

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO.1777 OF 2023

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Versus

The State of Maharashtra,
Through the Collector, Aurangabad. ... Respondent

...
Mr. Ajay S. Deshpande, Advocate for Petitioners.
Mr. S. G. Sangle, AGP for Respondent/State.
...

**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 15th FEBRUARY, 2023.**

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.):

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. By this petition, the petitioners have put forth prayer clauses A, B, C, and D, as under:-

“(A) *This Writ Petition may kindly be allowed, by suitably modifying the interim order passed by the Administrative Tribunal on 9.1.2023 at Exh ‘E’.*

- (B) *The Respondent may kindly be directed to consider the candidature of the petitioners for absorption to Group D posts, in the ensuing selection process of Verification of Documents being now taken up on 15th February 2023, under the directions of the Administrative Tribunal, especially because the said selection process has already been delayed and there was no selection process taken up for last more than 9 years, rendering the petitioners age-barred.*
- (C) *The Govt. Resolution dated 17.12.2021 at Exh. 'D' may kindly be suitably read-down by this Hon'ble Court, in order to remove inherent absurdity crept in, and all petitioners herein may kindly be declared to be eligible and entitled for age-relaxation in terms thereof uniformly, regardless of dates on which they became age-barred, so as to avoid an anomalous situation of junior becoming age-barred and senior is considered within age-limit.*
- (D) *Pending hearing and final disposal of Original Application filed by the petitioners herein, before the Administrative Tribunal, the respondent may kindly be directed to consider the candidature of all the petitioners herein, for the selection for Group 'D' posts, for which the selection process by way of Document Verification is now ordered to be scheduled on 15th February 2023, by the Administrative Tribunal, without considering them to be age-barred, in terms of G.R. dated 17.12.2021, if they are otherwise eligible and entitled to for absorption in Group 'D' posts."*

3. We have considered the strenuous submissions of the learned advocate for the petitioners and the learned A.G.P. on behalf of the sole respondent. With their assistance, we have gone through the petition paper book and the record available.

4. The petitioners submit that they are working as Kotwals on a

fixed honorarium, without attributes of the Civil Posts under the "State". They have been provided an avenue to enter upon the lowest post in the State which is termed as a Group-D (class IV) post and are eligible for absorption in the service of the "State". The Rules were accordingly framed vide the Government Resolution dated 07.05.1959, which regulates the recruitment, appointment and other service conditions of the Kotwals. These Kotwals have taken up the assignments in the said capacity on honorarium since 2008-2009 onwards and one of them (amongst the petitioners), has joined in 2015. Each one of them has, thus, completed more than five years as a Kotwal. This tenure has a close nexus with the claims of the Kotwals in this proceeding.

5. It is further canvassed that the duties and the obligations of such Kotwals are predominantly to assist the Talathis for enabling them to perform their duties effectively and to assist the Government Officers during their tours, to render the assistance to the Police Patil while effecting the service of summons, notice etc. The earlier honorarium of Rs.2000/- p.m. paid to these Kotwals, was subsequently increased to Rs.15,000/-. It is canvassed that the Kotwals are practically on duty 24x7 and they perform arduous tasks. They are not considered eligible and entitled to get any pay scale or Time Scale Promotion Scheme or even for pension or pensionary benefits. They do not have any other promotional avenue/prospect, save and except, their absorption as Group D employees. All Group

D employees in the "State" are within the supervision and control of the respective District Magistrates of the concerned Districts. The petitioners are working under the respondent District Collector, Aurangabad. This petition is with regards to the Kotwals from the Aurangabad district.

6. These petitioners have approached the learned Maharashtra Administrative Tribunal in Original Application No. 132 of 2023. They contended that they are eligible for being considered for the post of Group D (Class IV) in the light of the Government Resolution dated 7.5.1959. For the purposes of scrutinizing the candidature of all these Kotwals, who were approximately 162 as in June, 2022, a seniority list was published on 2.6.2022. It is canvassed that these Kotwals have to be interviewed, followed by verification of the documents, by the office of the District Collector. Since this is practically an in house mechanism, it is only the Kotwals who are to be considered for the appointment in the Class IV category. It is undisputed that an advertisement is not to be published and the applications from the public at large are not to be invited, in so far as the appointments of these Kotwals in the group D is concerned. Hence, the seniority list is published indicating which Kotwal would be eligible for being considered to the post of the peons.

7. There were 162 Kotwals, out of which, 146 were held to be eligible vide the seniority list/communication dated 2.6.2022. 16

Kotwals were held to be age barred as they had crossed the age limit of 45 years, to be considered for appointed as peons. Out of these 16 Kotwals, 11 approached the learned Maharashtra Administrative Tribunal by preferring the above referred Original Application.

8. The impugned order before us is dated 9.2.2023, passed by the learned Division Bench of the Tribunal. It had relied upon the Government Resolution 17.12.2021 (hereinafter referred to as the GR), by which, the impact and ill-effects of the COVID-19 pandemic resulting in postponement of recruitments, were to be neutralised by the State Government. Owing to the pandemic and the National lock down, the entire World had come to a standstill. Naturally, there was no recruitment process initiated by any department, practically in the entire Nation. Consequentially, the academic curriculum of the schools and colleges got postponed. The elections to various bodies got postponed and hence, the promotions, appointments, recruitment etc. in various departments, were also deferred.

9. Keeping these peculiar and fortuitous circumstances in view, the State of Maharashtra had introduced the said G R, which prescribed as under:-

“१) कोरोनाच्या पार्श्वभूमीवर शासकीय सेवेत सरळसेवेने नियुक्ती संदर्भात दि. १ मार्च २०२० पासून जाहिराती प्रसिध्द न झाल्यामुळे, शासनाने संबंधित पदाच्या सेवाप्रवेश नियमाद्वारे किंवा संदर्भाधीन दि. २५.०४.२०१६ च्या शासन

निर्णयाद्वारे नियुक्तीकरिता विहित केलेली कमाल वयोमर्यादा, दि. ०१ मार्च, २०२० ते या शासन निर्णयाच्या दिनांकापर्यंतच्या कालावधीत, ज्या उमेदवारांनी ओलांडली आहे, अशा उमेदवारांना या शासन निर्णयाच्या दिनांकापासून दि. ३१ डिसेंबर २०२२ पर्यंत, शासकीय सेवेत सरळसेवेने नियुक्ती संदर्भात ज्या जाहिराती प्रसिध्द होतील, त्या जाहिरातीसाठी “एक वेळची विशेष बाब” म्हणून परीक्षेस बसण्याची संधी देण्यात येत आहे.”

We are referring to the above clause of the said G R since clauses 2 and 3 set out therein, may not have any nexus with the cause of action before us.

10. The Tribunal, while passing the impugned order, has concluded in paragraphs 8 to 11, as under:-

“8. After having considered the pleadings on record and submissions advanced on behalf of both the sides, we are of the opinion that the relevant G.R. dated 19.07.2001 specifies the upper age limit of 45 years for consideration of Kotwals for new appointment to the post of Group-D (Class-IV) Government servant. In view of that it would be just and proper to refer to the G.R. dated 17.12.2021, issued by the General Administration Department, State of Maharashtra for giving relaxation to those candidates, who have become age barred during the period of 01.03.2020 till the date of issuance of G.R. dated 17.12.2021 for the recruitment up to 31.12.2022.

9. Learned C.P.O. submitted that this G.R. dated 17.12.2021 is applicable only to the new appointments through nomination and not to the promotional post. For

that purpose he invited our attention to the impugned letter dated 06.02.2023 (Annexure A-3), whereby it is mentioned that this is a process of absorption by promotion and also relied upon the G.R. dated 06.02.2019, whereby it is mentioned that the post of Group-D cadre from amongst Kotwals is promotional post. However in terms of Clause (3) thereof the appointment to the post of Group-D cadre amongst Kotwal is referred as new appointment to the post of Group-D without extending the benefits of past services. For ready reference the said cause No. 3 of the G.R. dated 19.07.2001 is reproduced hereunder :-

“३) गट-ड मधील नियुक्ती ही नवीन नियुक्ती समजण्यात यावी व कोतवाल हे पद अवगाकृत असल्याने या पदावरील सेवेचा, विचार कोणत्याही कारणास्तव वर्ग-४ या पदावरील सेवेचे फायदे देताना करण्यात येऊ नये.”

10. In view of the same, in our considered opinion, *prima-facie*, it appears that this is a recruitment i.e. new appointment by nomination only. Hence, in our considered opinion, the eligible applicants are entitled to claim benefit of age relaxation as per the G.R. dated 17.12.2021.

11. Upon perusal of the facts, we find that the applicants, who are age barred during the period of 01.03.2020 till issuance of the G.R. dated 17.12.2021 only will be eligible and entitled for participation into further process of recruitment of Group-D category posts. In view the same, interim relief is granted to the extent of directing the respondents to identify the applicants in this Original Application, who have age barred during the period from 01.03.2020 to 17.12.2021 and allow them in the selection process of Group-D cadre post as per the impugned letter

dated 06.02.2023 (Annexure A-3) by specifying any suitable date on or before 15.02.2023. This relief is granted subject to outcome of this O.A. The record about documents verification may be kept in sealed cover in respect of the present applicants, which is not to be opened without permission of this Tribunal. The said benefit may be granted to the similarly situated candidates, who are not before this Tribunal.”

11. We have perused the Government Circular issued by the Revenue and Forest Department, dated 19.07.2021, which clearly indicates that the Kotwals, who are to be considered for appointment as peons in class IV/Group D category, would be inducted as fresh appointees and their earlier services as Kotwal would be of no advantage, in so far as the service benefits that would be available to them, after entering in Group D service. In the light of the same, we are of the view that these Kotwals have earned a right to be considered for being appointed as peons in Group D category only because of the length of their engagement as Kotwals, minimum of which is 5 years. Any of them who has completed five years in the said capacity and who is not beyond 45 years of age, would be eligible for the post of peon.

12. The issue that was brought before the learned Tribunal and before us is as to the effect of the said G R dated 17.12.2021 for relaxation of age with reference to those Kotwals, who have been rendered age barred on account of completing 45 years during the

Covid pandemic. The contention of the Petitioners is that out of the 16 age barred Kotwals, 11 have approached the learned Tribunal. Considering the effect of the said G R dated 17.12.2021, the interim order of the Tribunal rendered 6 applicants eligible. Five were not held to be eligible.

13. Shri Deshpande, the learned advocate highlights a peculiar circumstance by contending that those Kotwals, who were seniors to the present petitioners by age and had turned 45 years during the pandemic, were given the benefits of the said G R. The present petitioners were not age barred during the pandemic. However, as a result of the National Lockdown followed by the second and the third waves of the pandemic in 2021 and 2022, the recruitment process was not even initiated, much less, completed prior to 2022. It is during this period from the lifting of the National Lockdown restrictions till the publication of the seniority list/communication dated 02.06.2022, declaring 146 Kotwals eligible, that these petitioners became age barred. As such, ironically, those Kotwals who became age barred prior to the petitioners, are to be considered for group D posts of Peons and those who were not age barred during the pandemic National Lockdown, are excluded by the said Government Resolution, because they became age barred in between the lifting of the National Lockdown restrictions till the introduction of the said G R dated 17.12.2021.

14. We find from the reproduced portion of the said G R dated 17.12.2021, that it does not run counter to the contents of the circular dated 19.07.2021. Moreover, it provides that those Kotwals who became 45 plus in between 1.3.2020 till 17.12.2021, would be considered as eligible until 31.12.2022, as a special case. The question that, therefore, arises, as to what would be the fate of those Kotwals who became age barred after 17.12.2021 until 31.12.2022, which is the cut-off date for extending the age relaxation. The anomaly is that those who became age barred on or prior to 17.12.2021, were given an opportunity until 31.12.2022 and those who became age barred in between 17.12.2021 and 31.12.2022, due to the deferring of recruitment process on account of the Covid pandemic, are left high and dry.

15. While considering whether these Kotwals are also eligible to be considered for relaxation, we rely upon the circular dated 24.2.1983, issued by the Revenue and Forest department pertaining to *"Consolidated Order in Respect of Establishment Matters Pertaining to Kotwals"*, which was not brought to the notice of the Tribunal. This circular pertains to the 'Rules for Recruitment And Employment of Kotwals', their duties and number of Kotwals to be recruited, with the facilities and concessions available to them. We find the relevant provision on internal page 4 of the said circular, under the title "Other Concessions and Facilities", as under:-

"i) preference for appointment as Attendant or Peon.

A person who has officiated as a Kotwal for a period of five years or more shall be given preference by the Sub-Divisional Officer for appointment as an attendant or a Peon in any of the revenue offices under his control and the Sub Divisional officer shall be authorised to relax the prescribed upper age limit in the case of such person to the extent of his service as a Kotwal.- Vide Rule 22 of the Rules for the recruitment and employment of Kotwals.”

No further circular or notification issued by the Government nullifying the above provision, has been brought to our notice.

16. It is thus obvious that the Kotwal who is officiating in such capacity for a period of 5 years or more, is to be given preference by the Sub Divisional Officer for appointment as an attendant or a peon in any Revenue Office under his control and the Sub Divisional Officer shall be authorized to relax the prescribed upper age limit in the case of such person to the extent of his service tenure as a Kotwal. In view of this specific provision, the case of the petitioners is advanced and they need to be held eligible for being considered for the appointment in the group D category as peons or attendants.

17. Considering the above, it is obvious that the said G R dated 17.12.2021, has catered to a laudable object of granting benefit to those Kotwals, who, under fortuitous circumstances owing to the Covid pandemic, could not avail of the legitimate benefit of being

considered for appointment as Group D employees. However, the pitfall is that the recruitment process for considering these Kotwals for appointment in the said category, was not set in motion in view of the second and the third waves of the Covid pandemic, thereby, rendering few more Kotwals age barred.

18. The intent and object of the said G R was to safeguard the interest of these Kotwals. However, it appears that the State Government lost sight of the fact that some Kotwals would become age barred after the cut off date i.e. 17.12.2021 till 31.12.2022. Had this aspect been perceived, the State Government would surely have included even this period within the ambit of the said G R as it's intent and object was to protect those Kotwals, who would be rendered age barred in these three waves of Covid 19. In our view, this would be a good ground for reading down the said G R dated 17.12.2021 so as to render benefits to those Kotwals who legitimately deserve such protection.

19. In view of the above, on the one hand, we conclude that the said G R dated 17.12.2021 has a laudable object and on the other hand, reading down the Government Resolution suitably would render the same benefits to the identically placed Kotwals. In ***Indra Sawhney and others vs. Union of India and others, 1992 Supp. (3) SCC 217***, the nine members Bench of the Honourable Supreme Court concluded in paragraph 553(2) as under :-

“553.

1.

2. Clause 2(i) of the second order dated September 25, 1991 is valid only if it is read down as under:-

- (a) *No distinction can be made in the backward classes as poor and poorer sections thereof. The distinction can be made only between the advanced and the backward sections of the backward classes. The advanced sections are those who have acquired the capacity to compete with the forward classes. Such advanced sections no longer belong to the backward classes and as such are disentitled to the reservations under Article 16(4). The reservations can be made only for the benefit of the backward or the non-advanced sections of the backward classes.*
- (b) *When backward classes are classified into backward and more or most backward classes as stated above on the basis of the degrees of social backwardness (and not on the basis of the economic criterion alone), exclusive quotas of reservations, will have to be kept separately for the backward and the more or most backward classes. It will be impermissible to keep a common quota of reservation for all the backward classes together and make available posts for the backward classes only if they are left over after satisfying the requirements of the more or more backward classes. That may virtually amount to a total denial of the posts from the reserved quota to the*

backward classes.

- (c) *Clause 2(i) of the order dated September 25, 1991 is, therefore, invalid, unless it is read, interpreted and implemented as above."*

20. In paragraph 843 and 844, in **Indra Sawhney** (supra), for expanding the scope of benefits within the meaning and context of the office memorandum dated 25.09.1991, the Honourable Supreme Court, concluded as under:-

"843. But the question now is whether clause (i) of the Office Memorandum dated September 25, 1991 is sustainable in law. The said clause provides for preference in favour of "poorer sections" of the backward classes over other members of the backward classes. On first impression, it may appear that backward classes are classified into two sub-groups on the basis of economic criteria alone and a preference provided in favour of the poorer sections of the backward classes. In our considered opinion, however, such an interpretation would not be consistent with context in which the said expression is used and the spirit underlying the clause nor would it further the objective it seeks to achieve. The object of the clause is to provide a preference in favour of more backward among the "socially and educationally backward classes". In other words, the expression 'poorer sections' was meant to refer to those who are socially and economically more backward. The use of the word 'poorer', in the context, is meant only as a measure of social backwardness. (Of course, the Government is yet to notify which classes among the designated backward classes are more socially backward, i.e., 'poorer sections'). Understood in this sense, the said classification is not and cannot be termed

as invalid either constitutionally speaking or in law. The next question that arises is : what is the meaning and context of the expression 'preference'? Having regard to the fact the backward classes are sought to be divided into two sub-categories, viz., backward and more backward, the expression 'preference' must be read down to mean an equitable apportionment of the vacancies reserved (for backward classes) among them. The object evidently could not have been to deprive the 'backward' altogether from benefit of reservation, which could be the result if word 'preference' is read literally — if the 'more backward' take away all the available vacancies/posts reserved for OBCs, none would remain for 'backward' among the OBCs. It is for this reason that we are inclined to read down the expression to mean an equitable apportionment. This, in our opinion, is the proper and reasonable way of understanding the expression 'preference' in the context in which it occurs. By giving the above interpretation, we would be effectuating the underlying purpose and the true intention behind the clause.

844. *In shall be open to the Government to notify which classes among the several designated other backward classes are more backward for the purposes of this clause and the apportionment of reserved vacancies/posts among 'backward' and "more backward". On such notification, the clause will become operational."*

21. In the case in hand, we find that the object behind the classification made by the State Government for protecting the Kotwals from losing the employment opportunities as Peons, would be further promoted if we read down the said G R, to cause an equitable apportionment of the chances, of being appointed as Peons, to those who are identically placed. It would result in

effectuating the underlined purpose and true intention behind the said G R. We are of the view that the object behind introducing the said G R. evidently was not to deprive similarly situated Kotwals from the opportunity of being appointed as Peons.

22. In ***Bennett Coleman & Co. vs. Union of India, (1972) 2 SCC 788***, the Honourable Supreme Court concluded that the crucial question was as regards Article 14, as to whether, the command implicit in it constitutes merely a bar on the creation of inequalities by the State or a command as well, to eliminate inequalities existing without any contribution thereto by the State action. It has been said that 'justice is the effort of a man to mitigate the inequality of men'. The whole drive of the directive principles of the Constitution is toward this goal and it is in consonance with the new concept of equality.

23. Dealing with the question whether, the court could grant any relief by enlarging the ambit of the scheme, the Honourable Supreme Court held in paragraphs 84 to 90 in ***Secretary, Mahatma Gandhi Mission and another vs. Bhartiya Kamgar Sena and others, (2017) 4 SCC 449***, as under:-

"84. In a similar situation, a Constitution Bench of this Court has in D.S. Nakara & Others v. Union of India (1983) 1 SCC 305 adopted a more innovative procedure of directing the State to fill up the lacuna by extending the benefit uniformly to all the people

who are otherwise similarly situated.

85. *The facts of D.S. Nakara's case are:*

"5. On May 25, 1979, Government of India, Ministry of Finance, issued Office Memorandum No. F-19(3)-EV-79 whereby the formula for computation of pension was liberalized but made it applicable to government servants who were in service on March 31, 1979 and retire from service on or after that date ('specified date', for short) ...

6. ... Consequently those who retired prior to the specified date would not be entitled to the benefits of the liberalized pension formula."

This Court made an elaborate examination of the concept of pension and its legal implications; the obligations of State under the Constitution of India flowing from the directive principles and a host of other factors. The Court recorded a conclusion.

"43. Further the classification is wholly arbitrary because we do not find a single acceptable or persuasive reason for this division. This arbitrary action violated the guarantee of Article 14. The next question is what is the way out?"

86. *The Court was then confronted with a question whether the court could grant any relief by enlarging the ambit of the scheme. Incidentally this Court had to deal with a submission that such a course of action was unprecedented:*

"40. ... Alternatively, it was also contended that where a larger class comprising two smaller classes is covered by a legislation of which one part is constitutional, the court examines whether the legislation must be invalidated as a whole or only in respect of the unconstitutional part. It was also said that severance always cuts down the scope of legislation but can never enlarge it and in the present case the scheme as it stands would not cover pensioners such as the petitioners and if by severance an attempt is

made to include them in the scheme it is not cutting down the class or the scope but enlarge the ambit of the scheme which is impermissible even under the doctrine of severability. In this context it was lastly submitted that there is not a single case in India or elsewhere where the court has included some category within the scope of provisions of a law to maintain its constitutionality.”

(emphasis supplied)

This court rejected the submission based on the lack of precedent, holding:

“41. The last submission, the absence of precedent need not deter us for a moment. Every new norm of socio-economic justice, every new measure of social justice commenced for the first time at some point of history. If at that time it is rejected as being without a precedent, the law as an instrument of social engineering would have long since been dead and no tears would have been shed. To be pragmatic is not to be unconstitutional. In its onward march law as an institution ushers in socio-economic justice. In fact, social security in old age commended itself in earlier stages as a moral concept but in course of time it acquired legal connotation. The rules of natural justice owed their origin to ethical and moral code. Is there any doubt that they have become the integral and inseparable parts of rule of law of which any civilised society is proud? Can anyone be bold enough to assert that ethics and morality are outside the field of legal formulations? Socio-economic justice stems from the concept of social morality coupled with abhorrence for economic exploitation. And the advancing society converts in course of time moral or ethical code into enforceable legal formulations. Overemphasis on precedent furnishes an insurmountable road-block to the onward march towards promised millennium. An overdose of precedents is the bane of our system which is slowly

getting stagnant, stratified and atrophied. Therefore, absence of a precedent on this point need not deter us at all. We are all the more happy for the chance of scribbling on a clean slate.”

and the Court finally concluded as follows:

“65. That is the end of the journey. With the expanding horizons of socio- economic justice, the Socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criterion: “being in service and retiring subsequent to the specified date” for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of “being in service on the specified date and retiring subsequent to that date” in impugned memoranda, Exs. P-1 & P-2, violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down. ... Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible. Let a writ to that effect be

issued. But in the circumstances of the case, there will be no order as to costs."

87. When Justice Mathew declared that Article 14 interdicts the State from creating inequalities, he was stressing the obvious. Further, he articulated the remedial measures the State has been enjoined to take recourse to: eliminate the existing inequalities through positive- affirmative-action, rather than passive neutrality.

88. What is the remedy open to the citizen and the corresponding obligation of the judiciary to deal with such a situation, where the inequalities are created either by the legislation or executive action ? Traditionally, this Court and the High Courts have been declaring any law, which created inequalities to be unconstitutional, but in Nakara's case this Court realised that such a course of action would not meet with the obligations emanating from a combined reading of the directive principles and Article 14. Therefore, this Court emphatically laid down in Nakara's case that it is possible to give an appropriate inductive relief by eliminating the factors, which creates the artificial classification leading to a discriminatory application of law.

89. Though this Court is not bound by the law declared by the municipal courts of other countries, this court in the last 70 years always examined with due regard decisions of the American Supreme Court on questions of constitutional law. In a comparable situation, American courts did exercise jurisdiction by granting appropriate injunctive orders compelling the State to comply with the constitutional mandate by ignoring the legislative command and extending the benefit provided under a legislation to a certain class of people who were expressly excluded from receiving that benefit provided by the legislation.

90. Notwithstanding the wholly unsatisfactory reasoning adopted by the High Court for allowing the claims of the writ petitioners, (the respondents herein), we are convinced

that the conclusion of the High Court could be justified on basis of the principle enunciated in D.S. Nakara's case."

(Emphasis supplied)

24. In view of the above, while upholding clause 1 of the said Government Resolution dated 17.12.2021, we would read down the same in a manner so as to ensure that the aforesaid measure would sub-serve the purpose for which the said Government Resolution was introduced.

25. In fact, the said G R ought to have considered the fact that the reason for which some of the Kotwals became age barred, was equally applicable to these petitioners and similarly situated Kotwals. We, therefore, conclude that this is an appropriate case for reading down the said Government Resolution dated 17.12.2021. The benefit of the said G R, which covers the recruitment process that was initiated by the communication dated 02.6.2022, deserves to be extended even to these petitioners. Hence, the State Government is at liberty to suitably add/modify clause 1 of the said Government Resolution, dated 17.12.2021.

26. In view of the above, this petition is allowed. The order of the Tribunal stands modified in the above terms. We direct that the petitioners shall be considered for absorption/recruitment in Group D category posts in the ensuing selection process including verification

of documents, which has began on 15.02.2023, pursuant to the commencement of recruitment process vide communication dated 02.06.2022. Consequentially, since the Tribunal has extended the date for considering the candidatures of six of the original applicants, by granting time up to 15.02.2023, we direct that the said exercise of scrutiny of the documents of the age barred Kotwals shall be conducted and completed by 3.00 p.m. on 17.02.2023. Rule is made absolute accordingly.

27. Since this order is dictated in the open Court, the parties to this litigation need not wait for the copy of the order to be uploaded on the official website of the Bombay High Court and they shall act in accordance with the directions given in this Judgment which has been dictated in the open Court.

28. The learned advocate for the petitioners submits, on instructions, that in view of this judgment, the petitioners would withdraw the Original Application No. 132 of 2023 which is pending before the Maharashtra Administrative Tribunal.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

rlj/