

# SUPREME COURT OF INDIA

Harish Maganlal Baijal

Vs.

State of Maharashtra

(Altamas Kabir and Cyriac Joseph JJ.)

07.05.2010

## JUDGEMENT

### **Altamas Kabir, J.**

1. The petitioner appeared in the Maharashtra State Service (Main), Examination, 1990, which was held for the filling up of 22 posts of Deputy Superintendent of Police/Assistant Commissioner of Police, Class-I. In his application, the Petitioner gave his first preference for appointment to the post of Deputy Superintendent of Police (DSP)/ Assistant Commissioner of Police, Class-I, and his second preference for the post of Sales Tax Officer, Class-I. Having secured 604 marks, the Petitioner did not qualify for one of the 14 vacancies in the open category and was placed immediately after the list of successful candidates. Out of the 22 vacant posts, the first 14 posts were for candidates from the open category and 8 posts were reserved for candidates from the Scheduled Caste and Scheduled Tribes and Other Backward Classes categories.

2. Since there were only 14 vacancies in the open category for the post of DSP, the Petitioner in keeping with his second preference, was appointed as Sales Tax Officer, Class-I, and he joined his duties in the said post on 22nd April, 1992.

3. Of the 14 candidates selected in the open category in the post of DSP, 3 candidates, 2 from the open category and one from the reserved category, were found to be physically unfit for the said post. On coming to learn of the above, the petitioner made a representation to the Minister of Home Affairs on 21st June, 1992, asking that the Maharashtra Public Service Commission be directed to recommend names from the 1990 batch according to the merit list, to fill up the vacancies caused.

“The Petitioner and two others were thereupon recommended by the Commission by its letter dated 6th November, 1992, and called upon by the State Government to join duty as DSP/Assistant Commissioner of Police, Class-I, as replacement candidates, and although the formalities for appointment were completed in December, 1992, appointment letter was issued to the Petitioner only on 30th August, 1993, and the Petitioner joined his duties in the post of DSP on 15th September, 1993. In the letter

of recommendation written by the Maharashtra Public Service Commission on 6th November, 1992, it was categorically mentioned that the replacement candidates were to be placed after the respondent No.8, Madhukar Shankar Talpade, despite the fact that the petitioner had obtained higher marks than Shri Talpade in the examination.

The said fact came to the petitioner's knowledge after the publication of the provisional gradation/seniority list.”

4. The provisional gradation/seniority list of the cadre of DSP/Assistant Commissioner of Police (Unarmed) came to be published by the Secretary, Home Department, Maharashtra State, in which the Petitioner was placed at serial No.238 and the Respondent Nos.5, 6, 7 and 8, who were from the same batch as the Petitioner, were shown at serial nos.200, 201, 202 and 203, respectively. From the said seniority list, it further transpired that candidates from serial Nos.188 to 202 were all from the same batch of direct recruits appointed in the year 1992. However, although the Respondent No.7 (Mr. Kumbhare) had joined the service on 15th September, 1993, along with the Petitioner, he was given seniority with effect from 15th July, 1992, along with the other batch mates of 1990 on the basis of contemporaneous merit/rank position prepared by the Maharashtra Public Service Commission, the Respondent No.4 herein. According to the Petitioner, if the same yardstick, as was applied in Mr. Kumbhare's case, had been applied to the Petitioner, his name would have appeared after Sanjay Devidas Baviskar, who had secured 605 marks and was placed at serial No.199 and before Sanjay Yashwant Gaikawad Aparati, the Respondent No.5, who having obtained 603 marks was placed at serial No.200. It is the Petitioner's case that having obtained higher marks than the Respondent No.5, he should have been placed at serial No.200 of the gradation list instead of the Respondent No.5.

5. Aggrieved by the above, the Petitioner made a representation to the Maharashtra Public Service Commission, but the same was rejected in June, 2003, on the ground that the seniority position assigned to the Petitioner was in keeping with the recommendation made by the Secretary, Home Department, Maharashtra State and could not, therefore, be changed.

6. Being dissatisfied with the manner in which his representation had been rejected, the Petitioner filed an application before the Maharashtra Administrative Tribunal, Aurangabad, being Original Application No.556 of 2003. The said application was subsequently transferred to the Maharashtra Administrative Tribunal, Mumbai, and renumbered as O.A. No.78 of 2004. A similar application being O.A. No.867 of 2003 was filed by one Mahesh R. Ghurye. By a common judgment and order dated 16th September, 2004, the Maharashtra Administrative Tribunal, Mumbai Bench, rejected the Petitioner's Application. The writ petition filed by the Petitioner before the Bombay High Court in this regard was rejected by an order dated 8th January, 2008, which has been impugned in the instant Special Leave Petition.

7. Appearing in support of the Special Leave Petition, Mr. Srenik Singhvi, learned Advocate, urged that under Rule 4(2) of the Maharashtra Civil Services (Regulation and Seniority)

Rules, 1982, the Petitioner was entitled to be placed in the seniority list in accordance with the marks obtained by him in the 1990 examination.

“Therefore, the direction given by the Maharashtra Public Service Commission to place the Petitioner below the last candidate out of the 22 candidates selected was not only erroneous, but arbitrary and in violation of the above-mentioned Rule. Mr.

Singhvi submitted that the learned Tribunal had erred in dismissing the Petitioner's Original Application.”

8. As far as the High Court is concerned, Mr. Singhvi submitted that it had proceeded on the erroneous basis that the Petitioner had been selected from the waiting list of candidates, whereas the Petitioner was one of the originally selected candidates, but could not be appointed on account of the number of vacancies. Learned counsel submitted that the gradation list prepared by the Respondent No.2 was, therefore, liable to be set aside with a direction to place the name of the Petitioner at serial no.200 instead of serial No.238. It was submitted that since Mr. Kumbhare's appointment was withheld on account of the discrepancy in his caste certificate, he could not have been given seniority over the Petitioner who joined his duties as Sales Tax Officer, Class-I, on 22nd April, 1992, and was, thereafter, issued appointment letter in the post of DSP on 30th August, 1993. Mr. Singhvi submitted that had the disqualification of the three candidates been taken into consideration at the time of preparation of the select list, the Petitioner would have been within the first 14 candidates from the open category on account of the marks obtained by him in the examination conducted in 1990 for filling up the 22 vacant posts. Instead, a direction was given by the Respondent No.2 to place him below Mr. Kumbhare, who had obtained lower marks than the Petitioner.

9. Mr. Singhvi also submitted that although Mr. Kumbhare had joined as D.S.P. on 15th September, 1993, along with the Petitioner, he had been given seniority with effect from 15th July, 1992, along with his other batch mates while the Petitioner was given seniority from the date of his appointment as D.S.P.

10. In support of his submissions, Mr. Singhvi referred to and relied on the decision of this Court in *P.M. Latha vs. State of Kerala*<sup>1</sup>, in which the equitable relief granted to certain candidates holding a higher qualification than was required was deprecated by this Court and such appointments were set aside upon it being observed that equity and law are twin brothers and law should be applied and interpreted equitably, but equity cannot override written or settled law.

11. Mr. Singhvi submitted that the order passed by the Secretary, Home Department, Maharashtra State, which was later confirmed by the Administrative Tribunal and the High Court, was liable to be set aside along with the order passed by the Tribunal and the High Court.

12. As against Mr. Singhvi's submissions, Mr. Vineet Dhanda, learned counsel, who appeared for the respondent Nos.5 to 8, submitted that as would be evident from the seniority list of DSPs and ACP Police Officers (Unarmed) published on 1st February, 2001, that candidates who had been selected for the first 14 posts, which were reserved for candidates from the open category, had obtained higher marks than the petitioner. It is thereafter that the remaining posts, which were reserved for candidates from the Scheduled Castes and Scheduled Tribes categories, were filled up with candidates from the reserved category who had obtained less marks than was obtained by the petitioner. Mr. Dhanda submitted that from the said seniority list it would be clear that Shri Madhukar Shankar Talpade was the last Scheduled Caste candidate to be appointed, whose marks were less than that obtained by the petitioner. However, the said eventuality was on account of the fact that of the 22 vacancies, the first 14 were meant for candidates from the open stream, whereas the next 8 posts were reserved for candidates from the Scheduled Castes and Scheduled Tribes categories.

13. It was submitted that not having been selected for the post of DSP, the petitioner had been appointed to the post of Sales Tax Officer, Class- I, which was his second preference. It is only on account of fortuitous circumstances, when three of the original candidates selected, two from the open category and one from the reserved category, were found to be ineligible for appointment, that the petitioner and two others were recommended by the Maharashtra Public Service Commission for appointment to the post of DSP. Mr. Dhanda submitted that not having been initially selected, the petitioner could not claim seniority over those candidates who had been selected at the initial stage.

14. Similar submissions were advanced on behalf of the State of Maharashtra by Mr. Arun R. Pednekar and, in addition, it was pointed out that even if the three disqualified candidates had not been considered initially, the petitioner would still not have been included among the first 14 candidates since there were others before him from the open category who had obtained higher marks than him. It was urged that the last recommended candidate for the post of DSP/ACP in the open category had secured 610 marks and there were three other candidates from the open category above the petitioner who had obtained higher marks than the petitioner, so that even if the candidates who had been subsequently found ineligible had been considered at the first instance, the petitioner would not have found a place within the first 14 candidates who were to be appointed from the open category.

15. It was lastly contended that having regard to the submissions advanced on behalf of the petitioner vis-à-vis his appointment as DSP along with the respondent No.7 Mr. Kumbhare, the petitioner had, no doubt, joined his duties on the same day as Mr. Kumbhare, but Mr. Kumbhare was a candidate from the Scheduled Caste category and had, therefore, been included in the select list for appointment subject to verification of his Caste Certificate. It was submitted that Mr.Kumbhare's case stood on a different footing from that of the petitioner and the contention of the petitioner in this regard had been rightly rejected both by the Tribunal as well as the High Court.

16. Having carefully considered the submissions made on behalf of the parties, we see no reason to interfere with the order of the Tribunal as affirmed by the High Court. Admittedly, out of all the 22 vacant posts, the first 14 posts were to be filled up by candidates from the open category and the remaining 8 vacancies were reserved for Scheduled Caste and Scheduled Tribes candidates.

“The last candidate to be included in the first 14 vacancies had obtained 610 marks, whereas the petitioner had obtained 604 marks. In between the last candidate and the petitioner there were 3 other candidates who had obtained 608, 607 and 605 marks, respectively, so that, in any event, even if the 3 ineligible candidates had been excluded from the very beginning, the petitioner still could not have been included among the first 14 candidates, particularly when one of the ineligible candidates was from the Scheduled Caste and Scheduled Tribes category.”

17. Apart from the above, the selection of the petitioner along with two other candidates as substituted candidates in place of the three ineligible candidates, was under fortuitous circumstances since the original selection had already been made and in keeping with the marks obtained by him and his second preference, the petitioner had been appointed as Sales Tax Officer, Class-I and he, in fact, joined in the said post on 22nd April, 1992. The petitioner's contention that since both Mr. Kumbhare and he had joined the post of DSP on 15th September, 1993, their seniority should have been reckoned from the same day was rightly rejected both by the Tribunal and the High Court, having regard to the fact that while Mr. Kumbhare had been included in the first select list and his appointment was also deferred on account of verification of his Caste Certificate, the appointment of the petitioner who had already been appointed and was functioning as Sales Tax Officer, Class-I, in the post of DSP, was accidental in view of the ineligibility of three candidates who had been included in the initial list of selected candidates. His claim for seniority could, therefore, be reckoned only from the date of his joining his duties as D.S.P.

18. It is also to be kept in mind that Mr. Kumbhare had been initially selected for one of the reserved posts from the Scheduled Castes and Scheduled Tribes category and his appointment had only been deferred for verification of his Caste Certificate.

“In the case of the petitioner it was different, in that, he was never included in the initial selection list as a result whereof he was appointed as Sales Tax Officer, Class-I, on account of the marks obtained by him and his position in the list of candidates who were successful in the examination conducted by the Maharashtra Public Service Commission in 1990. In our view, the view taken by the Tribunal as well as the High Court in this regard is the correct view and needs no interference.”

19. Even the petitioner's contention that he should have been placed above Mr. Talpade lacks merit, since Mr. Talpade was included in the original list from the Schedule Castes category and he was, therefore, entitled to be placed before the petitioner in the gradation list from the date of his joining as D.S.P. The reference made by Mr. Singhvi to Rule 4(2) of the

Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, does not also help the petitioner's case. Rule 4 of the said Rules deals with the general principles of seniority. Sub-Rule (2) of Rule 4, which deals with inter se seniority of direct recruits selected in one batch for appointment to any post, cadre or service, reads as follows:

“4. General principles of seniority :

(1) .....

(2) Notwithstanding anything contained in sub-rule (1),- (a) the inter se seniority of direct recruits selected in one batch for appointment to any post, cadre or service, shall be determined according to their ranks in the order of preference arranged by the Commission, Selection Board or in the case of recruitment by nomination directly made by the competent authority, the said authority, as the case may be, if the appointment is taken up by the person recruited within thirty days from the date of issue of the order of appointment or within such extended period as the competent authority may in its discretion allow;

(b) The inter se seniority of Government servants promoted from a Select List shall be in the same order in which their names appear in such Select List. If the Select List is prepared in two parts, the first part containing the names of those selected unconditionally and the second part containing the names of those selected provisionally. All persons included in the first part shall rank above those included in the second part:

Provided that, if the order in which the names are arranged in the select List is changed following a subsequent review of it, the seniority of the Government servants involved shall be rearranged and determined afresh in conformity with their revised ranks;

(C) The seniority of a transferred Government servant vis-à-vis the Government servants in the posts, cadre or service to which he is transferred shall be determined by the competent authority with due regard to the class and pay-scale of the post, cadre or service from which he is transferred, the length of his service therein and the circumstances leading to his transfer.”

20. From the aforesaid provisions, it will be apparent that the same refer to the seniority of recruits selected in one batch. In the petitioner's case, he was not so selected, but was brought in as a replacement candidate, not from any waiting list, but from the list of successful candidates in the examination held as per the marks obtained by them on the basis of the representation made by him to the Home Minister on 21st June, 1992.

“The aforesaid Rule, therefore, has no application in the petitioner's case despite the fact that the successful candidates as well as the petitioner were from the same batch.”

21. For the aforesaid reasons, the Special Leave Petition must fail and is, accordingly, dismissed.

“There will, however, be no order as to costs.”

*1(2003) 3 SCC 541*