

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (STAMP) NO. 8560 OF 2018**

Priyanka d/o Harish Ahire & Anr. ...Petitioners
Versus
The State of Maharashtra & Ors. ...Respondents

**WITH
WRIT PETITION (STAMP) NO. 16458 OF 2018**

Swati Bhimrao Pawar ...Petitioner
Versus
The State of Maharashtra & Ors. ...Respondents

Ms. Lakshmi Murali a/w Ms. Shweta B. Kamble I/b Lakshmi Murali &
Associates for the Petitioners in WP (St.)/8560/2018

Mr. A. B. Avhad I/b Mr. A. N. Gosavi for the Petitioner in WP
(St.)/16458/2018

Mr. A. I. Patel, A.G.P a/w Mr. R. S. Pawar, A.P.P for the Respondent No.1-
State in both the Petitions

Mr. S. R. Ganbavale for the Respondent No. 2 in both the Petitions

Mr. A. B. Borkar for the Respondent No. 3 in both the Petitions

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
FRIDAY, 10th AUGUST 2018***

P.C. :

1 The Petitioners in the above Writ Petitions are aspirants for the

post of Civil Judge, Junior Division and Judicial Magistrate, First Class in the State of Maharashtra. The said posts were advertised by the Maharashtra Public Service Commission ('MPSC') by issuing an advertisement in that regard, wherein, the recruitment process of a preliminary examination, written examination and viva-voce was spelt out. Suffice it would be to state that the Petitioners have gone through the gambit of processes prescribed for the said posts, results of which were declared on 27th March 2017. The recruitment to the said posts is governed by the Rules known as Maharashtra Judicial Services Rules, 2008. It is not necessary to refer to the said Rules in detail, save and except, Rule 6(3)(b) r/w 6(4)(a) and (c) which is relevant in the context of the reliefs sought in the above Writ Petitions.

2 The above Writ Petitions have been filed principally for the relief that the wait list be sent to the State Government by the MPSC, which was the recruiting authority, as the same was not done in the case of the instant recruitment which commenced in March 2016. The said relief is a common relief sought in the above Writ Petitions.

3 On behalf of the recruiting authority i.e. MPSC, an affidavit has been filed by one Pradeep Kumar, Secretary of the MPSC. In the context of the relief sought in the above Petitions, Paragraph 3 of the said affidavit assumes importance. The said Paragraph 3 is, therefore, reproduced herein for the sake of ready reference :

“3. I say and submit that, this Hon'ble Court in its judgment in the case of Vishnu Dattarao Gite passed in Writ Petition No.8210 of 2016 (2016) SCC Online Bom. 10717) had an occasion to consider the incongruity in the Maharashtra Judicial Services Rules, 2008, and, the Rules of Procedure framed by the Respondent No. 2, MPSC. I state that, vide the judgment cited supra, the primacy of the Maharashtra Judicial Services Rules, 2008, vis-a-vis the Rules of Procedure framed by the Respondent No.2, MPSC, stands confirmed. It is in this factual and legal background, I most humbly state that, there was an error on the part of the Respondent No. 2, MPSC, in not preparing a separate 'wait-list', as per the mandate of the Rule 6(3)(b), of the Maharashtra Judicial Services Rules, 2008. I further state and submit that, the staff of the Respondent No. 2, MPSC, could not appreciate the finer nuances of law, and, hence inadvertently, have exchanged correspondence with various Applicants, qua, the applicability of the Rules of Procedure of the MPSC, including, the amended Rules of Procedure, issued vide Standing Order No. 05/2016, dated 31-5-2016, to the matter of Maharashtra Judicial Service. I further say and submit that, the 'composite list' prepared by the Respondent No. 2, MPSC, does not in any manner compromise the principles of merit, fairness and transparency, in conducting the examination in issue. I hereby also undertake to this Hon'ble Court that, hence onwards, qua, the Maharashtra

Judicial Service Examinations, the Respondent No. 2, MPSC, will prepare a 'wait list' equal to 10% of number of vacancies notified, as per the mandate of the Maharashtra Judicial Services Rules, 2008."

4 A reading of the said Paragraph, therefore, discloses that the recruiting authority i.e. the MPSC has admitted its mistake and has stated that hence forthwith it will prepare a wait list equal to 10% of the number of vacancies notified, as per the extant Rules of the year 2008. However, it has also been said in the said Paragraph 3 that a composite list was prepared, meaning thereby, the list of 138 candidates qua the 131 vacancies and 10% of the candidates as per their merit, constituting the wait list. It is not necessary to consider the said aspect in the light of the statement made by the MPSC.

5 In our view, having regard to the mandate of the extant Judicial Rules, 2008 and especially Rule 6(3) (a) and (b), the wait list would be sent by the MPSC within two weeks from date. The aforesaid direction to the MPSC to send the wait list to the State Government should not be construed as any expression of opinion by this Court as regards the entitlement of the Petitioners who are on the wait list for appointment. It is

for the State Government, in consultation with the High Court, to take an appropriate decision thereon. We express no opinion in that regard.

6 In the light of the above, it is not necessary to keep the above Petitions pending. The same to accordingly stand disposed of.

7 Insofar as the other prayers which have been sought in the above Petitions, we reserve the right of the Petitioners to claim the said prayers at an appropriate stage, if the occasion so arises, in future.

REVATI MOHITE DERE, J.

R. M. SAVANT, J.