

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

WRIT PETITION NO.15066 OF 2023
(WITH CIVIL APPLICATION NO.3601 OF 2025
IN WRIT PETITION NO.15066 OF 2023
CIVIL APPLICATION NO.11811 OF 2024
IN WRIT PETITION NO.15066 OF 2023
CIVIL APPLICATION NO.5415 OF 2024
IN WRIT PETITION NO.15066 OF 2023)

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1. Yogesh Balkrishna Sarkate
Age: 30 years, Occu: Unemployed,
R/o. S/o. Balkrishna Sarakate at post,
Talni Taluka, Mantha, Talni, Jalna
2. Pratisksha Ashok Narale
Age: 22 years, Occu: Unemployed,
R/o. D/o. Ashok Narale, Mukkm,
Laxminagar, Achadani, Solapur,
Achakdani-413306

... Petitioners

Versus

1. The State of Maharashtra,
through its Principal Secretary,
Ministry of Energy, Mantralaya,
Madam Kama Road, Mumbai
2. Maharashtra State Power Generation
Company Ltd, Through its Chairman
& Managing Director, Head Office
Prakashgad, Bandra East, Mumbai
3. Maharashtra State Power Generation
Company Ltd, Through its Executive
Director (HR), Head Office Prakashgad,
Bandra East, Mumbai
4. Amit Ashok Chalak
5. Sonali Shahaji Patil
6. Asif Dange
7. Nikhil Rameshrao Wagh

... Respondents

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Shri. P. P. Shahane, Advocate for the Petitioners.
Shri. A. V. Lavte, AGP for the Respondent NO.1
Shri. H. S. Adwant Advocate a/w. Shir. S. V. Adwant, Advocate for
Respondent Nos.2 and 3
Shri. A. M. Reddy, Advocate for Respondent No.5
Ms. Akshara S. Madake, Advocate for Respondent Nos.6 and 7

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CORAM : ARUN R. PEDNEKER AND
VAISHALI PATIL-JADHAV, JJ.
DATED : MARCH 17, 2026

JUDGMENT (*Per* VAISHALI PATIL-JADHAV, J.) :-

. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. By this Petition, the petitioners are seeking selection and appointment on the basis of the terms and conditions of the advertisement No.01/2023, issued by respondent No.2. The petitioners further challenge the selection process under Advertisement No.01/2023 in view of change in the condition of Selection Process after the Advertisement from selection on the basis of 'SCORE OBTAINED' to 'WEIGHTAGE', which in turn resulted in selection of those who scored less than the petitioners, thus violating their right to seek appointment under the advertisement.

Facts giving rise to the present writ petition can be briefly stated as under : -

3. Respondent No.2 – Maharashtra State Power Generation Company Ltd. published Advertisement No.01/2023 for the post of

Junior Officer (Security) and Junior Officer (Security) (Departmental “Watchman” candidates) in Pay Group III in February 2023. As per the said advertisement, the selection process consisted of an Online Test followed by Physical Efficiency Test and Psychometric Test. The entire examination process was to be evaluated on a score basis wherein, 120 marks were allotted for Online examination and 40 marks were allotted for Physical Efficiency Test and Psychometric Test. Three posts were reserved for EWS Category and 14 posts were to be filled from the Open category. Petitioner No.1 applied under EWS category and petitioner No.2 applied under the open category for the advertised post.

4. Petitioner No.1 secured 96 marks in online examination and 37 marks in Physical Efficiency Test and Psychometric Test, thereby securing a total of 133 marks, and appeared in merit list of the open category. Petitioner No.2 secured 74 marks in Online examination and 34 marks in Physical Efficiency Test and Psychometric Test, thereby securing a total of 108 marks, and appeared in merit list of the open category. Petitioner No.1 was shortlisted at serial No.20 and petitioner No.2 at Serial No.21 in the Open category.

5. Thereafter, Respondent Nos.2 and 3 published the select list on the basis of weightage given to the scores obtained in online examination by applying 50% weightage and 50% weightage was given

to the Physical Efficiency Test and Psychometric Test. Thus, application of 50% weightage to the two different tests created change in the merit position and the petitioners were placed on the wait list, whereas, Respondent Nos.4 to 7 were selected. The following comparative chart would indicate the position.

Particulars	Name	Test Out of (120) A	PET Out of (40) B	Total Score (160) A+B	50 % of A	50 % of B	Total Out of 100% A+B
Petitioner No.1	Yogesh Balkrishna Sarkate	96	37	133	40	46.25	86.25
Petitioner No.2	Pratiksha Ashok Narale (Open Women Category)	74	34	108	30.83	42.50	73.33
Respondent No.4	Amit Ashok Chalak	92	40	132	38.33	50	88.33
Respondent No.5	Sonal Shahaji Patil (Open Women Category)	68	37	105	28.33	46.25	74.58
Respondent No.6	Asif Dange	92	40	132	38.33	50	88.33
Respondent No.7	Nikhil Ramrao Wagh	88	40	128	36.67	50	86.67

6. Respondent Nos.4 to 7 are selected over the petitioners, although they had scored less total marks than the petitioners. It is stated that the petitioners made various representations to the respondent Nos.2 and 3 to consider that their selection process is illegal and against the conditions prescribed in the advertisement. However, Respondent Nos.2 and 3 failed to correct the select list. As such, the present writ petition is filed challenging the selection process and seeking a direction to appoint the petitioners, as they have secured higher marks and are more meritorious.

7. Learned Counsel Shri. P. P. Shahane submitted that the primary challenge in the petition is that the recruitment process ought to have been completed strictly in accordance with the terms and conditions as stipulated in the advertisement No.1/2023 and the existing rules. It is also submitted that, once the process has commenced, it cannot be altered as it was nowhere stated in the advertisement that 50% weightage would be given to the Physical Efficiency Test & 50% for the Online Examination.

8. Learned Counsel Mr. P. P. Shahane relied on the judgment of Hon'ble Supreme Court in the case of **Ramjit Singh Kardam vs. Sanjeev Kumar and Ors**, reported in [(2020) 20 SCC 209], wherein the Hon'ble Supreme Court has observed that, '*the change in criteria of selection process keeping the candidates in total dark till the results are published is arbitrary*'. The learned counsel has also relied upon the judgment in the case of **Tej Prakash Pathak Vs. Rajasthan High Court [AIR Online 2024 SC 747]** to contend that eligibility criteria for being placed in the select list notified at the commencement of the recruitment process cannot be changed midway of the recruitment process. The learned Counsel has also relied upon the order passed by the Hon'ble Supreme Court in Civil Appeal No. 10932/2025 in the case of **J and K Service Selection Board and anr. Vs. Sudesh Kumar and others** decided on 26/11/2025 wherein the Court relying on **Tej Prakash Pathak (supra)**

held that there cannot be a change in selection criteria after completion of selection process. Therein, the evaluation procedure was altered after the interviews were over and candidates had completed their participation in the selection process.

9. Per contra, Mr. H. S. Adwant, learned counsel for Respondent Nos. 2 and 3 would submit that they have not changed the selection process in the midway. The submissions are reproduced as below :-

“1. It is required to be appreciated that the recruitment process operates in two spheres, that are mutually co-extensive with each other:

- a. On one hand, conduct of examinations / tests, as prescribed in the Advertisement, and the marking system adopted therein;*
- b. On the other hand, the evaluation of the relative fitness and merit of the candidates and the selection of the candidates in accordance with such evaluation.*

2. The introduction of the 'weightage metric' has been employed at the time of release of the Select List and Wait List only after the marks obtained in the examinations / tests were available to MSPGCL, in order to evaluate and assess the merit of the candidates. It could not have been done at the stage of Advertisement.

This is exactly why Clause 1, Page 20, Clause 3, Page 22 and Clause 17, Page 22 read with Clauses 20, 21, Page 23 have been inserted in the Advertisement.

3. MSPGCL has set out all the requisite terms and conditions in the Advertisement. There is no change in the rules of the game after the initiation of the recruitment process. Any modification or alteration of the conduct of the recruitment process, is within the terms and conditions of the Advertisement and the vested authority, power and jurisdiction to evaluate and assess the merit of the candidates in the recruitment process and select the best talent available from the pool of eligible candidates.”

10. From the above noted submissions, it appears that the contention of the respondents is that, once the marks are obtained, thereafter, weightage is applied at the time of releasing of the select list and wait list in order to evaluate and assess the merit of the candidates and it could not have been done at the stage of publication of advertisement. It is submitted that the advertisement itself provides for the same. It is further stated that there is no change in the rules of the game after commencement of the recruitment process. Any modification or alteration of the conduct of the recruitment process is within the terms and conditions of the advertisement and within the vested authority, power and jurisdiction of the recruiting body to evaluate and assess the best talent available from the pool of eligible candidates.

In this regard, he has particularly placed reliance upon Clauses 1, 3, 12, 15, 17 read with Clauses 20 and 21 of the advertisement.

11. Having considered the rival submissions, issues that arise for consideration are :-

- (A) Whether, after the candidates have obtained their marks, the respondents could have applied the weightage criteria upon the candidates after clearance of the Online test and Physical Efficiency Test and Psychometric Test ?
- (B) Whether the advertisement specifically provides for such a right (application of weightage after the entire test) to the respondents

and, if such a right is provided, whether the same would be arbitrary ?

12. For ready reference, the relevant clauses of the Advertisement are noted as under :-

“MAHAGENCO

Advt. No. 01/2023

MAHARASHTRA STATE POWER GENERATION COMPANY LTD.

For the company with manpower strength more than 11000 and potential for further growth, we are looking for high caliber individuals for the following position:

Post Code	Name of Post	Pay Gr.	CATEGORYWISE RESERVATION								
			SC	ST	VJ-A	NT-C	NT-D	OBC	EWS	OPEN	TOTAL
HR01	Jr. Officer (Security)	III	02 (WR01)	04 (WR01 ES01)	02 (WR01)	02 (WR01)	01	01	03 (WR01)	14 (WR04 ES02 PAP01 SP01)	29 (WR09 ES03 PAP01 SP01)
HR01	Jr. Officer (Security) Departmental “Watchman” Candidates (15%)	III	-	01	-	-	-	-	-	04 (WR01 ES01)	05 (WR01 ES01)

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Last date for Submission of application is 17.02.2023

Qualification and Experience as on 17.02.2023:

Post Code	Name of post	Qualification	Experience
HR01	Jr. Officer (Security) Pay Gr. - III Rs. 37340-1675-45715-1740-63115-1830-103375	1) Degree of a recognized University. 2) Knowledge of Marathi is essential.	No experience required. Remarks:- Candidates will be shortlisted subject to their performance in written and outdoor practical / physical efficiency test & Psychometric Test (PET). Must be physically fit as per “Accepted Norms” of the Security Services as below: <u>Male</u> a. Height – Minimum 165 cms without footwear b. Chest-Normal- Minimum 81 cms & expanded – minimum 86 cms c. Weight- Minimum 50 Kgs. d. Vision-6/6 without wearing glass or without any aid. <u>Female</u>

			<i>a. Height – Minimum 157 cms. without footwear.</i> <i>b. Weight – Minimum 45 Kgs.</i> <i>c. Vision- 6/6 without wearing glass or without any aid.</i>
		<i>Night or color blindness as well as any kind of physical disability / deformity shall be disqualification.</i>	

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Important Conditions about Selection Process

1. Prescribed qualification / experience are minimum criteria and mere possession of the same, does not entitle the candidate to be called for Online Examination. The candidates will be short listed for by applying suitable criteria.

2. The candidates who are apparently eligible as per age and educational criteria shall be called for Online Exam / Physical efficiency Test & Psychometric Test without verifying their other eligibility criteria.

3. The number of vacancies and reservation for backward classes indicated for different categories is provisional and likely to change. Such change will not be notified in Newspaper nor will be intimated to the candidates.

4. All the candidates registered successfully through online process will be called for online test irrespective of eligibility criteria.

*5. **Candidates applying for the posts advertised should ensure that they fulfill all eligibility criteria.** Their admission at all stages of the recruitment process will be purely provisional subject to satisfying the prescribed eligibility criteria mentioned in this advertisement. Company will take up verification of eligibility conditions with reference to original documents.*

6. Those reserved category candidates who compete with the Open category candidates will be treated as Open category candidate for the purpose of entire process of recruitment.

7. The Online Examination will be tentatively conducted in the month of March-2023.

8. The selection process for the above post will include the following: -

- a) Online test with by Physical efficiency test & Pshychometric Test.*
- b) Candidates shortlisted as per performance in written test should be required to undergo the Physical Efficiency test & Pshychometric Test.*
- c) Fitness certificate & Indemity Bond to be submitted by candidates shortlisted through written test and appearing for Physical Efficiency test & Pshychometric Test.*
- d) Candidates should undergo the Physical Efficiency test at their own risk.*

- e) *Shortlisted Candidates have to bring along fitness certificate from a medical practitioner to undergo the Physical efficiency test.*
 - f) *Candidate must Pass all the tests mentioned in the Physical Efficiency Test & Pshychometric Test and the score obtained by the candidates will be considered along with Online score for preparing merit.*
9. *Online test may be conducted as per Exam center list depending upon the number of candidates at each location. However, in case candidates appearing for the online test at a particular place are not adequate, such candidates may be asked to appear for the test at other center. The management reserves right to increase or decrease the location for test.*
 10. *If the number of applicants are large, then a suitable criteria will be fixed to short list the applicants for online test.*
 11. *If the number of candidates at any of the centers is more than the capacity of the Centre for Online Test / Examination, the candidates may be shifted to any other Center/s as per the decision of the Company.*
 12. *The Backward Category candidate must secure at least 20% marks of total marks & Open category candidates must secure at least 30% of marks of total marks to consider for selection process.*
 13. *The notification regarding recruitment process will be published on the Company's website i.e. www.mahagenco.in from time to time.*
 14. *The Company also reserves right to allot the candidates to any center other than the one he / she has opted for, for any other reason.*
 15. *Candidate will have to appear for Online Test at Examination Centre at his / her own cost & risk and MAHAGENCO will not be held responsible for any injury or losses, etc. of any nature.*
 16. *The documents & records pertaining to the above selection process will be kept only upto 3 months after completion of the selection process.*
 17. *Taking into consideration the performance in the Online test, Physical Efficiency Test & Psychometric Test the select list will be prepared.*
 18. *Canvassing in any form will disqualify the candidate."*

13. From the above-noted clauses of the advertisement, it is seen that the candidates were to be shortlisted subject to their performance in written and ongoing Practical/Physical Efficiency Test and Psychometric Test.

Clause (1) of the important conditions about selection

process provides that the prescribed qualification/ experience are minimum criteria and mere possession of the same, does not entitle the candidate to be called for online examination.

Clause (8) of the important conditions about selection process provides that the selection process for the post will include online test with Physical Efficiency Test and Psychometric Test. The candidates shortlisted as per performance in written test should be required to undergo Physical Efficiency Test and Psychometric Test. **The candidates must pass all the test mentioned in the Physical Efficiency Test and Psychometric Test and the score obtained by the candidates will be considered along with online score for preparing merit.**

Clause (17) states that select list will be prepared taking into consideration the performance in the Online test, Physical Efficiency Test and Psychometric Test.

Online test consisted of 120 marks and Physical Efficiency Test & Psychometric Test consisted of 40 marks, total 160 marks.

Clause 21 of the General Conditions provides that the company reserves the right to modify or cancel the advertisement/ selection process, fully or partly on any grounds and such decision of the company will not be notified or intimated to the candidates.

14. From perusal of the above clauses of the advertisement, it is seen that there is no clause providing for 50 % weightage to the Online

Test as well as 50 % weightage for the Physical Efficiency Test and Psychometric test. The marks apportioned are 120 for Online Test and 40 for the Physical Efficiency Test . It is undisputed position that if the "weightage" is not applied then the petitioners would automatically stand selected, whereas respondent nos.5 and 7 having secured lesser marks would be out of the select list.

The question before this Court is whether the respondents could have applied weightage criteria of 50% from the available candidates after having secured marks in Online examination and Physical Efficiency Test when the advertisement does not indicate 50% weightage criteria.

15. To our mind, the same is not available to the respondent authorities as it clearly gives discretion in their hands to change the selection criteria and thereby, applying different weightage points for the different categories which can change the final outcome of the selection list. Such a discretion cannot be vested in the respondent authorities which is the State. The discretion becomes arbitrary. The marks system allotted in the terms of the advertisement will have to be taken into consideration while considering the selection list. The weightage criteria adopted after the online examination would bring about a change in the selection criteria. It cannot be accepted that such a discretion is available with the respondent authorities.

16. The Constitution Bench of Hon'ble Supreme Court in the case of *Tej Prakash Pathak (supra)* has observed that recruitment process begins from the issuance of the advertisement and ends with the filling up of the notified vacancies. It consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva-voce and preparation of list of successful candidates for appointment. The doctrine proscribing change of rules midway through the game, or after the game is played, is predicated on the rule against arbitrariness enshrined in Article 14 of the Constitution. Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the concept of equality in all matters relating to public employment. These two articles strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles alike to all similarly situate and not to be guided by any extraneous or irrelevant considerations. In all its actions, the State is bound to act fairly, in a transparent manner. This is an elementary requirement of the guarantee against arbitrary State action which Article 14 of the Constitution adopts. A deprivation of the entitlement of private citizens and private business must be proportional to a requirement

grounded in public interest. Candidates participating in a recruitment process have legitimate expectation that the process of selection will be fair and non-arbitrary. The basis of doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in government dealings with individuals.

17. The Hon'ble Supreme Court has specifically considered the discernible ratio in *K. Manjushree Vs. State of AP and others*, MANU/SC/0925/2008: (2008) 3 SCC 512, that the criterion for selection is not to be changed after completion of the selection process, though in absence of rules to the contrary the Selection Committee may fix minimum marks either for written examination or for interview for the purposes of selection. But if such minimum marks are fixed, it must be done before commencement of selection process. Where the change was made after the interviews were over, it was observed that the game was played under the rule that there was no minimum marks for the interview, therefore introduction of the requirement of minimum marks for interview, after the entire selection process consisting of written examination and interview was completed, would amount to changing the rules of the game after the game was played.

18. Learned Counsel for respondent no.2 and 3 relied on the judgment in the case of *Chief Manager, Punjab National Bank and*

another Vs. Anit Kumar Das [(2021) 12 SCC 80] is of no help to respondents as the facts in that case were totally different and not applicable to case in hand. The learned Advocate further relies on the decision in *Writ Petition No.7267/2024 (Sharad Shriram Salunke and others Vs. The State of Maharashtra and others) dated 07.02.2025*. This judgment is also of no help to the petitioner as in this case, the minimum bench mark was introduced vide circular dated 17.04.2023 and circular was uploaded on 17.04.2023 and it was much before the scheduled exam, which was on 04.05.2023. As such, the candidates were having knowledge about the newly introduced minimum bench mark, hence the Court held that rule of the game was not changed.

19. In the instant case, after reading of the advertisement, we find that there is no clause, which grants discretion to the authorities to apply the weightage, which would be a detriment to some of the candidates. The marks allotted to the Online examination is 120 and for Physical Efficiency Test is 40. By applying weightage after selection list being published, giving 50% weightage to the Online Examination and 50% weightage to the Physical Efficiency Test, the final tally varies. Those candidates who have secured higher marks in the Physical Efficiency Test would gain an advantage over those who have obtained higher marks in the Online examination. This is not the criteria fixed in the advertisement nor any rule is shown to that effect. The

advertisement clearly indicates that both online marks and Physical Efficiency Test marks would be taken up. By applying the weightage, the final outcome changes and such an application becomes discretionary. It would not have been arbitrary, if such a weightage was shown in the advertisement itself. If we permit the weightage to be applied after the selection list is published, the respondent authorities can completely change the final selection by applying 80% or 90% weightage only to the Physical Efficiency Test. In the instant case, by applying 50% also they are being able to change the final outcome at least to the extent of the present petitioners.

20. Considering the same, we hold that,

- (a) The advertisement did not provide for application of unspecified weightage to different categories and only the total marks were to be taken into consideration for both the categories.
- (b) No such weightage could have been applied by the respondents authorities after the selection process commenced.

21. Considering the same, the Petitioners be selected and appointment orders be issued to them in terms of the advertisement as they have secured total marks more than the respondents.

22. Rule is made absolute in above terms. The writ petition stands disposed of accordingly.

23. In view of disposal of writ petition, the pending Civil Applications also stand disposed of.

(VAISHALI PATIL-JADHAV, J.)

(ARUN R. PEDNEKER, J.)

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