

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.1081 OF 2019

P.Y. Sathe Applicant
Versus
The State of Maharashtra & Ors. Respondents

Shri K.R. Jagdale, learned Advocate for the Applicant.

Smt. Archana B.K., learned Presenting Officer for the Respondents.

CORAM : Shri Shree Bhagwan, Vice-Chairman

DATE : 15.11.2019

O R D E R

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.
2. Learned Advocate for the Applicant pointed out that applicant applied in response to Bombay Police Constable Recruitment Process 2018 (Annexure A, page 18) Advertisement No.01/2018 dated 05.02.2018 (page 19). Applicant was temporarily selected but was found medically unfit and referred for re-verification to Board of Referees of J.J. Hospital as per letter dated 04.08.2018 Exhibit-F, page 48, issued by Assistant Commissioner of Police with conditions to qualify for medical tests and other related tests.
3. Consequent to this Applicant appears before the Board of Referees. The report of Board of Referees declared Applicant unfit (page 56). As per record on page 56 applicant had appeared before Board of Referees of J.J. Hospital and they found him unfit.
4. As per record shown on page 55 wherein column No.V. Applicant's right eye and left eye both vision has been shown as 6/12 and 6/12. Subsequently, Applicant went for Lasik Surgery, as per record, Exhibit I, page 51 and paid Rs.10,000/- for the same. After this applicant was again tested by J.J Group of Hospital on 24.10.2018 (Exhibit-K, page 58) his vision has been shown as 6/6 and 6/6 after Lasik Surgery.

5. It appears that applicant has further placed record the report of J.J. hospital dated 17.01.2019 where again his vision has been shown as 6/6. In view of all these facts it appears that when the applicant was sent for medical examination first time his eye vision was shown 6/12 but after Lasik surgery dated 24.10.2018 his eye vision improved and it became 6/6.
6. On medical ground applicant cannot be debarred to join Police Force, if he has eye vision of 6/6 by Lasik Surgery.
7. Learned Advocate has also relied upon Hon'ble High Court, Delhi, Judgment of Ms. Sreeja K. Versus Union of India and Anr. page 82 Exhibit W, delivered on 29.05.2012. In the said judgment in paragraph 11 following observations has been made by Hon'ble High Court Delhi :
- "11. There is nothing in the other lists appended to the said letter which would even remotely suggest that a person having under LASIK surgery is disabled from using the said instruments. As such, we find that there is nothing either in the rules, regulations or in any other document of the Geological Survey of India which debars the petitioner from functioning as a Juniar Geologist in the Geological Survey of India on account of the fact that she had undergone LASIK Surgery. On the contrary, it must be kept in mind that her corrected vision now falls within the parameters and standards prescribed under the said Regulation itself. That being the case, she cannot be denied employment on the purported ground that she is unfit far the post on account of LASIK surgery."*
8. In view of this decision of Hon'ble Delhi High Court and improvement of vision of the candidate after Lasik surgery dated 24.10.2018 applicant cannot be debarred to join Police force on this ground
9. However, as submitted by learned P.O. she desires some time to file reply and take instructions from the Department. In view of that the time required by learned P.O. is three weeks, the same is granted for considering and filing reply along with record.
10. Respondents are directed to keep one post of Constable vacant in the category of S.C. from the said advertisement in which the applicant applied for the post.

11. Respondents are at liberty to decide any representation made by the applicant in this regard before filing their reply.
12. Issue notice before admission returnable on 12.12.2019.
13. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.
14. Applicant is authorized and directed to serve on Respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A.. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.
15. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.
16. The service may be done by Hand delivery, speed post, courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.
17. In case notice is not collected within seven days or service report on affidavit is not filed 3 days before returnable date, Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.
18. S.O. to 12.12.2019. Hamdast and steno copy is allowed.


Sd/-
(Shree Bhagwan)
Vice-Chairman

prk

FARAD CONTINUATION SHEET No.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date : 15.11.2019</p> <p>O.A.No.1084 of 2019 with M.A.No.612 of 2019</p> <p>K.D. Salunkhe & Ors. Applicants Versus The State of Maharashtra & Ors. Respondents</p> <p>1. Heard Ms. Madhuri Sawant, learned Advocate holding for Shri S. Walimbe, learned Advocate for the Applicants, Ms. S.P. Manchekar, learned C.P.O. for the Respondents, Shri S.S. Dere, learned Advocate for the Respondents No.17 and 99 and Dr. Gunaratan Sadavarte, learned Advocate for the Respondent.817.</p> <p>2. It is pointed out that there was O.A.No.⁴⁴⁵455 of 2019 in which Hon'ble Member(J) of this Bench has passed the order on 01.08.2019, but the same O.A. was withdrawn and hence that order is also not in existence.</p> <p>3. Learned Advocate Shri S.S. Dere submits that two applicants are not going to be aggrieved party in this O.A. under Section 19 of the Administrative Tribunals Act, 1985, hence, they have no right to challenge this issue.</p> <p>4. Learned Advocate Dr. Gunaratan Sadavarte has pointed out that first M.P.S.C. had made advertisement for the post of 828 candidates and those posts were filled-in but subsequently due to various reasons, G.R. was issued to include 636 candidates which as per his submission is illegal.</p> <p>5. Since the O.A.No.722/2019 is pending at Aurangabad Bench as submitted by learned Advocate Shri S.S. Dere and the same O.A. is listed at Aurangabad Bench before regular D.B. on 29.11.2019.</p> <p>6. Learned C.P.O. Ms. S.P. Manchekar has taken objection for condonation of delay. It is observed that if at all the matter will be heard further, learned Advocate must file application for condonation of delay the matter will be heard after 29.11.2019.</p>

7. Learned Advocate Ms. Madhuri Sawant submits that he wants to amend prayer clause. He may file M.A. for the same.
8. As per the record in Exhibit-N, page 151 and 152 order dated 18.10.2019 of Aurangabad Bench is attached in paragraph 6 of the said order of O.A.No.722/2019 of Aurangabad Bench. Following observations has been made:-
"6. In view of the abovesaid factual aspect in my view, it is just to grant interim relief in favour of the applicant to maintain status quo in respect of 636 candidates as per the list given in the Appendix A to the Government Resolution dated 22.4.2019 issued by the Under Secretary, to the Government, Home Department, Mantralaya, Mumbai-32 (Exhibit-M), pending hearing and final disposal of this Original Application."
9. Learned Advocate Ms. Madhuri Sawant is at liberty to circulate the matter by mentioning in the 1st week of December, 2019, if ^{he} so desires.
10. Learned Advocate Shri S.S. Dere has requested to ensure that parties who are not before the Court should not get affected by the decision in the O.A.. The said request is granted.

Sd/- 
(Shree Bhagwan)
Vice-Chairman

prk

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

M.A./R.A./C.A. No. _____ of 20 _____

I N

Original Application No. _____ of 20 _____

FARAD CONTINUATION SHEET No.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date : 15.11.2019</p> <p align="center">M.A.No.598 of 2019 in O.A.No.1066 of 2019</p> <p>U.S. Bhoite & Ors. Applicants Versus The State of Maharashtra & Ors. Respondents</p> <p>1. Heard Shri D.B. Khaire, learned Advocate for the Applicants and Shri A.J. Chougule, learned P.O. for the Respondents.</p> <p>2. This is an application for leave to sue jointly.</p> <p>3. Considering the cause of action pursued by the Applicants is common and concurrent, application for leave to sue jointly is allowed subject to Applicants' paying requisite court fees, if not already paid.</p> <p>4. Miscellaneous Application is allowed and is disposed off.</p> <p align="right">Sd/- (Shree Bhagwan) Vice-Chairman</p> <p>prk</p>

FARAD CONTINUATION SHEET No.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date : 15.11.2019</p> <p style="text-align: center;">O.A.No.1066 of 2019</p> <p>U.S. Bhoite & Ors. Applicants Versus The State of Maharashtra & Ors. Respondents</p> <ol style="list-style-type: none"> 1. Heard Shri D.B. Khaire, learned Advocate for the Applicants and Shri A.J. Chougule, learned P.O. for the Respondents. 2. Learned Advocate for the Applicant has invited my attention to Government Resolution dated 01.08.2019, page 326, Exhibit-G and he submits that the issue is related to waiting list for the post of Under Secretary in Mantralaya and the same is still in the provisional stage. 3. Learned Advocate for the Applicant further submits that the said G.R. dated 01.08.2019 of G.A.D. (page 326, Exhibit-G), is not properly followed. 4. Issue notice before admission returnable on 12.12.2019. 5. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued. 6. Applicants are authorized and directed to serve on Respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A.. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing. 7. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>8. The service may be done by Hand delivery, speed post, courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicants are directed to file Affidavit of compliance and notice.</p> <p>9. In case notice is not collected within seven days or service report on affidavit is not filed 3 days before returnable date, Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.</p> <p>10. Meanwhile Respondents are at liberty to decide Applicants' representation, if any, pending with them.</p> <p>11. S.O. to 12.12.2019.</p> <p style="text-align: right;">Sd/- (Shree Bhagwan) Vice-Chairman</p> <p>prk</p>

Date : 15.11.2019

O.A.No.1088 of 2019 with M.A.No.616 of 2019

D.U. Sawant & Ors. Applicants
Versus
The State of Maharashtra & Ors. Respondents

1. Heard Shri G.A. Bandiwadekar, learned Advocate for the Applicants and Shri A.J. Chougule, learned P.O. for the Respondents.

2. This O.A.No.1088/2019 was heard and order was passed on 14.11.2019. Today, learned Advocate has filed application for speaking to minutes and submits that the Respondents are not clear about the order.

3. As submitted by learned Advocate for the Applicants in his application for speaking to minutes dated 15.11.2019, he prays for addition as paragraph 11(a) and 11(b) in Tribunal's order dated 14.11.2019, which is reproduced below :-

"11A. The Respondents are therefore restrained and thus directed not to take any coercive action against the Petitioners by dispossessing Petitioners from their respective service quarters, so also no further action to be taken based on notice of eviction till filing of reply by the Respondents and 2 weeks thereafter.

11B. The Learned P.O. is directed to communicate this order to the Respondents."

4. Respondents are directed to restrain from asking the applicants to vacant service quarter, since the applicants are already in police service as per their own order at page 202 issued by Joint Commissioner of Police (Administration) on behalf of Commissioner of Police dated 17.10.2013, Exhibit-I, page 219. They should work according to the same order.

5. The above protection is granted till filing of the reply. In view of the above, speaking to minutes dated 15.11.2019, of order dated 14.11.2019 is allowed. Prayers mentioned in above paragraph 3 are allowed along with order dated 14.11.2019. Hamdast is granted to both parties.

6. Learned P.O. is directed to communicate the Respondents about the order issued by the Tribunal today.

7. S.O. to 25.11.2019.

Sd/-

(Shree Bhagwan)
Vice-Chairman

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