

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.222 OF 2019

Mr. Kunal Sanjay Naik,
son of Sanjay Dattaram Naik,
Aged 23 years, Indian National,
Resident of H.No.204,
Soruem Waddo, Guirim,
Bardez Goa.

.... Petitioner

Versus

1. State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim,
Bardez Goa.
2. Goa Police Department,
Through Director General of Police,
Police Headquarter,
Panaji Goa.
3. Superintendent of Police,
Goa Police Department,
Police Headquarter,
Panaji Goa.
4. Department of Home,
Through its Secretary,
Having office at Secretariat,
Porvorim, Bardez Goa.

... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Mr. P. Lotlikar, Advocate for the Petitioner.

Ms. Susan Linhares, Addl. Government Advocate for Respondent Nos.1 to 4.

WITH
WRIT PETITION NO.1165 OF 2018

Mr. Allaudin Khan,
33 years of age,
Son of Vazir Khan,
r/o H.No.350/A,
Sanquelim Goa.

.... Petitioner

Versus

1. The Chief Secretary,
State of Goa,
Secretariat,
Alto Porvorim Goa.
2. Director General of Police,
Police Head Quarters,
Panaji Goa.
3. Superintendent of Police (HQ),
Police Head Quarters,
Panaji Goa.

.... Respondents

Mr. A. D. Bhobe, Ms. K. Govekar and Ms. A. Fernandes, Advocates for the Petitioner.

Mr. P. Faldessai, Addl. Government Advocate for Respondent Nos.1 to 3.

WITH
WRIT PETITION NO.186 OF 2019

Mr. Gaurav Gokuldas Naik,
H.No.438/A, near Forest Nursery,
Dhavalimol, Ponda Goa. 403 401

... Petitioner

Versus

1. State of Goa,
Through its Chief Secretary,
having office at Secretariat,
Porvorim Goa.
 2. Director General of Police,
Government of Goa,
having office at Police Headquarters,
Panaji Goa.
 3. Superintendent of Police,
Government of Goa,
having office at Police Headquarters,
Panaji Goa.
- Respondents

Mr. Y. V. Nadkarni and Mr. S. Parab, Advocates for the Petitioner.

Mr. Deep Shirodkar, Addl. Government Advocate for Respondent Nos.1 to 3.

WITH
WRIT PETITION NO.24 OF 2019

Navaneet Vinod Goltekar,
31 years of age,
Son of Vinod Goltekar,
R/o H.No.170, Gausa Waddo,
Sodiem, Siolim,
Bardez Goa.

.... Petitioner

Versus

1. The Chief Secretary,
State of Goa,
Secretariat,
Alto Porvorim Goa.

2. Director General of Police,
Police Head Quarters,
Panaji Goa.
3. Superintendent of Police (HQ),
Police Head Quarters,
Panaji Goa.

.... Respondents

Mr. A. D. Bhobe, Ms. K. Govekar and Ms. A. Fernandes, Advocates for the Petitioner.

Mr. P. Faldessai, Additional Government Advocate for Respondent Nos. 1 to 3.

***WITH
WRIT PETITION NO.228 OF 2019***

1. Mr. Virag Ulhas Pawar,
son of Ulhas Pawar,
aged 27 years, Indian National,
resident of House No.2782,
Hill View Colony, Muslim Wada,
Bicholim Goa.
2. Mr. Swapnil Navakant Naik,
son of Navakant Naik,
aged 29 years, Indian National,
resident of House No.658/A
Kaskar Waddo, Porvorim,
Soccoro Bazar, Bardez Goa.
3. Mr. Sameer Nilu Gaonkar,
son of Nilu Babusso Gaonkar,
aged 34 years, Indian National,
resident of H.No.308/2,
Talewadi Paroda, Salcete Goa.
4. Mr. Ganesh N. Matonkar,

son of Narayan Matonkar,
aged 41 years, Indian National,
resident of House No.111,
Madhlamaz Mandre,
Pernem Goa 403 527

.... Petitioners.

Versus

1. Director General of Police,
Government of Goa,
having office at Police Headquarters,
Panaji Goa.

2. Superintendent of Police,
Government of Goa,
having office at Police Headquarters,
Panaji Goa.

3. State of Goa,
Through its Chief Secretary,
having office at Secretariat,
Porvorim Goa.

.... Respondents

Mr. P. Sawant, Advocate for the Petitioners.

Mr. P. Faldessai, Additional Government Advocate for Respondent
Nos.1 to 3.

***Coram : M.S. Sonak &
Nutan D. Sardesai, JJ.***

***Reserved on : 14th August, 2019.
Pronounced on : 21st August, 2019***

Judgment (Per M. S. Sonak, J)

Heard the learned counsel for the parties.

2. The learned counsel for the parties state that the issue involved in all these petitions is one and the same. Accordingly, they submit that these petitions may be disposed of by a common judgment and order, by treating the Writ Petition No.222 of 2019 as the lead matter.

3. In all these petitions, the Petitioners seek an appropriate writ, order and directions to the Respondents to appoint the Petitioners to the post of Police Sub- Inspector (PSI) in pursuance of selection process commenced vide advertisement No.1/2016 published on 7th July, 2016.

4. The Superintendent of Police (HQ), Panaji, issued advertisement No.1/2016, inviting *inter alia* applications for direct recruitment to 34 posts of PSIs. The advertisement indicated that out of these 34 posts, 17 were unreserved posts, 4 reserved for Scheduled Tribes, 9 reserved for Other Backward Class, 2 reserved for Ex-Serviceman and 2 reserved for Sportspersons.

5. In pursuance of the advertisement, several candidates, including the Petitioners applied for appointment to the posts of PSIs. Between the period 25.10.2016 and 01.11.2016, prescribed tests in relation to *inter alia*, physical fitness etc., were held by the Respondents. On 20.11.2016, a written test was also held by the Respondents.

However, before the Department Selection Committee could actually meet to recommend the names of the selected candidates, on diverse dates between 27.08.2016 and 19.06.2017, 21 out of 34 advertised posts lapsed.

6. The Respondents, themselves, on 19th June, 2017 itself, sent a proposal to the Home Department for revival of these 21 posts. This is borne out from the affidavit in reply filed on behalf of the Respondents.

7. The pleadings in the petitions as well as the affidavit in reply on behalf of the Respondents indicate that further 2 posts lapsed on 31.08.2017, 2 posts on 30.09.2017, 2 posts on 31.10.2017, 4 posts on 30.11.2017 and 3 posts on 31.12.2017. Accordingly, on 09.08.2017, a further proposal was sent to the Home Department for revival of these 13 posts of PSIs as well.

8. On 25.09.2017, 21 posts were revived by the Home Department. The Police Authorities, accordingly addressed a letter dated 20.10.2017 to the Personnel Department seeking permission to continue with the recruitment process by selecting the candidates against the live posts and preparing a wait list, against which the selected/wait listed candidates could be appointed no sooner remaining 13 posts are actually revived.

9. The Personnel Department vide communication dated 16.11.2017 informed the Police Authorities that they could proceed with the recruitment process against the live posts. However, there was no specific response on the proposal to maintain a wait list and appoint wait listed candidates against the posts for which the revived had already been applied for.

10. On 28.02.2018, the Department Selection Committee actually met. From the record it is apparent that the DSC did not, undertake any selection procedure as such, but, merely relied upon the merit list prepared in the written examination held on 20.11.2016 and on the said basis, recommended 21 candidates for appointments to the post of PSIs, as against 21 revived posts of PSIs.

11. In pursuance of the aforesaid recommendation of the DSC, the Respondents, on 11.10.2018, appointed 21 candidates and sent them for basic training at Nashik, which is requirement under the Rules.

12. It is necessary to mention that the DSC in its meeting held on 28.02.2018 also prepared a wait list, which includes the Petitioners in these petitions, by indicating category wise merit positions. There is really no dispute that after the merit positions of 21 appointed PSIs, the Petitioners, on merits, stand at merit positions 22 to 34 category wise.

This position is clearly reflected in the minutes of the DSC which met on 28.02.2018.

13. The appointments as against 21 posts were made on 11.10.2018 on basis of recommendations of DSC. Within hardly 45 days from this, the balance 13 posts of PSIs were revived on 27.11.2018.

14. The Petitioners, naturally sought for appointments as against the revived 13 posts and addressed representations in this regard to the Respondents. The Respondents refused appointments to the Petitioners on the sole ground that when the DSC met on 28.02.2018, only 21 posts of PSIs had been revived and were live and therefore, no recommendations could be made to any posts, beyond the revived 21 posts as on the date of DSC, actually met. Aggrieved by this stance of the Respondents, the Petitioners, have instituted the present petitions seeking appointments to the balance posts of PSIs.

15. Mr. S. D. Lotlikar, Mr. A. D. Bhobe, Mr. Y. V. Nadkarni and Mr. P. Sawant, learned counsel appearing for the Petitioners in each of these petitions have, in unison, contended that there is absolutely no good or valid reason to deny the Petitioners any valid appointment to the posts of PSIs, merely on account of the fortuitous circumstance that the DSC met on 28.02.2018 and not on 28.11.2018, by which

point of time all the lapsed posts had been duly revived. They submit that right to be considered for appointment is a fundamental right under Article 16 of the Constitution of India and such valuable right cannot be frustrated, on the basis of such a fortuitous circumstance, having absolutely no nexus with the issue of eligibility or merit positions of the Petitioners.

16. The learned counsel for the Petitioners submit that from the returns filed by and on behalf of the Respondents, it is clear that even as on 16.11.2017, when the Personnel Department granted leave to fill up live posts of PSIs, in pursuance of selection process which had virtually been completed, there were at least 27 live posts, since, the balance 7 posts lapsed only on 30.11.2017 and 31.12.2017. The learned counsel therefore submit that appointments should have been made to these 27 posts at least, for which there was clear approval vide communication dated 16.11.2017.

17. The learned counsel point out that the DSC which met on 28.02.2018, did not itself undertake any independent selection procedures but merely went by the results of the tests held between 25.10.2016 and 20.11.2016. The DSC prepared the merit list solely on this basis. Accordingly, the learned counsel submit that appointments could not have been restricted only to 21 posts on account of the fortuitous circumstance that the DSC met on 28.2.2018, by which

date, on account of administrative lethargy only 21 posts were formally revived. They submit that were the DSC to meet slightly later, then, all 34 posts would have to be filled. They submit that the basis adopted by the Respondents is not rational and has no nexus whatsoever with the procedures prescribed and the issue of determination of merit of the candidates. They submit that the Petitioners cannot be prejudiced for the reasons of administrative lethargy.

18. Mr. Nadkarni, learned counsel for the Petitioner in WP No.186 of 2019 pointed out to the inconsistency in the stance of the Respondents. He submits that as on 28.02.2018, the reserved posts for sportspersons had not been formally revived. Yet neither the DSC nor the Government found any difficulty in recommending and appointing candidates to these reserved posts. However, in so far as the rest of the candidates are concerned, the stance is that appointments were made only to posts which were formally revived by 28.02.2018. Mr. Nadkarni submits that such inconsistent approach amounts to hostile discrimination prohibited by Article 14 of the Constitution.

19. The learned counsel for the Petitioners submit that if the DSC minutes placed by the Respondents are properly construed, it is apparent that the DSC intended to prepare a select list of 34 candidates. However, the DSC, recommended that the appointments to be made as against the posts which had already revived and balance

candidates in the select list to be appointed no sooner the balance posts were revived. The learned counsel for the Petitioners submit that in the present case, it is not as if the DSC prepared a wait list in the normal sense, in which a wait list is prepared. The learned counsel for the Petitioners submit that even this aspect has not been properly considered by the Respondents and consequently, the Petitioners are entitled to the reliefs as claimed in these petitions.

20. Mr. P. Faldessai, Mr. D. Shirodkar and Ms. Susan Linhares, learned Additional Government Advocates for the Respondents/State submitted that as on 28.02.2018, when the DSC met, only 21 posts had been revived and consequently, recommendations were made for appointment as against 21 posts. They point out that the Petitioners were no doubt wait listed but this wait listing was for the purposes of accommodating the Petitioners, only in the event the 21 recommended candidates who were to fail to join or were to quit after joining or were to be found unfit for appointment on account of health issues or after verification of their character and antecedents. They point out that the balance posts were revived only on 27.11.2018 and such revived posts are required to be filled in by a fresh recruitment process. Accordingly, they submitted that there is no illegality or infirmity in the stance of the Government.

21. The learned Government Advocates also point out that the

Petitioners only have a right to be considered for appointment and no right to be appointed. They point out that even the fact that the Petitioners have secured a merit position in the merit list or the fact that the Petitioners were placed on wait list confers upon the Petitioners no indefeasible right to seek appointments. For these reasons, they submit that these petitions are required to be dismissed.

22. The rival contentions now fall for our determination.

23. As noted in paragraphs 4 to 13 of this judgment and order, the facts situation in these matters is quite unique and therefore the rival contentions will have to be evaluated, having regard to this unique facts situation, about which there is no serious dispute between the parties.

24. In this case, in all 34 posts of PSIs were advertised. On this basis fitness/written tests were held between 25.10.2016 and 20.11.2016. On the basis of these tests, the DSC, which met on 28.02.2018, prepared merit lists, from which 21 candidates came to be appointed. There is also no dispute that after the commencement of the selection process, posts lapsed, basically on account of the delayed procedures and intervening ban on recruitments. Since the Respondents were in need of PSIs, the process for revival of the lapsed posts was also immediately initiated. The lapsing as well as the revival took place in a phased manner and not all at once. The State, along

with its return, has placed on record a chart at pages 55 and 56 of the paper book in Writ Petition No.222 of 2019, which gives all details on the position of lapsing and revival of posts. From this, it is quite clear that even as on the date of holding of tests, all 34 posts were very much alive.

25. The Police Department, vide communication dated 20.10.2017 sought for advice/approvals from the Personnel Department in the matter of continuance of the process. The Police Department, in fact proposed that leave be granted to make appointments against the posts which have been formally revived and further leave be granted to maintain a wait list, from which appointments could be made to the balance posts, as and when they revive, since, revival was quite imminent.

26. The communication dated 20.10.2017, is quite clear on the aforesaid aspect, and reads thus :

*To,
The Additional Secretary (Personnel),
Department of Personnel,
Government of Goa,
Secretariat, Porvorim Goa.*

*Sub: Filing up of posts of Police Constable in
Goa Police Department by direct recruitment.*

Sir,

*Please refer to your letter No.9/4/2005-PER-
Part-/DGP/2222 dated 18.07.2017 (copy enclosed)
conveying approval of Government to go ahead with the*

recruitment process of various posts in Goa Police Department.

2. *It is stated that we had advertised 119 posts of Police Constable, 34 posts of Police Sub-Inspector and 07 posts of Lower Division Clerk in the Goa Police Department in the year 2016. Due to the ban imposed on recruitments by the Department of Personnel, Government of Goa, Secretariat, Porvorim Goa vide Office Memorandum No.9/4/2005-PER dated 22.11.2016, we could not go ahead with the recruitment process.*

3. *In the mean time, out of 119 posts of Police Constable, 34 posts of Police Sub-Inspector and 07 posts of Lower Division Clerk advertised, 113 posts of Police Constable, 21 posts Police Sub-Inspector and 06 posts of Lower Division Clerk, lapsed over a period of time which are revised by the Department of Home (General), Government of Goa, Secretariat, Porvorim Goa vide Order dated 25.09.2017. However, few posts of Police Constable, Police Sub-Inspector and Lower Division Clerk, lapsed and likely to be lapsed till the recruitment process get completed. As such, as on date, we have 113 live posts of Police Constable, 30 live posts of Police Sub-Inspector and 06 live posts of Lower Division Clerk.*

4. *It is, therefore, kindly requested to inform this Office by return of post, whether we can continue the recruitment process by selecting the candidates against the available live vacancies, give Appointment Order against available live vacancies and consider the candidates from the wait list as and when the remaining posts are revived, maintaining the figure of number of posts advertised.*

Yours faithfully,

Sd/-

(S. M. Prabhudessai)

*Superintendent of Police (HQ),
for Director General of Police (Goa),
Panaji*

27. The response of the Personnel Department to the aforesaid communication dated 20.10.2017, is rather ambiguous. The same is contained in communication dated 16.11.2017 which reads thus :

*To,
The Director General of Police
O/o Director General of Police,
Police Head Quarters, Panaji Goa.*

*Sub: Filing up of Police Constable in Goa Police
Department by direct recruitment.*

Sir,

I am directed to refer to your letter No. CA-I/Rectt.PC/B-XLVIII/9004/2017 dated 20/10/2017, on the above cited subject and to inform you that the Government has approved to fill up the live posts of Police Constable, Police Sub-Inspectors and Lower Division Clerks pursuant to the recruitment process carried out by your office.

*Yours faithfully,
Sd/-
(Shashank V. Thakur)
Under Secretary (Personnel -II)*

28. The response dated 16.11.2017, no doubt means that approval was granted to make appointments against live posts or posts which had already revived, as on 16.11.2017. However, the communication does not go as far as to prohibit maintenance of a wait list or to operate such wait list to fill the balance posts, as and when they revive. Besides, the records indicate that as on 16.11.2017, almost 27

posts were alive and not merely 21 posts against which the appointments ultimately came to be made. The chart at pages 55 and 56, very clearly indicates that 7 posts lapsed only on 30.11.2017 and 31.12.2017, which means that, as on 16.11.2017, 27 posts were alive. In terms of the stance of the Respondents, as reflected in the returns, there was absolutely no difficulty in making appointments to at least these 27 posts, assuming that the stance is itself valid and reasonable.

29. The DSC met on 28.02.2018. As the minutes of this meeting reflect, the DSC did not undertake any independent assessment or hold any independent selection procedures. The DSC merely went by the results of the tests held between 25.10.2016 and 20.11.2016, when all 34 posts were admittedly alive. The DSC made two lists. The first, of 21 candidates, who were recommended for appointments against 21 revived posts as on 28.02.2018. The second, which was styled as '*wait list*', comprising, again on merit, the names, *inter alia* of the Petitioners.

30. According to us, if the matter is examined from the entire and proper context, the styling of the aforesaid second list, as a wait list, was perhaps a misnomer. In the peculiar facts and circumstances of the present case, it is apparent that the DSC prepared a merit list, *inter alia* of 34 candidates, in order of merit but recommended appointments immediately, to 21 revived posts. The recommendations were not made

in respect of balance posts, only because, as on the said date, the process of revival of the balance 13 posts, which had considerably advanced, was not formally completed. Thus, the determinative factor, was not some lack of merit on the part of the Petitioners, but the fortuitous date on which the DSC, actually met.

31. In pursuance of the recommendations of DSC, actual appointments were made only on 11.10.2018. Within hardly 45 days, from this date, the balance 13 posts formally revived with effect from 27.11.2018. The issue, which therefore arises, is whether this fortuitous date upon which the DSC formally met, should be determinative of the issue as to whether the Petitioners deserve appointments against the advertised posts, for which they have successfully cleared the selection processes and even secured merit positions. According to us, such a fortuitous circumstance cannot be the sole determining factor, in a matter of this nature.

32. This is not a case where the Petitioners seek to operate the wait list as some independent source of recruitment. This is also not a case where the Petitioners seek to operate a wait list beyond its period of validity, which is one year or to fill up any fresh vacancies which may have arisen after the issuance of the initial advertisement. This is also not the case where the Petitioners seek to operate the wait list for posts, in excess of the initially advertised posts. This is also not a case where

the Petitioners seek to jump the merit list prepared on the basis of common tests undertaken by them along with the 21 candidates who have now been appointed by the Respondents. All that the Petitioners seek is that they be not discriminated against, only on the basis of some fortuitous circumstance that the DSC was held on a particular day, when formally only 21 posts had been revived and not on some slightly later date, by which time all the 34 vacancies came to be formally revived. All that the Petitioners seek is that they be not denied appointments for circumstances not of their making or for reasons attributable primarily to administrative delays, if not lethargy, particularly when such reasons are entirely unconnected with the determination of their merit or the transparency or reasonableness of the selection process. According to us, in the peculiar facts and circumstances of the present case, the Respondents, have no good and valid answers to these contentions raised by and on behalf of these Petitioners.

33. As noted earlier, this is not at all the case where the Petitioners seek operation of the so called wait list beyond its period of validity or to fill up posts in excess of the initially advertised posts or to fill up vacancies which arose after the commencement of the selection processes, or to jump the merit list prepared on the basis of common tests. Admittedly, even the lapsing of posts and their revivals took place in a phased manner. Over such matters, neither the appointed

candidates nor the Petitioners, who were left out, have any control whatsoever. These were not situations of their making. These situations, did not in any manner reflect upon the merit or the manner of selection of the petitioners. Therefore, it is apparent that the only determinative factor in the present case has been fortuitous dates upon which the DSC met on i.e. 28.02.2018. Since by this date, 21 posts had been revived, 21 appointments were made, and that too on 11.10.2018. Within next 45 days, even the balance 13 posts were formally revived. But relying upon the purely fortuitous circumstance as aforesaid, appointments are being denied to the Petitioners against the balance 13 revived posts.

34. This is not the case where some conscious decision had been taken by the Government about not reviving any lapsed posts. Rather, all steps were underway to revive the lapsed posts on account of the dire need to fill in the posts of PSIs. In these state of facts, we do not think that the Petitioners should or could have been left behind, relying almost exclusively upon the fortuitous circumstance that when the DSC met on 28.02.2018, only formal orders of revival of 21 posts were already made.

35. The time gap of hardly 45 days between the dates on which the appointments were given to the 21 candidates i.e. 11.10.2018 and the formal orders of revival of balance 13 posts i.e. 27.11.2018 is so short that the contention, which was not even raised by and on behalf

of the Respondents, that there may be several others who have, in the meanwhile, attained eligibility and therefore were also equally entitled to be considered, is not attracted.

36. From the context, it is quite clear that the DSC which met on 28.02.2018 intended to prepare a select list or a merit list as proposed in the communication dated 20.10.2017, whereby, actual appointments could be recommended to the 21 revived posts and the balance list could be operated as and when the other posts revived, subject no doubt to the ceiling of 34 posts initially advertised and subject further to the condition that the revival takes place during the validity period of the wait list. Even otherwise, there is nothing wrong in advertising and consequently making recommendations against anticipated vacancies.

37. In the present case, the vacancies were already existing, but, for administrative reasons arising out of not filling up of vacancies within the specified period, they had lapsed. The process for revival of the lapsed vacancies was commenced almost immediately and was being pursued. Therefore, this was not even a simple case of anticipated vacancies but this was a case where the vacancies were imminent. These relevant aspects have escaped the decision making process, thereby, rendering the Petitioners' rights to be considered for public employment in a fair, transparent and non discriminatory manner, a casualty.

38. The aspect of inconsistent approach and consequent discrimination is evident from the instance cited by Mr. Nadkarni, the learned counsel for the Petitioner in Writ Petition No.186 of 2019. There is indeed some inconsistency in the approach of the Government, particularly when it comes to making appointments to the reserved posts of sportspersons. On one hand the Government contends that appointments were made only against 21 posts because only 21 posts were revived as on 28.02.2018, when the DSC actually met. On the other hand, the chart at pages 55 and 56 of the paper book in Writ Petition No.222 of 2019 placed on record by the Government itself, very clearly indicates that the two posts reserved for sportspersons lapsed on 30.11.2017 and 31.12.2017 but were revived only on 27.11.2018. This means that as on 28.02.2018, when the DSC met, the two reserved posts for sportspersons had not been formally revived. Yet, the Government, perhaps correctly, saw no difficulties in making appointments against the posts reserved for sportspersons.

39. Applying the same logic, there should have been no difficulties for making appointments to the balance 13 posts, at least from the date of their revival, which is 27.11.2018, hardly within 45 days from the date on which appointments were made to the 21 posts. This inconsistent approach amounts to treating equals, unequally. This inconsistent approach, is broadly based upon a classification which lacks any serious and intelligible differentia. In any case, the so called

differentia, based almost entirely upon the fortuitous circumstance that the DSC met on 28.02.2018, by which date only 21 of the 34 posts were formally revived, does not get any immunity under the classification doctrine relevant to interpretation of Article 14 of the Constitution of India.

40. There is no doubt that the wait list is not source of recruitment. There is also no doubt, that even if a person is placed in select list that does not entitle such person to some indefeasible right to secure appointment. However, it is equally true that a person's claim for appointment cannot be denied for reasons which are purely fortuitous or based on no cogent reasons or rational. In the present case, too much emphasis has been laid upon fortuitous circumstance that the DSC was held on 28.02.2018, on which date, only 21 posts had been formally revived. All other relevant considerations have been completely ignored. The aspect that lapsing took place in stages has not been considered. Such lapse was not held to be a good enough reason to exclude the some candidates from the selection process. The applications for revival of the posts were pending with the Government. The Department in fact sought for permission to make appointments against all 34 posts or at least to make appointments as against all 34 posts as and when all these posts were revived in phased manner. There was absolutely no good reason to reject this reasonable request made by the Police Department itself. In fact there was no rejection as such. The Government cannot

take any advantage of the ambiguity in its response dated 16.11.2017.

41. According to us, there is no much difference between the 21 candidates, who were selected and appointed to the posts of PSIs in pursuance of the selection process which commenced vide Advertisement No.1/16 and the present Petitioners who have been left out. The two sets of persons do not really constitute a separate or distinct class, particularly, since both these set of candidates have answered one and the same selection test/fitness test. The only so called distinguishing feature is really based upon purely fortuitous circumstance that the DSC met on 28.02.2018 and by that date only 21 posts have been revived and the balance 13 posts were revived within hardly 45 days from the dates on which 21 recommended candidates were actually appointed by the State Government.

42. It is true that Article 16 of the Constitution of India does not confer any fundamental right to appointment but confers a fundamental right to be considered for appointment to public posts. This implies that no candidate can be denied fair consideration for appointment to public posts, based only on some fortuitous circumstances having no nexus whatsoever with their merits or their performance in selection procedures. This also implies that their candidatures are considered in a fair, transparent and non discriminatory manner. The right to be considered for appointment

cannot be defeated by denying appointments upon grounds which are not germane to determination of merit or having nexus with the fair selection procedures. This right, also cannot be defeated by denying appointments consequent to adoption of some unequal or discriminatory approach. Therefore, though we agree with the contentions of the learned Government Advocates that there is no fundamental right to appointments, we hold that this proposition cannot be extended to mean or to say that there is even no fundamental rights to be considered for public employment in a fair, transparent and non discriminatory manner.

43. In *East Coast Railway and Another Vs Mahadev Appa Rao and others*,¹ the Hon'ble Supreme Court has held that though a candidate who has passed an examination or whose name appears in select list does not have an indefeasible right to be appointed, yet appointment cannot be denied arbitrarily, nor can the selection be cancelled without giving proper justification. If the Court finds that appointment is denied arbitrarily or the selection is cancelled without giving proper justification, appropriate directions can be issued in the matter.

44. In *Director, SCTI For Medical Science & Technology & Another Vs M. Pushkaran*,² the Hon'ble Apex Court was

1 (2010) 7 SCC 678

2 (2008) 1 SCC 448

concerned with a case where the select list was abandoned after making some appointments and decision was taken to contract out work relating to security guards just as the Respondent's turn had come for issue of offer of appointment. The High Court directed the issue of offer of appointment to the Respondent and the Hon'ble Apex Court upheld such direction by observing that there was no valid reason or justification to deny appointment to the Respondent. In this case, Hon'ble Apex Court considered several earlier precedents on the issue. Most of these precedents hold that successful candidates may not have any indefeasible rights to be appointed if the Government, bonafide has some justification to deny appointment. However, this does not mean that the State has a licence to act in an arbitrary manner or to ignore the select panel or to decline to make appointments on its whims. There has to be a justifiable reason to deny appointment to a person who is on the select panel.

45. In *R. S. Mittal Vs Union of India*³ the Hon'ble Apex Court found that the only reason given was inaction on the part of the Government. The Hon'ble Apex Court held that such inaction does not constitute a justifiable reason for denial of appointment.

46. For all the aforesaid reasons, we allow these petitions and direct the Respondents to issue appointment letters to the Petitioners within two months from today, no doubt if the petitioners, are

³ 1995 Suppl.(2) SCC 230

otherwise found to be fit and suitable for such appointments. In the peculiar facts and circumstance of these cases, there is no question of appointments with any retrospective effect and no such claim was made by any of the learned counsel for and on behalf of the Petitioners. The appointments, subject to the Petitioners being found to be otherwise fit and suitable, will have to be effective, latest from 1st November, 2019.

47. Rule is accordingly made absolute in all these petitions in the aforesaid terms. There shall be no order as to costs.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

at*