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

WRIT PETITION NO. 571 OF 2022

Somnath Jotiram Chavan & ors. ..Petitioners

VS.

The State of Maharashtra & anr. ..Respondents

Mr. Sandeep Dere a/w. Ms. Pooja Kankoji for petitioners.
Mr. B. V. Samant, AGP for respondent nos. 1 and 2.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE : JANUARY 24, 2022.

P.C. :

1. Maharashtra Public Service Commission (hereafter 'the Commission' for short) has initiated a process of selection for recruitment on vacant posts of Police Sub-Inspector vide advertisement dated February 28, 2020. The petitioners (86 in number) had the occasion to participate in a preliminary examination that was conducted on September 4, 2021 for screening of candidates who would be eligible to participate in a further examination. The result of the preliminary examination has been declared on December 3, 2021. The petitioners did not figure in the list of successful candidates and hence are not eligible to participate in the further examination, which is now scheduled on January 29, 2022.

2. Aggrieved by the result of the preliminary examination, these petitioners along with 2 (two) others had approached the Maharashtra Administrative Tribunal, Mumbai Bench (hereafter 'the Tribunal' for short) on December 23, 2021 by instituting an original application (Original Application No. 1056 of 2021). By an order dated December 24, 2021, the Tribunal declined the prayer for interim relief. The order dated December 24, 2021 is the subject matter of challenge in this writ petition dated December 27, 2021.

3. The reason why the petitioners approached the Tribunal and sought for interim relief to allow them to participate in the examination scheduled on January 29, 2022 is that the Commission had deleted 3 (three) questions, viz. 17, 27 and 90, of the question paper booklet on the ground that the key answers were incorrect. The petitioners claim that they had correctly answered such questions but were deprived of marks therefor, in view of their deletion by the Commission. The Tribunal by referring to Rule 18 of the Rules of Procedure, 2014 of the Commission observed that the power thereunder had not been exercised arbitrarily and, therefore, there was no immediate warrant for the Tribunal to interdict the process of selection and grant the petitioners interim relief. The view taken by the Tribunal in the interim order dated December 24, 2021 is a plausible view; and it is well settled that if two views are possible in a given set of facts and

circumstances and the Tribunal chooses to adopt one such view, which is not absurd or irrational, the High Court in exercise of its writ jurisdiction would not substitute its view for the view taken by the Tribunal.

4. Having regard to the reason assigned by the Tribunal, we were inclined not to interfere. However, what impels us to grant interim relief in favour of the petitioners is that although the Tribunal had fixed January 21, 2022 as the next date for consideration of the original application and the respondents in the original application were directed to file reply affidavits within such date, we are informed by Mr. Dere, learned advocate appearing for the petitioners that reply affidavits were not filed and today, on the request of the advocate appearing for the Commission, the Tribunal has granted further 4 (four) weeks' time to file a reply affidavit. If indeed the Commission was diligent and filed the reply affidavit by the time stipulated by the order dated December 24, 2021, we would not be unreasonable in assuming that the original application could have been finally decided prior to January 29, 2022. However, it is the lack of diligence of the Commission that has resulted in the Tribunal adjourning the proceedings till February 22, 2022 by which time further examination scheduled on January 29, 2022 would be conducted. If the petitioners are not allowed to participate in such examination but ultimately, they succeed in the original application, the situation would certainly become complicated thereby putting the process of

selection in utter chaos. It is because of the omission and/or failure on the part of the Commission to file the reply affidavit before the Tribunal in terms of the order dated December 24, 2021 that we direct the Commission to make appropriate arrangements to facilitate participation of the petitioners in the examination that is scheduled to be conducted on January 29, 2022.

5. We make it clear that such participation would be without prejudice to the rights and contentions of the Commission as well as the State and that the same shall be provisional, and without creating any right or equity in favour of the petitioners at the time the Tribunal takes up the original application for final hearing.

6. We also make it clear that till such time further orders are passed by the Tribunal, the results of the petitioners in respect of the examination scheduled to be conducted on January 29, 2022 shall not be published.

7. At this stage, Mr. Samant, learned AGP for the Commission as well as the State, on instructions, submits that the Commission has made all arrangements for conducting the examination on January 29, 2022 with all the successful candidates of the preliminary examination and that making arrangements for these petitioners may not be possible within such short time.

8. We have bestowed due consideration to such submission and have no reason to uphold the same. We are

of the view that the harm and injury that could ensue to the petitioners if the original application succeeds would far outweigh the harm and injury that the Commission is likely to suffer, should this order be implemented. Having not filed the reply affidavit on time, the Commission has to be blamed for the situation in which it finds itself now and, therefore, irrespective of the arrangements being made for other candidates, necessary arrangements have to be made for these petitioners too.

9. With these directions, this writ petition is disposed of. No costs.

10. We request the Tribunal to consider the original application finally on the next date fixed. If the Commission and/or the State fail(s) to file their reply affidavit by that date, no further extension of time may be granted to it/them so as to facilitate early completion of the process of recruitment.

11. All contentions on merits are kept open. The Tribunal will proceed to decide the original application on its own merits, without being influenced by any observation in this order.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)