
(2002) 04 BOM CK 0042

In the Bombay High Court

Case No : Writ Petition No's. 4625 of 2001 and 1785, 1804 to 1814, 1817, 2205 to 2224, 2229, 2230 and 2295 to 2298 of 2002, Appellate Side Writ Petitions 1350 to 1391 and 1901 of 2002, W.P. St. No's. 47362 and 47395 of 2001, W.P. St. No. 15153 and 16113 of 2002,

Sunil Rajaram Ghosalkar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Constitution of India, 1950 — Article 320

Citation : (2002) 5 BomCR 189 : (2002) 4 MhLj 170

Hon'ble Judges : V.G. Palshikar, J; Nishita Mhatre, J

Bench : Division Bench

Advocate : V.M. Thorat, in C.A. No. 403/02 in W.P. No. 4626/01, Y.S. Jahagirdar, G.S. Godbole and V.H. Shinde, in all the petitions of appellate Side and Original Side except W.P. St. No. 15153/02 and S.B. Shetye, in W.P. St. No. 15153/02, for the Appellant; S.B. Shetye, for M.P.S.C., J.S. Pawar, Addl. Govt. Pleader and S.R. Nargolkar, AGP for the State in all the Writ Petitions of Appellate Side and P.M. Mokashi, for the respondent M.P.S.C. in all the writ petitions of Original Side, for the Respondent

Judgement

V.G. Palshikar, J.—These petitions are filed by the Police Constables in service of the State of Maharashtra, challenging the action of the State in not appointing the selected candidates such as petitioners to the post of Police Sub-Inspectors. All these petitions raised identical facts and law and therefore they can be conveniently decided by this common judgment. This judgment shall cover all the cases mentioned in the schedule attached hereto, which shall form part of the judgment.

2. Facts stated briefly, giving rise to the present petitions are that several posts of Police Sub-Inspectors were vacant and therefore State of Maharashtra took a decision of filling them up.

3. In the cadre of Police Sub-Inspectors, 50% posts are filled up by direct

recruitment and out of the remaining 50%, 25% are filled in departmental promotions on the basis of seniority and the remaining 25% are to be filled in by holding a departmental competitive examination from amongst the candidates who are serving as Police Constables in the State. It is this selection through competitive examination for these 25% which is in controversy. According to Recruitment Rules, in this behalf, holding of such examination is necessary. Till about 1990 this examination was conducted by the department itself. However, the State Government found that the conducting of departmental examination by the department itself was not very proper and several complaints regarding fairness of that examination were received and therefore the State of Maharashtra requested the Maharashtra Public Service Commission to conduct this examination for the purposes of the selecting candidates to this 25% posts. It is pertinent to note however in this case that the Maharashtra Public Service Commission was invited only to conduct the examination on behalf of the State of Maharashtra which was being done previously by the State itself. The recommendations of the M.P.S.C. are not strictly speaking invited to what has been done by the Maharashtra State, but to request the M.P.S.C. to hold the competitive departmental examination for and on behalf of the State to enable the State to make selection of the best available candidate. Consultation or opinion of the M.P.S.C. and their active participation in the matter of selection process was therefore not necessary. In effect the M.P.S.C. in the instant case was only examination holding authority, and as a consequential responsibility, it was also the duty of the M.P.S.C. to lay down the standards of the examination, the standards of passing and the standards to be used for selecting the candidates from out of the successful candidates.

4. The M.P.S.C. did all these jobs and held the examination in 1998 which accordingly communicated the result thereof to the State of Maharashtra giving the list of meritorious candidates for appointment by the State and the State thereafter made certain appointments. However though the M.P.S.C. had communicated large number of successful candidates in its list, only certain number of candidates were appointed by the State. Persons who were not selected and appointed, therefore chose to approach the court for redressal of their grievance of non-recruitment. Some of the successful candidates approached the Maharashtra Administrative Tribunal and claimed directions to the State Government to appoint them as they have successfully passed the test as also the physical test. The matter was taken up by the Maharashtra Administrative Tribunal, affidavit in reply was filed on behalf of the State and also the M.P.S.C. and ultimately a direction was issued by the Tribunal directing the M.P.S.C. to send about 150 names in addition to those already sent to the State. Even this direction was considered insufficient by some of the constables and they therefore assailed this order of the tribunal in this court by way of petitions under Article 226 of the Constitution of India. These petitions form one bunch of petitions to be decided by this court and other bunch is of those persons who have chosen to come to High Court directly without approaching the Tribunal and

have claimed similar identical relief as those were come via Tribunal. Normally this court would be extremely reluctant to interfere directly in writ petition as alternate efficacious remedy is available to these petitioners. However number of cases have already been decided by the Tribunal and a particular view which is impugned in the other bunch of petitions have been taken by the Tribunal. In these circumstances it is not proper to direct these petitioners to the alternate remedy of Tribunal for the reasons that the view of the Tribunal in regard to this question is already known and is impugned in this court. It is in this peculiar circumstance that we are hearing and adjudicating this direct petitions.

5. In all these petitions the contentions raised on behalf of the petitioner is that M.P.S.C. having laid down the standards of examination and standards of posts has found more than 700 candidates successful and eligible for appointment as Police Sub-Inspector. Yet it sent only few names and that it was wrong in so doing is established beyond doubt by the directions issued by the Tribunal to the effect that 150 more names be sent by the M.P.S.C. to the State. The simple question which now remains for consideration of this court is whether the M.P.S.C. has any power or authority to refuse to send the names of successful candidates to the extent who has found already successful and eligible for appointment as PSI. The learned counsel appearing on behalf of the petitioners submitted that in this case the role of the M.P.S.C. was limited as it was invited to conduct only the examination for and on behalf of the police department. Its participation was limited and therefore its duty was also limited. It will be seen that the M.P.S.C. is a commission constituted by the Constitution of the State. It is an independent body created for the purpose of holding fair and impartial selection either by the process of examination or interview or both. The recommendation made by the commission are binding only in cases where the commission is invited and the participation of the commission is compulsory. That is to say the Government of Maharashtra is bound to consult the M.P.S.C. for certain recruitment and if the recruitment for which the commission is approached in one stage the consultation is compulsory and not otherwise. The recruitment to the cadre of Police Constables or Police Sub-Inspector is not such a recruitment to a cadre where consultation of the M.P.S.C. is compulsory. That being the statutory position inviting the M.P.S.C. in the present case to conduct the examination for and on behalf of the State was simply an invitation to do part of the job which the State is required to do for selecting the Police Sub-Inspector. The M.P.S.C. according to the learned counsel was called upon to determine the standards and the manner in which the examination would be conducted, and the job of the commission ended there.

6. The commission has completed its job, laid down the standards of the examination, and it found 726 candidates as suitable for appointment, and as per the earlier requisition 179 candidates out of 726 found eligible by it for appointment. The appointments accordingly were made. It is hereafter the grievance started. Those who were not recommended and who learnt that they were also held eligible by the M.P.S.C. moved before the Tribunal as aforesaid

and before the Tribunal it was contended on behalf of the State that State have taken a policy decision to fill up 463 more vacancies from amongst the candidates who had passed the written and physical examination conducted by the M.P.S.C. and affidavit to that effect was also filed before the Tribunal.

7. On 29-7-2000 the State Government sent a requisition to the M.P.S.C. calling upon it to forward the list of 463 candidates who had passed the written and physical test according to merit as held by the M.P.S.C. Unfortunately instead of forwarding the list of 463 candidates the M.P.S.C. forwarded a list of 48 candidates to the State as only 48 additional candidates were found eligible. This was obviously contrary to the stand taken by the Commission earlier before the Tribunal that 726 who had passed the written test and physical test are including some of the petitioners. Because of this failure of the Commission to fulfil the requisition as made by the State, applications were moved before the Tribunal seeking further directions or clarifications. In those proceedings the Commission took a stand that if additional names are to be recommended it would result in lowering down the standard of such examination and therefore the Commission cannot sent more than 48 names. The Tribunal by common order on 22-6-2001 decided on the entire group of Original Applications and Miscellaneous Applications and had upheld the contentions of the M.P.S.C. that remitting any additional names would result the lowering down of passing standard and directed to M.P.S.C. to remit 150 to the State Government from the candidate who had already passed the examination. It is pertinent to note that in spite of the fact that the Tribunal accepted the contention of the Commission sending the additional candidates, would result in lowering down the standard and as also the fact that only 48 such candidates were available to be remitted. In its order the Tribunal directed the recommendation of 150 additional candidates. It is an obvious anomaly in the order of Tribunal. It is this action of the Respondent which is now impugned before this Court including the order of M.A.T. Several submission at the bar were made by the learned counsel. The State Government does not oppose the petition and it is sought to be fulfilled by the prayers made in this petition. However the M.P.S.C. took a stand to oppose this petition on the ground that it is its duty to satisfy the standards of passing and eligibility of any examination entrusted to it and remitting the names of those persons in its numbers, would be the effect of lowering the standards of candidates and hence the petitioners are opposed.

8. On consideration of the rival contentions, we are of the view that the stand taken by the M.P.S.C. that remitting 463 additional names as required by the State would result in lowering the standards of the candidate to recommend is unacceptable and it is baseless and illegal.

9. The M.P.S.C. is established in the State of Maharashtra in accordance with the provisions of Article 320 of the Constitution of India. Clause (3) thereof lays down categories in which the Commission shall be consulted by the Government. A perusal of this will demonstrate that recruitment to Class III posts of Sub-

inspector is not covered by any of these clauses and consequently it is not mandatory to the State of Maharashtra to consult the M.P.S.C. for recruitment of PSI. In this case the M.P.S.C. was requested to assist the Government of Maharashtra in the conduct of the examination for recruitment of PSI. It will be seen that as many as 23000 constables in the State of Maharashtra had applied for appearing in the competitive examination and out of them, persons eligible as per the recruitment rules were required to be recommended. The holding of examination of the kind prescribed by the Rules was therefore a big task and the State Government thought it fit to use the services of M.P.S.C. who has acquired expertise in holding such examination. In effect the assistance of the service of the Commission was taken for the limited purpose of conducting examination after laying down the passing standards of eligibility etc. The Commission has factually done this work, who had fixed certain standard for passing different categories of people in accordance with the reservation made by those clauses. It was thereafter that the Commission found 726 candidates suitable and eligible for appointment as PSI. It then recommend 179 out of them in accordance with the merit for appointment as that was the only requirement then sent to it by the State. When the requirement of Government was found more, the Government sent additional requisition. We need not consider the pendency of the Original Application before the Tribunal. We will be considering basically the action of the M.P.S.C. in refusing to send names when it is bound to do so. In the instant case there being no such compulsion of consultation under Article 320, using of the services of the M.P.S.C. for the limited purpose of conducting the departmental examination, no such obligation extended on the State of Maharashtra nor M.P.S.C. has any right to withhold the selection list from the State. In effect in this case the M.P.S.C. was acting as an agent of the State of Maharashtra for the purpose of holding examination as the number of candidates was as much as 23000. That being the factual and legal position the M.P.S.C. cannot refuse sending the names of such number of persons as are required by the State.

10. We also find no substance in the contention that standard of passing and eligibility would be lowered if more number has forwarded to the State. In our opinion this contention is baseless. The M.P.S.C. has in its wisdom fixed certain criteria for passing the examination and it has also fixed certain criteria for passing the physical test and after examining the candidates according to those standard and criteria, has found 726 candidates are eligible. Then sending of any number of candidates from those 726 candidates, would not result in lowering the standard because standard was already determined and those 726 candidates were already been found fit and eligible. In fact laying of standard has direct relationship with the number to be recruited. If more number of candidates are to be recruited the standard will be lesser. Therefore in this case names are to be sent without lowering standard which is already fixed. Hence the contention of M.P.S.C. is unacceptable. This being factual situation there is no ground for M.P.S.C. to refuse and recommend the names as desired by the State of Maharashtra. No injury on any count is caused either to the M.P.S.C. or to the

State by permitting the recruitment of candidates who had already selected by the M.P.S.C. after prescribed standard were observed and fulfilled by those candidates. In the result therefore all these petitions must succeed and are allowed.

11. The respondent M.P.S.C. is hereby directed to remit to the State of Maharashtra within one month from the receipt of this order the names of 406 candidates as additionally required by the State of Maharashtra. This shall be in addition to 179 candidates already sent and it will include 150 seats additionally ordered by the Tribunal. In effect the Commission would remit the names of 406 plus 179 candidates. It has already sent 179 candidates, so it will additionally sent the names of 406 candidates within the stipulated period.

12. As a consequence of the view that we have taken W. P. St. 15153/02 filed by the M.P.S.C. is hereby dismissed.

13. The State will then proceed to issue appointment orders as prescribed by it. This be done expeditiously to avoid any loss of period to be caused to the successful candidates.

Rule made absolute in the above terms.

There is no order as to costs.

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After the judgment was pronounced, the learned Counsel appearing on behalf of M.P.S.C. requested for stay of order for about eight weeks. We see no reason to grant stay as there is no injury caused to M.P.S.C. by implementation of this order. The request accordingly stands rejected.

Parties to act on the authenticated copy of this order.