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

WRIT PETITION NO. 5530 OF 2021

The Secretary,
Maharashtra Public Service
Commission

.. Petitioner

Vs.

Mahesh Arjun Kute & Anr.

.. Respondents

Ms. Manisha Jagtap i/by J. Shekhar & Co. for petitioner.
Mr. Dinesh B. Khaire a/w Ms. Purva Pradhan and Mr. Abhijeet
Pawar for respondent no.1.
Mrs. R. A. Salunkhe, AGP for respondent no.2-State.

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

DATE: MARCH 16, 2022

PC:

1. The Secretary, Maharashtra Public Service Commission (hereafter "the Commission", for short) has impugned in this writ petition the judgment and order dated July 20, 2021 of the Maharashtra Administrative Tribunal, Mumbai (hereafter "the Tribunal", for short) while allowing Original Application No. 294 of 2020, instituted by the respondent no.1.

2. The operative part of the order of the Tribunal reads thus:

"12. In view of the above we pass the following order: -

(a) The Home Department should send requisition to M.P.S.C. within a period of three weeks.

- (b) M.P.S.C. should recommend the names of the candidates from the waiting list from OBC Sports category and if as per merits, the applicant is eligible, his name should also be considered, within a period of three weeks thereafter.
- (c) The entire process should be completed within a period of 45 days from the date of this order.”

3. Before examining the validity of the impugned judgment and order it would be appropriate to notice the relevant facts giving rise to the original application before the Tribunal, out of which this writ petition arises.

4. The Commission had issued an advertisement on May 13, 2018 inviting applications from eligible candidates for appointment on vacant posts of Police Sub Inspector in the Maharashtra Police Force. It is not in dispute that the respondent no.1 belongs to the OBC category and is also a sportsman and that he was eligible to be considered in the category of OBC-Sports quota. Incidentally, 4 (four) vacancies were earmarked for such quota. The respondent no.1, having obtained 162 marks, did figure in the merit-list published by the Commission on March 17, 2020 for filling up such quota but was unfortunately at the 5th position. Thus, effectively, he was the first wait-listed candidate.

5. Even before publication of such merit list on March 17, 2020, Mr. Anil N. Sawale, a candidate who had obtained 182 marks and figured in the merit-list, intimated to the Commission as well as the respondent no.2, the Director General of Police, Maharashtra, that he had secured appointment as Police Sub Inspector pursuant to a prior

process of selection and that he was no longer interested in continuing with his candidature pursuant to the advertisement dated May 13, 2018. He requested that his candidature may be allowed to be withdrawn. The Commission received such intimation from Mr. Sawale on February 24, 2020, yet, proceeded to include him in the merit-list. Mr. Sawale's intimation was not given any consideration by the Commission, allegedly, on the strength of instructions issued by it to the participating candidates that in course of selection process, no inquiry/correspondence from any candidate would be entertained regarding the result of any examination.

6. Notably, despite publication of the merit-list on March 17, 2020, the Commission communicated its recommendation on July 14, 2020, i.e., nearly 4 (four) months later. Obviously, this delay could be attributed to the national lockdown announced from March 24, 2020. Also, due to the pandemic arising out of Covid-19, the candidates who figured in the merit-list prepared by the Commission on March 17, 2020 were allowed to join the training programme more than a year later, June 24, 2021 to be precise. Immediately thereafter, the Director General of Police sent a requisition to the Home Department requesting for calling of further names from the Commission because of non-joining of candidates who figured in the merit-list. The Commission refused to recommend the name of the respondent no.1 and other wait-listed candidates on the ground that the Home Department's requisition had reached it beyond a year of publication of the merit-list. Since the respondent no.1 found that his name had not been

recommended by the Commission despite request of the Home Department, he instituted the original application before the Tribunal whereon the judgment and order under challenge was rendered.

7. Bare reading of the impugned judgment and order reveals the Tribunal forming an opinion that the delay on the part of the Home Department should not be a reason for a deserving candidate belonging to sports category and particularly from the OBC category to be denied an appointment. Since it was the policy of the Government to encourage deserving candidates belonging to the reserved category, to which the respondent no.1 belongs, it would be just and proper if he were not made to suffer for the delay of the Home Department in communicating its request to the Commission within 30 days.

8. We have heard Ms. Jagtap, learned advocate appearing for the petitioner/Commission and Mr. Khaire, learned advocate appearing for the respondent no.1.

9. It is not in dispute that prior to publication of the merit-list on March 17, 2020, Mr. Sawale had withdrawn his candidature. If indeed his candidature had been cancelled by the Commission at the first instance, the respondent no.1 being the next in the merit-list/first waitlisted candidate would have figured within the first four candidates in such merit-list. That the Commission follows a particular procedure of not entertaining inquiry/correspondence in the course of selection process may not *per se* be unjustified; however, such instructions are confined to inquiry/correspondence about the

result of any examination. The same cannot be read in a manner so as to deny the rightful claim of a candidate who could have been recommended for appointment, if only the Commission had exercised due diligence at its end. This would have been possible if the Commission had initiated efforts to verify from the office of the Director General of Police the authenticity of the request made by Mr. Sawale.

10. Be that as it may, since the Commission itself took more than 4 (four) months to communicate its recommendation to the Home Department because of the national lock down that was enforced on and from March 24, 2020, there is no reason as to why belated sending of requisition by the Home Department, because of the same reason, should be faulted and a recommendation denied to the respondent no.1 despite his position as noted above.

11. Keeping in view the above facts and circumstances, two views are indeed possible and the view taken by the Tribunal does not appear to us to be an absurd view or grossly wrong on the face of any statutory rules by which the Commission feels itself to be bound. The respondent no.1 is a reserved category candidate and in terms of our constitutional scheme, reserved category candidates are entitled to preferential treatment. Here, the respondent no.1 is not seeking any such treatment. He claimed enforcement of his right based on his position in the merit-list. As such, appointment ought not to be denied when the respondent no.1 is not at fault. Law is well settled that it is not for the writ court to substitute its view for the view taken by the Tribunal, particularly when it is

a plausible view. Therefore, substituting the view taken by the Tribunal in the given facts and circumstances would not at all be justified.

12. We, therefore, dismiss the writ petition. No costs.

13. It is made clear that this order would be confined only to the respondent no.1 who had approached the Tribunal within time and not to any other wait-listed candidate.

14. The Commission is directed to forward the name of the respondent no.1 to the Home Department as well as the Director General of Police within a month from date, whereafter the respondent no.1 may be offered appointment and allowed to join the training programme by a month thereafter.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

PRAVIN
DASHARATH
PANDIT

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