos.7269, 7270 and 7271 of 2016 by order dated 21.02.2018, in paragraph No.3, following directions were issued :-

"Meanwhile, respondent No.4 to 14 shall accept the application forms for facilitating participation of the petitioners in the recruitment process for appointment to the post of Police Constable from amongst reserved category seats of 5% for the Home Guards subject to outcome of the petitions."

24. The provisional select list of Ahmednagar Police Recruitment, 2018 is produced at Exh. "H" in Writ Petition No.4455 of 2018 and as per said list petitioner – Amol Sahebrao Salve in this petition is at Sr. no.14 and it is list of total 20 candidates. Exh. "H" is a list of Pune Gramin Police Constable Recruitment, 2018 in Writ Petition No.5372 of 2018 and it shows that petitioner – Amit Gulab Girwale in the said petition is temporarily selected as police constable from OBC category and it is a list of total five candidates selected from different categories of reservation, as detailed in the list. There is no dispute that petitioner in Writ Petition No.4455 of 2018 is petitioner No.4 in Writ Petition No.7270 of 2016 and petitioner in Writ Petition No.5372 of 2018 is petitioner No.6 in Writ Petition No.7270 of 2016.

25. As per order dated 27.07.2018 in both the Writ Petition Nos.4455 and 5372 of 2018, this Court directed

to maintain status-quo as on that day. It is the case of the petitioners that they have not been given appointments, though they have been selected. As referred above, as per the select list in the respective petitions, said petitioners have been temporarily selected as Police Constable from the concerned category. It is not the case of the petitioners in both these petitions that they have not been given appointments on the ground that their reservation certificates in the recruitment of police constables under the Home Guard category have been held invalid, like the petitioners in Writ Petition No.11802 of 2016. In both the above writ petitions, the petitioners have claimed similar reliefs. In Writ Petition No.5372 of 2018, this Court had passed following order on 07.07.2018:-

“Learned Counsel for the petitioner submits that the petitioner is not being considered on the ground that the certificate of the petitioner is not valid. There is no such order passed by the authority, nor it is placed along with the present Writ Petition. In fact, the selection process conducted by the respondents is being assailed. The matter would lie before the Maharashtra Administrative Tribunal. As there

is no order passed stating that the certificate of the petitioner is not valid, we cannot accept the contention of the petitioner.

Xxxxx "

. Considering the above order and the fact that the petitioners are not claiming that they have not been given appointments on the ground that their certificates claiming reservation are not valid, the petitioners have alternate remedy before the Maharashtra Administrative Tribunal to make grievance about the selection process and of not giving appointment to them and as there is disputed question as to whether they are entitled to appointment as claimed by them, which cannot be considered in writ jurisdiction, we are not inclined to entertain the petition to the extent of above relief. Moreover, petitioner – Amol Sahebrao Salve in Writ Petition No.4455 of 2018 is petitioner No.4 in Writ Petition No.7270 of 2016 and petitioner – Amit Gulab Girwale in Writ Petition No.5372 of 2018 is petitioner No.6 in Writ Petition No.7270 of 2016, are not entitled to reliefs of setting aside the office orders dated

21.01.2015, 17.07.2015 and 05.08.2015 and as they are entitled to reservation certificate as per Government notification dated 14.07.2003, as per reliefs claimed in Writ Petition No.7270 of 2016, said relief need not be again granted in these petitions of 2018.

26. For all the reasons discussed above, we pass following order :-

A] **IN WRIT PETITION NO.11802 OF 2016.**

i) The office order/communication dated 15.07.2016 issued by respondent No.3 to respondent Nos. 4 and 5 is quashed and set aside.

ii) Respondent No.3 is directed to issue positive verification of reservation certificates dated 04.03.2016, to respondent Nos.4 and 5 holding that the petitioners are qualified for taking benefits of such reservation certificates. The respondent Nos. 4 and 5 are directed to consider the case of the petitioners for appointment on the post for which they were selected as per list dated 10.05.2016, if said list exists and if such posts are not yet filled.

B] IN WRIT PETITION NOS.7269, 7270, 7271 OF 2016.

i) Respondent Nos.2 and 3 are directed to issue reservation certificates as per Government Notification dated 14.07.2003 and rule 8 (iii) of the Maharashtra Police Constables (Recruitment) Rules, 2011, in favour of the petitioners [including petitioner No.4 in WP No.7270 of 2016 – Amol s/o. Sahebrao Salve, who has filed WP No.4455 of 2018 and petitioner No.6 in WP No.7270 of 2016 – Amit s/o. Gulab Girwale, who has filed WP No.5372 of 2018] if such certificates are not already issued to them.

C] IN WRIT PETITION NOS.4455 AND 5372 OF 2018.

i) The petitioners may avail alternate remedy available to them to make grievance about the selection process and for directions to appoint them on the basis of their selection as police constable, under the Home Guard category, before the appropriate forum.

. Rule is made absolute in above terms in all the writ petitions and accordingly they are disposed of. No costs.

[S.M.GAVHANE, J.]

[S.V.GANGAPURWALA, J.]

. At this stage, learned Counsel for the petitioners makes a request that the interim relief

operating in Writ Petition Nos.4455 of 2018 and 5372 of 2018 be continued for a further period of six weeks, so as to avail alternate remedy. Learned AGP opposes said request.

. As it is submitted that the interim relief was operating, the interim relief granted earlier in Writ Petition Nos.4455 and 5372 of 2018 is continued for a period of 4 (four) weeks from today.

. Needless to state that on lapse of 4 (four) weeks, the interim protection granted by this Court shall come to an end.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]