

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11725 OF 2018

WITH

CIVIL APPLICATION NO. 207 OF 2019

WITH

CIVIL APPLICATION NO. 1952 OF 2018

WITH

CIVIL APPLICATION NO. 2442 OF 2018

- 1 The State of Maharashtra through
the Chief Secretary, Mantralaya,
Mumbai-400 0132.
- 2 The Additional Chief Secretary, Home
Department, Mantralaya, Mumbai-
400 032.
- 3 The Director General of Police,
Maharashtra State, Shahid
Bhagatsingh Road, Colaba, Mumbai.

...Petitioners

Versus

- 1 Janardan Vasant Patil,
Sitaram Building, G Block, Room
No.10, Phaltan Road, Mumbai – 400
001.
- 2 Subhash Balkrishna Chawan
3rd Floor, A Wing, Commissioner of
Police Compound, Officers' Quarters,
B.T. Marg, Mumbai-400 034.
- 3 Shivaji Manikram Pasalkar
11 A/B, Third Floor, Police Camp,
Tardeo, Mumbai – 400 034.
- 4 Pandurang Dashrath Khillari
83/2376, Pantnagar Police Wasahat,
Pantnagar, Ghatkopar (E), Mumbai-
400 075.
- 5 Rajendra Mahadeo Sohani
Prakash Bhavan, Shinde, Chawal,
Room No.6, Gavdevi Road, Tembhi
Pada, Bhandup (W), Mumbai
- 6 Sadashiv Tukaram Sawant
A-401, Visamo, Co-op. Housing
Society, Plot No.100, Gorai-II,

- Boriwali (W), Mumbai.
- 7 Ram Mahadev Mangle
Flat No.204, Plot No.4, Priyanka
Heritage, Sector 16-A, Sanpada, Navi
Mumbai
- 8 Deepak Ganpat Girkar
B-35, B Wing/033, R.M.M.M.,
Goregaon (E), Mumbai – 400 063.
- 9 Sambhaji Ramchandra Mohite
B/102, Rukhmini Co-op. Housing
Society, Sector 20, Eiroli, Navi
Mumbai
- 10 Raghunath Ramchandra Nimbalkar,
Building No.26/1, B.D.D. Chawl,
Ganpat Jadhav Marg, Worli, Mumbai
400 018.
- 11 Sanjay Abaji Bhosale
1/60, Tardeo Police Officers
Quarters, Tardeo, Mumbai 400 034.
- 12 Sanjay Shivajirao Thakur
C/102, Himgiri Co-op. Hsg. Society,
Veenanager, L.B.S. Road, Mulund(E),
Mumbai.
- 13 Sanjay Narhari Rane
Tejujay Mansion, 5/13, Dr.
Babasaheb Ambedkar Road, Lalbaug,
Mumbai – 400 012.
- 14 Shatrughna Dinkar Rane
B/70, Saraf Choudhary Nagar,
Kandiwali (E), Mumbai 400 101.
- 15 Pradip Ghanshyam Chopade
2/12, Officers Quarters, Near Mittal
Court, Somwar Peth, Pune.

...Respondents

- Mr. N. K. Rajpurohit, AGP for the State/Petitioner.
- Mr. R. S. Apte, Senior Advocate, a/w Mr. Ranjit A. Agashe,
I/b Namrata A. Agashe & Yuvraj Takale, for
Respondent no.1.
- Mr. S. C. Naidu, I/b Mr. Pankaj R. Thatte, for Respondent
nos.2 to 13 and 15.
- Ms. Manisha Khemka, I/b Khemka and Associates, for the
Applicant in CAW 1952/2018.
- Ms. Ketaki A. Asgaonkar, for the Applicant in CAW
2442/2018.

**CORAM: B. R. GAVAI &
N. J. JAMADAR, JJ**

DATED: 22nd February, 2019

Oral Judgment:- (Per B. R. Gavai, J.)

1. Rule.
2. Rule made returnable forthwith. By consent of the parties heard finally.
3. Heard Mr. Rajpurohit, the learned AGP for the State/Petitioners. Mr. Apte, the learned Senior Advocate for Respondent no.1 and Mr. Naidu, the learned Counsel for Respondent nos.2 to 13 and 15 and Ms. Khemka, the learned Counsel for the Applicant in Civil Application No.1952 of 2018 and Ms. Asgaonkar, the learned Counsel for the Applicant in Civil Applicant No.2442 of 2018 supporting the stand of the Government.
4. The petition challenges the judgment and order passed by the Maharashtra Administrative Tribunal, Mumbai, dated 22nd August, 2017 vide which the original applications filed by the Respondents have been allowed and they have been directed to be given the deemed date of promotion from the date they were given ad-hoc promotion in the year 2003 and onwards.

5. The learned Tribunal has come to a finding that for the period between 2002 and 2009, the total vacancies were 2304, 2615, 3387, 2974, 3145, 2810, 2201 and 2072 respectively. The reason which appears to have appealed to the learned Tribunal is that, out of total number of vacancies in a particular year, the quota of departmental promotees was 25% and, as such, 25% of total number of vacancies should have been filled in from the departmental promotees. The reasoning adopted by the learned Tribunal appears that since the original applicants have been actually working on different dates from 2003 onwards, they were entitled to the deemed date of promotion from the date they actually worked as per the Police Sub-Inspector (recruitment) Rules, 1995. It is relevant to read Rule 4 of the said Rules:

“4. Appointment to the post of Police Sub-Inspector by promotion, selection on the basis of limited departmental examination and nomination shall be made in the ratio of 25 : 25 : 50.”

6. It could, thus, be seen that the rule provides for 50% posts for direct recruitment quota by Maharashtra Public Service Commission (MPSC), 25% posts for departmental direct quota to be filled in by an examination conducted by MPSC and third category of departmental promotees on the basis of their seniority and clearing the departmental

examination. Admittedly, prior to 2002, in which the original applicants have cleared the departmental examination, there was departmental examination held in the year 2000. In the said examination held in the year 2000, 1261 Head Constables had cleared the examination. It is the stand of the Respondents that taking into consideration the vacancies available in the quota of the departmental promotees, the persons who had cleared the 2000 examination were required to be accommodated up to the year 2008. As such, vacancies in the quota for the departmental promotees, to which the original applicants are entitled to, became available only in the year 2009 and, as such, they were given deemed date from that year.

7. It would be relevant to refer to the specific stand taken by the Petitioners herein, in the original application, which reads thus:

“15.1 Although there were vacancies from the promotee quota of 25%, yet, it is also factually correct that the Departmental Qualifying Examination for promotion to the post of P.S.I. were held in the month of August, 2000.

15.2 In the aforesaid examination held in the month of August, 2000, there were 1261 candidates declared pass and they were to be given promotions as per the quota available for the promotees and that was given up to the 2010.”

8. Not only this but the learned Tribunal has also recorded the chart submitted by the learned Presiding Officer with regard to the vacancies in the quota of departmental promotees. The same reads thus:

वर्ष	रिक्त पदे	भरलेली पदे	नियुक्तीचा दिनांक	परिक्षेचे वर्ष
२००१	६०१	$\frac{१७}{५८४}$	$\frac{३०.०४.२००१}{३०.०४.२००१}$	१९९२-९५
२००२	१०३	१०३	०१.०१.२००२	२०००
२००३	९४	९४	०१.०१.२००३	२००२
२००४	१५१	$\frac{१२६}{२५}$	$\frac{०१.०१.२००४}{०१.०६.२००४}$	
२००५	७२	७२	०१.०१.२००५	
२००६	११९	११९	०१.०१.२००६	
२००७	१२६	१२६	०१.०१.२००७	
२००८	४९	$\frac{६}{४३}$	$\frac{०१.०१.२००८}{२०.१०.२००८}$	
२००९	---	---	---	---

The perusal of the said chart would clearly reveal that, in pursuance of various promotion orders, the departmental promotees were granted ad-hoc promotion in excess of vacancies available in that quota.

9. The perusal of the order promoting the original applicants temporarily in the year 2003 clearly shows that the promotion which was granted to them was purely temporary and that they would be entitled to a permanent placement in the cadre of Police Sub-Inspector only against

the vacancies that would be available in future in the quota of the departmental promotees.

10. We find that, firstly, the learned Administrative Tribunal ought not to have entertained the grievance of the original applicants without at least some of the persons in the two other quotas having been made party Respondents. The order passed by the learned Tribunal has adversely affected the seniority position of the Police Sub-Inspectors appointed by two other avenues. The original applications therefore, as a matter of fact, suffered from non-joinder of the necessary parties.

11. Faced with this situation, Mr. Naidu, the learned Counsel for some of the original applicants states that, it would be in the interest of justice that this Court remands the matter to the learned Tribunal with liberty to the original applicants to rectify the defect of the non-joinder of necessary parties. He submits that the original applicants may be granted liberty to implead the Sub-Inspectors, falling in other two quotas, at least in a representative capacity, so that their interest is also appropriately safeguarded.

12. We find that the stand taken by the original applicants is reasonable and fair. In that view of the matter, the

impugned judgment and order is quashed and set aside. The matter is remanded back. The learned Tribunal shall grant relief to the original applicants to implead the Sub-Inspectors from other two categories in representative capacities so that the interest of other two categories will be safeguarded. We further direct the Petitioners/State to produce the entire relevant data before the learned Tribunal so as to assist the learned Tribunal in proper adjudication of the *lis*.

13. Needless to state that, we have not considered the merits of the matter and all questions of the rival parties are kept open. Taking into consideration the long standing dispute, the learned Tribunal is requested to decide the original application/s on remand as expeditiously as possible and preferably within six months from today.

14. The writ petition is disposed of in above terms.

15. In view of disposal of the petition, the Civil Applications do not survive and are disposed of accordingly.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]