

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13227 OF 2018

1. Mr. Santosh Bapurao Rathod,
2. Mr. Vishnu Gangadhar Giri,
3. Mr. Vinod Bhaskar Pawar,
4. Mr. Sunil Amrut Bhamre,
5. Mr. Sandip Goraksh Parvate,
6. Mr. Amit Ramchandra Zanzane,
7. Mr. Mayur Panjabrao Patil.] Deleted & transferred as Respondent.
8. Mr. Rupesh Uttamrao Ingle,
9. Mr. Abhijit Gorak Kanse.] Deleted & transferred as Respondent.
10. Mr. Siddeshwar Trimbak Gaikwad,
11. Mr. Anil Balu Nimbalkar.] Deleted & transferred as Respondent.
12. Mr. Nitin Prabhakar Patil,
13. Mr. Chetanlal DHannulal Patel,
14. Mr. Kashinath Shankar Pawar,
15. Mr. Imran Aslam Khan,] Deleted & transferred as Respondent.
16. Mr. Rahul Chandrakant Khandekar,
17. Mr. Tatya Anna Bhosale,
18. Mr. Anant Vishnu Gholve,
19. Mr. Shyam Rambhau Gaikwad,
20. Mr. Pankaj Suryabhanji Wasade,
21. Mr. Indrajit Shahaji Nemane,
22. Mr. Lahu Ramchandra Navale,

23. Mr. Sayyad Irfan Yunus,
24. Mr. Ashish Devidas Padole,
25. Mr. Suraj Sanjay Patil,
26. Mr. Vikas Vilas Chavan,] Deleted & transferred as Respondent.
27. Mr. Atul Baliram Rathod,
28. Mr. Dyneshwar Jagannath Ghadge,] Deleted & transferred as Respondent.
29. Mr. Anna Madhukar Darade,] Deleted & transferred as Respondent.
30. Mr. Santosh Shivraj Patil,
31. Mr. Hitesh Vinayak Chopade,] Deleted & transferred as Respondent.
32. Mr. Shankar Ramrao Chavhan,
33. Mr. Amit Rajendra Gaikwad,] Deleted & transferred as Respondent.
34. Mr. kiran Babarao Mahajan,
35. Mr. Ramjan Madarso Shaikh,
36. Mr. Raju Kumar Palve,
37. Mr. Dinesh Jagannath Ghuge,
38. Mr. Anil Mahadev Tambade,
39. Mr. Amit Bharat Surve,
40. Mr. Satish Vinayak Bavane,
41. Pawansingh Ambarsingh Janghale. ...Petitioners

Versus

1. The State of Maharashtra,
Through Secretary,
Home Department Mantralaya,
Mumbai 400032.

2. The Secretary,
General Administration Department,
Mantralaya, Mumbai 400032.
3. The Secretary,
Law and Judiciary,
Mantralaya, Mumbai 400032.
4. The Director General of Police,
Shahid Bhagat Singh Road,
Colaba, Mumbai -400005.
5. The Secretary,
Maharashtra Public Service Commission,
Floor 5-8, Cooprej Telephone Exchange
Building, Maharshi Karve Road,
Cooprej, Mumbai 21.
6. Shri. Jogendra dinkar Gavit,
Through the Director,
Maharashtra Police Academy,
Trimbak Road, Nashik 422007
and through Commissioner Mumbai Railway.
7. Shri. Junonkar Nishant Premanand,
Through the Director,
Maharashtra Police Academy,
Trimbak Road, Nashik 422007.
Through Inspector General of Police
Nagpur Range, Nagpur.
8. Shri. Sapate Jagan Damu,
Through the Director,
Maharashtra Police Academy,
Trimbak Road, Nashik 422007 and
Through the Commissioner of Police
Railway, Mumbai.
9. Shri. Chalurkar Dipak Narayan,
through the Director,
Maharashtra Police Academy,
Trimbak Road, Nashik 422007 and
through Inspector General of Police
Nagpur Range, Nagpur.

10. Shri. Gavali Manilal Dayaram,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the Commissioner of Police
Railway, Mumbai.
11. Shri. Netake Rakesh Pralhad,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
through the Commissioner of Police
Railway, Aurangabad.
12. Shri. Rakesh Chhagan Shinde,
through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007 and
Through the Commissioner of Police, Mumbai.
13. Shri. Gawari Kalu Shankar,
through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007 and
Through the Commissioner of Police,
Pinpari Chinchwad.
14. Shri. Panchmukh Vikas Janardan,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007 and
Through the Commissioner of Police,
Pinpari Chinchwad.
15. Shri. Balaji Ram Gonarkar,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007 and
Through the Commissioner of Police
Railway, Aurangabad.
16. Shri. Aashish Bhagavan Bhagat,
Through the Director,
Maharashtra Police academy,

Trimbak Road, Nashik 422007 and
Through the Commissioner of Police
Railway, Mumbai.

17. Shri. Pradeep Shirishkumar Londhe,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai City.
18. Shri. Shikhare Bhimasen Haridas,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the Commissioner of Police
Pinpari Chinchwad.
19. Shri. Kamble Pravin Narayanrao,
through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Railway, Mumbai.
20. Shri. Darekar Shrikrishna Balasaheb,
through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the Commissioner of Police
Pinpari Chinchwad.
21. Shri. Bokefode Nilesh Ramesh,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pinpari Chinchwad.
22. Shri. Lohekar Ajay Yadavrao,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pinpari Chinchwad.

23. Shri. Bhise Sunil Ashok,
through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Railway Nagpur.
24. Shri. Sharif Sandu Tadavi,
through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
through the Commissioner of Police
Railway Aurangabad.
25. Shri. Vite Akash Nivrutti,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Railway Pune.
26. Shri. Birhade Sunil Bhimrao,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Railway Mumbai.
27. Shri. Chougale Pranil Maruti,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pipri Chinchwad.
28. Shri. Shashikant Dasharath Saindane,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the Commissioner of Police
Mumbai city.
29. Shri. Tembhurne Chetan Mahipal,
Through the Director,
Maharashtra Police academy,

Trimbak Road, Nashik 422007, and
Through the Inspector General of Police
Nagpur Range.

30. Shri. Ubale Rupali Shamrao,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the Commissioner of Police
Pune Railway.
31. Shri. Bhalerao Pradip Motiram,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the Commissioner of Police
Railway Aurangabad.
32. Shri. Sudage Tarachand Dadu,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the Commissioner of Police
Railway Pune.
33. Shri. Kirwale Balaji Hausaji,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the Commissioner of Police
Railway Aurangabad.
34. Shri. Warkade Lalit Punjaji,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai City.
35. Shri. Kamble Sachin Mohan,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the Commissioner of Police
Mumbai Railway.

36. Shri. Khatawkar Shriram Ramdas,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the Commissioner of Police
Aurangabad Railway.
37. Shri. Pawar Milind Dhanraj,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the Commissioner of Police
Mumbai Railway.
38. Shri. Bandu Arjun Meshram,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007,
Through the Commissioner of Police
Nagpur Railway.
39. Shri. Jadhav Kailash Santosh,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Aurangabad Railway.
40. Shri. Bhawari Ravindra Prabhakar,
through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the Commissioner of Police
pinpari chinchwad.
41. Shri. Panhale Ravindra Sopan,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pipari Chinchwad.
42. Shri. Koli Rahul Appa,
Through the Director,
Maharashtra Police academy,

Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pipari Chinchwad.

43. Shri. Vasudev Mallikarjun Laxman,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
through the Commissioner of Police
Mumbai City.
44. Shri. Kurewad Kunal Balaprasad,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the Commissioner of Police
Pipari Chinchwad.
45. Shri. Suresh Prakash Bunde,
through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police,
Nagpur Range.
46. Shri. Patange Nandkishor Gajanan,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pipari Chinchwad.
47. Shri. Bahiram Tanaji Raju,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Nagpur Railway.
48. Shri. Ghadge Ajit Hanmant,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai City.

49. Shri. Salve Bandu Changdev,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Railway Pune.
50. Shri. Pathare Ashok Trymbak,
through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Railway Mumbai.
51. Shri. Khobragade Dhiraj Ramdas,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police
Nagpur Range.
52. Shri. Koli Dhanraj Dagadu,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
through the Commissioner of Police
Mumbai city.
53. Shri. Sapkale Jitendra Subhash,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai city.
54. Shri. Padekar Anil Kashinath,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai Railway.
55. Shri. More dattatray machindra,
Through the Director,
Maharashtra Police academy,

Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai city.

56. Shri. Jagzape Maruti Parshuram,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pune Railway.
57. Shri. Pujarwad Gangadhar Poshatti,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Aurangabad Railway.
58. Shri. Vaibhav Dilip Jamadar,
through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pune Railway.
59. Shri. Piwal Narendra Sanjay,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police
Nagpur Range.
60. Shri. Dummalwad Dipak Sudarshan
through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai Railway.
61. Shri. Bapu Maroti Jondhale,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pinpari Chinchwad.

62. Shri. Bagade Sameer Balasaheb
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai Railway.
63. Shri. Karangami Vilas Gomaji
through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police
Nagpur Range.
64. Shri. Madhukar Papat Bhoir
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pune Railway.
65. Shri. Ghode Lahuji Sakharam,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Aurangabad Railway.
66. Shri. Undirwade Rajesh Vasanta,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police
Nagpur Range.
67. Shri. Ravindra Namdevrao Wagh,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the Commissioner of Police
Nagpur Railway.
68. Shri. Holar Sunil Appa,
Through the Director,
Maharashtra Police academy,

Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai Railway.

69. Shri. Naik Prakash Damji,
Through the Director,
Maharashtra Police Academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police
Nagpur Range.
70. Shri. Dhanajee Sakharam Raut,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai Railway.
71. Shri. Gomed Premchand Patil,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the inspector General of Police
Nagpur Range.
72. Shri. Sonkamble Gautam Gangadhar,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the Commissioner of Police
Aurangabad Railway.
73. Shri. Tarde Namdeo Laxman,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pune Railway.
74. Shri. Chavan Nilesh Satyawan,
Through the Director,
maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the Commissioner of Police
Pimpri Chinchwad.

75. Shri. Dive Ramnath Hiran, Through the Director, Maharashtra Police academy, Trimbak Road, Nashik 422007, and Through the Commissioner of Police Mumbai Railway.
76. Shri. Jivhare Madhav Eknath, Through the Director, Maharashtra Police academy, Trimbak Road, Nashik 422007 Through the Commissioner of Police Aurangabad Railway.
77. Shri. Pankaj Sampatrao Masram, Through the Director, Maharashtra Police academy, Trimbak Road, Nashik 422007 Through the Inspector General of Police Nagpur Range.
78. Shri. Sirsath Yuvraj Vasant, Through the Director, Maharashtra Police academy, Trimbak Road, Nashik 422007 Through the Commissioner of Police Pimpri Chinchwad.
79. Shri. Bhimte Pravin Dharmdas, Through the Director, Maharashtra Police academy, Trimbak Road, Nashik 422007 Through the Commissioner of Police Nagpur Railway.
80. Shri. Wankhade Mangesh Ravindra, Through the Director, Maharashtra Police academy, Trimbak Road, Nashik 422007 Through the Commissioner of Police Nagpur Railway.
81. Shri. Kambale Mahavir Shopan, Through the Director, Maharashtra Police academy,

Trimbak Road, Nashik 422007,
Through the Commissioner of Police
Pipari Chinchwad.

82. Shri. Nimgade Pritam Bhaurao,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police
Nagpur Range.
83. Shri. Waghmare Shrikant Digambar,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pune Railway.
84. Shri. Milind Keshao Gedam,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police
Nagpur Range.
85. Shri. Milind Madhukar Sonkamble,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Aurangabad Railway.
86. Shri Medhe Sumedh Pandurang,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai Railway.
87. Shri. Kamble Bapu Bhaskar,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police

Mumbai Railway.

88. Shri. Gajbhiye Ashwin Ashokrao,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Nagpur Railway.
89. Shri. Kakade Dhammdip Bhanudas,
through the Director,
maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Aurangabad Railway.
90. Shri. Kadam Abhay Suryakant,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai City.
91. Shri. Sonkamble/Kerulkar Anil Champatrao,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Aurangabad Railway.
92. Shri. Ujwal Bhaskar Arke,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai Railway.
93. Shri. Vijay Pratap Jadhav,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai City.

94. Shri. Namdev Jalshing Talwade,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pipari Chinchwad.
95. Shri. Savane Nitin Bajrang,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007,
Through the Commissioner of Police
Mumbai City.
96. Shri. Sayam Premshaha Indarshaha,
Through the Director,
maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police
Nagpur Range.
97. Shri. Yelgulwar Rajesh Hanmantrao,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
through the Commissioner of Police
Aurangabad Railway.
98. Shri. Vasant Nivrutti Adhari,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
through the Commissioner of Police
Mumbai Railway.
99. Shri. Pardhe Deepak Uttamrao,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
through the Commissioner of Police
Mumbai Railway.
100. Shri. Magre Kalpesh Kaduba,
Through the Director,
Maharashtra Police academy,

Trimbak Road, Nashik 422007,
Through the Commissioner of Police
Mumbai Railway.

101. Shri. Bhadane Rahul Shaligram,
through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pinpari Chinchwad.
102. Shri Shelke Prakash Dashrath,
through the Director,
maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Nagpur Railway.
103. Shri Kharat Yogesh Bapurao,
through the Director,
maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai City.
104. Shri Patil Pravin Babarao,
through the Director,
maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police
Nagpur Range.
105. Shri. Kodape Sushil Dasharath,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police
Nagpur Range.
106. Shri. Bhalerao Satish Baburao,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai City.

107. Shri Salve Devidas Rohidas,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai Railway.
108. Shri. Jagne Arvindkumar Shamrao,
Through the Director,
maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police
Nagpur Range.
109. Shri. Dhule Ravindra Kailash,
through the Director,
maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai Railway.
110. Shri Bambode Sanghmitra Rushi,
through the Director,
maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police
Nagpur Range.
111. Shri. Ubale Sachin Sayaji,
through the Director,
maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pipari Chinchwad.
112. Shri. Gaikwad Jalbaji Eknath,
through the Director,
maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Aurangabad Railway.
113. Shri. Kamble Chetan Dhondiram,
Through the Director,

Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai Railway.

114. Shri. Bhandge Harshal Shivaji,
through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pune Railway.
115. Shri. Bharsat Ramdas Raghunath,
through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai Railway.
116. Shri Kamble Maloji Baban,
through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007,
Through the Commissioner of Police
Pune Railway.
117. Shri. Kamble Satpal Parasharam,
through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pune Railway.
118. Shri. Mhaske Amol Tatyrao,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai Railway.
119. Shri. Kamble Raviraj Rayabanna,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police

Pinpari Chinchwad.

120. Shri. Kudmethe Vishal Ramdas,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Nagpur Railway.
121. Shri. Kirti Kishor Waghdhare,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police
Nagpur Range.
122. Shri. Naik Narendra Narayanrao,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police
Nagpur Range.
123. Shri. Ahire Pandit Popatrao,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pipari chinchwad.
124. Shri. Maroti Laxman Madewad,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pipari Chinchwad.
125. Shri. Manohar Ravi Bansi,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police
Nagpur Range.
126. Shri. Ohal Sandip Shahaji,
Through the Director,

Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pipari Chinchwad.

127. Shri. Khillare Maroti Hari,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai Railway.
128. Shri. Sunil Prakash Ranadive,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai City.
129. Shri. Ajay Bhagwanrao Panpatil,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Aurangabad Railway.
130. Shri Bhopale Tukaram Dattatray,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai City.
131. Shri. Gaikwad Murari Kishanrao,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Aurangabad Railway.
132. Shri. Kadam Rupesh Vijaysinha,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police

Aurangabad Railway.

133. Shri. Mane Ganesh Dattu,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pimpri Chinchwad.
134. Shri. Pradipkumar Shrikrishna Nitawane,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007,
Through the Inspector General of Police
Nagpur Range.
135. Shri. Londhe Budhawant Pandurang,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai City.
136. Shri. Vikas Dnyandeo Madake,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Pimpri Chinchwad.
137. Shri. Parasharam Shivji Suryagandh,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai City.
138. Shri. Desai Sachin Ramesh,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai Railway.

139. Shri Roshan Wasudeorao Khandekar,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police,
Nagpur Railway.
140. Shri. Tayade Milind Jangalu,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007,
Through the Commissioner of Police
Mumbai Railway.
141. Shri. Deshmane Ravi Gulab,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Aurangabad Railway.
142. Shri. Nimbalkar Dipak Shaligram,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police
Nagpur Range.
143. Shri. Nitnaware Pravin Ramesh,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police
Nagpur Range.
144. Shri. Maheebub Rubab Tadvi,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai City.
145. Shri. Pravin Devidasrao Hire,
Through the Director,
Maharashtra Police academy,

Trimbak Road, Nashik 422007
Through the Commissioner of Police
Nagpur Railway.

146. Shri. Telkikar Vijay Hari,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai Railway.
147. Shri Warthe Rajesh Ashokrao,
through the Director,
maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Nagpur Railway.
148. Shri. Kamble Bhairinath Sadashiv,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai Railway.
149. Shri. Vasave Dhirsing Lalsing,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the Commissioner of Police
Mumbai City.
150. Shri. Dattatray Shripati Kamble,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007, and
Through the Commissioner of Police
Mumbai Railway.
151. Shri Bagde Abhishek Ashok,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Inspector General of Police

Nagpur Range.

152. Shri. Pawar Anil Gorakshnath,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai Railway.
153. Shri Anand Babruwan Jadhav,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007
Through the Commissioner of Police
Mumbai Railway.
154. Shri Atram Nitin Charanmdas,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007.
155. Shri. Bhalerao Nilesh Andres,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007.
156. Shri. Lohare Maruti Kishan,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007.
157. Badane Rahul Shaligram,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007.
158. Shri Vijay Pratp Jadhav,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007.
159. Shri. Pojirwadh Gangadhar Poshtti,
Through the Director,
Maharashtra Police academy,
Trimbak Road, Nashik 422007.

160. Mr. Abhijit Gorak Kanse,
 161. Mr. Anil Balu Nimbalkar,
 162. Mr. Vikas Vilas Chavan,
 163. Mr. Dyneshwar Jagannath Ghadge,
 164. Mr. Anna Madhukar Darade,
 165. Mr. Mayur panjabrao Patil,
 166. Mr. Imran Aslam Khan,
 167. Mr. Hitesh Vinayak Chopade,
 168. Mr. Amit Rajendra Gaikwad. ...Respondents

(Respondent Nos.160 to 168
 were Petitioners transferred as
 Respondents)

WITH
INTERIM APPLICATION NO.16320 OF 2023
IN
WRIT PETITION NO.13227 OF 2018

Avinash Atmaram Achgekar ...Applicant/Petitioner.

Versus

Santosh Bapurao Ratho & Ors. ...Respondents

Mr. S. C. Naidu a/w. Mr. Mangesh Madhav Deshmukh, Ms. Divya Yajurvevi, Mr. Abhishek Ingale, Mr. Sudeshkumar Naidu, Mr. Pradeep Kumar, Mr. Shailesh Ahire and Mr. Tanmay Sawant for the Petitioners.

Mr. Akhilesh Dubey a/w. Mr. Sushant Walimbe, Mr. Hrutik Chavan and Ms. Srushty Kamble i/b. Ms. Aarti J. Nishad for the Applicant in IA/16320/2023.

Mr. Birendra Saraf, Advocate General a/w. Mr. P. P. Kakade, G.P., Mr. B. V. Samant, Addl. G. P., Mr. M. M. Pable, AGP and Ms. Kavita N. Solunke, AGP for Respondent No.1-State.

Dr. Suresh Mane a/w. Ms. Vaishali Jagdale for Respondent Nos.34, 41, 42 and 46.

Dr. Jayashri Patil a/w. Mr. Rajaashok D. Ghate for Respondent Nos.146 to 156.

Mr. A. Y. Sakhare, Senior Advocate i/b. Mr. Zishan Quazi for Respondent Nos.160 to 164.

Mr. Mangal Bhandari for Respondent Nos.165 to 168.

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

Date on which the Arguments were Concluded : 26th February 2024.

Date on which the Judgment is Pronounced : 20th March 2024.

JUDGMENT: (Per Jitendra Jain, J.) :-

1. **Rule.** Rule made returnable forthwith. The learned counsel waive service of notice for respective Respondents. By consent of the parties, the writ petition is taken up for final hearing.

2. This petition under Article 226 and 227 of the Constitution of India seeks to challenge the order dated 6th November 2018 passed by the Maharashtra Administrative Tribunal (for short “Tribunal”) in Original Application (O.A.) No.394 of 2018 by which the Tribunal has dismissed the Petitioner’s O.A. by observing that post decision of the Supreme Court in the case of *Jarnail Singh & Ors. Vs. Laxmi Narayan Gupta & Ors.*¹. the decision of the Bombay High Court in Writ Petition No.2797 of 2015 in the case of *The State of Maharashtra & Anr. Vs. Shri.Vijay Ghogre & Ors.*² stands impliedly overruled and, therefore, the

1 2018 (10) SCC 396

2 2017 SCC Online Bom 7398

Petitioners cannot be considered for the post of the Police Sub-Inspector (for short “PSI”).

3. Narrative of Events:-

- (i) On 2nd June 2016, a requisition was made by Respondent No.1-State to Respondent No.5-MPSC for demand of 828 post to be filled under Police Sub-Inspector (Inter-department Direct Service Examination) 2016.
- (ii) Based on above requisition, on 27th June 2016, an advertisement was issued for filling up 828 posts by conducting Limited Departmental Competitive Examination (LDCE) 2016. The details of 828 vacancies as per the said advertisement are as under:-

Sr. Nos.	Category	No. of Posts
1	Scheduled Caste	108+9*=117
2	Scheduled Tribes	47
3	Vimukta Jati/Denotified Tribes (A)	--
4	NT (B)	1
5	NT (C)	--
6	NT (D)	--
7	Special Backward Class	16+5*
8	Open	642
Total		828
*Backlog Posts		

- (iii) Based on above 828 candidates were selected and sent for training. Out of which 642 candidates were from open category and 186 from reserved category.
- (iv) The above 186 posts (828-642) were to be selected from reserved category on the basis of the Maharashtra State Public Services (Reservation for Scheduled Caste, Scheduled Tribes, Denotified Tribes, Nomadic Tribes, Special Backward Category and Other Backward Classes) Reservation Act, 2001 (the Reservation Act of 2001). The said Reservation Act was the subject matter of challenge before this Court in Writ Petition No.2797 of 2015 in the case of *Vijay Ghogre & Ors. (supra)*. There was a difference of opinion between the two learned Judges of this Court and, therefore, the said case was referred to the learned third Judge.
- (v) On 4th August 2017, after receiving the opinion of the third Judge, the Division Bench of this Court by majority passed the following order:-

ORDER

- (i) *The impugned judgment and order dated 28 November 2014 of Maharashtra Administrative Tribunal to the extent it strikes down the Reservation Act is set aside and the issue of constitutional validity of the Reservation Act is kept open for determination in appropriate case and on an appropriate occasion;*
- (ii) *The Government Resolution dated 25 May 2004 is struck down to the extent it makes provisions for reservation in matters of promotions in favour of Scheduled Caste, Scheduled Tribes, Denotified Tribes (A), Nomadic Tribes (B), Nomadic Tribes (C), Nomadic Tribes (D) and Special Backward Classes, being ultra vires*

Article 16(4A) of the Constitution and contrary to the law laid down in M. Nagaraj case.

- (vi) Meanwhile, a writ petition was filed in this Court by one ***Sushant Salvi Vs. State of Maharashtra***³ and this Court pronounced an order on the said petition on 28th September 2017. The issue raised therein was whether the Government Resolution dealing with relaxation of age is applicable to the advertisement dated 27th June 2016 for filling up 828 vacancies for the post of PSI. This Court held that the advertisement dated 27th June 2016 was not a direct recruitment but was recruitment by selection on the basis of promotion of in-service police constable and, therefore, the Circular granting relaxation of the age would not be applicable to LDCE-2016.
- (vii) On 18th October 2017, Respondent No.1 issued a letter to its departments with regard to fall out of the decision of this court in the case of ***Vijay Ghogre & Ors. (supra)***. The said letter states that during the period of stay given by the High Court, there was no problem in releasing the order of promotion but since the matter was pending before the Supreme Court, same should be made clear in the order of promotion.
- (viii) On 2nd November 2017, Respondent No.1-State again addressed a letter to all its departments stating that the period of stay granted

3 WP/6631/2017

by the High Court in case of *Vijay Ghogre & Ors. (supra)* had come to an end on 21st October 2017 and the Supreme Court has not given any stay to the said decision of the High Court and, therefore, reservation could not be given in any promotion. The said letter further states that till the hearing takes place, the process of promotion should be kept in abeyance. The hearing was scheduled on 13th November 2017.

- (ix) On 26th December 2017, Respondent No.4-DGP issued a communication that out of 828 candidates, recommended by Respondent No.5-MPSC, the training of 781 candidates is planned to be conducted from 8th January 2018 at Nashik. It further states that in future if any directives are received from the Court, suitable changes would be made about which all candidates are to be informed.
- (x) On 29th December 2017, Respondent No.1-State addressed one more letter to all its departments and reiterated that since there was no stay of the decision of the Bombay High Court in the case of *Vijay Ghogre & Ors. (supra)*, no promotion could be made from reserved category but there is no statutory prohibition in giving promotion to the employees of open category. Therefore, the quota of promotion in vacant posts in open category are to be filled in temporary manner as per seniority subject to the decision of the

Supreme Court.

(xi) On 15th January 2018, Law and Judiciary Department of Respondent No.1-State gave an opinion that Respondent No.5-MPSC cannot recommend candidates more than the post requisitioned nor Respondent No.1-State can appoint candidates in excess of the post advertised by the notification. However, in exceptional circumstances or in an emergent situation, policy decision in that behalf may be taken although such a decision will be vulnerable to litigation. It further states that this action neither protects 186 candidates from the reserved category from the consequence of reversion nor safeguards the State Government from its obligation to undo the action of promotion given on the basis of reservation and it further states that there is a clear breach of order of this Court in the case of *Vijay Ghogre (supra)*.

(xii) On 5th March 2018, Respondent No.1-State addressed a letter to Respondent No.4-DGP, wherein Respondent No.1-State reiterated that inclusion of 154 candidates to be made in direct service is subject to the decision of the Supreme Court in the case of *Vijay Ghogre & Ors. (supra)* and after the final decision of the Supreme Court, there would not be more candidates than actual demand. The said letter further states that instead of calling back 186 reserved candidates from training promotion of these 186

candidates were to be subjected to the decision of the Supreme Court.

(xiii) On 28th March 2018, pursuant to RTI query, Respondent No.1-State clarified that out of 1400 posts vacant, 750 post were sought to be filled by LDCE 2016 and 650 posts by LDCE 2017. It further states that out of 2422 posts to be filled by LDCE, 1150 posts are vacant, out of which 828 post are filled by LDCE 2016 and 781 candidates have been sent for training from 8th January 2018. For the balance 322 posts, the process of examination of LDCE 2017 is going on.

(xiv) On 16th March 2018, the Respondent No.4-DGP issued a communication in which it was stated that as per the revised result dated 28th February 2018 recommendation for additional 154 candidates for the post of PSI was made and they were being sent for training subject to the decision of the Supreme Court in the case of *Vijay Ghogre & Ors. (supra)*.

(xv) On 31st March 2018, the Respondent No.1-State issued a Government Resolution for disbursing remuneration and allowances of the candidates proposed for the post of PSI which were sent for training.

(xvi) On 4th April 2018, the Respondent No.1-State issued a Government Resolution for filling 322 post in the category of PSI by conducting

LDCE 2017 and the same were to be filled without considering reservation.

(xvii) On 18th May 2018, the Respondent No.1-State issued a Government Resolution for disbursing remuneration and allowances of 154 candidates for creating 154 supernumerary post of PSI. It is also important to note that Respondent No.1-State in its reply before the Tribunal in O.A. No.394 of 2018 has stated that supernumerary posts were created subject to the out come of the Supreme Court's decision in the case of ***Vijay Ghogre & Ors. (supra)***.

(xviii) On 20th August 2018, Respondent No.1-State filed an Affidavit-in-reply in O.A. No.320 of 2018 before the Tribunal, wherein they have stated on oath that 154 candidates were sent for training are not in addition to the earlier 828 candidates but they were sent for training subject to the outcome of the decision of the Supreme court in the case of ***Vijay Ghogre & Ors. (supra)*** and same is clearly mentioned in letter dated 5th March 2018.

(xix) On 12th September 2018, in the reply of Respondent No.1-State in O.A. No.394 of 2018 further reiterates the Government's letter dated 5th March 2018, wherein it is clarified that after the final decision of the Supreme Court, the actual number of candidates will not be more than 828 and, therefore, the contention of the

Petitioners that $828+154=982$ posts are sought to be filled is not correct.

(xx) On 24th October 2018, Law and Judiciary Department of Respondent No.1-State opined that appointment through LDCE comes within the category of appointment through promotion and same is a fastrack or accelerate promotion and LDCE 2016 is also recruitment by way of promotion of in-service candidates.

(xxi) On 13th November 2018, a representation was made by one Shri. Rajendra Kondhare to the Chief Minister of the State stating therein that in LDCE 2016, 982 posts have been filled ($828+154$).

(xxii) On 20th November 2018, the Respondent No.4-DGP issued an order reiterating that 148 trainee PSI are being sent subject to decision by the Supreme Court in future and all the candidates should take a note of the same.

(xxiii) Meanwhile, on 25th September 2023, this Court in the present writ petition by an interim order directed Respondent Nos.1, 2 and 4 to prepare a list of candidates who have secured marks of 245 and 249 out of 400 marks and send all these candidates for receiving training for the post of PSI. This candidates numbered 154. This order was passed by observing that post the decision of this Court in the case of *Vijay Ghogre & Ors. (supra)*, no

reservation can be provided for promotion to the post of PSI and, therefore, there was a serious error on the part of the Respondent No.4-DGP to select initially 186 candidates from reserved category for being sent for training. This Court further observed that to correct the same, 154 candidates without any reservation were sent for training by the State. However, there were some candidates who had secured more marks than the last candidates who were sent for training and this was where *prima-facie*, there was discrimination and violation of the judgment delivered by this Court in the case of *Vijay Ghogre & Ors. (supra)*.

(xxiv) It is on the above backdrop that the present writ petition is being heard finally.

Submissions of the Petitioners :-

4. The Petitioners submit that promotion granted to 22 reserved category candidates (other than Scheduled Caste & Scheduled Tribes) is ultra-vires Article 16(4-A) of the Constitution inasmuch as the State cannot make reservation in promotion for other backward class candidates. The Petitioners submitted that LDCE 2016 conducted by Respondent No.5-MPSC is selection by promotion of in-service candidates which is also known as accelerated promotion and in support thereof, the Petitioners have relied upon various documents of

the State including the affidavits filed by the State before the Tribunal. The Petitioners further contended that under Article 320 of the Constitution, consultation of Respondent No.5-MPSC is required not only for direct recruitment but also for promotion of in-service candidates. The Petitioners further submitted that the Tribunal's finding that the decision of this Court in the case of *Vijay Ghogre & Ors. (supra)* is impliedly overruled is erroneous. The Petitioners further submitted that in addition to 828 posts notified in the advertisement, 154 reserved candidates were appointed and, therefore, the composite post would work out to 982 (828+154). The Petitioners further submitted that they have locus to file the present writ petition since on account of the decision in the case of *Vijay Ghogre & Ors. (supra)*, the reserved category candidates were to be reverted back and in their place, the Petitioners would fall within the zone of consideration. The Petitioners have filed detailed written submissions and compilation of case laws in support of its prayers that the impugned order of the Tribunal is required to be set aside.

Submissions of Respondent No.1-State:-

5. The Respondent No.1-State represented by the learned Advocate General submitted that it is incorrect to state that 982 posts were filled up. The learned Advocate General submitted that 154 candidates from reserved category were sent by mistake inspite of there

being no stay of the decision of this Court in the case of **Vijay Ghogre & Ors. (supra)**. Therefore in the appointment letter to the reserve category candidates, it was informed that promotion is subject to the outcome of the decision in the case of **Vijay Ghogre & Ors. (supra)**, which is pending before the Supreme Court. To counter-balance the said aforesaid mistake, the State decided to send another 154 candidates from open category and an undertaking was taken from these candidates was taken that their promotion is subject to the outcome of the decision in the case of **Vijay Ghogre & Ors. (supra)**. The Respondent No.1-State further submitted that supernumerary post of 154 candidates were created only for the purpose of accounting for expenses of the candidates sent for training and same cannot be treated to mean that the State has created 154 additional posts. The said interim order dated 25th September 2023 passed by this Court, whereby 154 candidates were sent does not in any manner create any rights or equities in favour of the Petitioners and is subject to the final decision in the present Writ Petition. The Respondent No.1-State further submitted that policy decision of the Government has not been challenged before the Tribunal by the Petitioners. The Respondent No.1-State further submitted that on account of confusion, there has been some inconsistency in the stand of the Respondent No.1-State as to whether LDCE 2016 is selection by way of promotion or direct recruitment. The

Respondent No.1-State further submitted that the present Petitioners have no locus since even if all 828 posts were to be filled on merits, the last candidate who has scored 249 would enter and the present Petitioners' marks being less than 249, they would in any way not be eligible in the zone of consideration. The Respondent No.1-State further submitted that the number of posts for which recruitment would be made would not exceed 828 after the decision of the Supreme Court in the case of *Vijay Ghogre & Ors. (supra)* and it is only as a contingency measure subject to the outcome of the decision in the case of *Vijay Ghogre & Ors. (supra)* that the State having already sent 154 reserved candidates for training that another 154 candidates from open category were sent for training by creating additional posts on supernumerary basis. The Respondent No.1-State further submitted that to some extent, the decision of this Court in case of *Vijay Ghogre & Ors. (supra)* has been diluted by the decision of the Supreme Court in the case of *Jarnail Singh (supra)*. But, however, it is submitted that the question of the effect of the decision in *Jarnail Singh (supra)* on the *Vijay Ghogre' & Ors. (supra)* judgment need not be gone into by this Court and same ought to be left to be considered in an appropriate case. The entire basis of the Petitioners that there are 982 posts under LDCE 2016 is incorrect. The Respondent No.1-State further submitted that the Petitioners cannot question violation of any fundamental right in the

present case. The Respondent No.1 has filed detailed written submissions in support of its contentions and prayed for dismissal of the present petition.

Submissions of Respondent Nos.34, 41, 42 and 46 :-

6. These Respondents were represented by learned Advocate Dr. Mane. The Respondents submitted that under no circumstances, recruitment of 154 reserved category could be disturbed and recalled since the LDCE 2016 is a recruitment under *Rule 3(b)* of the Police Sub-Inspector (Recruitment) Rules, 1995 and not under *Rule 3(a)*. It is their contention that LDCE 2016 is not a promotional exam but a selection and, therefore, reservation is permissible under Article 16(4) of the Constitution of India. These Respondents further relied upon various documents, where the State has been taking contradictory stands as to whether LDCE 2016 is a case of recruitment or promotion. These Respondents have filed a written submissions and case laws in support of their contentions. The Respondents have therefore prayed that under no circumstances, the 154 reserved candidates who have been sent for training can be recalled.

Submissions of Respondent Nos.165 to 168:-

7. These Respondents represented by learned Advocate Mr. Mangal Bhandari submitted that the State has been taking inconsistent

stand in relation to the nature of LDCE 2016 as to whether it is a promotional exam or recruitment exam. It is his submissions based on various documents that LDCE 2016 is a promotional exam and not a case of direct recruitment. He further submitted that appointment of 154 reserved candidates cannot be treated as direct recruitment and letter dated 19th November 2018 is illegal and cannot be acted upon. The Respondents further submitted that the Respondent No.1-State could not have sent reserved candidates for training and it was a mistake knowingly done despite the opinion of the law and judiciary department and the Advocate General. These Respondents further submitted that it is incorrect to say that only for the purpose of training period, 154 posts were stated to be supernumerary post. The Respondents further submitted that these candidates who have completed the training have been confirmed and, therefore, the contention of Respondent No.1-State is contrary to its own stand. The Respondents further submitted that the reserved candidates should be recalled since same is contrary to the decision of this Court. These Respondents have also filed their written submissions in support of their contentions.

Submissions of Respondent Nos.146 to 156:-

8. These Respondents made their submissions in support of the impugned judgment of the Tribunal and prayed for dismissal of the writ

petition. It is their submissions that the States in its Affidavit dated 29th October 2018 have submitted that this is not a post for promotion and the Tribunal has decided the said O.A. under the caption “Selection”. It is further submitted that in service jurisprudence, Recruitment Rules govern the field of recruitment. It is further submitted that recommendation for appointment order issued by Respondent No.5-MPSC on 24th May 2017 is not challenged in the original application and, therefore, the O.A. was not maintainable before the Tribunal. It is further submitted that in the Supreme Court, the quantifiable data has been submitted in the case of *Vijay Ghogre & Ors. (supra)*. It is further submitted that in this very recruitment LDCE 2016, the Supreme Court in the case of *Gajanan Babulal Bansode & Ors. Vs. State of Maharashtra & Ors.*⁴, has observed that no additional seats could be filled up beyond the notified vacancies and same was not considered by this Court while passing the interim order on 25th September 2023. These Respondents have also filed the written submissions and prayed for dismissal of the writ petition.

Submissions of Mr. K. R. Shetty:-

9. The learned Advocate filed a compilation of documents giving summary of various decisions of the Supreme Court and constitutional amendment with regard to reservation in promotion. In the said

4 2021 (4) SCC 494

compilation of documents, various decisions of the Supreme Court are also annexed. It is his contention that reservation in promotion is not warranted by Article 16(4) of the Constitution of India and if same is permitted then serious consequences would ensue.

Submissions in Interim Application No.16320 of 2023:-

10. These Intervenors were represented by the learned Advocate Mr. Dubey. It is his contention that after 31st December 2023, the Petitioners would have to compete with the applicants for 50% of the post of PSI by promotion and, therefore, to avoid the same, the Petitioners are trying to march over the applicant by contending that 154 supernumerary posts were created by Government Policy. The Intervenors further submitted that on account of interim order dated 25th September 2023, the case of the applicants is severely prejudiced as it would amount to their juniors being appointed to the post of PSI. The Intervenors further submitted that on the anvil of the doctrine of legitimate expectation, they should be heard. The Intervenors have further submitted that the issue cannot be remanded back to the Tribunal after the Petitioners having taken advantage of interim order dated 25th September 2023. It is submitted that the interim order has been passed without considering all the facts on record and, therefore, same should not be made absolute. It is their contention that 982 posts has not been created by the State. It is their submission that the State

cannot make appointment in excess of the advertised post and the Petitioners cannot claim negative equality under Article 14 and 16 of the Constitution of India. The Intervenors have also filed the detailed written submissions in support of their contentions.

11. We have heard the learned counsel for the Petitioners, learned Advocate General for the Respondent No.1-State and other Advocates for the Respondents and Intervenors. We have also perused the Affidavit-in-reply and written submissions filed by the parties.

Analysis and Conclusion:-

12. The Tribunal has dismissed the OA filed by the Petitioners primarily on the ground that judgment of this Court in the case of ***Vijay Ghogre & Ors. (supra)*** stands impliedly overruled by necessary implication inasmuch as the decision of this Court while quashing the Government Resolution of 25th April 2004 had observed that in the absence of any quantifiable data placed on record the State could not have provided for reservation in promotion and for this finding, this Court relied upon the decision in the case of ***M. Nagaraj & Ors. Vs. Union of India***⁵. According to the Tribunal, the Supreme Court in the case of ***Jarnail Singh (supra)*** in paragraph 21 has observed that the conclusion in ***M. Nagaraj (supra)*** that the State has to collect

5 2006 (8) SCC 212 decided on 19th October 2006

quantifiable data showing backwardness of the Scheduled Castes and Scheduled Tribes being contrary to the judgment of the nine Judge Bench in *Indra Sawhney Vs. Union of India*⁶ is held to be invalid. Therefore, the Tribunal came to a conclusion that the decision of this Court in the case of *Vijay Ghogre & Ors. (supra)* is impliedly overruled and consequently the fate of 154 reserved candidates is no more in suspended animation but the State Government should abide by the judgment of the Supreme Court in the case of *Jarnail Singh (supra)*.

13. In view of above, the first issue which requires to be addressed is whether the Tribunal was justified in coming to a conclusion that the decision of this Court in the case of *Vijay Ghogre & Ors. (supra)* stands overruled by implication because of the decision of the Supreme Court in the case of *Jarnail Singh (supra)* and more particularly paragraph 21 of *Jarnail Singh's* decision. Therefore, it is necessary for us to analyse the decision of this Court in the case of *Vijay Ghogre & Ors. (supra)*, decision in the case of *M. Nagaraj* and *Jarnail Singh (supra)* to adjudicate upon the aforesaid finding of the Tribunal.

14. On 4th August 2017, this Court in the case of *Vijay Ghogre (supra)* after receiving the opinion of the learned third Judge, by majority passed the following order:-

⁶ (2000) 1 SCC 168

ORDER

(i) *The impugned judgment and order dated 28 November 2014 of Maharashtra Administrative Tribunal to the extent it strikes down the Reservation Act is set aside and the issue of constitutional validity of the Reservation Act is kept open for determination in appropriate case and on an appropriate occasion;*

(ii) *The Government Resolution dated 25 May 2004 is struck down to the extent it makes provisions for reservation in matters of promotions in favour of Scheduled Caste, Scheduled Tribes, De-Notified Tribes (A), Nomadic Tribes (B), Nomadic Tribes (C), Nomadic Tribes (D) and Special Backward Classes, being ultra vires Article 16(4A) of the Constitution and contrary to the law laid down in M. Nagaraj case.*

15. It is important to analyse the opinion of the third Judge in the case of ***Vijay Ghogre & Ors. (supra)*** which was rendered on 25th July 2017. The opinion of the third Judge can be summarised as under :-

- (i) Insofar as the vires of 2001 Reservation Act is concerned, the majority view was that the said adjudication is academic and therefore the issue of constitutional validity of the Reservation Act is left open to be decided in an appropriate case and on appropriate occasion.
- (ii) Insofar as the Government Resolution dated 25th May 2004 to the extent it makes provision for reservation at the stage of promotions in favour of any Backward Class citizens other than Scheduled Castes/Scheduled Tribes is ultra-vires Article 16(4-A) of the Constitution and liable to be struck down. This is so because Article 16(4-A) of the Constitution expressly provides the

State to make reservation in matters of promotion in favour of Scheduled Castes and Scheduled Tribes only. Therefore no other backward class can get the benefit of reservation under Article 16(4-A) of the Constitution.

- (iii) Insofar as, the Government Resolution dated 25th April 2004 to the extent it makes provision for reservation in matter of promotion in favour of Scheduled Castes and Scheduled Tribes is concerned, the majority opinion was that same is ultra-vires Article 16(4-A) of the Constitution since no quantitative and qualitative data with respect to backwardness and adequate representation and efficiency was placed before the Court as per the mandate of *M. Nagaraj* case.
- (iv) In paragraph No.69 of the aforesaid referenced judgment, the learned Judge observes that the corrective steps within 12 weeks would mean collection of quantifiable data to form an opinion in the matter of reservations at the stage of promotion in favour of Scheduled Castes/ Scheduled Tribes and on the basis of said quantifiable data the State is directed to re-visit the provision of Section 4 of the Reservation Act.
- (v) The learned Judge further observes that if the exercise of collecting quantifiable data is not completed within 12 weeks

then liberty is granted to the Tribunal/Court to examine the validity of Reservation Act and till such time the State Government shall treat the Scheduled Castes and Scheduled Tribes employees at par in matters of promotions with open category and other backward class category of employees.

16. The abovereferred decision of this Court in the case of *Vijay Ghogre (supra)* is pending before the Supreme Court and Respondent Nos.146 to 156 in the written submissions have stated that the State has submitted quantifiable data before the Supreme Court in Special Leave Petition No.28306 of 2017 which is *Vijay Ghogre's case*. Therefore, it would not be appropriate for this Court to give any opinion on whether in the absence of quantifiable data the decision in the case of *Vijay Ghogre (supra)* is impliedly overruled. That would amount to adjudicating upon the matter which is pending before the Supreme Court which is not permissible. Therefore, we would proceed on the premise that the decision of this Court in the case of *Vijay Ghogre (supra)* is still a good law subject to our examining in subsequent paragraphs, whether it could be said that the judgment has been impliedly overruled by subsequent judgment of the Supreme Court in the case of *Jarnail Singh (supra)*.

17. Now, we propose to decide whether the decision of this Court in the case of *Vijay Ghogre (supra)* has been overruled impliedly by the

decision of the Supreme Court in the case of *Jarnail Singh (supra)*.

18. In *M. Nagaraj (supra)*, the Supreme Court was considering whether Article 16(4-A) of the Constitution inserted by Constitution (Eighty Fifth Amendment) Act 2001 retrospectively from 17th June 1995 providing reservation in promotion was unconstitutional and violative of the basic structure. The Supreme Court upheld the validity of Article 16(4-A) and 16(4-B) by observing that they retain the controlling factors, namely backwardness and inadequacy of representation keeping in mind the overall efficiency of the State Administration under Article 335. The Supreme Court further observed that the main issue before them concerned the “extent of reservation” and for this, the State concerned would have to show in each case the existence of the compelling reasons namely, backwardness, inadequacy of representation, and overall administrative efficiency before making provision for reservation. The Supreme Court further observed that if the State wishes to exercise its discretion to make reservation for Scheduled Caste and Scheduled Tribes in matters of promotion, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment, in addition to compliance with Article 335 and in any case, the State has to ensure that they do not breach the ceiling limit of 50% or extend the reservation indefinitely.

19. On 21st December 2016, there was a difference of opinion between two learned Judges of this Court in the case of ***Vijay Ghogre & Ors. (supra)***. The issue before the Division Bench arose out of the proceedings of the Tribunal with regard to vires of the Maharashtra State Public Services (Reservation for Scheduled Caste, Scheduled Tribes, Denotified Tribes, Nomadic Tribes, Special Backward Category and Other Backward Classes) Reservation Act, 2001 and Government Resolution dated 25th May 2004 issued by the State of Maharashtra providing for reservation in promotion. The Tribunal struck down the Reservation Act and the Government Resolution on promotion as ultra-vires to the Constitution and the law laid down in ***M. Nagaraj (supra)***. Since there was a difference of opinion, the matter was referred to the third learned Judge of this Court.

20. On 25th July 2017, the learned third Judge expressed his opinion by observing that Constitutional validity of the Reservation Act was an academic exercise which the Tribunal ought not to have gone into. The third learned Judge further observed that Government Resolution dated 25th May 2004 to the extent, it makes provisions for reservations in favour of notified tribes, nomadic tribes and special backward classes is ultra-vires Article 16(4-A) of the Constitution and insofar as, it makes provision for reservation in matters of promotion in

favour of Scheduled Caste/Scheduled Tribes is ultra-vires Article 16 (4-A) of the Constitution for want of adherence to the constitutional imperatives prescribed in ***M. Nagaraj's*** case and, therefore, same is struck down. The learned third Judge further observed that the State should collect quantifiable data with regard to backwardness, adequacy of representation and overall efficiency of Administration in the services (these were the studies mandated by ***M. Nagaraj's*** case) and on the basis of the same to take decision within a period of 12 weeks in the matter of reservation at the stage of promotion in favour of Scheduled Caste and Scheduled Tribes. The learned third Judge further observed that if this exercise is not carried out within the stipulated period, then the vires of the Reservation Act can be examined by the Tribunal/Court.

21. Pursuant to above, a majority opinion came to be passed on 4th August 2017 in the following terms:-

(i) The impugned judgment and order dated 28 November 2014 of Maharashtra Administrative Tribunal to the extent it strikes down the Reservation Act is set aside and the issue of constitutional validity of the Reservation Act is kept open for determination in appropriate case and on an appropriate occasion;

(ii) The Government Resolution dated 25 May 2004 is struck down to the extent it makes provisions for reservation in matters of promotions in favour of Scheduled Caste, Scheduled Tribes, De-Notified Tribes (A), Nomadic Tribes (B), Nomadic Tribes (C), Nomadic Tribes (D) and Special Backward Classes, being ultra vires Article 16(4A) of the Constitution and contrary to the law laid down in M. Nagaraj case;

22. Therefore, the majority judgment of this Court in the case of ***Vijay Ghogre & Ors. (supra)*** held that since there was no quantifiable

data placed before them with regard to backwardness, adequacy of representation and efficiency of Administration in the services, the Government Resolution giving reservation in promotion was struck down with a caveat that if the said data is collected within 12 weeks, then the State can take a decision in a time bound manner and if the said exercise is not carried out within the stipulated period, then the validity of Reservation Act would be permitted to be agitated before the Court. Therefore, this Court following *M. Nagaraj's* case held that reservation in promotion should be backed by data with regard to three parameters; backwardness, adequacy of representation and overall efficient administration in the services.

Thereafter on 26th September 2018, the Constitution Bench of the Supreme Court in the case of *Jarnail Singh & Ors. (supra)* was posed with the question as to whether the decision in the case of *M. Nagaraj (supra)* should be referred to a larger Bench inasmuch as the decision in the case of *M. Nagaraj (supra)* which states that the State has to collect quantifiable data showing the backwardness of the class is contrary to the nine Judge Bench in *Indra Sawhney & Ors. Vs. Union of India & Ors.*⁷. The Supreme Court in this case held in paragraph 23 that the decision in *M. Nagaraj's* case has in unmistakable terms stated that the State has to collect quantifiable data showing the backwardness of

⁷ 1992 Supp (3) SCC 217

the Scheduled Castes and Scheduled Tribes and this portion of the judgment is directly contrary to the nine Judge Bench in *Indra Sawhney & Ors. (supra)*. Ultimately in paragraph 36 it concluded that the judgment in *M. Nagaraj's* case need not be referred to the Seven Judge Bench. However, the conclusion arrived at in *M. Nagaraj's* case that the State has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes was held to be invalid as the same was contrary to a larger bench judgment of this Court in *Indra Sawhney (supra)*. On a reading of the decision in case of *Jarnail Singh & Ors. (supra)*, the only part of *M. Nagaraj's* case which is overruled is with regard to obligation of the State to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes. However, with regard to other parameters laid down by *M. Nagaraj's* case (*supra*) namely, the data relating to inadequacy and efficiency was not disturbed by *Jarnail Singh's* case. Therefore, on a conjoint reading of the 2018 *Jarnail Singh* and *M. Nagaraj's* cases, we are of the view that the decision of the Supreme Court in *Jarnail Singh's* case of 2018 only overruled one parameter which is the quantifiable data with regard to backwardness laid down by *M. Nagaraj's* case and not any other parameter.

23. At this point, it is relevant to note that this Court in *Vijay Ghogre's* case struck down the Government Resolution giving

reservation in promotions on the ground that the State did not provide the data with regard to all the three parameters namely, backwardness, inadequacy of representation and efficiency of administration. Therefore, the only part of ***Vijay Ghogre's*** case which can be said to be no more a good law, *prima-facie*, is the observation of this Court with regard to quantifiable data showing backwardness. Therefore, in our view, the Tribunal was not justified in observing in the impugned judgment that post ***Jarnail Singh's*** case, decision of ***Vijay Ghogre's*** case is completely and impliedly overruled. This in our view, would not be a correct reading of the decision of ***Jarnail Singh's*** case and ***M. Nagaraj's*** case.

24. On 28th January 2022, the Supreme Court in paragraph 8 of the decision in the case of second ***Jarnail Singh & Ors. Vs. Laxmi Narayan Gupta & Ors.***⁸, rejected the ground to challenge the decision in ***M. Nagaraj's*** case with regard to collection of quantifiable data showing backwardness but reiterated that the State has to collect quantifiable data regarding inadequate representation of Scheduled Castes and Scheduled Tribes in the services of the State, if reservation is sought to be provided in promotions. This observation of the Supreme Court in the year 2022 supports the view which we have taken above that out of various parameters laid down by ***M. Nagaraj's*** case, only parameters

8 (2022) 10 SCC 595

relating to backwardness was held to be bad but with regard to other parameters, the decision in the case of **M. Nagaraj** still holds the field. Therefore, the Supreme Court in 2022 in **Jarnail Singh** arrived at these following points for determination :-

“1) What is the yardstick by which, according to M. Nagaraj (supra), one would arrive at quantifiable data showing inadequacy of representation of Scs and STs in public employment?

2) What is the unit with respect to which quantifiable data showing inadequacy of representation is required to be collected?

3) Whether proportion of the population of SCs and STs to the population of India should be taken to be the test for determining adequacy of representation in promotional posts for the purposes of Article 16(4-A)?

4) Should there be a time period for reviewing inadequacy of representation?

5) Whether the judgment in M. Nagaraj (supra) can be said to operate prospectively?

6) Whether quantifiable data showing inadequacy of representation can be collected on the basis of sampling methods, as held by this Court in B.K. Pavitra & Ors. v. Union of India & Ors.⁷ (“B.K. Pavitra II”)?

25. The Supreme Court in 2022 **Jarnail Singh’s** case and thereafter analysed each and every issue with regard to quantifiable data on account of representations. The Supreme Court in 2022 in paragraph 45 in the case of **Jarnail Singh & Ors. (supra)**, once again observed after analyzing **M. Nagaraj’s** case that the quantifiable data regarding backwardness of Scheduled Castes and Scheduled Tribes is no more required in view of the judgment in the 2018 **Jarnail Singh’s** case.

26. In view of the above, we do not approve the reasoning of the Tribunal in the impugned order that post 2018 **Jarnail Singh’s** case,

decision of this Court in the case of ***Vijay Ghogre*** stands overruled by necessary implication. The Tribunal was wrong in observing that ***Jarnail Singh's*** case overruled ***M. Nagaraj's*** case with regard to the data on account of representations and efficiency. Therefore, the decision of this Court in the case of ***Vijay Ghogre & Ors. (supra)*** holds the field even today so far as the State of Maharashtra is concerned. We have noted that the challenge to this judgment is pending before the Supreme Court.

27. We would have stopped our decision with this finding since the only ground on which the Tribunal dismissed the O.A. was on the basis that ***Vijay Ghogre's*** case has been impliedly overruled. However, the present matter relates to exams conducted in 2016 and it has been since 8 years that the fate of many candidates is in uncertainty. Furthermore, the challenge before the Supreme Court in case of ***Vijay Ghogre (supra)*** is pending and which would have a direct effect on the present controversy. The parties have advanced their arguments on other issues also. Therefore, we deem fit to avoid further delay and restrain ourselves from remanding the matter back to the Tribunal and deem appropriate to adjudicate other issues which were raised before us.

28. Insofar as the contention of the Petitioners with regard to 22 candidates belonging to the reserved category (other than Scheduled

Castes and Scheduled Tribes) is concerned, we have perused the Original Application No.394 of 2018 filed before the Tribunal which is the subject matter of the present proceedings. On perusal of the same, we could not find any challenge mooted by the Petitioners before the Tribunal with respect to these 22 candidates nor any relief is claimed as is evident from the paragraph dealing with reliefs mentioned in the Original Application. The present petition is against the order passed by the Tribunal in Original Application No.394 of 2018 and the Petitioners having not challenged the appointment of 22 candidates on the ground that the same is in violation of Article 16(4-A) of the Constitution of India. In our view, the Petitioners cannot raise the said issue in this petition. Therefore, we do not propose to adjudicate upon the same. However, if the Petitioners wish to challenge the same, then they may do so in independent proceedings in accordance with law. However, certainly they cannot raise this issue in this petition. Therefore, the Petitioners' submission with regard to 22 candidates belonging to the reserved category (other than Scheduled Castes and Scheduled Tribes) is not adjudicated in the present proceedings.

29. Now coming to the action of Respondent No.1-State in sending candidates from reserved category for training and on realising that the same would be contrary to the decision of this Court in the case of *Vijay Ghogre (supra)*, sending another 154 candidates from open

category for training and on confirming the same, the Respondent No.1-State has submitted *before us that in the appointment letter to the reserve category candidate and an undertaking from the open category candidates, it is informed* that their promotion would be subject to the outcome of the decision of the Supreme Court in the case of **Vijay Ghogre (supra)**. Admittedly, the Respondent No.1-State was not justified in sending candidates from the reserved category, contrary to the decision of this Court. However, on realising the same, they have sought to rectify their mistake by sending another batch from the open category. By the time they realised this mistake, they could not have called the reserved candidates back and, therefore, they decided to send a contingent batch from the open category. The confirmation of the candidates from both these batches would be subject to the outcome of the Supreme Court in the case of **Vijay Ghogre (supra)**. If the decision of this Court in the case of **Vijay Ghogre (supra)** is confirmed by the Supreme Court then the candidates sent from the reserved category will have to be reverted to their original post *as per the appointment letter given to them by the State*. If the Supreme Court reverses the decision of this Court in the case of **Vijay Ghogre (supra)**, then the open category candidates will have to be reverted to their original post since they too have given an undertaking to Respondent No.1-State that their promotion is subject to the outcome of the decision of the Supreme

Court. Therefore, in our view, it would not be correct to uphold the contention of the Petitioners that as against 828 notified vacancies, the Respondent No.1-State has created additional 154 vacancies by sending candidates from the open category and, therefore, the total candidates selected for promotion is 982 as against 828 notified. This is so because the two batches of 154 candidates from reserved category and open category were sent to rectify the mistake committed by State, which is more particularly described by us above and with *an undertaking/appointment letter* that 154 candidates from either batch would be promoted subject to the decision of the Supreme Court in the case of ***Vijay Ghogre & Ors. (supra)***. This stand of the Respondent No.1-State is evident from their Affidavit in O.A. No.320 of 2018 dated 20th August 2018. The communication of Respondent No.1-State to Respondent No.4-DGP dated 5th March 2018 and communication dated 16th March 2018, wherein it is clarified that the 154 candidates would be subject to the outcome of the decision in the case of ***Vijay Ghogre (supra)*** by the Supreme Court. Insofar as the contention of the Petitioner that 154 supernumerary posts have been created is concerned, the said supernumerary posts as rightly contended by Respondent No.1-State have been created only for the purpose of remuneration during training period and same is evident from the communications dated 31st March 2018 and 18th May 2018 of

Respondent No.1-State. Therefore, we cannot accept the contention of the Petitioners that by creating supernumerary posts, the State has increased the number of notified vacancies from 828 to 982.

30. The next issue which arises is whether LDCE-2016 is a promotion of in-service candidates or a direct recruitment. The advertisement dated 27th June 2016 issued was on the basis that it is a promotional position since the said advertisement provided for reservation at 33%. If the advertisement was for direct recruitment then higher reservation of 50% would have been provided and since only 33% was provided, LDCE-2016 is a selection by promotion of in-service candidates and not the case of direct recruitment. The reserved category candidates did not object to the same at any stage of the proceedings and therefore, today in the present petition cannot contend that it is the case of the direct recruitment. Furthermore, the reserved category candidates also did not raise this issue before the Tribunal but on the contrary, they proceeded before the Tribunal on the correct premise that it is the case of the promotion by placing reliance on the decision in case of *Vijay Ghogre (supra)*. Therefore, the conduct of the reserved category candidates clearly demonstrates and rightly so that LDCE-2016 is a selection by promotion of in-service candidates and not a direct recruitment. Reliance placed by the learned Advocate Dr. Mane on the decision of the Supreme Court in case of *Pavnesb Kumar Vs. Union of*

*India*⁹ supports the case of the respondent-State that LDCE-2016 is a mode of accelerated promotion though not normal mode of promotion. The Supreme Court in case of *Akhilesh Prasad Vs. Jharkhand Public Service Commission*¹⁰ has also held that LDCE is a promotional exercise which gives an opportunity of accelerated promotion and it is not the case of a direct recruitment. This Court in the case of *Sushant Salvi (supra)* has also held that LDCE-2016 is selection by promotion of in-service persons. The Government Resolution of 27th June 2016 also states so. The requisition dated 2nd June 2016 by Respondent No.1-State to Respondent No.6-MPSC and opinion of Law & Judiciary Department also reiterates that it is selection by promotion of in-service candidates. In our view, LDCE-2016 cannot be said to be process of direct recruitment but it is selection by promotion under Rule 3(b) of the aforesaid Recruitment Rules. Therefore, the LDCE-2016, in our view, is selection by promotion falling under Rule 3(b) of the Police Sub-Inspector Recruitment Rules, 1995.

31. The word “supernumerary” means one beyond the regular, usual or necessary number, an additional or extra one associated with the regular body or set. It means ‘that is beyond or in excess of the prescribed number. The Supreme Court in the case of *Kunal Kapil Chindarkar Vs. State of Maharashtra*¹¹ observed that supernumerary

9 Civil Appeal No.3641 of 2023 decided on 28th November 2023

10 2022 SCC OnLine SC 510

11 2001 SCC Online Bom 577

seats will not change the sanctioned intake capacity in any manner. Applying the ratio of this decision, in our view, the Petitioners cannot contend that by creating 154 supernumerary posts, the notified vacancies of 828 are sought to be increased by Respondent No.1-State.

32. We have in our judgment in Writ Petition No.16025 of 2022 in the case of *Dattatray Maruti Bansode & Ors. Vs. State of Maharashtra* discussed that the number of vacancies to be filled cannot be more than what was notified in the advertisement and since there were no exceptional circumstances for the State to recruit more than the notified vacancies, any submission by the Petitioners or the Respondents which would have the effect of selecting more than 828 candidates would be contrary to our judgment in Writ Petition No.16025 of 2022.

33. We have in our aforesaid judgment in the case of *Dattatray Maruti Bansode (supra)* also held that LDCE 2016 is a selection by promotion of in-service candidates under Rule 3(b) of the Police Sub-Inspector (Recruitment) Rules, 1995 and it is not a case of direct recruitment and same is also applicable to the present case.

34. In our view, assuming all 828 posts were to be filled on merits then the marks of the last candidate in LDCE 2016 would be 249. The Petitioners in the present petition, have scored less than 249.

Therefore, in our view, the Petitioners would not be entitled to be considered for the promotion under LDCE 2016. It seems that the Petitioners has proceeded on the basis that 982 posts have been created, which is incorrect since 154 candidates over and above 828 were sent only to take care of the outcome of the decision in the case of ***Vijay Ghogre & Ors.*** by the Supreme Court. The Respondent No.1-State has categorically submitted before us that they have not created more than 828 posts under the 27th June 2016 advertisement and they further do not intend to exceed the said figure after the outcome of the decision of the Supreme Court in the case of ***Vijay Ghogre & Ors.*** It is also categorically stand of the Respondent No.1-State that 154 supernumerary posts were created only for the period of training and further the said posts would come to an end on the outcome of the decision in the case of ***Vijay Ghogre & Ors.*** by the Supreme Court. The Petitioners are also not justified in claiming any rights on the basis of the interim order of this Court dated 25th September 2023. In our view, the present Petitioners, irrespective of the outcome of the decision in the case of ***Vijay Ghogre (supra)*** would not have any right to claim promotion since that would amount to selection of candidates more than what has been notified.

35. The Petitioners and Respondents have relied upon various decisions. We propose to deal with the same in brief as under :-

(a) The petitioners have relied upon the following decisions :-

- (i) *Judgment in case of Virendra S. Hoooda & Ors. Vs. State of Haryana & Anr.*¹²;
- (ii) *Judgment in case of Hoshier Singh Vs. State of Haryana & Ors.*¹³;
- (iii) *Judgment in case of Prem Singh & Ors. Vs. Haryana State Electricity Board and Ors.*¹⁴;
- (iv) *Judgment in case of Arup Das & Ors. Vs. State of Assam & Ors.*¹⁵.

These judgments deals with the proposition as to whether the appointment can be made in addition to what is notified in the advertisement. These issues have been discussed by us in Writ Petition No.16025 of 2022 wherein we have relied upon the decision of the Supreme Court where this proposition and the decisions have been discussed. Therefore, we do not propose to repeat the same in this judgment.

(b) Insofar as the decision of the Bombay High Court in the case of *Santosh Pandurang Lokhande Vs. The State of Maharashtra & Ors.*¹⁶ is concerned, the said decision was with respect to LDCE-2017. This decision has discussed the effect of *Jarnail Singh's case* on *M. Nagaraj's case* and *Vijay Ghogre's case*.

12 (1999) 3 SCC 696

13 1993 Supp (4) SCC 377

14 (1996) 4 SCC 219

15 (2012) 5 SCC 559

16 Decided on 18th October 2019 in WP/3945/2019

We are concerned with LDCE-2016 and we have already discussed the judgment of 2018 *Jarnail Singh's case* and *M.Nagaraj's* case. However, post the Bombay High Court decision, the Supreme Court in 2022 has rendered another decision in the case of *Jarnail Singh (supra)* which we have already discussed above. Therefore, this decision of the Bombay High Court is not separately discussed herein.

- (c) The Petitioners have also relied upon the decisions in the case of *Union of India Vs. Hindustan Development Corporation and Ors.*¹⁷ and *Kerala State Beverages (M and M) Corporation Limited Vs. P.P. Suresh and Ors.*¹⁸. These decisions have been relied upon to canvass the proposition on legitimate expectation.

In our view, on the facts of the present case, the petitioners are not justified in contending that they should be considered for the post in addition to the notified vacancies in the advertisement and therefore, the question of application of legitimate expectation does not arise.

- (d) The petitioners have relied upon the decision in the case of *D.K. Reddy & Anr. Vs. Union of India & Ors.*¹⁹ and more

17 (1993) 3 SCC 499

18 (2019) 9 SCC 710

19 (1996) 10 SCC 177

particularly paragraph 13 to explain what is supernumerary post. In our view for the reasons discussed above, on the facts of the present case, we have already opined that the supernumerary post was only for the purpose of accounting for training expenses and to counter-balance the mistake committed by respondent-State in sending the reserved candidates and to counter-balance the same, 154 candidates were sent subject to the outcome of the decision of the Supreme Court in the case of *Vijay Ghogre (supra)*. Therefore, the decision in case of *D.K. Reddy (supra)* would not apply to the facts of the present case.

- (e) The petitioners have also relied upon the decision in case of *Ajit Singh & Ors. Vs. State of Punjab & Ors.*²⁰ to contend that they have a fundamental right to be considered for promotion. We have expressed our view that in no case, the total promotion should exceed 828 candidates as notified in the advertisement post decision of the Supreme Court in case of *Vijay Ghogre (supra)*. The petitioners do not fall within these 828 candidates irrespective of whatsoever may be the decision in the case of *Vijay Ghogre (supra)* by the Supreme Court. Therefore, in the facts of the present case, this decision

20 (1999) 7 SCC 209

cannot assist the petitioners to seek the reliefs prayed for.

- (f) The petitioners have also relied upon the decision in the case of *Vinod Dadasaheb Dhore & Anr. Vs. The Secretary, Maharashtra Public Service Commission, Mumbai & Ors.*²¹ wherein this Court has opined that by availing concessions in examination fee the candidates belonging to backward class have not been given any advantage in the selection process. We do not think that in the facts of the present case before us this decision has any relevance.

- (g) The last decision relied upon by the petitioners in the case of *Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay & Ors.*²² is with regard to addition of necessary party. In the light of what we have discussed above, this decision would have no application.

36. In view of the above, the decisions relied upon by the petitioners as discussed above do not take the case of the petitioners any further.

37. We now propose to deal with the decisions relied upon by the learned counsel Dr. Suresh Mane for Respondent Nos.34, 41, 42, 46 and other reserved category candidates.

21 Decided on 20th December 2017 in WP/11970/2017

22 (1992) 2 SCC 524

- (a) The said Respondents relied upon the decision in the case of ***Dr. (Major) Meeta Sahai vs. State of Bihar & Ors.***²³. The Supreme Court in the said decision observed that clause 5(iii) of advertisement issued invited applications for the post of General Medical Officers restricting “work experience” only to experience gained in Government Hospital. The Appellant therein did not challenge the selection process but were questioning the interpretation of the phrase “work experience” for the determination of merit. The Supreme Court observed that since interpretation of statute or rule is in exclusive domain of courts and given the scope of judicial review in delineating such criteria, appellant’s challenge was maintainable. We do not find any reason as to how this decision is applicable to the issue before us. The issue before us in the present petition is whether the decision of this Court in ***Vijay Ghogre (supra)*** has been overruled by the Supreme Court and the act of the State in sending contingent 154 applicants for training. The case of the Petitioners on the basis of submissions is that additional 154 vacancies were created. We, therefore, do not see how this decision assists the Respondent.
- (b) The second decision relied upon by these Respondents is the decision of the Supreme Court in the case of ***Mukesh Kumar & Anr.***

23 (2019) 20 SCC 17

*Vs. The State of Uttarakhand & Ors.*²⁴. The Supreme Court was considering whether the State Government is bound to make reservations in public posts and whether the decision by the State Government not to provide reservations can be only on the basis of quantifiable data relating to adequacy of representation of persons belonging to Scheduled Castes and Scheduled Tribes. The Supreme Court after considering various decisions observed that the State Government is not bound to provide reservation in promotions. The Supreme Court set aside the direction of the High Court to the State Government that they should first collect data regarding representation of Scheduled Castes and Scheduled Tribes and on that basis the State Government should take a decision whether to provide reservation on promotions. In the instant case before us, the issue is not whether the State Government is bound to provide reservation in promotions and therefore this decision is not applicable to the facts before us.

- (c) The next decision relied by this Respondent is the case of *Pavnesht Kumar vs. Union of India & Ors.*²⁵. The Supreme Court, based on the facts before them rejected the contention that regular promotion criteria had to be applied with regard to medical fitness even in the matter of selection through LDCE. This issue is not

24 Civil Appeal No.1226 of 2020

25 Civil Appeal No.3641 of 2023

before us and therefore it does not come to the rescue of the Respondents. However, this decision brings out a distinction between a normal promotion and promotion by selection through LDCE. It observes that promotion by selection through LDCE is a chance given for their promotion without waiting for normal course of promotion within the limited category of candidates. We have already observed earlier that LDCE 2016 is a selection by promotion of in-service candidates and is not a case of recruitment.

- (d) The next decision relied upon by these Respondents is the case of *Vikas Pratap Singh & Ors. vs. State of Chattisgarh & Ors.*²⁶. The issue before the Supreme Court was with respect to correctness of question set and model answers of this question set and whether any illegality can be said to have crept in if irregularities in evaluation are corrected and undeserving selected candidates are identified and replaced with deserving candidates. In the case before us this is not an issue and therefore the said decision is not applicable.

38. We now propose to deal with case laws cited by *Shri. R. R. Shetty*:-

- (a) The first decision relied upon is in the case of *R. K. Sabharwal &*

26 2013 SCC OnLine 599

*Ors. Vs. State of Punjab & Ors.*²⁷. He relied on the said decision in support of his submission that the working of the roster is to be operative prospectively. He further relied on the observation of the Supreme Court, wherein the Supreme Court stated that prescribed percentage cannot be varied or changed, simply because some of the members of the backward class have already been appointed/promoted against general seats and further the concept of vacancy has no relevance in operating the percentage of reservation. He further relied in support of his submission that the reservation policy arising in the cadre is to be filled from amongst the category of persons to whom the respective vacancies belong. In our view, this decision is not applicable to the facts of the present case inasmuch as the 154 candidates are concerned, they have been sent in two groups; one belonging to reserved category and another belonging to open category and this was done to rectify the mistake by the State Government, which was contrary to the decision of this Court in *Vijay Ghogre & Ors. (supra)* and since *Vijay Ghogre's* case was pending before the Supreme Court, the Respondent No.1-State took the decision to send 154 candidates from the open category, subject to the outcome of the Supreme Court's decision.

27 (1995) 2 SCC 745

- (b) The second decision relied upon is in the case of ***Union of India & Ors. Vs. Virpal Singh Chauhan & Ors.***²⁸, for the proposition that while rule of reservation gives accelerated promotion, it does not give consequential seniority and further providing reservation in promotion is not warranted by Article 16(4). In our view, we are not called upon to decide this issue in this petition and as observed by us above the only issue before us is whether the State was justified in sending 154 candidates in addition to 828 notified and, therefore, this decision relied upon has no relevance.
- (c) Insofar as the other decisions relied upon by Mr. Shetty is concerned, we have already considered the same in this judgment and, therefore, we do not propose to deal with the same again.

39. Mr. Dubey, learned counsel appearing for the Intervenors have also relied upon various decisions which we now propose to deal with:-

- (a) The Intervenors have relied on the decision in the case of ***R. Muthukumar & Ors. Vs. Chairman and Managing Director TANGEDCO & Ors.***²⁹, and the decision of the Himachal Pradesh High Court in the case of ***Dr. Ravi Kumar Vaid Vs. State of H. P. & Ors.***³⁰ in support of his proposition that the Petitioners cannot claim benefit of Article 14 on the ground of negative equality. We

28 (1995) 6 SCC 684

29 2022 SCC Online SC 151

30 2022 SCC OnLine HP 4474

have already observed above that in no case, the total final recruitment would exceed 828 candidates after the decision of the Supreme Court, hence the claim of the Petitioners that additional posts were created and they should be accommodated has been rejected. Therefore, this decision would not be applicable to the facts of the present case. Insofar as the decision in the case of *Arup Das & Ors. Vs. State of Assam & Ors.*³¹, *Mukul Saikia & Ors. Vs. State of Assam & Ors.*³² and *Pankjeshwar Sharma & Ors. Vs. State of Jammu & Kashmir & Ors.*³³ are concerned same have been relied upon for the proposition that excess appointments cannot be made. We have already taken the said view in Writ Petition No.16025 of 2022 and, therefore, these judgments supports the view which we have taken and also the stand taken by Respondent No.1-State that after the decision of the Supreme Court in the case of *Vijay Ghogre (supra)*, the final selection by promotion of in-service candidates would not exceed 828. Therefore, the Intervenors are justified in relying upon the said decisions.

- (b) The Intervenors further relied on the decision in the case of *State of Bihar & Ors. Vs. Shyama Nandan Mishra*³⁴ on the ground of legitimate expectation and decision in the case of *Bannari Amman*

31 (2012) 5 SCC 559

32 (2009) 1 SCC 386

33 (2021) 2 SCC 188

34 2022 SCC Online SC 554

*Sugars Ltd. Vs. Commercial Tax Officer & Ors.*³⁵ on the ground of promissory estoppel and legitimate expectations. These decisions have been relied upon in support of their contention that they have locus on the basis of the principles of legitimate expectation to intervene in this petition. We have already observed above that the Petitioners are not justified in seeking reliefs in the present petition and, therefore, the Intervention Petition would not survive.

40. We now propose to deal with the decisions relied upon by Dr. Jayashri Patil appearing for Respondent No.146 to 156:-

- (a) Ms. Patil, learned counsel for the Respondents have relied upon various decisions, some of which we have already considered above and we propose to deal with only those case laws which have not been dealt with hereinabove. The first of such decision is in the case of *Dhanraj Vs. Vikram Singh & Ors.*³⁶. This decision has been relied upon for the proposition that the writ court ought not to have gone into in the absence of specific pleadings. This judgment has been relied upon in support of the proposition that the Petitioners have not challenged the rules and the advertisement and, therefore, the petition is required to be dismissed. In view of our discussion and coming to a conclusion that the Petitioners are

35 (2005) 1 SCC 625

36 2023 SCC OnLine SC 724

not justified in seeking the reliefs the consideration of this decision is not warranted.

- (b) The next decision relied upon is in the case of *Inder Parkash Gupta Vs. State of J&K & Ors.*³⁷ in support of her proposition that the recruitment rules govern the field of any recruitment in the service jurisprudence. In our view, there is no second opinion on this proposition but same has to be understood in the light of the facts of the present matter wherein on account of 154 candidates being sent, contrary to the decision of this Court in the case of *Vijay Ghogre & Ors. (supra)*, another contingent of 154 candidates were sent, so as to counter-balance the mistake and same being subjected to the decision of the Supreme Court in the case of *Vijay Ghogre & Ors. (supra)*. In view of above, we do not propose to deal with other case laws since the decisions relied upon by M. S. Patil, since same have already been considered by us above.

41. In view of above, we pass the following order:-

- (a) The impugned order of the Tribunal in O.A. No.394 of 2018 dated 6th November 2018 to the extent, it holds that the decision of this Court in *Vijay Ghogre & Ors. (supra)* stands overruled by implication is set aside.

However for the reasons recorded hereinabove, the

³⁷ (2004) 6 SCC 786

dismissal of O.A. is confirmed.

- (b) The stand of the State Government that only one of the two groups, that is, either 154 candidates from the reserved category or 154 candidates from the open category would be promoted and confirmed and in no case, the 828 notified vacancies as advertised would be exceeded is accepted as a statement made to the Court.
- (c) Insofar as the interim order dated 25th September 2023 is concerned, the same was subject to the final orders in the present writ petition. The effect of the interim order would amount to sending candidates in excess of 828 for training. Since we have held that posts advertised only can be filled and such posts cannot exceed 828, the interim order cannot now survive in view of the findings recorded. The interim order dated 25th September 2023 therefore, stands vacated. As a result by the interim order dated 25th September 2023 about 133 more candidates who have been sent for training are directed to be recalled and reverted to the original posts.
- (d) Insofar as the present Petitioners are concerned, if they are not found to be more meritorious than 154

candidates who were sent for training to counter-balance the mistake, they would not be considered for promotion.

- (e) The Writ Petition is disposed of in terms of above order. Pending Interim Applications are also disposed of. No order as to costs.
- (f) This judgment shall operate after a period of six weeks from today.

[JITENDRA JAIN, J.]

[A. S. CHANDURKAR, J.]

(This Judgment is modified as per speaking order dated 27th March 2024. The corrections in the Judgment are shown in italics.)