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

WRIT PETITION NO. 15471 OF 2022

**Maharashtra Public Service
Commission, thr. Secretary**

.. Petitioner

Vs.

Sundari S B & Ors.

.. Respondents

Mr. Ashutosh M. Kulkarni a/w Mr. Sarthak S. Diwan for petitioner/MPSC.

Ms. Yashashree Munde i/by Parinam Law Associates for respondent nos.1 and 2.

Mr. M. M. Pabale, AGP for respondent no.3/State.

**CORAM: S. V. GANGAPURWALA, ACTING CJ. &
SANDEEP V. MARNE, J.**

DATE: JANUARY 18, 2023

P.C.:

1. The present respondent nos.1 and 2 filed original application bearing No. 526 of 2022 before the Maharashtra Administrative Tribunal, Mumbai (hereafter "the Tribunal", for short) thereby seeking direction against the present petitioner to issue a revised list of candidates including the names of the candidates qualified under the seats reserved under the Open-Orphan Category.

2. The present respondent nos.1 and 2 had applied for the post of Police Sub Inspector pursuant to the advertisement issued by the petitioner from Open-Orphan Category. The respondent nos.1 and 2 appeared in the preliminary examination. The respondent no.1 secured 11 marks and respondent no.2 secured 14.5 marks. They were held to be ineligible on the ground that the cut-off marks were 21. These respondents approached the Government.

The Government issued a letter dated 5th July, 2019 directing the petitioner/MPSC to consider these respondents for the main examination on the ground that if such candidates are not allowed to participate in the selection process, the same would be against the welfare policy. These respondents thereafter appeared for the main examination and secured 51 marks. The cut-off marks were 51. The petitioner did not place these respondents in the select list. Aggrieved thereby, the present respondent nos.1 and 2 approached the Tribunal.

3. The Tribunal allowed the original application and directed the present petitioner to recommend the names of the present respondent nos.1 and 2 by 19th August, 2022 and to issue the orders of appointment on or before 23rd August, 2022. The Director General of Police was thereafter directed to send the present respondent nos.1 and 2 for training by 26th August, 2022. The said order is assailed in the present writ petition.

4. Mr. Kulkarni, learned advocate for the petitioner strenuously contends that the Tribunal only on the ground of acquiescence has allowed the original application. Acquiescence in itself would not be sufficient to prevail over the Rules. The petitioner had set 21 marks as the cut-off marks. A candidate obtaining less than 21 marks is ineligible to appear for the main examination. The respondent nos.1 and 2 had secured less than the cut-off marks as such were ineligible to appear for the main examination. It was only because the letter was given by the Government, the petitioner allowed these candidates to appear for main examination. However, that in itself would not make the present respondent nos.1 and 2 qualified. If such candidates are allowed to appear, then there would be no sanctity to the selection process.

5. Mr. Kulkarni further submits that the respondent nos.1 and 2 were allowed to provisionally appear for the main examination.

6. The learned advocate for respondent nos.1 and 2 supports the order of the Tribunal and submits that not only the present respondent nos.1 and 2, but even those candidates who were not possessing Orphan Certificate were allowed to appear in the main examination. The petitioner cannot adopt dual standards.

7. We have considered the submissions canvassed by the learned advocates for the parties.

8. The factual matrix that the present respondent nos.1 and 2 having submitted the form for Open-Orphan Category, the marks obtained by these respondents in the preliminary examination and the Government issuing the letter dated 5th July, 2019 are not disputed. It is also not disputed that these respondents were allowed to appear for the main examination without the intervention of the Court. It is also a fact that in the main examination these respondents have secured the cut-off marks.

9. The respondent nos.1 and 2 had secured less than cut-off marks in the preliminary examination and inspite of that the present petitioner allowed these respondents to appear for the main examination on the basis of letter issued by the State Government on 5th July, 2019 without any demur. The Government had issued the letter on the ground that the candidates are from Orphan Category and it would be in furtherance of the social welfare obligation that they should be allowed to appear for the main examination. The petitioner being a constitutional body and autonomous one could have resisted the present respondents from appearing for the main examination. It appears that without demur the petitioner allowed these respondents to appear for the main examination and these respondents have secured the required cut-off marks in the main examination. The Tribunal observed that the petitioner acquiesced in its act.

10. It appears that the Government had issued a letter. If the Orphans seats would not have been filled in, then said seats would

have gone to the general category and thereby would have frustrated the reservation meant for Orphan Category. However, we do not wish to comment upon as that would not be germane to decide in the present case.

11. Naturally, the petitioner without demur allowed these respondents to appear for the main examination, in a way representing that they have condoned the less marks obtained by these respondents and allowed them to appear for the main examination. If the petitioner would have precluded these respondents from appearing in the main examination, then it was within their rights and it would have been justified in doing so. However, the petitioner accepted the direction/request of the Government and allowed these respondents to appear in the main examination and after the respondents have secured the cut-off marks in the main examination, the petitioner has raised these objections.

12. We also do not find from the record that these respondents were only allowed to provisionally appear in the main examination. The parties have changed their position. It would be too late in the day to consider the case of the petitioner. The Tribunal has already exercised its discretion.

13. In light of the facts and circumstances, we are not inclined to interfere in the order passed by the Tribunal. However, we would add that this matter would not be considered as a precedent.

14. The writ petition as such is disposed of. No costs.

15. Time to implement the order of the Tribunal is extended by two weeks from today.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)