

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.92 OF 2019

Maharashtra Public Service Commission]
Having office at 5 ½th 7th & 8th Floor,]
Cooperage Telephone Nigam Building]
Maharshi Karve Road, Cooperage]
Mumbai – 400 021]..... Petitioner.

Versus

1] Miss. Rohini Subhash Sonwalkar]
Age 26 years, Student,]
residing at Bhadali Kd., Post – Saskal]
Tal. - Phaltan, Dist – Satara,]
]]
2] The Addl. Chief Secretary]
Home Department, Mantralaya,]
Mumbai – 400 032.]..... Respondents.

Mr. Nitin P Dalvi for the Petitioner.
Mr. Dinesh B Khaire for the Respondent No.1

CORAM : B. R. GAVAI &
N. J. JAMADAR, JJ
DATE : 10th January 2019

ORAL JUDGMENT :- [PER B.R.GAVAI, J.]

1 Rule. Rule made returnable forthwith. Heard by consent of the parties.

2 The Petition challenges the judgment and order passed by the learned Maharashtra Administrative Tribunal dated 01/11/2018 by which the

Original Application of Respondent No.1 has been allowed.

3 The learned Tribunal has allowed the Original Application in the following terms :-

“(A) For the same reasons which are recorded in O.A. 1052/2017 (along with O.A. 1007/2017 as lead O.A), present Original Application is allowed and the impugned communication dated 20.6.2018 is quashed and set aside quash and set aside.

(B) Respondent no.2 is directed to take up the process of applicant's candidature and recommend and forward the name of the applicant to the Government for appointment as P.S.I. The said process shall be completed within 10 days from the date of receipt of the order.

(C) Parties are directed to bear own costs.”

4 In so far as the directions as contained in operative clause (B) are concerned, we find no reason to interfere with the order passed by the learned Tribunal. Undisputedly the Petitioner who is a woman belongs to NT category. The cut off marks for open female category was 189. Respondent No.1 has secured 216 marks. It is thus clear that the Respondent No.1 has got much more marks than the cut off marks fixed by the Petitioner for open category candidate.

5 The Division Bench of this Court in Writ Petition No.1925 of 2014

with Writ Petition No.1930 of 2014 vide judgment and order dated 16/12/2015 after relying on the law laid down by the Hon'ble Apex Court in the case of Indra Sawhney vs. Union of India and ors. reported in 1992 Supp. (3) SCC 215 has observed thus :-

“11. It will be appropriate to refer to the following observations of the Constitution Bench of the Apex Court in paragraph 811 in the case of Indra Sawhney .vs. Union of India and ors. reported in 1992 Supp. (3) Supreme Court Cases 215:-

“811. In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.”

12. It could thus be seen that the Constitution Bench of the Apex Court itself has held that if a Scheduled Castes candidates get selected in the open competition on the basis of their own merit, they will not be counted against the quota reserved for Scheduled Castes and they will be treated as open competition candidates.

13. In the present case, out of the candidates who had applied against the women category, all the candidates who have been short-listed belong to the different reserved categories except the intervener in Writ Petition No. 1925 of 2014. In the interviews conducted, the petitioners were found to be the most meritorious candidates. We are, therefore, of the considered view that the facts in the present case would not be governed

by the law laid down by the Apex Court in the case of *Rajesh Kumar Daria* (supra). We are of the view that if the view of the learned Tribunal is accepted, then it would result in a situation to exist, which is not permissible in view of the law laid down by the Constitution Bench of the Apex Court in the case of *Indra Sawhney* (supra). Merely because all the meritorious candidates in the women category belonged to the reserved categories like OBC, SC and ST, in our view cannot be a ground to deny them the benefit of their meritorious position. We find that if the view as accepted by the learned Tribunal is accepted, it will defeat constitutional mandate as explained in the judgment in the case of *Indra Sawhney* (supra) by the Constitution Bench of the Apex Court. A situation would exist that a male candidate belonging to a reserved category would be entitled to be selected against an open category post if he is entitled on his own merit. However, a female candidate belonging to a reserved category, even though she is much more meritorious than a candidate belonging to open category women, would not be entitled to be selected against the said post. The said situation in effect would result in permitting a discriminatory treatment to the women reserved candidates as against the male reserved candidates. We find that such a situation is not permissible under the Constitutional scheme as interpreted by the Constitution Bench of the Apex Court in the case of *Indra Sawhney* (supra)."

It can be thus seen that the learned Tribunal has rightly found that Respondent No.1 was entitled to be considered from open female category.

6 We see no reason to interfere with the said operative part. However, the learned counsel for the parties agree that what is communicated

on 20/06/2018 is the selection list of the candidates selected by the Petitioner for being appointed as Police Sub Inspector. In so far as clause (A) of the operative part is concerned, we find that there was no occasion to quash and set aside the entire selection process.

7 In that view of the matter, while upholding the operative part clause (B) of the impugned order we quash and set aside Clause (A) of the operative part of the impugned order.

8 Rule is partly made absolute in the aforesaid terms.

9 However before we part with the matter we are at pains that though the MPSC i.e. the Petitioner herein was the party to Writ Petition No.1925 of 2014 with Writ Petition No.1930 of 2014 wherein this Court has clearly held as narrated above that a female candidate belonging to a reserved category, if she is entitled on merit in open category, she is entitled to be treated as open female candidate. The MPSC had also sought a review of the said judgment dated 16/12/2015 in Writ Petition No.1925 of 2014 with Writ Petition No.1930 of 2014, which review application was rejected. The judgment in the said Writ Petitions is dated 16/12/2015 whereas the present select list is issued on 20/06/2018.

10 It is thus clear that the act of the Petitioner – MPSC in publishing the select list contrary to the law laid down by the Division Bench in the said case is contemptuous in nature. Every authority under the jurisdiction of this Court is bound to follow the law as laid down by this Court.

11 In that view of the matter, issue notice to the Secretary, Maharashtra Public Service Commission calling upon him to show cause as to why action should not be taken against the MPSC for disobeying the law as laid down by this Court. Notice is made returnable on 24/01/2019. On the said date, the Secretary of the Petitioner – MPSC to personally remain present in this Court and to show cause as aforesaid. The Registrar (Judicial-1) of this Court is directed to ensure that the notice is served upon the Noticee prior to the returnable date.

[N. J. JAMADAR, J]

[B. R. GAVAI, J]