

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 465 OF 2021

Maharashtra Public Service Commission ...Petitioner

Versus

Sandip Kakasaheb Bhitade and Ors. ...Respondents

WITH

WRIT PETITION NO. 163 OF 2021

WITH

INTERIM APPLICATION NO.1245 OF 2021

Maharashtra Public Service Commission ...Petitioner

Versus

Ganesh Ananda Kiture and Ors. ...Respondents

And

Vaibhav Ashok Dhere and Anr. ...Applicant

Mr.Ashutosh M. Kulkarni with Mr.Gaurav Sharma, for the petitioner in Writ Petition no.173/21 and Writ Petition (st) No.465.

Ms.Madhavi Ayyappan i/b. Talekar and Associates for the respondent No.1 in WP(St) No.465/2021.

Mr.Atul Damle, Senior Advocate i/b. Mr.Chetan Nagare, for the respondent nos.5, 7, 8, 10 and 12 in WP/163/2021.

Ms.R.A.Salunkhe-AGP for State in Writ Petition (St) no.465/21.

Mr.B.V.Samant, AGP for State in Writ Petition no.163 of 2021.

Mr.Vivek Deshmukh, Deputy Secretary present.

Mr.Sagar Bhangade, Law Officer present.

Mr.Devendra Tawde, Under Secretary present.

**CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE :- JUNE 10, 2021.

P.C.:

1. This is a batch of petitions filed by the petitioner-Maharashtra Public Service Commission (for short '**the MPSC**') assailing common judgment and order dated December 10, 2020, passed by the Maharashtra Administrative Tribunal (for short '**the tribunal**'), thereby allowing the original applications filed by the private respondents/candidates.

2. In the proceedings before the tribunal, a controversy had arisen qua a selection process undertaken by the MPSC on a requisition of the Home Department of the Government of Maharashtra namely the Director General of Police, to fill up 750 posts of Police Sub-Inspector, for which an advertisement dated December 7, 2016 was issued. The respondents had participated in the selection process as undertaken by the MPSC. The procedure culminated in the MPSC notifying a final select list of candidates to be recommended, alongwith a wait list. Such

list was published by the MPSC on June 20, 2018. It is not in dispute that the names of the respondents appeared in the waiting list.

3. The waiting list was to subsist and remain in operation for a period of one year from the date of declaration of the result or till the declaration of the result of the subsequent recruitment process for the same post whichever was earlier, as per Rule 10(8) of the Maharashtra Public Service Commission Rules of Procedure (Amendment) 2016. Applying the said rule, the wait list was to lapse on September 19, 2018 on completion of one year also considering that the next examination (2017 examination), to fill up the vacant posts 'Police Sub-Inspector' was held in March 8, 2019.

4. It had so transpired that out of 750 recommended candidates, 57 recommended candidates did not join. Hence, the Home Department/ Director General of Police, made a demand for recommendation of 57 candidates from the wait list by addressing letters dated January 4, 2019 and January 16, 2019 to the MPSC. MPSC however did not act upon these letters to forward such names. Being aggrieved by such non-recommendation, the private respondents/candidates approached the tribunal by filing the original applications in question.

5. The tribunal allowed such original applications of the private respondents/candidates, *interalia* observing that the select list was valid and subsisting on the date a requisition was made by the Home Department, so as to cast an obligation on the MPSC to forward the names of candidates in relation to the 57 vacancies which remained unfilled, on account of non joining of the selected candidates. The tribunal has held that it was not proper for the MPSC to not forward the names of the private respondents/candidates, whose names appeared in the wait list. The tribunal accordingly allowed the application by the passing the following directions:-

“32. Thus in view of above, we allow the Original Applications with following directions:-

(a) We direct the M.P.S.C. to prepare the revised wait/reserved list of the candidates of 2016 PSI examination and consider the names of the applicants in the wait list by following the law laid down by the Hon’ble High Court on the point of reservation within three weeks i.e. on or before 5th January,2021.

(b) The M.P.S.C. is hereby directed to recommend the names of the applicants from the revised wait list, if they are eligible and prepare the list within 10 days thereafter i.e. till 16th January,2021.

(c) We are not inclined to give time further as already the issue remained unsolved for a long time of 3 years.

(d) No order as to costs.”

6. We have heard learned Counsel for the parties for quite some time. In assailing the tribunal’s order, the principal question as

posed by Mr.Kulkarni, learned Counsel for the MPSC is to the effect as to whether, any sanctity could be attributed to the select list in view of the observations as made by the Division Bench of this Court in its order passed on Writ Petition No.92 of 2019 (MPSC Vs. Rohini Subhash Sonwalkar). Mr.Kulkarni however would fairly concede that by the said order of the Division Bench the select list in no manner was set aside and that the observations as made by the Division Bench were required to be read in the context of the case of the respondent therein namely Ms.Rohini Subhash Sonwalkar who was claiming benefit of a horizontal reservation.

7. The hearing of these petitions had spilled over to the afternoon session, when on the backdrop of the earlier deliberation, Mr.Kulkarni has taken instructions from Mr.Vivek Deshmukh, Deputy Secretary, Mr.Sagar Bhangade, Law Officer and Mr.Devendra Tawde, Under Secretary, who are present in the Court, to make a statement that the MPSC having considered its position, would comply with the directions of the tribunal as contained in the impugned order. We accept this statement of Mr.Kulkarni. In view of such statement of Mr.Kulkarni, these petitions would not warrant any further adjudication.

8. We however, clarify that in the event there are any issues in regard to any further vacancy arising under the selection in question, it will be open to the State Government as also the MPSC to take appropriate decision on such issues in accordance with law. We also clarify that if there are any pending proceedings before the tribunal, arising under the selection process in question, such proceedings be decided by the tribunal on merits of each of such individual cases.

9. The petitions stand disposed of in the above terms. No costs.

10. As petitions are disposed of, pending Interim Application no.1245 of 2021 in Writ Petition no.163 of 2021 does not survive. It is accordingly disposed of.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)