

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

WRIT PETITION NO. 4327 OF 2018

Dhammdip Bhanudas Kakade	...Petitioner
Versus	
Chief Secretary, Government of Maharashtra & Ors.	...Respondents

**WITH
CIVIL APPLICATION NO. 818 OF 2018
IN
WRIT PETITION NO. 4327 OF 2018**

Rajendra Nandkumar Chavan	...Applicant
<u>In the matter between :</u>	
Dhammdip Bhanudas Kakade	...Petitioner
Versus	
Chief Secretary, Government of Maharashtra & Ors.	...Respondents

Mr. Abhijeet Desai i/b. Mr. Siddeshwar Biradar, Mr. Arjun S. Pawar and Mr. S. D. Patil for Petitioner.
Mr. N. C. Walimbe – AGP for Respondents – State.
Mr. Sandeep Dere for Applicant in CA No. 818 of 2018.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.
DATE : 12 APRIL 2018**

P. C :

1] Heard the learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 2nd April 2018 made by the Maharashtra Administrative Tribunal (MAT) dismissing the petitioner's

Original Application No. 283 of 2018 on the ground that presently, the petitioner, had no cause of action to institute the OA.

3] Mr. Desai, the learned counsel for the petitioner submits that the order dated 5th March 2018, which was questioned in the OA before the MAT affects the petitioner who has been appointed as Sub Inspector of Police in the Police Force in terms of Rule 3(b) of the Police Sub Inspector (Recruitment) Rules, 1995 (said Rules). He submits that by the impugned order, candidates on the wait list have been sent for training and if, such wait list candidates, are permitted to join training or complete training, then, the petitioner's appointment may be in *jeopardy*. He submits that in terms of the ruling of the Hon'ble Supreme Court in the case of ***Rakhi Ray & Ors. vs. High Court of Delhi & Ors. (2010) 2 SCC 637***, it is settled position in law that vacancies cannot be filled up over and above the number of vacancies advertised and the recruitment of candidates in excess of the notified vacancies constitutes violation of Articles 14 and 16 of the Constitution of India. Mr. Desai submits that the petitioner has been incorrectly regarded as a promotee in terms of

Rule 3(a) of the said Rules, when in fact, the petitioner, is an appointee in terms of Rule 3(b) of the said Rules as a result of the limited departmental examination held by the Commission. For all these reasons, Mr. Desai submits that the MAT, was not justified in dismissing the petitioner's OA No. 283 of 2018 on the grounds stated in the impugned order or even otherwise.

4] From the perusal of the order dated 5th March 2018, we find that the said order, specifically retains the petitioner at training. The petitioner, specifically states that certain additional candidates are to proceed for training, without, recalling the 186 candidates, who are presently undergoing training. From this, it does appear, that at least presently the petitioner, has no cause of action to rush to the Tribunal or for that matter this Court.

5] The issues now raised by Mr. Desai, are not required to be decided at this stage because Mr. Desai has not been able to demonstrate the basis upon which any cause of action can be said to have accrued to the petitioner at present, on account of the order dated 5th March 2018,

which, as noted earlier, very specifically, does not disturb the petitioner's training schedule. Besides, the reasons for issuance of the order dated 5th March 2018 have been set out therein and at least, at this stage, there is no necessity to examine such reasons at the behest of the petitioner, whose training schedule, is in no manner presently affected by the order.

6] Accordingly, we find no jurisdictional error in the impugned order made by the MAT. However, we clarify that if and when any cause of action does accrue to the petitioner, then, the petitioner, will undoubtedly have the liberty to institute appropriate proceedings before the appropriate forum.

7] This petition is accordingly dismissed. There shall be no order as to costs.

8] In view of the dismissal of the petition, civil application no. 818 of 2018 does not survive, the same is also disposed of.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)