

A GAJANAN BABULAL BANSODE & ORS.

v.

STATE OF MAHARASHTRA & ORS.

(Civil Appeal No. 104 of 2021)

B FEBRUARY 05, 2021

**[L. NAGESWARA RAO, INDU MALHOTRA AND
VINEET SARAN, JJ.]**

- Service Law – Selection – To the post of Police Sub Inspector – State of Maharashtra had issued the impugned G.R. without any consultation or prior approval by Maharashtra Public Service Commission (MPSC) – The impugned G.R. sought to fill up double the number of vacancies notified for Limited Departmental Competitive Examination (LCDE) – OAs filed challenging the policy decision contained in the impugned G.R. – Maharashtra Administrative Tribunal by interim order directed that status quo be maintained with respect to 636 additional candidates whose list was appended to the G.R. – Held: It is well settled in service jurisprudence that the authority cannot fill up more than the notified number of vacancies advertised, as the recruitment of candidates in excess of the notified vacancies, would be violative of Arts.14 and 16 (1) of the Constitution – Tribunal vacated the order of status quo, on the ground that two of the applicants had participated in the examination, but failed to qualify – This could not be a justifiable ground to vacate the interim order, since promotional prospects of the applicants/petitioners would be seriously prejudiced, as a block of 636 additional candidates would be appointed as Police Sub-Inspectors over and above the applicants – The other ground on which the Tribunal vacated the interim order was that the applicants had not challenged the G.R. – This is an erroneous observation which would be evident from the prayers in the O.A.– The third ground on which the Tribunal vacated the interim order was that in similar O.As challenging the same G.R, the applicants in those cases had withdrawn their respective cases, since they were desirous of pursuing their representations with the State Government – This could also not be a justifiable ground for vacating the order of status quo merely because other parties had chosen to withdraw their O.A. for their own reasons – High Court in writ petition has*

issued a direction to the State to send the additional list of 636 A candidates for training of 9 months during the pendency of proceedings before the Tribunal – Such a direction ought not to have been passed in writ petition – Direction now passed by Supreme Court that the impugned G.R. will remain stayed during pendency of proceedings before the Tribunal – Tribunal to decide the pending O.A. within six months while ensuring that the additional 636 candidates are given notice of the pending O.A. through the State, to enable them to appear and participate in the proceedings – Tribunal further directed to club all pending Original Applications challenging the impugned G.R. and pass a common judgment in these cases – Police Sub-Inspector (Recruitment) Rules, 1995 – r.5 C – Constitution of India – Art.320(3)(a).

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 104 of 2021.

From the Judgment and Order dated 06.03.2020 of the High Court D of Judicature at Bombay Bench at Aurangabad in Writ Petition No. 15045 of 2019.

Vinay Navare, M.N.Rao, R.Basant, Sr. Advs., Ajay Deshpande, Vinod Sangavikar, Anand Dilip Landge, M. Y. Deshmukh, Ms. Aaina Verma, Ravindra Keshavrao Adsure, Siddeshwar Namdev Biradar, Yash Prashant Sonavane, Ms. Manjeet Kirpal, Manu Krishnan, Sachin Patil, Rahul Chitnis, Aaditya A. Pande, Geo Joseph, Advs. for the appearing parties.

The Order of the Court was passed by

INDU MALHOTRA, J.

1. The Government of Maharashtra issued a requisition on 02.06.2016 to the Maharashtra Public Service Commission (“MPSC”) to conduct the Limited Departmental Competitive Examination (“LDCE”) for selection of candidates to the post of Police Sub Inspector.

2. The Home Department, Government of Maharashtra vide G Government Circular dated 27.06.2016 notified 828 vacancies, out of which 642 were from the open category, and 186 were from various reserved categories, for promotion to the post of Police Sub-Inspector through the LDCE – 2016.

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A 3. The selection was governed by the provisions of the Police Sub-Inspector (Recruitment) Rules, 1995. The relevant Rules are extracted hereunder:

“Rule 3: Appointment to the post of Sub-Inspector of Police in the Police Force in the State of Maharashtra shall be made either:

- B (a) by promotion of a suitable person on the basis of seniority subject to fitness from amongst the persons holding the posts of Havaldar and Assistant Police Sub-Inspector in the Police Force who have completed not less than five years continuous regular service or seven years broken service and who qualify in the departmental examination held by the Director General of Police in accordance with the rules laid down in paragraph 5 of the Government Resolution No. PSB. 0390/CR-408/POL-5-A, dated 5th July 1995, 1994

Or

- D (b) by selection of persons working in the Police Force on the basis of the result of the limited departmental examination held by the Maharashtra Public Service Commission for appointment to the post of Sub-Inspector of Police for admission to which a candidate shall-

- E (i) not be more than 35 years of age :

Provided that, relaxation of age of five years may be granted to candidates of Backward Classes and-

- F ‘Provided also that, the candidates who were eligible to appear for the limited departmental examination after 1st January, 1991, but who were not allowed to appear for the limited departmental examinations held in 1998 and 2002 on account of the age limit, shall be given three chances to appear for next consecutive examinations.

- G (ii) have completed a minimum regular service as Police Constable with educational qualifications as mentioned below

Minimum Regular Service Educational Qualification

(1) 4 years .. Degree in any faculty.

(2) 5 years .. Passed the Higher Secondary School

- H Certificate examination

(3) 6 years .. Passed the Secondary School A
Certificate examination

(c) by nomination on the basis of the result of a competitive examination held by the Commission in accordance with the rules made in this behalf from time to time, and for admission to which a candidate shall :- B

(i) not be less than nineteen years of age and not more than (twenty-eight years) of age on the date specified by the Commission

Provided that the maximum age limit may be relaxed upto (thirty-one years) in respect of candidates belonging to the Backward Classes: C

Provided that an ex-serviceman who has served continuously in the Armed Forces for a period of not less than 5 years may be allowed to deduct from his age, the period of 2 years over and above the length of his continuous service in the Armed Forces upto the date of release from service. D

(ii) Possess a degree or any other qualification declared by the Government to be equivalent thereto;

(iii) Possess the following minimum physical measurements, namely: E

For Male

(i) Height .. 1165 Centimetres minimum.

(ii) Chest .. 79 Centimetres and above with minimum expansion of F 5 centimetres.

For Female

Height .. 1157 Centimetres.

Rule 4: Appointment to the post of Police Sub- Inspector by G promotion, selection on the basis of limited departmental examination and nomination shall be made in the ratio of 25:25:50.

Rule 5: Notwithstanding anything contained in these rules, if in the opinion of Government, the exigencies of service, 'so requires, Government may with prior consultation with MPSC make H

- A appointment to the post of Police Sub-Inspector in relaxation of the ratio prescribed for appointment by promotion selection on the basis of limited departmental examination or nomination.”
4. The MPSC recommended the names of 828 candidates, out of which 642 were from the open category, who had secured 253 marks
- B and above; and 186 candidates were from the various reserved categories, who had secured 230 marks and above, on the basis of the corrected final result declared on 12.12.2017.
5. The Home Department, Government of Maharashtra *vide* Government Resolution No. Police -1818/ File 355/Pol 5A dated 22.04.2019 notified that the Cabinet had taken a policy decision to accommodate 636 additional candidates who had secured more than 230 marks in the LDCE – 2016 examination.
6. On 11.06.2019, the Directorate General of Police issued a direction for conducting the medical test and other formalities to send the additional 636 candidates for training to the Maharashtra Police Academy, Nasik, as a part of the process of their appointment to the post of Police Sub-Inspector.
7. The Deputy Secretary of the MPSC addressed a letter dated 11.07.2019 to the Additional Chief Secretary (Appeal and Security) Government of Maharashtra wherein it was stated that as per Article 320 of the Constitution, the MPSC has the power to appoint candidates to various posts in the State. The post of Police Sub-Inspector being a Class III post, was required to be filled up in accordance with The Police Sub-Inspector (Recruitment) Rules, 1995. The list of 636 additional was notified by the Government on its official website, had been done without consulting the MPSC, which was a serious irregularity, and would hamper the functioning of the Commission.
8. In the above background, various Original Applications were filed by candidates to challenge the Policy decision contained in the G.R. dated 22.04.2019. In the present case O.A. No. 722 / 2019 was filed by a group of In-service candidates who were working as Police Constables, and were aggrieved by the impugned G.R., since it would adversely affect their promotional prospects.
- The Petitioners challenged the G.R. dated 22.04.2019 *inter alia* on the ground that the additional 636 candidates who were directed to be accommodated to the post of Police Sub-Inspector, was contrary to

the Recruitment Rules, and would have the inevitable effect of distorting A
the ratio for recruitment through the Limited Departmental Examination.

Rule 4 of the Police Sub-Inspector (Recruitment) Rules, 1995 provides a quota of 25% for promotion through the Local Departmental Examination. The appointment of 636 additional candidates would have the effect of distorting the quota of 25% prescribed by Rule 4, and curtail the future promotion opportunities of candidates who had either failed in the LDCE-2016, or who were not eligible on account of age, experience and educational qualification. The denial of promotional avenues to the Petitioners in the foreseeable future would be violative of Articles 14 and 16 of the Constitution of India.

The Maharashtra Administrative Tribunal *vide* interim Order dated 18.10.2019 directed that *Status Quo* be maintained with respect to the 636 additional candidates whose list was appended to the Government Resolution. This Order was passed on the basis of an earlier Order dated 01.08.2019 passed by the Principal Bench of the Tribunal in O.A. No. 445 of 2019.

9. Respondents No. 5 and 6 herein filed Misc. Application No.545 of 2019 to vacate the interim Order of *status quo* dated 18.10.2019, wherein it was prayed that a direction be given to the State to proceed with the implementation of G.R. dated 22.04.2019.

10. The Maharashtra Administrative Tribunal *vide* Order dated 30.11.2019 vacated the interim Order dated 18.10.2019 on the ground that two of the Petitioners had appeared in the LDCE exam, but failed to qualify in the said examination; whilst the other Petitioners had not participated in the exam. It was also held that the Petitioners had failed to implead the 636 additional candidates who were directed to be appointed under the impugned G.R., and were necessary parties to be impleaded in the O.A. Reliance was placed on the Order passed by the Bombay High Court in W.P. No. 3555/2019 *Nivrathi Venkatrao Gitte v. State of Maharashtra*, wherein the same G.R. dated 22.04.2019 had been challenged. The High Court had directed that the process of selection may proceed, but would be subject to the results of the Writ Petition.

11. Aggrieved by the Order dated 30.11.2019, the Original Applicants / Petitioners herein filed W.P. No. 15045 of 2019 before the Bombay High Court, Aurangabad Bench.

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- A The Bombay High Court rejected the Writ Petition, and the prayer to maintain *status quo* with respect to the 636 additional candidates who were directed to be appointed. The High Court declined to determine whether the G.R. dated 22.04.2019 had been issued in extraordinary circumstances as provided by Rule 5, since the O.A. was pending adjudication before the Tribunal. The High Court however issued a direction to the State Government to send the additional 636 candidates for the training of 9 months; and, requested the Tribunal to dispose of the pending O.A. within the same period, so that prior to the posting / appointment orders being issued in favour of the additional candidates, the O.A. would be decided.
- B direction to the State Government to send the additional 636 candidates for the training of 9 months; and, requested the Tribunal to dispose of the pending O.A. within the same period, so that prior to the posting / appointment orders being issued in favour of the additional candidates, the O.A. would be decided.
- C 12. We have heard Mr. Vinay Navare, Senior Advocate for the Appellants, Mr. Sachin Patil, Advocate-on-record for the Respondent- State of Maharashtra, Mr. Ravindra Adsure for the Caveators, and Mr. R. Basant, Senior Advocate and Mr. M. N. Rao, Senior Advocate for the Intervenors. With the consent of parties, we are disposing of the
- D Appeal at the admission stage.
13. Article 320(3)(a) of the Constitution of India provides that the Union Public Service Commission, or the State Public Service Commission shall be consulted on all matters relating to methods of recruitment to civil services, and for civil posts.
- E In the present case, we find that the State of Maharashtra has issued the impugned G.R. dated 22.04.2019, without any consultation or prior approval by the MPSC, which is evident from the letter dated 11.07.2019 issued by the MPSC to the Government, expressing its disapproval of the decision taken by the Government unilaterally to make
- F these appointments without any consultation.
14. Rule 5 of the Police Sub-Inspector (Recruitment) Rules, 1995 provides that notwithstanding anything contained in these rules, if in the opinion of the Government, the exigencies of service require, the ratio prescribed for appointment by promotion, on the basis of Limited
- G Departmental Examination or nomination, may be relaxed with the prior consultation of the Commission.
- The Government would be required to establish before the Tribunal as to whether there were any extra-ordinary circumstances which have warranted the exercise of power under Rule 5, which may be resorted to only in rare and exceptional circumstances.
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15. The impugned G.R. seeks to fill up double the number of vacancies which were notified for the LCDE – 2016 by the Circular dated 27.06.2016. It is well-settled in service jurisprudence that the authority cannot fill up more than the notified number of vacancies advertised, as the recruitment of candidates in excess of the notified vacancies, would be violative of Articles 14 and 16 (1) of the Constitution of India. A

16. The Tribunal has vacated the Order of *status quo* dated 18.10.2019, on the ground that two of the Applicants had participated in the examination, but failed to qualify. B

This could not be a justifiable ground to vacate the interim Order, since the promotional prospects of the Petitioners would be seriously prejudiced, since a block of 636 additional candidates would be appointed as Police Sub-Inspectors over and above the Applicants. C

17. The other ground on which the Tribunal has vacated the Interim Order is stated in para 17 of the Order that the Applicants had not challenged the G.R. dated 22.4.2019. D

This is an erroneous observation which would be evident from the prayers in the O.A. which are set out hereunder for ready reference:-

“(A) Original Application may kindly be allowed by directing the Respondents to undertake recruitment strictly as per PSI Recruitment Rules, 1995, without any deviation therefrom E

(B) The recruitment by promotion of as many as 636 candidates sought to be made vide Govt. Resolution dated 22.4.2019, may kindly be quashed and set aside, the same being contrary to Recruitment Rules as well as binding precedent of the Hon’ble Apex Court. F

€ Pending hearing and final disposal of this Application, the Respondents No.1 to 3 may kindly be directed not to take any further action in furtherance of the impugned Govt. Resolution dated 22.4.2019. G

(D) Pending hearing and final disposal of this Application, the Respondents No.1 to 3 may kindly be directed to maintain *status quo* in respect of 636 candidates sought to be appointed by promotion, under the Impugned Govt. Resolution dated 22.4.2019. H

A € Any other suitable and equitable relief to which applicants are entitled to and this Hon'ble Tribunal deems appropriate, may kindly be granted in their favour.”

(emphasis supplied)

B In view thereof, the said observation cannot be a ground for vacating the interim order of stay granted vide Order dated 18.10.2019.

18. The third ground on which the Tribunal has vacated the Interim Order was that in similar O.As challenging the same G.R. dated 22.4.2019, including O.A. No. 455 of 2019 filed before the Principal Bench, the Applicants in those cases had withdrawn their respective

C cases, since they were desirous of pursuing their representations with the State Government.

This could also not be a justifiable ground for vacating the Order of *status quo* merely because other parties had chosen to withdraw their O.A. for their own reasons.

D 19. We find that the High Court in the present Writ Petition has issued a direction to the State to send the additional list of 636 candidates for training of 9 months during the pendency of proceedings before the Tribunal.

E We are of the view that such a direction ought not to have been passed in the Writ Petition filed by the present Petitioners, who are aggrieved by the impugned Government Resolution No. Police -1818/ File 355/Pol 5A dated 22.04.2019, which is the subject matter of challenge.

F 20. In view of the discussion hereinabove, we allow the present Civil Appeal, and direct that Government Resolution No. Police -1818/ File 355/Pol 5A dated 22.4.2019 will remain stayed during the pendency of proceedings before the Maharashtra Administrative Tribunal.

G We set aside the Order dated 30.11.2019 passed by the Maharashtra Administrative Tribunal which vacated the interim Order 18.10.2019, and the Order dated 06.03.2020 passed by the Bombay High Court in W.P. No. 15045 / 2019.

H 21. We direct the Maharashtra Administrative Tribunal, Nagpur Bench to decide the pending O.A. within a period of six months from the date of receipt of this Order. The Tribunal will ensure that the additional 636 candidates are given notice of the pending O.A. through

the State, to enable them to appear and participate in the proceedings. A
The Tribunal is further directed to club all pending Original Applications
challenging the impugned Government Resolution No. Police -1818/ File
355/Pol 5A, and pass a common Judgment in these cases.

There will be no order as to costs.

Pending applications, if any, are accordingly disposed of.

Devika Gujral

Appeal allowed.