

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9450 OF 2023

Abhishek Manish Surve,
Age : 26 years, Occupation: Nil,
R/at C/02, Naigaon New Police Line,
G. D. Ambedkar Marg, Parel,
Mumbai – 400 012.

...Petitioner

Versus

1. The Commissioner of Police Mumbai,
O/at. Mumbai Police Commissionerate,
L.T. Marg, Opp. Crawford Market, Fort,
Mumbai – 400 001.
2. The Additional Director General of Police
[Training and Special Unit], M. S. Mumbai
O/at Director General and Inspector
General of Police, M. S. Mumbai,
Old Bar Council, Hall, Shahid
Bhagat Singh Marg, Mumbai-400 039.
3. The State of Maharashtra,
Through Additional Chief Secretary,
Home Department, Mantralaya,
Mumbai – 400 032.
4. Ganesh Shivaji Bhosale,
Age : Adult, Occupation: Nil,
R/at. 26, Ravivar Peth,
Joshi Galli, North Solapur-413 005.

...Respondents

Mr. Abhijeet Desai a/w. Ms. Daksha Pringhera, Mr. Vijay Singh and Mr.
Digvijay Kachare i/by M/s. Desai Legal Advocate for the Petitioner.

Mr. B. V. Samant, Addl. G. P. a/w. Mr. A. R. Metkari, AGP for the
Respondent (State).

**CORAM : A. S. CHANDURKAR,
JITENDRA JAIN, J.J.**

DATE : 5th FEBRUARY 2024.

JUDGMENT:- (Per Jitendra Jain, J.)

1. **Rule.** Rule made returnable forthwith. By consent of the parties heard finally.
2. By this petition under Article 226 of the Constitution of India, the Petitioner challenges an order passed by the Maharashtra Administrative Tribunal, Mumbai ("Tribunal"), whereby the Original Application No.818 of 2017 dated 22nd June 2023 filed by the Petitioner was dismissed.
3. Briefly, the facts are as under:-
 - (i) On 23rd February 2017, an advertisement was issued by the Respondents to fill in 1717 posts of Police Constables and 39 posts were advertised for Police Constable Bandsman. Out of these 39 posts, one seat was reserved for NT(B) category and the present Petitioner belongs to the said category. The educational qualification for the post of Police Constable was 12th standard and for the post of Police Constable Bandsman, it was 10th standard. There were some height and chest requirement relaxation for the post of Police Constable Bandsman as compared to Police Constable. As per the said advertisement, the last date for making

application for the said post was 17th March 2017. In the said advertisement, it was also mentioned that the Police Constable Bandsman would be required to work at Police Department also.

- (ii) On 22nd March 2017, a corrigendum was issued by the Respondents with regard to calculation of marks, insofar as for the post of Police Constable Bandsman is concerned. It is stated that the average of music test and written test will be added to the physical test and thereafter aggregate will be considered for the purpose of selection of the candidates. The Petitioner along with other candidates appeared for the exams.
- (iii) The marks of the Petitioner were 78, 75 and 45 aggregating to 138 and the marks of the candidate selected was 90, 28 and 79 aggregating 143.5 after applying the average method as stated above to music and written test and adding the same to marks scored in physical examination.
- (iv) On 17th July 2017, the Petitioner made a representation to the Respondents stating that since he has secured higher marks in the music exam, he should be considered as an eligible candidate for the post of Police Constable Bandsman. According to the Petitioner, he has secured 75 marks in music exam, compared to the marks secured by the selected candidate which was only 28 in music exam. However, since no response was received, the Petitioner

was constrained to file an Original Application (OA) before the Tribunal in August 2017, which was Numbered as Original Application No.818 of 2017.

- (v) On 20th July 2017, the Petitioner was informed that he has secured less marks as compared to the selected candidate and he was put on the Wait List No.1 and said Wait List will be valid for the period of one year.
- (vi) On 22nd June 2023, the Tribunal dismissed the Petitioner's OA and it is on this backdrop that the present petition is filed challenging the order of the Tribunal dated 22nd June 2023.

4. The Petitioner submitted that for the post of Police Constable Bandsman, it is the marks scored in music test which is relevant and since he has acquired more marks in the said test as compared to the candidate who was selected, the Tribunal was not justified in dismissing the petition. The Petitioner further submitted that the Respondents were not justified in changing the marking pattern after the issuance of an advertisement and, therefore, even on this count, the action of the Respondents in introducing averaging system is illegal. The Petitioner, therefore, prayed for quashing of the impugned order of the Tribunal.

5. Per contra, the Respondents supported the order of the Tribunal and submitted that the Tribunal has exhaustively dealt with all the contentions of the Petitioner and given a detailed reasoning and,

therefore, this Court should not interfere in exercise of its extraordinary jurisdiction. The Respondents further submitted that the Petitioner having not raised any objection when on 22nd March 2017, the marks pattern was informed, today after having not being selected, he cannot allege that the Respondents were not justified in changing the marking pattern after the issuance of advertisement.

6. We have heard learned counsel for the Petitioner and the Respondents and with their assistance have perused the records annexed to the petition.

7. The Petitioner did not object to the change in the scoring pattern issued by corrigendum on 22nd March 2017. The Petitioner with full knowledge appeared for the exams and awaited for the results. It is only when the aggregate marks scored by him after playing averaging system was found to be less than the selected candidate and he was put on Wait List at Serial No.1 that he is challenging the scoring pattern. In our view, the Petitioner now cannot after having not raised any objection at the time when the scoring pattern was changed and moreso, after appearing for exams take this as a ground to challenge the selection process. The Petitioner if at all was not satisfied with the change in the scoring pattern then he ought to have challenged it at the time when the corrigendum of 22nd March 2017 was issued. Therefore, in our view, the Petitioner today cannot contend that the scoring pattern

was changed post advertisement and, therefore, the same should be ignored.

8. Secondly, the advertisement itself states that even the Police Constable Bandsman will have to render services at the Police Station. Therefore, a person applying for Police Constable Bandsman would also be required to render his services as Police Constable and thus, merely because of his musical experience he does not become entitled for the post of Police Constable Bandsman. Therefore, the scoring pattern of averaging marks of music test, written test and physical test cannot be said to be perverted or arbitrary and, therefore, we do not find any force in the argument of the Petitioner on this count. Admittedly, the aggregate marks scored by the Petitioner is less than the selected candidates for the said post in NT(B) category and the Respondents have therefore rightly listed him on waiting list No.1.

9. It is also important to note that there were 39 posts advertised for the post of Police Constable Bandsman. The Petitioner in his petition has not impleaded all the candidates who were selected for the said post except impleading the person who was selected in NT(B) category. If the contention of the Petitioner is accepted, then it will affect not only Respondent No.4, but also other candidates who were selected for the post of Police Constable Bandsman. In our view, this would affect all the candidates and at this stage without impleading

these candidates, the Petitioner is not justified in challenging the scoring pattern.

10. If the scoring pattern issued on 22nd March 2017 is to be ignored, then also the aggregate marks scored without considering the music test would be 123 marks as compared to Respondent No.4, who scored 169 marks. Therefore, even on this count, the most eligible candidate would be Respondent No.4 and not the Petitioner.

11. We have perused the order of the Tribunal and the Tribunal has given a detailed reasoning for dismissing the Original Application. No perversity has been shown to us for exercise of writ jurisdiction. In our view, therefore, the order of the Tribunal is not required to be interfered with.

12. The Petition is dismissed. Rule is discharged. No order as to costs.

[JITENDRA JAIN, J.]

[A. S. CHANDURKAR, J.]