

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

INTERIM APPLICATION NO.158 OF 2024

IN

WRIT PETITION NO.16025 OF 2022

Dattatray Maruti Bansude and Ors. .. Applicants-Petitioners

Vs.

The State of Maharashtra,
Through the Chief Secretary and Ors. .. Respondents

ALONG WITH

INTERIM APPLICATION NO.929 OF 2024

IN

INTERIM APPLICATION NO.158 OF 2024

IN

WRIT PETITION NO.16025 OF 2022

Vishnu Gangadhar Giri .. Applicant

In the matter between

Dattatray Maruti Bansude and Ors. .. Petitioners

Vs.

The State of Maharashtra,
Through the Chief Secretary and Ors. .. Respondents

Mr. R.R. Shetty, with Mr. Sandeep Dere, Ms. Aarti Patil-Dere and Ms. Sonali Pawar, for the Applicants in IA/158/2024 in WP/16025/2022 and for the Petitioners in WP/16025/2022.

Mr. S.C. Naidu, with Mr. Mangal Bhandari, Mr. Mangesh Deshmukh and Mr. Shailesh A. Sawant, for the Applicant in IA/929/2024 in IA/158/2024 in WP/16025/2022.

Mr. Akhilesh Dubey, with Mr. Sushant Walimbe, Ms. Priyanka K. and Mr. Hrutik Chavan, i/by Ms. Aarti Nishad, for Respondent Nos.7 to 11 in IA/158/2024 in WP/16025/2022.

Mr. P.P. Kakade, Government Pleader, with Mr. B.V. Samant, Additional Government Pleader and Mr. A.R. Metkari, Assistant Government Pleader, for the Respondent-State of Maharashtra.

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

DATE : 5TH FEBRUARY, 2024.

PC. :

1. Interim Application No.158 of 2024 has been preferred by the petitioners seeking a direction that respondent no.2 – Secretary, Home Department, Mantralaya be directed to verify and indicate as to whether the petitioners are more meritorious than the last selected candidate as in Writ Petition No.13227 of 2018 and further if the petitioners are found to be similarly placed, their names be included in the training session for the post of “Police Sub Inspector”.

2. The basis for preferring this interim application is that according to the petitioners, they are similarly situated as the candidates who pursuant to the order dated 25th September 2023 passed in Writ Petition No.13227 of 2018 were directed to be sent for undergoing training subject to the rider that the said order would not create any right or equity in favour of the said petitioners. The petitioners contend that 828 vacancies had been advertised on 27th June 2016 on the basis of which they participated in the Limited Departmental Competitive Examination – 2016. In the results that were declared on 12th December 2017, 642 candidates from the Open Category who secured 253 marks and above as well as 186 candidates from the Reserved Category who secured 230 marks and above came to be selected. Since the Government Resolution dated 25th May 2004 providing for reservation in promotion came to be set aside by this Court in the case of *State of Maharashtra, through the Chief Secretary, Government of*

Maharashtra & Anr. Vs. Shri Vijay Ghogre & Ors., along with connected matters, (Writ Petition No.2797 of 2015, along with connected petitions, decided on 4th August 2017), the 186 candidates from the Reserved Category were not entitled to such promotion and, therefore, they could not have been sent for training. By Government Resolution dated 22nd April 2019, about 154 candidates having more than 230 marks but from the Open Category were sent for training. 32 of the said 186 candidates being meritorious were permitted to continue with the training. The Government Resolution dated 22nd April 2019 was the subject matter of challenge in various Original Applications before the Maharashtra Administrative Tribunal. By the judgment dated 4th March 2022, the Maharashtra Administrative Tribunal set aside the Government Resolution dated 22nd April 2019, by which 636 candidates who had secured 230 and more marks came to be accommodated. That decision of the Tribunal is the subject matter of challenge in Writ Petition No.16025 of 2022.

3. The petitioners contend that in Writ Petition No.13227 of 2018 (*Santosh Bapurao Rathod & Ors. Vs. The State of Maharashtra & Ors.*), a similar challenge is raised and by an interim order dated 25th September 2023, a direction was issued to prepare a list of candidates who had secured marks between 245 to 249 out of 400 and then to send such candidates for training. By relying upon the decision in *State of Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors., (2015) 1 SCC*

347, it is submitted that the present petitioners are similarly situated and they too be sent for training after verifying their merit viz-a-viz the last selected candidate who has benefited from the order dated 25th September 2023 passed in Writ Petition No.13227 of 2018. The petitioners state that they do not intend to claim any equity and this direction be issued subject to outcome of the writ petition.

4. On the other hand, according to the respondents as well as the applicant in Interim Application No.929 of 2024, the petitioners are not similarly situated and hence they are not entitled for such interim direction. It is submitted that undertaking such exercise would result in the number of candidates being sent for training to be in excess of the advertised vacancies. Such course was not permissible. The applicants in Interim Application No.16320 of 2023 in Writ Petition No.13227 of 2018 contend that the order dated 25th September 2023 passed in Writ Petition No.13227 of 2018 deserves to be vacated in view of the fact that while the advertisement dated 27th June 2016 was only for 828 posts, a total of 982 candidates had been selected and sent for training, which thus exceeded the advertised vacancies. Reference was made to the decisions in *Arup Das and Ors. Vs. State of Assam and Ors.*, (2012) 5 SCC 559; *R. Muthukumar and Ors. Vs. Chairman and Managing Director, TANGEDCO and Ors.*, 2022 SCC OnLine SC 151; and *Pankjeshwar Sharma and Ors. Vs. State of Jammu and Kashmir and Ors.*, (2021) 2 SCC 188 in that regard.

5. We have heard the learned counsel for the parties and we have perused the documents on record. The grievance sought to be raised by the petitioners in Interim Application No.158 of 2024 is that since the petitioners are similarly situated in terms of merit with the candidates who have got the benefit of the interim order dated 25th September 2023 passed in Writ Petition No.13227 of 2018, a direction to ascertain as to whether the petitioners are more meritorious than the last selected candidate who has benefited from the interim order dated 25th September 2023 deserves to be issued. On 16th January 2024 and 23rd January 2024, time was granted to the learned Additional Government Pleader to file affidavit-in-reply but the learned Additional Government Pleader was unable to place the affidavit-in-reply on record. Further time is again being sought today.

6. We find that the direction sought by the petitioners of ascertaining whether they are more meritorious than the last selected candidate who has benefited by the order dated 25th September 2023 passed in Writ Petition No.13227 of 2018 can be issued subject to further consideration of the matter. Presently, the petitioners by filing this Interim Application No.158 of 2024 merely seek an exercise to be undertaken for determining whether they too are entitled for the benefit of the order dated 25th September 2023. Since the entire record is available with the respondent

no.2, this factual aspect can be ascertained by filing an affidavit. The further course to be adopted after this factual aspect is ascertained and placed on record can be considered thereafter. The question as to whether the petitioners are entitled to be sent for such training is also a matter to be thereafter adverted to in the light of the contention raised by the respondents that the candidates sent for training would exceed the number of vacancies advertised. For the present, the factual aspect with regard to the inter se merit can be examined.

7. For aforesaid reasons, it is directed that the respondent no.2 shall within a period of ten days file an affidavit indicating whether the petitioners are more meritorious than the last selected candidate in Writ Petition No.13227 of 2018 pursuant to the order dated 25th September 2023. Dependent upon ascertainment of this aspect, the further claim of the petitioners for including their names in the list of candidates to be sent for training shall be considered in the writ petition. The contentions of the parties in that regard are kept open.

8. Interim Application No.158 of 2024 and Interim Application No.929 of 2024 are disposed of in aforesaid terms.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]