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

WRIT PETITION NO. 11577 OF 2019

Maharashtra Public Service Commission ..Petitioner

vs.

Amit Ramesh Nangare & ors. ..Respondents

.....

Mr. A.M. Kulkarni for petitioner.

Mr. R.S. Pawar, AGP for State.

Mr. S.D. Patil for respondent No.1.

.....

**CORAM : RANJIT MORE &
M.S.KARNIK, JJ.**

DATE : 14th NOVEMBER, 2019

P.C.:-

Heard.

2. The petitioner - Maharashtra Public Service Commission ('MPSC' for short) is challenging the judgment and order dated 8/5/2019 passed by the Division Bench of the Maharashtra Administrative Tribunal in Original Application No. 30 of 2019. The said application was filed by respondent No.1 seeking direction to respondent Nos. 2 and 3 to consider the candidature of the applicant on vacant post from Scheduled Caste (General) category for

the post of Sub Inspector, State Excise, Class - C, Maharashtra from advertisement bearing No.1 of 2017 dated 13/1/2017.

3. The Government sought requisition of 300 posts of Sub Inspector, State Excise, Class - C. In response of this requisition the petitioner issued an advertisement in the month of January, 2017 inviting applications for the post of Sub Inspector, State Excise, Class - C. Out of 300 posts 37 posts were allotted to the Scheduled Caste. The petitioner declared the result on 8/1/2018 and thereafter recommended 297 candidates to the post of Sub Inspector, State Excise, Class - C, on 5/2/2018. Out of 297 candidates 17 candidates did not join and the said posts remained vacant. Out of these 17 posts, 5 posts were allotted to Scheduled Caste (General) category. The Government, thereafter, on 3/11/2018 issued requisition to the MPSC for filling of 4 posts of the Scheduled Caste category. In pursuance of this requisition, the MPSC sent names of 4 candidates. The fourth candidate and the present respondent No.1 secured the same marks and therefore, he

approached the Tribunal for the reliefs as stated herein above.

4. It was specific case of respondent No.1 before the MAT that there were 5 posts available for Scheduled Caste candidate out of 17 posts which remained vacant. Further contention was that respondent No.1 would have been selected to the post of the Sub Inspector, State Excise, Class - C if the requisition were for 5 posts instead of 4.

5. On behalf of the State of Maharashtra, the Deputy Commissioner in the office of State Excise, Maharashtra State, Mumbai, filed reply before the MAT on 15/4/2019. The reason not to send requisition for 5 posts which are vacant out of these 17 posts was stated to be that "the respondent has not taken any conscious decision not to send requisition for waiting list candidate."

6. The MAT having heard the respective counsel found that the State Government has not sent the requisition for 5 candidates belonging to the Scheduled

Caste when 5 posts were available during the period of 1 year i.e. period before the expiry of the wait list. In consonance with the findings of the Tribunal directions were issued to respondent Nos. 2 and 3 to furnish requisition to the MPSC within 15 days of receipt of the Tribunal's order and the MPSC was directed to carry out the compliance within further 15 days. This order is challenged by the MPSC.

7. It is pertinent to note that respondent Nos. 2 and 3 have accepted the impugned order passed by the Tribunal as they have not challenged the same. On the contrary, it is pointed out that the Government has complied with the order by furnishing requisition to the MPSC in terms of the directions contained in paragraph 18 of the impugned order. We are, therefore, not inclined to interfere with the impugned order in the present Petition. The Petition is accordingly dismissed.

8. At the request of the MPSC we further make it clear that the order impugned was passed in the peculiar facts and circumstances of the case.

9. The petitioner – MPSC is granted 4 weeks time to comply with the impugned order.

(M.S.KARNIK, J.)

(RANJIT MORE, J.)

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