

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.133 OF 2023

1. Sandip Suresh Mali
Age: 31 yrs, Occu: Student,
R/at: A/p. Deorashtre, Tal. Kadegaon,
Dist. Sangli – 415303.
2. Pundalik Maroti Vyahadkar
Age: 32 yrs, Occu: Student
R/at: Pipari Deshpande, Post Govardhan,
Tal. Pombhurna, Dist. Chandrapur.
3. Swapnil Machhindra Hinge,
Age: 31yrs, Occu: Student,
R/at: A/p Awsari BK, Tal- Ambegaon,
Dist- Pune 412406.
4. Sukhdeo Gopinath Rathod,
Age: 30 yrs, Occu: Student,
R/at: Loni Tanda, Post, Babhalgaon
Tal. Pathari, Dist. Parbhani- 431506.
5. Sayed Habib Rashidmiya,
Age: 31 yrs, Occu: Student,
R/at: Plot No. 8, Opp. Abrar Function
Hall, Waghi Road, Barkatpura,
Nanded-431601.
6. Saipan Maula Nadaf,
Age: 31yrs, Occu: Student,
R/at: A/p Aherwadi,
Tal. South Solapur,
Dist. Solapur – 413215.

...Petitioners

Versus

1. Maharashtra Public Service Commission,
Through its Secretary,
Having office at: 512,7 & 8th Floor,
Cooprej Telephone Nigam Building,

Maharshi Karve Road, Cooprej, Mumbai.

2. The Director General &
Inspector General of Police,
Maharashtra State, Mumbai,
Having Office at: Old Council Hall,
Shaheed Bhagat Singh Marg,
Mumbai-400039.
3. The State of Maharashtra,
Through Principal Secretary,
Home Department, Mantralaya,
Mumbai-32.
4. The State of Maharashtra,
Through Principal Secretary,
General Administration Department,
Mantralaya, Mumbai-32.
5. The Maharashtra Police Academy,
Through its Additional Director General of
Police (Training) Having Office
at: Trimbak Road, Nashik – 422007.
6. Maharashtra Police Academy, Nashik.
Through its Director (Training)
Having office at: Trimbak Road,
Nashik-422007.
7. Balu Popat Shirsat,
Age: Adult, Occu: Nil.
8. Ravindra Vishwasrao Kakde,
Age: Adult, Occu: Nil.
9. Rajesh Keshavrao Dongre,
Age: Adult, Occu: Nil.
10. Vishnu Govinda Wagh,
Age: Adult, Occu: Nil.
11. Jitendra Murlidhar Patil,
Age: Adult, Occu: Nil.

12. Ajmodeein Pashamiya Shaikh,
Age: Adult, Occu: Nil.
13. Kishor Bapu Bacchav,
Age: Adult, Occu: Nil.
14. Reshim Bhanudas Kolekar,
Age: Adult, Occu: Nil.
15. Sunil Parashram Bidkar,
Age: Adult, Occu: Nil.
16. Shedge Aniket Vitthal,
Age: Adult, Occu: Nil.
17. Pavan Shahurao Nimbalkar,
Age: Adult, Occu: Nil.
18. Prasad Dileep Kolape,
Age: Adult, Occu: Nil.
19. Sandip Nanaso Sonwalkar,
Age: Adult, Occu: Nil.
All Respondents having address at:
C/o: The Director General &
Inspector General of Police,
Maharashtra State, Mumbai,
Having Office at: Old Council Hall,
Shaheed Bhagat Singh Marg,
Mumbai-400039.

...Respondents

Mr. Mihir Desai, Senior Advocate a/w. Mr. Shrikant D. Patil for the
Petitioners.

Mr. M. M. Pable, AGP for Respondent Nos.1 to 6-State.

**CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.**

Date on which the Arguments were heard : 21st March 2024
Date on which the Judgment is pronounced : 04th April 2024

Judgment (Per Jitendra Jain, J.) :-

1. By this petition under Article 226 of the Constitution of India, the Petitioners seeks to challenge the order passed by the Maharashtra Administrative Tribunal (for short “Tribunal”), whereby the Tribunal has rejected the prayer to remove the successful candidates belonging to open category (Respondent Nos.7 to 19 in Original Application) and directed, the case of the Petitioner to be considered for the post of Police Sub-Inspector (for short “PSI”), if there are vacant posts on the date of the impugned order for the year for which the recruitment process was conducted.

Brief facts are as under:-

2. On 26th April 2017, Respondent No.1 issued an advertisement for recruitment of 650 candidates for the post of PSI. The Petitioners applied for the said post under the Other Backward Class (OBC) category and/or Denotified Tribes (DT-A category). The Applicants cleared their preliminary examination. Thereafter on 5th November 2017, the Petitioners appeared for the main exam. The Petitioners also cleared the said main exam and, thereafter, physical test and interview was conducted.

3. On 8th March 2019, the merit list was declared and the Petitioners secured 231 marks but did not find their name in the

recommendation list as they secured less marks than cut off meant for their respective category.

4. On 3rd January 2020, after almost 10 months, the Petitioners made an application under the Right to Information Act, 2005 seeking information regarding procedure of selection of reserve category candidates from open category, who have secured marks above the cut off marks, of the general category. This information was provided to the Petitioners on 3rd February 2020. The Petitioner, thereafter, filed Original Application (O.A.) on 7th January 2021.

5. The Petitioners made an Interim Application in the aforesaid O.A. which came to be rejected. The said rejection of interim relief was challenged before this Court and this Court remanded the matter back to the Tribunal for fresh consideration. On remand, the Tribunal on 19th September 2022 rejected the prayers of the Petitioners to displace the Respondent-candidates. However, the Tribunal directed that the Petitioners be considered for the post of PSI if any vacancy exists on the date of its order for the year for which the examination was conducted. It is on this backdrop that the present Petitioners are before us. At the outset, the Petitioners submitted that they do not propose to displace Respondent Nos.7 to 19, who were already appointed after filing the O.A. The only serious submission made by the Petitioners is that they

may be considered for the said post in subsequent year's advertisements. The Petitioners submitted that this Court under Article 226 of the Constitution of India has wide powers to consider the said prayer and issue necessary directions to the Respondents. In support of the said submission, the Petitioners have relied upon the following decisions:-

1. *Dwarka Nath Vs. Income Tax Officer, Special Circle, D-Ward, Kanpur & Anr.*¹
2. *Union of India & Ors. Vs. Bharat Forge Ltd. & Anr.*²
3. *RBF RIG Corporation, Mumbai Vs. Commissioner of Customs (Imports), Mumbai.*³
4. *Comptroller and Auditor-General of India, Gian Prakash, New Delhi & Anr. Vs. K. S. Jagannathan & Anr.*⁴
5. *Rajesh Kumar Daria Vs. Rajasthan Public Service Commission & Ors.*⁵
6. *Mrs. Shaila Tanaji Patil Vs. Maharashtra Public Service Commission.*⁶

6. The Petitioners, therefore, submitted that the aforesaid prayers may be considered by this Court and necessary directions be issued to the Respondent-State and its departments.

7. Per contra, the Respondent-State submitted that there are no vacancies existing pursuant to the advertisement dated 26th April 2017

1 (1965) 57 ITR 349

2 2022 SCC Online SC 1018

3 (2011) 3 SCC 573

4 (1986) 2 SCC 679

5 (2007) 8 SCC 785

6 Writ Petition No.15613 of 2022

since all the post have been filled up. The Respondent-State also further submitted that the prayers of the Petitioners for their consideration for the said post in subsequent advertisements also cannot be entertained since the recruitment process has been completed for the subsequent years or is at its advanced stage and if any such relief is granted, it would upset the rights of the candidates who are selected and appointed in subsequent years or are in the zone of consideration for those respective years. The Respondent-State supported paragraph 15 of the Tribunal's order wherein the Tribunal has observed that the Petitioners did not exercise their remedy in time so as to seek any relief. The Respondent-State, therefore, prayed for dismissal of the Writ Petition.

8. We have heard the learned Senior Counsel for the Petitioners and learned Assistant Government Pleader for Respondent Nos.1 to 6-State and its departments and with their assistance have perused the documents annexed to the petition, affidavit-in-reply, etc.

9. Admittedly, the Respondents have stated that as on the date of the impugned order of the Tribunal and also as of today, there are no vacancies in existence for the Petitioners to be accommodated pursuant the advertisement dated 26th April 2017 for the post of PSI. The Petitioners have also fairly submitted that they do not wish to displace Respondent Nos.7 to 19 and seek appointment in their place. In the

light of these facts, insofar as the Petitioners grievance is to be considered for the vacancies advertised on 26th April 2017 would not survive.

10. It is also important to note that the final merit list was published on 8th March 2019. The Petitioner did not challenge the same till February 2020 i.e. almost a year and even after receipt of RTI information in February 2020, the OA came to be filed in 2021 by which time the Respondent Nos.7 to 19 were already given the appointment letter. In our view, the Tribunal in paragraph 15 have correctly analysed the delay on the part of the Petitioners to seek redressal of the grievance. Furthermore, the Petitioners participated in the selection process and having not been selected cannot challenge the MPSC Rules and the advertisement. If the Petitioners had any grievance with respect to the advertisement and the MPSC Rules then same ought have been challenged at the first available instance and not after having participated and not being selected. Therefore even on this count, we do not find any infirmity in the Tribunal's order.

11. Insofar as, the Petitioners submissions with respect to their prayer that they be considered for the post of PSI which was advertised in subsequent years are concerned, Respondents in their affidavit-in-

reply dated 4th March 2024 have given the status about about the vacancies which were advertised in subsequent years. Insofar as 2019 advertisement is concerned, 496 posts were advertised and all posts were filled up. Similarly advertisement issued in the year 2020 for 650 posts has reached its finality. Insofar as, 2021 advertisement is concerned, the recruitment is at the stage of interview. Similarly for the 2022 and 2023, the results of the exams are pending. In our view, the prayers sought for by the Petitioners that they should be considered against the posts advertised in subsequent years is concerned, same is untenable because for each year there is a separate advertisement for separate number of posts and the criteria required for filling up the post would keep on changing every year as per the prevailing situation in those years. If the prayer of the Petitioners is to be accepted then it would affect the candidates who have applied in subsequent years which would lead to a chaotic situation since for granting such relief all the candidates affected in subsequent years will have to be heard. In our view, such a course of action cannot be permitted. There is no dispute that powers under Article 226 of the Constitution of India are very wide, but that would not empower this Court to upset the recruitment for the subsequent years for the reasons stated above. Any such exercise of power under Article 226 by this Court would amount to this Court exercising powers of recruitment, which is not permissible. The

decisions relied upon by the Petitioners with respect to the powers of the Court under Article 226 of the Constitution of India would not be applicable to the facts of the present case before us and therefore the same would not be of any assistance to further the case of the Petitioners.

12. In view of the above and looked from any angle, we see no reason to interfere in the Tribunal's order and no relief can be granted to the Petitioners on the facts of the present case and therefore, the Writ Petition is dismissed with no order as to costs.

(JITENDRA JAIN, J.)

(A. S. CHANDURKAR, J.)