



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

948 WRIT PETITION NO.4255 OF 2026

NITIN DIGAMBAR MALI

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. G.N. Tirthkar, Advocate h/f Mr. A.S. Mali, Advocate for petitioner

Mr. V.M. Kagne, AGP for State

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CORAM : SMT. VIBHA KANKANWADI &
AJIT B. KADETHANKAR, JJ.

DATE : 21st APRIL, 2026

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

. By way of present writ petition, petitioner, who is a 43 years old legal practitioner, challenges the advertisement dated 18.03.2026 bearing No.6/2026, issued by respondent No.3, to the extent of cut-off date fixed for upper age limit for candidates belonging to Other Backward Class (OBC), of which 47 posts are stated to be reserved.

2 Heard learned Advocate for petitioner and learned AGP for State.

3 Learned Advocate appearing for petitioner submits that Clause No.8.2 of the said advertisement prescribes the age limit in accordance with the provisions of the Maharashtra Civil Services (Provision of Upper Age Limit for Recruitment by Nomination) Rules, 1986. As per these provisions, the upper age limit for candidates from OBC is 43 years and the petitioner would cross 43 years, if the cut-off date i.e. 01.07.2026 is taken into consideration. It is further submitted that, the petitioner is also challenging the Maharashtra Additional Public Prosecutors, Group 'A', Recruitment Rules, 1997 and the Government Resolution dated 25.04.2016, to the extent of Rule 5(b). He has drawn our attention to the Judgment in Writ Petition No.5005 of 1999 decided by this Court on 25.07.2017, which has been confirmed by the Hon'ble Supreme Court wherein the Rules have been considered. He submits that, as per the order passed by this Court the entire recruitment process ought to have been completed within the stipulated period, which was subsequently extended by the Hon'ble Supreme Court by six months. However, respondent No.1 has now issued the present advertisement dated 18.03.2026, wherein cut off date is mentioned as 01.07.2026 and by the said date, the petitioner would cross 43 years. The petitioner, who aspires to apply for the said post, would lose the opportunity due to such alleged arbitrariness on the part of the respondent/State.

4 He also relies on the decision of the Co-ordinate Bench of this Court in **Minakshi Sayaji Nirbhavane vs. The State of Maharashtra** in Writ Petition No.4462 of 2026 with companion matters, wherein interim order has been passed on 09.04.2026 allowing the petitioners therein to file their applications and also extending time to file applications till tomorrow i.e. 17.04.2026. In the said petition, *prima facie* observations have been made that the petitioners should not suffer on account of delay on the part of the State in appointing Additional Public Prosecutors.

5 Learned AGP appearing for respondents/State opposed the petition and raised a preliminary objection that the petitioner ought to have approached the Maharashtra Administrative Tribunal. He relies on the decision in Original Application No.275/2026 with companion matters by Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad, decided on 08.04.2026, wherein recruitment Rules and also fixation of upper age limit were considered. He also makes a statement that the said order is under challenge before this Court in a writ petition. He submits that the interim protection granted in other matters cannot be considered by the Co-ordinate Bench and he also specifically points out that similarly situated petitioners, who had approached Nagpur Bench, withdrew their petition with liberty to approach Maharashtra Administrative Tribunal, Nagpur Bench.

6 The first and foremost issue that requires consideration is, whether the petitioner made any attempt to approach the appropriate Forum at the outset. Though it is stated in the petition that petitioner is challenging the Rules, the prayer clause does not specifically reflect so and the challenge does not appear to be on the legal points.

7 Rules for recruitment for the post of Additional Public Prosecutors (Group 'A') have been in existence since 1997. The Home Department of Government of Maharashtra has framed those Rules under the heading 'the Deputy Director, Assistant Director and the Public Prosecutor and the Additional Public Prosecutor (Group - 'A') in the directorate of the Public Prosecutions, Maharashtra State (Recruitment) Rules, 1997'. The age limit thereafter appears to have been amended by the Government Circulars and/or by way of legislation till date. It further appears that validity of these Rules has not been challenged.

8 Once age limit is prescribed, the cut-off date is necessarily required to be fixed by the State Government or the M.P.S.C., having regard to the applicable Rules. It is tried to be stated that the validity of Rule 5(b) is challenged on the ground that the said Rules were, for the first time, published without amending the basic Rules. In fact, the reason as to why such amendment was necessitated, that too by way of a change in the Rules,

has not been explained.

9 The petitioner was aware of, or should have had the knowledge about the decision of this Court in Writ Petition No.5005 of 1999 dated 25.07.2017, as well as the subsequent decision of the Hon'ble Apex Court. If the Government was not undertaking the recruitment process, the petitioner could have approached this Court or, as the case may be, the Hon'ble Apex Court, if he was of the opinion that the order of this Court, as extended by the Hon'ble Supreme Court, had not been adhered to by respondent No.1. In such circumstances, without approaching the Maharashtra Administrative Tribunal, Bench at Aurangabad, and having directly approached this Court, we do not find that any interim protection deserves to be granted, nor any final relief can be granted in view of the Rules already in existence since 1997. The Writ Petition is, therefore, **dismissed**.

(AJIT B. KADETHANKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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