

(1989) 11 BOM CK 0037

In the Bombay High Court

Case No : Writ Petition No's. 3798, 4107, 4373 and 4713 of 1988

Mohan Rupa Ghegad

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 29-11-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 1 BomCR 210

Hon'ble Judges : V.S. Kotwal, J; R.G. Sindhakar, J

Bench : Division Bench

Advocate : Arvind V. Bandiwadkar, for the Appellant; D.L. Patil, A.G.P. in W.P. Nos. 4107 of 1988 and 4373 of 1988 and V.M. Kanade, A.G.P. in W.P. Nos. 3798 of 1988 and 4713 of 1988, for the Respondent

Judgement

V.S. Kotwal, J.—This bunch of four petitions which contains the identical question can well be disposed of by a common judgment and which is acceptable to both the sides. We are tempted to observe even at the threshold that the impugned order in all the petitions is almost shockingly un-sustainable by any yardstick. The factual structure in all the petitions is practically identical and the nature of contentions is also the same.

2. All the petitioners have been working as Police Constables in State Police Force and were posted at different places. There are two avenues open for the promotional post of Sub-Inspector, one from the Department and one from the Channel of Public Service Commission. All the petitioners have staked their claim through the Channel of Departmental promotion. This pertained to the batch for 1988. At that time 120 posts were declared for being filled in through this channel from the Departmental promotion to the post of Sub-Inspector. Out of those 98 posts were filled in by the Department. A short table of events would give clear idea in that behalf. Initially a written examination was fixed which contains three subjects namely Essay, General Knowledge and Law and for each subject 100 marks are allotted. Passing of this examination in these three

subjects is the necessary requirement. This written examination was held on 12th and 13th of February, 1988. It is an accepted position that all these petitioners had successfully passed in all the three subjects in this written examination. Consequently, therefore, a wireless message was sent by respondent No. 2 on 30th of March, 1988 directing the officers to intimate to all these petitioners to remain present for the further test namely for outdoor test and interview. This was obviously on the footing that they had passed the written examination. 50 marks are allotted for the outdoor test and 100 marks are allotted for the interview. All the petitioners appeared in pursuance of this requisition and all of them passed both the tests namely the outdoor test and the interview. These petitioners actually appeared for these tests on 5th April, 1988. However, before they were declared to be successful a very interesting event occurred which has given rise to this proceeding the validity of which order can hardly be sustained. A wireless message was issued on behalf respondent No. 2 on 17th April, 1988. It is firmly reflected in that message by way of direction that in so far as the written test in the subject of Essay it was decided to have a fresh or re-examination of that subject only. The said direction does not stop at that but goes a step further making it clear that not only the candidates who have failed in first attempt but those who have been declared successful in that very subject in the examination already held had to appear for this re-examination in that subject and that subject and that re-examination was fixed on 5th of May, 1988. All the petitioners were practically perplexed by this mandate issued by respondent No. 2 more because absolutely no reason was even whispered therein for holding re-examination. However, under the circumstances they felt obliged to appear for re-examination in Essay subject and thus they faithfully appeared. However, as the luck would have it all of them failed in the Essay subject in the re-examination though admittedly they had passed in the examination that was already held in that subject. This obviously entailed into serious consequences against them because the further avenues opened for them as being required to be sent for the training, etc., for the promotional post of P.S.I. had come to a stand-still and thus they have been denied the said promotion, though as stated, by that time they had already passed outdoor test and the interview which was subsequent to the written examination meaning thereby that their success in the subsequent tests was also practically wiped out.

3. It is this order that is being placed under challenge in this petition under Article 226 of the Constitution of India by all the petitioners in this bunch of four petitions.

4. Reference can be made to another interesting feature which however is peculiar only to the petitioner in Writ Petition No. 4713 of 1988. Not only his promotion has been completely stopped and short circuited on account of his failure in the re-examination but he has been specifically informed on behalf of respondent No. 2 that since he has filed the writ petition in this Court challenging the first order of re-examination he has been reverted to the post of Police Constable. Obviously the petitioner therein had to file civil application for

amendment and for including this prayer in the main petition because it was subsequent to the filing of the petition. After hearing both the sides we granted that civil application and with the leave of the Court a prayer to that effect for setting aside the order of reversion has also been added.

5. We have already indicated the short catalogue of events which have taken place right from the beginning till the end which ultimately resulted in filing these writ petitions. Shri Bandiwadekar, the learned Counsel for the petitioners, is fully justified in assailing this order on several counts. The foremost however is to the effect that though there are no recruitment rules under the statute or the Rules still those are governed by the Government's resolutions and what is of significance is that there is no clause any way in any such circulars even inferentially suggesting that once the candidate is declared as successful the step can be taken backward by declaring him unsuccessful after holding a re-examination and as such the impugned order recorded by the respondent No. 2 is obviously without jurisdiction and ab initio null and void. He has also assailed the order on the ground that it leaves practically to wind all norms of rationality because in the first instance the directions issued for re-examination do not contain even inferentially a single valid reason about its necessity and secondly in the affidavit filed on behalf of the respondents an interesting statement has been made that this was so done because there were several complaints from the un-successful candidates that the subject Essay which was put in the first examination was outside the syllabus prescribed in that behalf. This is not however the end of the matter because the further part is more surprising inasmuch as in all solemnity the affidavit mentions the reason as to why even the successful candidates were asked to appear for re-examination and the said ground is that there should be "uniformity".

6. If hardly requires any comment to discard these contentions raised in the affidavit on behalf of the respondents and the contentions raised by Shri Bandiwadekar, the learned Counsel, must be up-held without any reservation. The learned Assistant Government Pleaders Shri. D.L. Patil and Shri. V.M. Kanade inspite of the best of their endeavours could not persuade us to any other view nor could they cite any rule in justification of those contentions raised in the affidavit. In the first instance as rightly contended by Shri. Bandiwadekar, the learned Counsel, though there are no recruitment Rules as such this would be governed by certain Government Resolutions and it is practically conceded or at any rate no contrary material is placed before us even to inferentially indicate that a candidate once declared successful and the examination once held can be cancelled and there can be direction for re-examination. The respondent No. 2 obviously gets no jurisdiction in that behalf and there is no escape from his conclusion. As stated, the almost amazing explanation given in the affidavit is to the effect that unsuccessful candidates complained that the paper in the Essay subject was perhaps outside the syllabus prescribed in that behalf. In the first instance this is not clarified in the order in question. Secondly it is also not clarified before us as to what was the exact nature of the syllabus and whether in

fact it was outside the scope of the syllabus and we would not be unjustified if we observe though incidentally as to whether at least for the Essay subject there could be specific syllabus as such. Any way the candidates were asked to appear for the Essay subject, they did appear and answered and the results were also declared because it is only on that basis that the petitioners were invited for the further test of outdoor test and interview. It is also as stated almost surprising to note that the candidates who were declared successful in the Essay subject in the first examination were also compelled to appear in the re-examination only on the ground to achieve uniformity. We hardly find even a semblance of logic or rationality in this contention. Obviously, therefore, there was no justification whatsoever at least for directing the successful candidates to re-appear though if the mandate was for the unsuccessful candidates to re-appear then the complexion would have been something different. Any way asking the successful candidates to re-appear on such hopelessly untenable ground can hardly be sustained.

7. It is really on this short premise that all the petitioners must succeed. An identical situation had arisen when a Division Bench of this Court had an occasion to decide Writ Petition No. 3517 of 1988 on August 9, 1989 and the identity becomes more prominent because it was relating to the same examination for the same batch. The Division Bench set aside same order that was recorded by the respondent No. 2 more or less on the same reasons which we have assigned and with respect with which we fully concur. Even the said Division Bench was surprised at the manner with which the whole episode was conducted on behalf of the respondents jeopardising the career of the petitioner therein. With respect, therefore, we have no hesitation to following the said ratio.

8. Then remains in the field the only other aspect about the order of reversion recorded against the petitioner in Writ Petition No. 4713 of 1988. We have already indicated and ruled that the amendment was allowed and he was also permitted to add to the ground of relief in the main petition. This relates to the order of reversion passed against him by respondent No. 2 on 15th July, 1989. It is not merely the order of reversion that hurts any one but the reason therefore is very hurting inasmuch as it indicates therein that the said order is passed because of the orders passed by this Court and suggesting thereby that because the petitioner therein has moved this Court by writ petition against the original order of compelling him to appear for re-examination. We are really constrained to say that not only there is no rationale behind this order but it on the contrary un-mistakably indicates utter arbitrariness in the matter of passing such an order merely because the petitioner decides to file writ petition challenging the validity of the order which right legitimately accrues to him and merely because such writ petition is admitted by this Court that should never be a ground for passing such a punitive order of reverting him. To say the least, therefore, the validity of this order can hardly be sustained and therefore it follows as a logical corollary that this order also will have to be set aside. Shri. Bandiwadekar, the learned Counsel, makes a statement at the Bar that the further event has caused more

prejudice to him in that though he has been working as Police Constable from March 1989 till July 1989 he has not been paid the salary even that is legitimately due for the post of a Police Constable. We confidently hope that even this deficiency would be immediately made good of by the Department.

9. In view of this discussion all the petitions deserve to be allowed.

10. Rule in all the petitions made absolute in terms of prayer clause (iv) in each of the petitions. In addition in Writ Petition No. 4713 of 1988 rule is also made absolute in terms of added Clause (iv-a).

11. We further direct that in the peculiar facts and circumstances of this case the respondents shall pay costs to each of the petitioners.