

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

WRIT PETITION NO.17649 OF 2024

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Subhash Namadev Sabale And Ors.

....Petitioners

V/s

The State Of Maharashtra And Ors.

....Respondents

Mr. Anil Sakhare, Senior Advocate i/b. Mr. Sachin Chandan & Mr. Suhas Deokar, Mr. Atharv Gidye, & Mr. Tanmay M. Shembavanekar, Advocates for Petitioners.

Mrs. Ashwini A. Purav, Assistant Government Pleader for Respondent Nos. 1 to 5.

Mr. Sandeep Dere (through V.C) a/w Ms. Sonali Pawar, Advocates for Respondent No. 75.

**CORAM: A.S. CHANDURKAR &
M.M. SATHAYE, JJ.**

DATE : 24TH APRIL 2025

ORAL JUDGMENT (Per A.S. Chandurkar, J.)

1. Rule. Rule made returnable forthwith. Heard the learned counsel appearing for the parties.

2. The petitioners are faced with a peculiar situation, since it is their grievance that the Original Application filed by them before the Maharashtra Administrative Tribunal ("Tribunal", for short) did not conclude by redressing all their grievances on merit. Despite remand of the proceedings by an earlier order, those grievances subsist.

3. Shortly stated, the petitioners claim to be recruited under Batch No.102 and have been promoted on the post of Assistant Police Inspector on 29.05.2014. They seek benefit of grant of deemed date of

promotion. Raising such grievance, they approached the Tribunal by filing Original Application No.1226 of 2022. In the said Original Application, they made following prayers:-

- a) That this Hon'ble Tribunal be pleased to issue order and/or direction at it deems fit, and recall, set aside and/or modify the Order dated 23rd September 2022 along with its Speaking to Minutes dated 28th September 2022, passed in Original Application Nos. 557 of 2021 and 676 of 2021 and thereby holding that the Respondent Nos. 6 to 89 are not entitled for deemed date granted pursuant to the captioned orders;
- b) That this Hon'ble Tribunal be pleased to issue necessary direction to the Respondent Nos. 1 to 5 to forthwith conduct and complete all formalities with respect to the promotion of the Applicants to the post of Police Inspector on or before 31st December 2022 in accordance with law;

4. Initially, the Tribunal passed an interim order on 19.12.2022 and referred to the list of 46 candidates, the petitioners herein, out of 200 who had availed the benefit of reservation in the light of Government Resolution dated 07.05.2021. Miscellaneous Application No.711 of 2022 came to be disposed of by the order dated 19.12.2022. Thereafter, the Tribunal disposed of Original Application No.1226 of 2022 on 08.11.2023. In paragraph Nos.10 and 11, it was observed as under:-

“10. For more clarity, we reproduce para 12 of the order of this Tribunal dated 19.12.2022 in M.A 711/2022 in O.A 1226/2022:-

"The list given by affidavit dated 14.12.2022 marked Exh. 1 in MA No. 711 of 2022 is to be considered. The implementation of the order dated 23.9.2022 will not come in the way of granting promotions to all the applicants except 46 mentioned in list no. 4 in the affidavit. Here we make it clear that we do not wish to continue the stay for implementation of order further i.e., 28.12.2022 as the stay to the promotions cannot remain for a longer time in view of law and order. The post of PI are to be filled in at the earliest."

11. Thus, learned counsel for the applicants submit that the grievances of the applicants are redressed and the application can be disposed of.

5. The petitioners not being satisfied with the aforesaid order challenged the same in Writ Petition No.395 of 2024. By the order dated 21.06.2024 this Court observed in paragraph Nos.6 and 7, as under:-

“6. In paragraph no.11 of the impugned order, it has been categorically recorded that the learned counsel for the petitioners before the Maharashtra Administrative Tribunal had stated that the grievance of the petitioners were redressed and the Original Application could be disposed of. Assuming that the learned counsel was not instructed to make that statement, even then it would be necessary for the petitioners to approach the Maharashtra Administrative Tribunal and seek adjudication of the proceedings on merits. We are not inclined therefore, to consider the prayers made in the Original Application as a court of first instance since the petitioners' remedy lies before the Maharashtra Administrative Tribunal. Moreover, necessary factual adjudication is also for considering the petitioners entitlement to relief as prayed for.

7. Thus, following law laid down in ***Ramdas Shrinivas Nayak & Anr*** (supra), we are not inclined to entertain the writ petition on merits. The Petitioners are at liberty to adopt the course as prescribed in the aforesaid decision before the Tribunal. Keeping all contentions on merits open, the Writ Petition is disposed of as not entertained. Needless to state that the time spent by the petitioners in this Court while pursuing the writ petition shall be taken into consideration if the petitioners seek re-consideration of the order dated 8 November 2023.”

6. Thereafter, the Tribunal re-considered the matter. On 30.07.2024 the Tribunal was of the view that what was recorded in the order dated 08.11.2023 was correct. As no application for Speaking to the Minutes/Review was filed, it proceeded to dismiss Miscellaneous Application No.448 of 2024. The petitioners being aggrieved by the said order have filed present writ petition.

7. We have heard the learned counsel for the parties at length. It can be seen that the grievance raised by the petitioners as regards grant of a deemed date has not been decided on merits. When the Original Application was disposed of on 08.11.2023, the Tribunal recorded the

statement made on behalf of the petitioners that their grievances were redressed in view of what was recorded in the order 19.12.2022. After remand by this Court, the Tribunal declined to go into this aspect and maintained the aforesaid observations. Proceeding on the basis that what was recorded was correct, we find that the petitioners have been deprived of consideration of their grievances on merits.

8. Be that as it may, in the present writ petition, reply has been filed by the respondent No.4. In the paragraph No.7 of the reply, it has been stated, as under:

“7. I say that the Hon'ble Tribunal disposed of the OA No. 1226/2022 by passing the final order dated 08/11/2023 and observed that the promotions to PSIs of batch No.102 can be given except 46 PSIs who have taken the benefit of reservation. The paragraph no 9 of the order dated 08/11/2023 shows that the order dated 08/11/2023 was passed with the consent of Advocate Shri. Dere who had appeared for Respondents therein (applicants in OA 557/2021 and 676/2021). Accordingly, as per the order dated 08/11/2023, this office issued promotions to 168 APIs (PSI of batch No. 102 who were found fit on the DPC dated 21/03/2023. The 46 API (PSI batch 102), who are Petitioners in the present Petition, though found fit on the DPC dated 21/03/2023 were not given promotion as per the order of the Hon'ble Tribunal dated 08/11/2023.”

9. We are inclined to remit the proceedings to the Tribunal to consider and decide Original Application No.1226 of 2022 afresh on its own merits and in accordance with law. However, while doing so we note the stand taken on behalf of the respondent No 4 - Director General of Police in the affidavit dated 21.04.2025 that in the Departmental Promotion Committee meeting held on 21.03.2023, the present petitioners were found fit for being promoted. They were however not promoted in view of the order of the Tribunal dated 08.11.2023.

10. We are, therefore, inclined to direct the respondent Nos.1 to 5 to

take further steps in accordance with recommendation of the Departmental Promotion Committee meeting dated 21.03.2023 and consider the eligibility of the petitioners for promotion, subject to the petitioners satisfying the prescribed criteria including the requirements of the Government Resolution dated 07.05.2021.

11. For the aforesaid reasons the orders dated 08.11.2023 and 30.07.2024 passed by the Tribunal in Original Application No.1226 of 2022 are set aside. The Tribunal shall decide Original Application No.1226 of 2022 on its own merits and in accordance with law.

12. All contentions of the parties on merits are kept open.

13. Rule is made absolute in aforesaid terms with no order as to costs.

(M.M. SATHAYE, J.)

(A.S. CHANDURKAR, J.)