(2010) 08 BOM CK 0134

Bombay High Court

Case No: Writ Petition No''s. 2525, 2546, 2586, 2605, 2708, 2837, 2845, 2981 and 3457 of 2010

Maharashtra Public Service Commission and Others		APPELLANT
	Vs	
Rajendra C. Kadam and Others etc. etc.		RESPONDENT

Date of Decision: Aug. 2, 2010

Acts Referred:

- Bombay Police Act, 1951 - Section 133, 2, 2(6), 25(2), 3

Citation: (2010) 5 BomCR 24 : (2010) 112 BOMLR 3480

Hon'ble Judges: R.M. Savant, J; A.M. Khanwilkar, J

Bench: Division Bench

Advocate: A.A. Kumbhakoni and A.M. Kulkarni, in WP No. 2981/2010, M.S. Karnik, in WP Nos. 2525, 2586, 2708, 2837 and 2845/10, A.V. Anturkar and S.B. Deshmukh, in WP No. 2546/10 and Swati Manchekar, in WP Nos. 2605 and 3457/10, S.B. Deshmukh, for Respondents 3-19, 21-38, 40-45, 47 and 48 WP No. 2708/10, Swati Manchekar, for Respondent Nos. 4 and 7-13 in WP No. 2525/10 and S.N. Patil, AGPfor Respondents 1 and 2 in WP 2525, 2586, 2605, 2981 and 3457/10 and Respondent No. 1 in WP Nos. 2546, 2708, 2837 and 2845/10, for the appearing parties; A.A. Kumbhakoni and A.M. Kulkarni for Respondent Nos. 3 in WP 2525, 2605 and 3457/10 and Respondent No. 2 in WP Nos. 2546, 2708, 2837 and 2845/10, M.S. Karnik, for Respondents 4-8 in WP Nos. 2605 and 3457/10,   A.V. Anturkar andS.B. Deshmukh for Respondents 3-19, 21-38, 40-45, 47 and 48 WP No. 2708/10, Swati Manchekar, for Respondent Nos. 4 and 7-13 in WP No. 2525/10 and S.N. Patil, AGP for Respondents 1 and 2 in WP 2525, 2586, 2605, 2981 and 3457/10 and Respondent No. 1 in WP Nos. 2546, 2708, 2837 and 2845/10, for the Respondent

Judgement

A.M. Khanwilkar, J.

All these Petitions involve overlapping questions emanating from the common decision of the Maharashtra Administrative Tribunal (hereinafter referred to as the ''Tribunal'') Mumbai Bench, dated 9th March, 2010 in original Application Nos. 1246,

1462, 1511, 1512 all of 2009 and O.A. 25/2010 respectively. Although, 5 original applications were filed before the Tribunal, in this Court, in all 9 writ petitions have been filed which, as aforesaid, are being disposed of together by this common Judgment. Out of these 9 writ petitions, 3 writ-petitions are filed by Petitioners who were not made parties to any of the original applications filed before the Tribunal, but are aggrieved by the decision of the Tribunal as they are directly affected by the said decision. The same are Writ Petition Nos. 2708/2010, 2845/2010 and 2837/2010. Whereas, Writ Petition No. 2525/2010 is filed by Petitioner who was Respondent in the proceedings before the Tribunal. The said Petitioners have supported the stand taken by the Maharashtra Public Service Commission (hereinafter referred to as M.P.S.C.). In the Writ Petition filed by the M.P.S.C. all the original applicants in the respective applications, in all 170 in numbers have been arrayed as Respondents 1-170 respectively. Whereas, the remaining Writ Petitions are filed by the original applicants challenging the adverse opinion recorded by the Tribunal in relation to the other grounds urged by them.

2. The challenge before the Tribunal was in respect of the select list for the post of Police Sub-Inspector published on 12th November, 2009. That list was prepared to fill in 533 vacancies by selection of the eligible candidates from the feeder post on the basis of Limited Departmental Competitive Examination. The said selection process or examination was to consist of preliminary exam for 200 marks, main exam for 100 marks, physical test for 100 marks and interview test for 50 marks. Insofar as the physical test is concerned, the same consisted of running a distance of 800 meters and other events. Insofar as taking part in running a distance of 800 meters, the maximum marks to be allocated to the candidate was 50 marks. The allocation of marks was to depend on the time taken by each candidate to cover the distance of 800 meters so as to assess their physical ability. For that slab of 10 seconds was applied. As per the prescribed norm, if the candidate was to complete 800 meters distance in 2.30 or less minutes, he would be allocated full 50 marks. The marks would be reduced by 6 if the candidate was to complete the 800 meter distance in 2.30 to 2.40 minutes and in the same manner for every 10 additional seconds.

3. The feeder posts for recruitment to the post of Police Sub-Inspector by selection on the basis of Limited Departmental Competitive Examination are persons in police department such as Police Constable, Police Naik and Police Head Constable. The aspiring candidates working in the said feeder posts could apply for appointment on selection basis and would get three opportunities to appear for the Limited Departmental Competitive Examination subject to possessing necessary qualification. To regulate the recruitment to the post of Police Sub-Inspector, the State of Maharashtra in exercise of powers conferred by Clause (b) of Section 5 of the Bombay Police Act and all other powers enabling it in that behalf has framed rules to regulate recruitment to the post of Sub-Inspector of Police in the police force in the Home Department of Government of Maharashtra. The said Rules are

called Police Sub-Inspector (Recruitment) Rules, 1995. It may be useful to advert to Rule 3 & 4 of the said Rules:

3. Appointment to the post of Sub-Inspector of Police in the Police force in the State of Maharashtra shall be made either,-

(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 pargraph 5 of the Government Resolution, No. PSB. 0390/CR-408/POL-5-A dated the 5th July 1994;

Or

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

(i) not be more than thirty-five years of age; provided that, relaxation of age of five years may be granted to candidates of Backward Classes, and-

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

or

(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,

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

Provided that the maximum age limit may be relaxed upto twenty-eight years in respect of candidates belonging to the Backward Classes:

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 the service.

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

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

For Male

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

(emphasis supplied)

It is noticed that the post of Police Sub-Inspector can be filled by three sources of recruitment namely nomination, promotion and selection. The ratio in which it has to be done is spelt out by Rule 4. In the present case, we are concerned only with the source of recruitment by selection on the basis of Limited Departmental Competitive Examination.

4. Sometime in August 2007, requisition was sent by the State Government to M.P.S.C., thereby notifying 533 vacancies of Police Sub-Inspectors. The M.P.S.C. after consultation with the Government issued circular mentioning the condition that the candidates must complete minimum regular service as mentioned in the Recruitment Rules as on 1st January, 2008. Here it may be mentioned that the first examination for recruitment by selection on the basis of Limited Departmental Examination was conducted in the year 1998. In the said examination the cut off date was fixed as 1st January, 1998. The next examination was conducted in the year 2002. The cut off date to invite applications from eligible candidates was fixed as 1st January, 2002. Admittedly, no examination was held thereafter, till the present examinations pertaining to year 2006. Even though the examination which is subject matter of challenge pertains to year 2006, the cut off date has been fixed as 1st January, 2008. For the preliminary examination held on 11th May, 2008, out of around 18,572 applications, only around 17,507 candidates appeared for main examination conducted on 20th July, 2008. In the said examination all the original applicants (Respondents 1-170 herein) appeared. The results of the said examination was declared on 11th August, 2009. Around 2219 candidates were eligible to appear for the physical test and subsequent interviews. The final result was accordingly declared on 12th November, 2009. The names of the original applicants/Respondents 1-170 did not appear in the final merit list although according to them, they had passed the main examination and had also undergone physical test alongwith around 2219 candidates similarly situated. According to the M.P.S.C., each of the writ-petitioners (total 44) in Writ Petition No. 2546/2010 have failed in the main examination. Be that as it may, the final results were declared on 12th November, 2009 and select list was published. Thereafter, the original applicants (Respondents 1 to 170 herein) filed five separate original applications before the Tribunal challenging the selection process on diverse counts. The Tribunal has formulated the main grounds of challenge in Paragraph 5 of the impugned Judgment which reads thus:

5. The main grounds adduced by the applicants are as under:-

1. Rule 3(b)(ii) lays down that for admission to a limited departmental examination a candidate should have completed a minimum regular service as Police Constable of four years in case he is a degree holder, five years in case he has passed the HSC examination and six years in case he is qualified at the SSC examination. It was wrong to fix the cut-off date as 1.1.2008 for the examination of 2006.

2. As per G.R. of 8.2.1996, it is the duty of the Police Unit in-charge to verify the forms filled in by the candidates and submit the same to D.G.P., for onwards submission to M.P.S.C., through the Home Department. However, para 4 of the circular dated 15.2.2008, was withdrawn by corrigendum dated 29.2.2008. As a result, there was no verification about the eligibility of the candidates prior to the examination and they were directly admitted on the basis of form submitted to the M.P.S.C..

3. The applicants underwent physical test at various venues and one of the item is 800 meters running. At some venues there was a track of 400 meters, while at other places there was a track of 200 meters. Thus, those who ran four laps of 200 meters had to negotiate eight extra curves which reduced their speed of running. This resulted in an unfair advantage to those who were tested on 400 meters track vis-a-vis others who underwent test on a 200 meters track.

4. Rule 3(b)(ii) prescribes the minimum regular service as four, five or six years depending on the educational qualification. The minimum regular service is to be completed after the acquisition of the educational qualification. However, the M.P.S.C. has considered candidates eligible if they possessed the educational qualification on the cut-off date and not at the beginning of the period of qualifying service. This has resulted in ineligible candidates being allowed to compete.

5. The Rules prescribe regular service which implies that a confirmed order must have been passed. However, many of the candidates did not satisfy that requirement.

6. In all direct recruitments, Government has prescribed a reservation of 30% for women candidates. As no such reservation was provided in the current recruitment, it has violated the said stipulation.

7. Many candidates from other streams like Wireless, Motor Transport etc. were allowed to appear in the examination, which is not expected in the scheme enunciated by the Government.

5. The original Applications were resisted by the State Government as well as M.P.S.C. Besides countering the main grounds of challenge, it was urged on behalf of the State and M.P.S.C. that it is too late in the day for the original applicants to question the selection process inasmuch as each of the original Applicants participated in the selection process without any demur. Insofar as the correctness of the grounds of challenge, according to the State and M.P.S.C., the same were

untenable and ill advised. On the other hand, the selection process was taken forward in confirmity with the requirements of the Recruitment Rules. The Tribunal after considering the rival stand eventually partly allowed the original applications. The Tribunal accepted the challenge of the original applicants only on two counts and all other contentions have been negatived. The first ground accepted by the Tribunal is that the candidate who has gained experience of specified period after acquiring the qualification referred to in Rule 3(b)(ii) can alone be reckoned towards the qualification specified in the said rule. This conclusion has been reached by the Tribunal essentially on two counts. Firstly, that the State Government had issued circular dated 18th July 1979 read with circular dated 31st August, 1972 which clearly stipulated that where experience for a specified period has been prescribed as an essential qualification, the experience gained after acquiring the basic educational qualification prescribed should be alone counted towards the specified period and that the experience gained prior to acquiring these qualifications should be ignored unless it is expressly provided in the Recruitment Rules. The Tribunal has held that this circular has been followed by all the departments of the State. Besides, the Recruitment Rules of 1995 do not make express provision to provide to the contrary. Further, the brochure issued by the M.P.S.C. in relation to the examination-in-question itself refers to the said circular of 1979. For these reasons, the Tribunal accepted the challenge of the original Applicants that the consideration of candidates who did not possess the requisite experience after having acquired the prescribed qualification was illegal and contrary to the rules. The Tribunal has then accepted the other ground that the original applicants were required to undergo physical test at various venues to run the distance of 800 meters but some venues had track of 400 meters while at other places the track provided was of 200 meters. As a result, the candidates who participated in the physical test to run distance of 800 meters on the track of 200 meters had to run 4 laps, whereas the candidates who ran the same distance on the track of 400 meters had to run only 2 laps. This resulted in an unfair advantage to the candidates who ran the same 800 meters distance on the track of 400 meters. In as much as, the candidates who ran the distance of 800 meters on the track of 200 meters must have lost minimum of 4-5 seconds in completing the same distance. On that basis, it was held that having regard to the fact that the marks were allocated for physical test on the basis of slab system of 10 seconds, such loss of 4-5 seconds would be significant and may have direct bearing on the marks obtained for the physical test. Insofar as this ground is concerned, the State as well as M.P.S.C. had countered the same on the argument that each of the original applicants have voluntarily chosen the venue and participated in the physical test without any demur. Therefore, they cannot be heard to complain about the disadvantage. In any case, the assumption of the original applicants that by running the 800 meters distance on the track of 200 meters, they have suffered some disadvantage and must have lost few seconds in the process due to more number of curves, was untenable. That logic may be relevant to athletes of international standards. Moreover the tracks, be it of 400 meters or 200

meters, were circular/oval in shape. None of these tracks had a single curvature or single bend which would affect the time taken to cover the distance. According to M.P.S.C. the same system of gradation was being followed for years together even for making recommendations by nomination i.e. direct recruits. The only difference being that the total number of marks allotted for physical test in the case of the direct recruits is double that of the marks allotted at the present examination. Having regard to the fact that large number of candidates were to appear throughout the State, to facilitate early conclusion of the selection process, physical test was arranged at various places throughout the State. Those venues were chosen by the candidates. Further, the purpose of conducting physical test was not to assess the speed of the candidates but their endurance and their ability to cover the distance. The marks were allocated on the basis of time taken by them to cover such distance. Moreover ,this test was a small part of the overall physical test and not decisive at all. Further, such microscopic enquiry was impermissible. However, the Tribunal although conscious of the fact that microscopic investigation or roving enquiry is impermissible, proceeded to answer the said issue in favour of the original applicants. In the first place, it has negatived the stand taken by the State and M.P.S.C. that all the candidates participated in the physical test without any demur and, therefore, it was not open to them to object on this count. It has also negatived the argument of the State and M.P.S.C. that in the case of Shashikant K. Sagare v. The State decided by the Mumbai Bench of the Tribunal in O.A. No. 106/2004 and several other companion cases dated 5th May, 2006, the Tribunal has already considered this very contention. Instead, it found that although similar argument was canvassed in the said matter, the same has not been finally adjudicated. On that reasoning, the Tribunal proceeded to hold that it was open for it to examine the said controversy in the present set of cases. It then found that it is common knowledge that in 2 laps there would be 8 curves, whereas in 4 laps there would be 16 curves. It went on to observe that whatever the experts may say, it is common sense that whoever is running at his fastest, whether an international athlete or a Police Constable, will have to slow down for a fraction of a second, while negotiating a curve. It then proceeded to assume that the slowing down process would reduce the timing of the candidate at least by four seconds i.e. half second due to each additional curve of the eight additional curves.

6. On the above basis, the Tribunal partly allowed the original applications and direct the State and M.P.S.C. to prepare the final list afresh after excluding the candidates who did not have experience required under Rule 3(b)(ii) after acquiring the prescribed additional qualification and secondly to reduce timing to the extent of four seconds of the candidates who had ran the distance of 800 meters on the track of 200 meters and thereafter to reassess their marks for physical test by applying appropriate slab. The operative order passed by the Tribunal reads thus:

39. In view of the above arguments, these applications are partly allowed and it is hereby directed that:-

(a) The experience required under Rule 3(b)(ii) should have been acquired after the educational qualification.

(b) Those who ran 800 meters on a 200 meter track their marks should be reassessed by reducing their timing to the extent of 4 seconds.

As discussed, other contentions are rejected. M.P.S.C. may recompute the results accordingly, within three weeks from the date of receipt of this order. There will be no order as to costs.

7. The above said decision of the Tribunal has been challenged by the successful candidates who were parties to the original application as Respondents as also third parties who were not impleaded as Respondents in the original applications. At the same time ,M.P.S.C. has also challenged the view so taken by the Tribunal on the two grounds referred to above. At the same time ,the original applicants have filed independent writ-petitions challenging the finding of the Tribunal on other grounds raised by them which did not find favour with the Tribunal. Accordingly, all these Writ Petitions were heard together and are being disposed of by this common Judgment.

8. We would first deal with two grounds on which the Tribunal has partly allowed the original applications. The first ground is that on construction of Rule 3, the experience possessed by the candidate after acquiring the qualification should alone be counted towards the period specified in Rule 3(b)(ii). The argument mainly revolves around the word "with" appearing in Sub-Clause (ii). The view taken by the Tribunal is that the expression "with" is to be understood to mean that the experience to be possessed by the candidate should be reckoned from the date "after" the acquisition of the prescribed qualification. According to the State and M.P.S.C., the expression "with" will have to be understood as "and" or "as well". To buttress this argument reliance was placed on the Marathi version of the Recruitment Rules. The same uses the word ^^o** The plain meaning of this word is "and" or "as well".

9. We shall revert back to the opinion recorded by the Tribunal. The Tribunal in the first place referred to the Circulars dated 31st August, 1972 and dated 18th July, 1979, which stipulate that in all the "existing Recruitment Rules" wherever experience for a specified period has been prescribed as an essential qualification, the experience gained after acquiring basic academic qualification prescribed should be alone counted towards the specified period and that the experience gained prior to acquiring these qualifications should be ignored unless it is expressly provided in the Recruitment Rules. The Tribunal has further noticed that the Recruitment Rules of 1995 make no express provision to provide to the contrary. In substance, it is held that since the directive contained in the Government Circulars referred to above, has operated for all these years and has been uniformly followed by all the departments of the State, it may not be appropriate to overlook

the same. Instead, in absence of express provision in the Recruitment Rules of 1995, it should be presumed that the intention of the Government was to restate the position predicated in the said Government Circulars.

10. The Counsel appearing for the original applicants relied on the decision of the Apex court in the case of S.B. Bhattacharjee Vs. S.D. Majumdar and Others, to contend that the contemporanea exposition is a well known tool for interpreting any provision much less for purposive construction and to give effect to the legislative intent. The argument though attractive will have to be turned down. For, the language of the Recruitment Rules under consideration is clear and unambiguous. The expression used is "with" and not "after". By interpretative process we cannot rewrite the intent of the express provision. As aforesaid, the plain meaning of expression appearing in the Marathi version leaves no manner of doubt about the intent to use the said expression. It plainly means "and" or "as well". The expression "with" appearing in the Rule 3(b)(ii) of the English version of the Recruitment Rules will have to be understood as "and" or "as well" and not "after" as has been construed by the Tribunal. We are fortified in our view by the decision of the Apex Court in the case of A. K. Raghumani Singh and Others Vs. Gopal Chandra Nath and Others, . In that case, the Recruitment Rules provided that the post of Superintending Engineer shall be filled up by promotion from "Executive Engineer (Civil)/(Mech.) and Surveyor of Works possessing degree in Civil/Mechanical Engineering or its equivalent from a recognized institution with 6 years'' regular service in the grade. The expression "with" occurring in this rule has been construed by the Apex Court to mean "and" or "as well". The Apex Court besides referring to the dictionary meaning of the word "with" has also adverted to other decisions of the same Court to answer the issue under consideration. The relevant discussion of the said Judgment reads thus:

7. The word "with" has been defined in the New Shorter Oxford Dictionary (1993), diversely the meaning depending on the context in which it is used. But when it is used to connect two nouns it means: "Accompanied by; having as an addition or accompaniment. Frequently used to connect two nouns, in the sense ''and'' - ''as well''.

8. Applying the definition to the eligibility criteria it is clear that it requires the prescribed educational qualification and 6 years'' experience as well. Given the plain meaning of the phrase, the Court would not be justified in reading a qualification into the conjunctive word and imply the word "subsequent" after the word "with".

9. Even on a point of principle it would be unreasonable to distinguish between the nature of the regular service required, as if the service in the grade subsequent to the obtaining of the necessary educational qualification were qualitatively different from the service in the grade prior thereto. In fact no such case has been made out.

10. The appellants'' contention appears to have been based on the decision of this Court in N. Suresh Nathan v. Union of India. In that case, the qualification for promotion prescribed was as under: (SCC p. 585, para 1)

1. Section Officers possessing a recognised Degree in Civil Engineering or equivalent with three years'' service in the grade failing which Section Officers holding Diploma in Civil Engineering with six years'' service in the grade - 50 per cent.

2. Section Officers possessing a recognised Diploma in Civil Engineering with six years'' service in the grade - 50 per cent.

11. The Court held that the Rules would have to be read in keeping with the practice followed in the Department for a long time and that the period of service in the grade for eligibility for promotion commenced from the date of obtaining the degree and the earlier period of service prior to obtaining the degree was not counted. Since this practice had been consistently followed and was understood as such by all concerned, the Court held that it would not be justified in taking a contrary view and unsettling the settled practice in the Department.

12. The decision in Suresh Nathan case has been explained in M.B. Joshi v. Satish Kumar Pandey D., Stephen Joseph v. Union of India and finally in Anil Kumar Gupta v. Municipal Corporation of Delhi as being limited to the facts of that case.

13. In M.B. Joshi case

the decision in Suresh Nathan case was distinguished in the facts of that case and it was indicated that when the language of the rule is quite specific that if a particular length of service in the feeder post together with educational qualification enables a candidate to be considered for promotion, it will not be proper to count the experience only from the date of acquisition of superior educational qualification because such interpretation will violate the very purpose to give incentive to the employee to acquire higher education". See D. Stephen Joseph v. Union of India SCC p. 755, para 5

14. The Court in D. Stephen Joseph case was also of the view that the decision in Suresh Nathan was an exception to the accepted principle of interpretation of the rule on the plain language.

15. In the last-mentioned case, namely, Anil Kumar Gupta case the essential qualifications for appointment were (a) Degree in Civil Engineering, and (b) two years'' professional experience. The Court interpreted the language to mean "that the two years'' professional experience need not entirely be experience gained after obtaining the degree" (SCC p.136, para 24).

16. Given the meaning of the words, the principle involved and the weight of precedents, the view of the High Court must be upheld.

(emphasis supplied)

11. Reliance is rightly placed on the decision of the Apex Court in the case of Subhash v. State of Mahrashtra and Ors. wherein the Apex Court has observed that the circular cannot replace the intent of the statutory Rules framed under Article 309 of the Constitution. Further, the Counsel appearing for the M.P.S.C. has invited our attention to seven other statutory Rules framed by the State of Maharashtra in relation to other Recruitment Rules to point out that the expression "after" is used in contradistinction to the expression "with" used in the Recruitment Rules in question. These Rules follow the scheme propounded in the Government Circular dated 31st August, 1972. The said Rules are:

i) Principal & Vice Principal,
Industrial Training institute in the
Maharashtra Educational Service
Class-I (Junior) Recruitment
Rules 1989. [See Rule 3(b)(iv)]

ii) The Head Master, Govt. Technical
High School, In the Maharashtra
Educational Service, Class-I, (Junior)
Recruitment Rules 1989 [See Rule 3(b)(iv)]

iii) Engineering Superintendent
Govt. Technical High School,
In the Maharashtra Educational Service,
Class-I, (Junior) Recruitment Rules 1989
[See Rule 3(b)(iv)]

iv) Inspector of Technical Education
Re-designated as Inspector of Vocational,
Educational and Training in the Maharashtra
Educational Service, Class-I, (Junior)
Recruitment Rules 1989
[See Rule 3(b)(iv)]

v) Senior-Surveyor-Cum-Junior Apprenticeship
Advisor Re-designated as Assistant apprenticeship
Advisor (Senior) in the Maharashtra Educational
Service, Class-I, (Junior) Recruitment Rules 1989
[See Rule 3(b)(iv)]

vi) Bio Mechanical Engineer at Regional Limb Fitting
Centre attached to the Govt. Medical Colleges
and Hospitals under the Directorate of Medical
Education and Research of the Govt. of
Maharashtra (Recruitment) Rules 1989
[See Rule 3(2)(b)(i),(ii),(iii), (iv)]

vii) Executive Engineer (Electrical) (Class-I) and
Deputy Engineer (Electrical) (Class-II) in the
Dairy Development Department (Recruitment)
Rules 1989. [See Rule 3(c)(iii)]

12. In each of these Rules, the word used is "after", which means that only experience after acquisition of the requisite qualification can be taken into account for the purpose of determining eligibility of the candidate. That is not the intention in the Recruitment Rules under consideration. Further, considering the setting in which the expression "with" has been employed in the Recruitment Rules under consideration, it is unfathomable to ascribe the meaning thereto as "after".

13. The argument of the original applicants that the Recruitment Rules do not talk about eligibility and that subject, therefore, continues to be governed by the Government Circulars dated 31st August 1972 and 18th July 1979, deserves to be stated to be rejected. It is argued that the Government Circulars which are administrative instructions can be issued to fill up the gaps. Reliance is placed on the decision of the Apex Court in the case of Dhananjay Malik and Others Vs. State of Uttaranchal and Others, . The reliance on this decision is inapposite. For, in the same decision the Apex Court has noticed the earlier Constitution Bench decision in the case of Sant Ram Sharma Vs. State of Rajasthan and Another, which takes the view that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. As held by us earlier, the Government Circulars in the present case are anterior in point of time. The same cannot be pressed into service to whittle down the express provision in the statutory rules and moreso, which are framed in later point of time. Further, the present Recruitment Rules are not silent on the relevant matter, but are quite clear and unambiguous and consciously use the expression "with" in contradistinction to the word "after" as is used in other set of statutory Recruitment Rules framed by the State Government. There is nothing to even remotely suggest that the persons in regular service in the feeder posts of police force would be qualitatively different subsequent to the obtaining of the necessary qualification, from the service in the said posts prior thereto.

14. Reliance is also placed on the decision of the Apex Court in the case of Indian Airlines Ltd. and Ors. v. S. Gopal krishnan reported in 2001 (2) SCC 362 to contend that experience prior to acquiring qualification cannot be counted. However, applying the principle stated by the Apex Court in A.K. Raghumani''s case (supra) and on interpretation of the Recruitment Rules under consideration, it is not possible to countenance this argument.

15. Reliance is, however, placed on the other decision of the Apex court, in the case of Shailendra Dania and Others Vs. S.P. Dubey and Others, . In the first place, this Judgment has analyzed all other relevant decisions including the exposition in the

case of A.K. Raghumani Singh (supra). Having considered those decisions in Paragraph 36, the Court has plainly observed that each of those decisions were based on interpretation of the respective Rules called in question. The meaning has been given to the words used in the context of the entire scheme governing service conditions and facts involved in each case and none of the earlier decisions referred by the Apex Court after the decision in N. Suresh Nathan''s case can be said to have taken a different view. Having said this, the Apex Court proceeded to answer the controversy arising before it in that case on the basis of the entire scheme of the Rules in question. It may be useful to reproduce Paragraph 36 of the said decision which reads thus:

36. From a reading of the decisions rendered by this Court, one thing is clear to us that the decisions in N. Suresh Nathan, M.B. Joshi, D. Stephen Joseph, Anil Kumar Gupta, A.K. Raghumani Singh and Indian Airlines Ltd. are based on the interpretation of the respective rules called in question, giving meaning to the words used in the context of the entire scheme governing service conditions and the facts involved in each case and it cannot be said that the decisions rendered by this Court after the decision of N. Suresh Nathan case have taken a different view than what has been decided in N. Suresh Nathan case. Thus, we are required to decide the matter on the basis of the entire scheme of the Rules, the facts and circumstances at the relevant time and the Rules called in question before us, independently giving meaning to the words, the principle involved and the past practice, if any, which is in consonance with the interpretation given by us to the Rule. If we find that two views are possible after interpreting the Rule, then the Rule would be interpreted keeping with the practice followed in the Department for a long time and thus the practice practically acquired status of rule in the Department.

In Paragraph 37 of the same decision, the Apex Court has then formulated the only question examined by it in that case. It is whether a diploma holder, Junior Engineer who obtains a degree while in service becomes eligible for promotion to the post of Assistant Engineer on completion of three years of service after he obtains the Engineering degree or on completion of three years of service prior to obtaining a degree in Engineering. After having analyzed the provisions of Rules in question and the setting in which the expression "with" is used therein, the Court went on to hold that service experience required for promotion from the post of Junior Engineer to the post of Assistant Engineer by a degree holder in the limited quota of degree-holder Junior Engineer cannot be equated with the service rendered as a diploma-holder nor can be substituted for service rendered as a degree-holder. It was held in that case that if any other view were to be taken, it would amount to saying that the experience gained by the candidate in service as a diploma holder is qualitatively the same as that of the experience of a graduate Engineer. Whereas, the Rules envisaged distinction between the experience of degree holder and diploma holder for further promotion to the post of Executive Engineer also. Thus understood, the subsequent decision of the Apex Court in the case of Shailendra

Dania (supra) will be of no avail to answer the issue on hand.

16. In the present case, we are concerned with the recruitment to the post of Police Sub-Inspector. The feeder cadre is of Police Constable, Police Naik and Police Head Constable, working in the police force in Maharashtra. The object and purpose of Rule 3, in particular, Sub-clause (ii) of Clause (b), is to provide an incentive to the employee to acquire higher educational qualifications. It is intended to encourage the persons working in Police Force to strive towards excellence. It is a welfare provision. If the argument propounded by the original applicants and as accepted by the Tribunal were to be upheld, it may be counter productive. In that, the candidates would be better placed with the SSC qualification and on completing 6 years service would be automatically considered for selection. In that case, he may not have to take the trouble of pursuing HSC or Degree course to improve his educational qualification. For that he may have to put in two years or three years as the case may be and in return get benefit of only one year of service experience as per Rule 3. Such interpretation would be counter productive especially when the nature of service to be rendered by him will not be qualitatively different from the service in the grade prior to acquiring such additional qualification. Notably, the post of Sub-Inspector of Police, the educational qualification provided in Rule 3(b)(ii) is not of technical qualification but a generic one of passing Secondary School Certificate Examination, Higher Secondary School Certificate Examination or Degree in any faculty as the case may be. Further, keeping in view the duties to be performed as Police Constables, the experience to be acquired by the Police Constable is not a professional experience. A priori, we have no hesitation in taking the view that the expression "with" appearing in the Rule under consideration will have to be understood as "and" or "as well". If so, the eligibility of candidate for appointment to the post of Sub-Inspector of Police would be of such police constables working in the police force in the State of Maharashtra who have completed a minimum regular service as Police Constable and also have prescribed educational qualification at the time when they are considered for appointment to the post of Sub-Inspector of Police. In this view of the matter, the first ground which found favour with the Tribunal and on the basis of which direction has been given to M.P.S.C. to recompute the results and issue fresh final list, cannot be countenanced.

17. That takes us to the second ground which found favour with the Tribunal. The Tribunal was impressed by the fact that the candidates who were made to run on tracks of 200 meters in contrast to 400 meters, were required to negotiate additional curves. That affected their timing in covering the of distance of 800 meters atleast by 4-5 seconds. In that, for each additional curve they would lose at least half second timing-due to slowing down. That may have a cascading effect on allocation of marks for physical training as the same was on the basis of slab system of 10 seconds. Even though we would uphold the opinion of the Tribunal that this very issue was raised before the Tribunal in the case of Shashikant K. Sagare, but has not been specifically answered. Even then, the question is:

whether it was open to the Tribunal to entertain such ground. Indeed, the Tribunal has noticed at the outset that the scope of judicial review does not permit the Tribunal to undertake roving enquiry or resort to microscopic investigation. Even after having said this, the Tribunal proceeded to examine the grievance of the original applicants on the specious reasoning that the track differentiation has led to substantial disadvantage for those who ran on 200 meters track instead of 400 meters. In justification the Tribunal has found that it would depend on the timing of the individual candidate. For instance, if timing is two minutes 35 seconds, 5 seconds either way may not make a difference. Because, marks are the same from two minutes thirty seconds to two minutes forty seconds. However, if the timing is two minutes and thirty one seconds or two minutes forty one seconds, then it is bound to make a difference even if a person lost two seconds because of shorter track. It then found that 10 seconds slab does not adequately compensate for this differential track in all cases. It is then observed that whatever the experts may say, it is common sense that in the process of negotiating eight additional curves the person would slow down eight times and resultantly would suffer overall timing of at least four seconds.

18. This view is nothing short of guesswork. It is founded on conjecture and surmises. In the first place the assumption of loss of half a second at each additional curve is without any legal evidence to substantiate that fact. Judicial notice or presumption cannot be deduced in respect of such a fact. In that case, why not assume loss of one whole second or even more for each additional curve? It can be even less than half a second or insignificant. If such challenge is to be entertained, there is no reason why the candidates cannot be permitted to challenge the selection process on the ground that they were subjected to physical test in unequal conditions-which can be on account of climatic difference, the nature or condition of the tracks, the speed and direction of the wind, the different timing of conducting the event etc. There can be no end to such pleas and assumptions. If such argument is to be stretched further, the Court can also "assume" that the length of track on the different grounds may also have been marginally unequal. There can be no end to the ingenuity of the challenges that may be put forth.

19. We may refer to the decision of the Apex Court in the case of Sadananda Halo and Others Vs. Momtaz Ali Sheikh and Others, . While considering a similar situation, the Apex Court observed thus:

57. The treatment of the Division Bench is identical. The Division Bench has found out a pattern in selection and commented that the candidates who secured higher marks in the physical test i.e. above 40 and up to 46, were awarded abnormally low marks i.e. marks ranging from 7 to 20 and thereby these candidates were ousted from consideration. The marks were found to be overwritten/interpolated in respect of all the candidates and not a single instance was found free from such impairment. The Division Bench has given few examples in para 153 where the

marks were substantially changed and reduced to reject those candidates. Some further defects were found that the candidates were not awarded marks for 100 metre race which had been completed within the permissible limit. Two such examples were cited by the Division Bench. So also it is commented that some candidates were not given proper marks and were not allowed to cross the benchmark. It is on this basis that the selection has been set aside, of course again considering the crossing of the benchmark of 250 candidates a day. In our opinion the exercise undertaken of scrutinising the marks allotted to each and every candidate was unnecessary and unwarranted since in the petition no such assertions were made.

58. It is settled law that in such writ petitions a roving inquiry on the factual aspect is not permissible. The High Court not only engaged itself into a non-permitted fact-finding exercise but also went on to rely on the findings of the amicus curiae, or as the case may be, the scrutiny team, which in our opinion was inappropriate. While testing the fairness of the selection process wherein thousands of candidates were involved, the High Court should have been slow in relying upon such microscopic findings. It was not for the High Court to place itself into a position of a fact-finding commission, that too, more particularly at the instance of those petitioners who were unsuccessful candidates. The High Court should, therefore, have restricted itself to the pleadings in the writ petition and the say of the respondents. Unfortunately, the High Court took it upon itself the task of substituting itself for the Selection Committee and also in the process assumed the role of an appellate tribunal which was, in our opinion, not proper. Thus, the High Court converted this writ petition into a public interest litigation without any justification.

59. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule. This position was reiterated by this Court in its latest judgment in Union of India v. S. Vinodh Kumar where one of us (Sinha, J.) was a party. This was a case where different cut-off marks were fixed for the unreserved candidates and the Scheduled Caste and Scheduled Tribe candidates. This Court in para 10 of its judgment endorsed the action and recorded a finding that there was a power in the employer to fix the cut-off marks which power was neither denied nor disputed and further that the cut-off marks were fixed on a rational basis and, therefore, no exception could be taken. The Court also referred to the judgment in Om Prakash Shukla v. Akhilesh Kumar Shukla where it has been held specifically that when a candidate appears in the examination without protest and subsequently is found to be not successful in the examination, the question of entertaining the petition challenging such examination would not arise. The Court further made observations in para 34 of the judgment to the effect: (S. Vinodh Kumar case, SCC p. 107, para 19)

19. ...34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seems to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not "palatable" to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.

In para 20 this Court further observed that there are certain exceptions to the aforementioned rule. However, the Court did not go into those exceptions since the same were not material.

60. In our opinion the first basic thing for such a selection process would be the lack of bona fides or, as the case may be, mala fide exercise of powers by those who were at the helm of selection process. Both the courts below have not recorded any finding that they found any mala fides on the part of any of the State officials who headed the interviews. On the other hand the tenor of the judgments shows that the whole process did not suffer from mala fides, lack of bona fides, bias or political interference. In Union of India v. Bikash Kuanar this Court observed in para 14 thus: (SCC p. 195)

14. When a Selection Committee recommends selection of a person, the same cannot be presumed to have been done in a mechanical manner in absence of any allegation of favouritism or bias. A presumption arises in regard to the correctness of the official act. The party who makes any allegation of bias or favouritism is required to prove the same. In the instant case, no such allegation was made. The selection process was not found to be vitiated. No illegality was brought to our notice.

61. The learned Single Judge relying upon the decision in Raj Kumar v. Shakti Raj seems to have found an exception to this rule and has more particularly relied on the observation made in para 16 to the following effect: (SCC p. 536)

16. ...But in his case, the Government has committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law.

We do not think that this case is apposite for the present controversy. In the reported decision the Court found a clear-cut breach of the 1955 Rules. It also found that the names, though were required to be called from the employment exchange, were not so called. The Court also found fault with the procedure involved. We are afraid such is not the case in the present situation. No deviation from the rules or no

inherent defect in the selection process which would render the whole selection illegal have either been alleged or proved.

(emphasis supplied)

20. We are of the considered opinion that, the finding reached by the Tribunal cannot stand the test of judicial scrutiny as it is founded on surmises and conjectures. The attempt of the original applicants was to invite the Tribunal to not only undertake a roving enquiry but also a microscopic investigation of the disadvantage suffered by them to the extent of four seconds while participating in the test to assess their physical ability and endurance. Moreover, that view is taken without there being any material on record to substantiate the same. Notably, it was nobody''s case that the tracks at different places throughout the State were not circular or oval in shape. It is pertinent to note that none of the tracks had single curvature or a single bend which could affect the timing to cover the distance of 800 meters. In any case, some tracks in Mumbai/Thane were of 400 meters. In other places throughout the State of Maharashtra, where substantial majority of the candidates participated, the track provided was of 400 meters. Further, the system of gradation by applying slab of 10 seconds is being followed for several years by M.P.S.C. Even for making recommendations by nominations i.e. Direct recruit. Insofar as the Direct recruits are concerned, they are required to appear for physical test for double marks than the marks allotted to the candidates appearing in the selection on the basis of Limited Departmental Competitive Examination. This system followed by the M.P.S.C. has been approved by the State Government and has been consistently followed for all these years. If the candidate was to be so conscious about the timing, he could have elected for the 400 meters track for the physical test. The venue and centers provided to the candidates was as per their choice. All these candidates have participated in the competitive examination after electing their own venue without any demur. Suffice it to observe that the basis on which the Tribunal upheld the ground of challenge is unsustainable. The Tribunal on its own could not have assumed that the candidates participating on the track of 200 meters would suffer any disadvantage of atleast 4 to 5 seconds due to the additional curves; and more so when the experts opinion on the subject relied upon by M.P.S.C. was to the contrary. In other words, there was absolutely no legal basis for the Tribunal to arrive at the finding about the loss of fraction of timing upto four seconds in each and every case. Such assumption to say the least is replete with surmises and conjectures, if not perverse. Even for this reason, the conclusion so reached by the Tribunal cannot be sustained and stand the test of judicial scrutiny. As we are over turning the finding of the Tribunal even in relation to the second ground which has found favour with the Tribunal, the operative order passed by the Tribunal will necessarily have to be set aside and as a consequence all original applications will have to be dismissed in to to.

21. However, before we pass such order, we will have to address the grounds raised in the Writ Petitions filed by the original applicants to assail the adverse finding recorded by the Tribunal on other grounds. We shall first deal with the ground that the cut off date fixed as 1st January, 2008 for the examination of 2006 is illegal. Instead, the cut off date should be in the context of date of vacancies which pertain to year 2006. To buttress this submission, emphasis was placed on the expression "working in" occurring in Rule 3(b) of the Rules. It was submitted that the essential qualification will have to be reckoned in the context of the date of vacancies against which the appointment is to be made and at the relevant time, the candidate must be a person working in a police force in regular service as police constable. The Tribunal has negatived this plea on the reasoning that, each of the original applicants, pursuant to the advertisement issued in 2008, clearly mentioned that the examination was of 2006 and there were 533 vacancies and the cut off date was 1st January, 2008, participated in the selection process without any demur. It is too late in the day for the applicants to now question the correctness of the said cut off date. To get over this position, Counsel for the original Applicants would contend that they had no choice but to appear for the examination otherwise they would have missed the opportunity which was the last opportunity for some of them. For, they would have become over age or would have missed the third chance to appear in the examination. According to the original Applicants, they were covered by the excepted category of candidates who, therefore, even after appearing for the examination could legitimately assail the process on the ground that the cut off date provided for was impermissible. It is submitted that the original applicants had made grievance before the Tribunal much before the results were declared. They submitted representation on 14th May, 2008; whereas the main examination was held on 20th July, 2008 and results were published on 11th August, 2009. Indeed, the Counsel for the M.P.S.C. contended that the so called representation was never produced before the Tribunal. Be that as it may, eventually the Applicants filed the original applications in September 2009. Moreover, in the reply filed by the State as well as M.P.S.C., no ground was specifically taken about acquiescence by the original applicants. That is a question of fact to be pleaded and proved. In the absence of that plea, the applicants cannot be non-suited merely because they had participated in the selection process, which they did. Counsel appearing for the original applicants relied on the decision of the Apex Court in the case of Mohan Lal Aggarwal and Others Vs. Bhubaneswari Prasad Mishra and Others, . According to him the exposition in this case would apply to the case on hand on all fours. In as much as, the candidates had no choice but to participate in the selection process lest they would have lost the final opportunity available to most of them. We have no intention to non-suit the original applicants merely because they had voluntary participated in the selection process. Instead, we would examine the ground under consideration on its own merits.

22. Considering the arguments of both sides even if we were to agree with the original applicants/contesting Respondents that their case will have to be considered as covered within the excepted category, as they had no choice and also because the State and M.P.S.C. did not specifically plead or prove the factum of acquiescence by the original applicants. The question is, whether the cut off date as arrived at by the State can be said to be illogical, malafide or arbitrary? Admittedly, it is nobody''s case that the cut off date was fixed as 1st January, 2008, so as to accommodate any particular candidate or to deprive the prospects of any of the original applicants. In the first place, we are not dealing with the claim of the original applicants for promotion as such. If it were to be a case of promotion, certainly the date of vacancies would assume significance in following the process for appointment on promotion. However in the present case, admittedly, the claim is in relation to selection on the basis of Limited Departmental Competitive Examination. If it is so, the State Government was competent to provide for cut off date of its choice so as to widen the net to invite more candidates to compete inter se. That would facilitate selection of best amongst the available lot as and when the examination to appoint by selection based on Limited Departmental Examination was to be held. We find that the cut off date has been justly fixed as 1st January, 2008, considering the fact that the examination to be conducted for selecting the candidates as Sub-Inspector of Police was to be held in the year 2008-although pertaining to vacancies of year 2006. If any authority is required, we can usefully refer to the decision of the Apex Court in the case of J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., . In Paragraph 12 of this decision, the Apex Court has expounded as follows:

12. It is difficult to accept the contention of Shri Rao to adopt the chain system of recruitment by notifying each year''s vacancies and for recruitment of the candidates found eligible for the respective years. It would be fraught with grave consequences. It is settled law that the Government need not immediately notify vacancies as soon as they arose. It is open, as early as possible, to inform the vacancies existing or anticipated to the PSC for recruitment and that every eligible person is entitled to apply for and to be considered of his claim for recruitment provided he satisfies the prescribed requisite qualifications. Pegging the recruitment in chain system would deprive all the eligible candidates as on date of inviting application for recruitment offending Articles 14 and 16.

23. The Apex Court in the case of Dr. Ami Lal Bhat Vs. State of Rajasthan and others, has expounded that fixing of such cut off date for determining the maximum or minimum age required for a post, is the discretion of the rule-making authority of the employer as the case may be. In matters where time gap between advertisement and cut off date is less than a year, the cut off date cannot be considered as unreasonable. The Court has restated the legal position that in order to avoid uncertainty in respect of minimum or maximum age of the candidate which may arise, if such a age is linked to the process of selection which may take

uncertain time, it is desirable that the cut off date should be with reference to the fixed date. It has observed that fixing an independent cut off date far from being arbitrary makes for certainty in determining the maximum age.

24. We may also refer to the decision of the Apex Court in the case of Amlan Jyoti Borooah Vs. State of Assam and Others, . In Paragraph 40 of the said decision, the Apex Court observed thus:

40. The State in an emergent situation would subject to constitutional limitations is entitled to take a decision which subserves a greater public interest. While saying so, we are not unmindful of the fact that the Constitution also demands that candidates who had acquired eligibility for recruitment to the post in the meantime should also be given opportunities to participate in the selection process. This Court times without number had lamented the lackadaisical attitude on the part of the State to treat the matter of selection for appointment to services in a casual and cavalier manner. If no appointment could be made from 1997 to 2001, it is the State alone who could thank itself therefore ,but, unless there exists a constitutional or a statutory interdict so as to compel the superior court to set aside the selection which has otherwise been validly made; in exercise of their power of judicial review the same would not ordinarily be interfered therewith.

(emphasis supplied)

25. Reliance is placed by the Original Applicants on the decision of the Apex Court in the case of P. Mohanan Pillai Vs. State of Kerala and Others, to contend that ordinarily the Rules which were prevailing at the time when the vacancies arose ought to be adhered to. The qualification must be fixed at that time. The eligibility criteria as also the procedure as prevailing on the date of vacancy should ordinarily be followed. However, in our opinion, the original applicants have misread the exposition of this reported Judgment. The observations in Paragraph 10 & 11 on which emphasis was placed are in the context of fact situation of that case where the Court opined that the decision taken by the State smacks of arbitrariness and had caused prejudice to the candidates like the Appellant in the said case. However, as has been stated earlier, it is nobody''s case that the procedure followed by M.P.S.C. which is a constitutional functionary was to favour any particular section of candidates or for that matter intended to deny claim of any one of the candidates. It is not the case of the original applicants that the process followed by the M.P.S.C. was malafide or biased. On the other hand, we find that the M.P.S.C. has tried to scrupulously follow the mandate of the extant regulations in completing the selection process.

26. Further, it is well established that the Government need not immediately notify vacancies as soon as it would occur. If the cut off date was to be pegged down to year 2006, it would deprive all the eligible candidates as on date of inviting applications for recruitment which action would be offending Article 14 and 16 of

the Constitution of India. Thus understood, the challenge to the selection process on the ground that incorrect cut off date has been specified by the Government cannot be sustained.

27. We may now turn to the grievance of the original Applicants that although they had raised the issue of cut off marks not being announced beforehand by the M.P.S.C. It is argued that this plea has not been adverted to at all by the Tribunal. In the first place, going by the Judgment of the Tribunal it does not appear that this plea was argued before the Tribunal. The Tribunal has noted all the grounds of challenge in the opening part of the judgment and dealt with the same in seriatim. In any case, it is well established by now that the M.P.S.C. is competent to evolve process of elimination so as to make the selection process meaningful. We find that the principle of multiples of the number of vacancies to prune the selection list at different levels applied by the M.P.S.C. is neither arbitrary, illogical or absurd. The fact that the selection list could have been finalised also by adopting some other method as suggested by the Original Applicants cannot be the basis to frown upon the selection list prepared by the M.P.S.C. It is not the case of the Original Applicants that the method adopted by the M.P.S.C. was to favour any section of candidates as such. We find that the process followed by the M.P.S.C. is in complete conformity with the extant Regulations and attempted to select the best candidates amongst the available candidates at the relevant time eligible for being appointed against the vacancies.

28. The next ground agitated by the original applicant was that the Recruitment Rules prescribe regular service which implies that a confirmed order must have been passed in favour of the candidate so as to be eligible within the meaning of Rule 3. Even this ground has been overturned by the Tribunal. The Tribunal has found that regular service mentioned in Rule 3(b)(ii) would mean service of candidates who have been regularly selected as distinguished from both who are working as ad-hoc or fortuitous appointees. The Tribunal has noticed that it was not the case of the Applicants that any one of the candidates who appeared for examination was ad-hoc appointee in the cadre of police constables. The Tribunal has further held that the fact that no confirmation order has been issued in favour of the candidate, it does not mean that such candidate was not in regular service as police constable.

29. We may now turn to Rule 3(b)(ii). It stipulates that the candidate must have completed a minimum regular service as police constable. The expression ''regular service'' as has been understood by the Tribunal would mean that the person is a regular appointee or regularly selected. The expression excludes only those persons who are working on ad-hoc basis or fortuitous appointees on the post of police constable. Not even a single successful candidate is covered by the latter category. It would necessarily follow that all the successful candidates were eligible being in regular service as police constable. We are in agreement with the view taken by the

Tribunal that even if the confirmation order has remained to be issued for whatever administrative reasons, that by itself does not mean that a person is not in regular service as police constable unless established to the contrary. In the circumstances, we find no merits even in this challenge of the original applicants.

30. The next challenge was on the ground that candidates from other streams like Wireless, Motor Transport etc. were wrongly allowed to appear in the examination. That was not consistent with the scheme enunciated by the Government. Even this challenge has been negatived by the Tribunal. The Tribunal has opined that the requirement of Rule 3(b), is that, the person must be working in the police force in the State of Maharashtra, to be eligible for being considered to the post of Sub-Inspector of Police. It is found that the term ''working in the police force'' was wide enough to cover all the persons working as police constables in other streams. The Tribunal has interpreted the word minimum'' appearing in Rule 3(b)(ii) to mean that it not only qualifies the term regular service but also police constable.

31. To answer this controversy, we may refer to Section 3 of the Bombay Police Act, 1951. The same provides that there shall be one police force for the whole of the State of Maharashtra. It further provides that the said police force shall include every police officer referred to in Clause (6) of Section 2 of the Act provided that the members of the police force constituted under any of the Acts mentioned in the Schedule I immediately before coming into force of the said Act in the relevant part of the State shall be deemed to be the member of the City Police Force. On conjoint reading of Section 3 alongwith Section 2(6) which is the definition clause, it clearly postulate that the whole State of Maharashtra has only one police force and all the members of the said force are appointed under the provisions of the Bombay Police Act of 1951. The post of the Head of Wireless stream for the State i.e. Director General of Wireless is held by Additional Director General of Police. Thus, the Additional Director General of Police is also the supreme of the wireless stream. Accordingly, no distinction is made between the members of wireless stream and rest of the Police Force. They are all members of one Police Force. They are governed by provisions of Bombay Police Act, 1951. It was argued that even the uniform provided for the wireless members and the rest of the police force is identical according to the designations. Reliance was also placed on the provisions of Section 25(2)(a) of the Bombay Police Act as well as Rule 5 read with Schedule I, (ii) which shows that the Police Officer including those appointed for police motor transport system or police wireless system and also in column of (iii) of the said Schedule I of the said Rules also includes police officers appointed for Motor Transport wing or Police Wireless Wing and posted in District. They are governed by the provisions of Act of 1951. Our attention was also invited to the provision in the Police Manual. Rule 133 thereof provides for internal transfer of the services. A Constable after completing two years of service can be transferred to Wireless Department after getting training of six months. Considering the above provisions, we have no difficulty in agreeing with the submission made before us that

candidates from other streams like the Wireless Motor Transport can also be considered as persons working in the police force in the State of Maharashtra subject to fulfilling the requisite qualification regarding education and experience. Accordingly, there is no substance in this challenge.

32. The next ground urged on behalf of the applicants was that proper scrutiny or verification of forms filled in by the candidates was not done as was required in terms of GR-82/1996; for no verification about the eligibility of the candidate prior to the examination was undertaken. Instead, the candidates were directly admitted on the basis of form submitted to the M.P.S.C. Even this ground has been negatived by the Tribunal. The Tribunal has noticed that the requirement of verification was adhered to at subsequent stage. In that, after the preliminary examination, screening and verification was done to ensure that only eligible candidates as per norms had applied and would appear for the main examination as also the interview. The fact that the said procedure has been scrupulously followed is not in dispute at all. If so, we are in agreement with the opinion recorded by the Tribunal that no prejudice has been caused to any of the original applicants on account of non-scrutiny of applications before the preliminary examination was conducted. Hence, even this challenge does not merit any interference.

33. The next ground agitated was that all the recruitments in Government prescribe a reservation of 30% for women candidates. No such reservation has been provided in the current selection process, which has violated the said norm. Even this plea has been negatived by the Tribunal. The Tribunal has noticed that the Government Resolution adverted to dated 25th May, 2001 issued by the Women and Child Welfare Department was in respect of reservation of 30% for women candidates. It clarifies that 30% is applicable only for direct recruitment. Since the present recruitment process was of selection on the basis of Limited Departmental Examination, that cannot be equated with the recruitment by nomination as provided in Rule 3(c). We are in agreement with this opinion of the Tribunal. The present selection process is on the basis of Limited Departmental Examination to which the norms or reservation specified for direct recruitment will have no bearing. No statutory rule has been brought to our notice which mandates that even in respect of the selection process, reservation to the extent of 30% for women ought to be observed. Accordingly, even this contention ought to fail.

34. Taking over all view of the matter, therefore, we have no hesitation in concluding that the challenge put forth before the Tribunal by the original applicants was devoid of merits. The Tribunal has committed manifest error in accepting the two grounds and resultantly issuing directions to the State and the M.P.S.C. to prepare fresh final list on that basis. Hence, we proceed to pass the following order:

ORDER

1. Writ Petition filed by M.P.S.C. (WP No. 2981/2010); and the successful candidates (WP Nos. 2708/2010; 2845/2010; 2837/2010 & 2525/2010) are allowed.

2. Writ Petitions filed by the original Applicants (WP Nos. 2586/2010; 2546/2010, 3457/2010 & 2605/2010) are dismissed.

3. The impugned Judgment and order of the Tribunal dated 9th March, 2010, in original applications No. 1246, 1462, 1511, 1512 & O.A. 25/2010 is quashed and set aside. Instead, the original applications filed before the Tribunal are dismissed with costs.

4. All Petitions disposed of on the above terms.

35. While parting we express a word of appreciation for the able assistance given by the Counsel appearing for the respective parties and more particularly for adhering to the time schedule given to them for concluding their arguments.

36. At this stage, Counsel for the original Applicants prays that the operation of the impugned decision be stayed and in any case, the Authorities be directed not to act upon the final list prepared on the basis of impugned selection process. This request is opposed by the Counsel appearing for the M.P.S.C. on the argument that considering the law and order situation in Maharashtra and appointment of almost 1100 PSI is put on hold, it may not be appropriate to accede to the request made by the Applicants. However, considering the fact that so far interim order was operating in favour of the original Applicants and that the request is only for two weeks'' time from today, in the interest of justice, we direct that the Authorities shall not act upon the decision pronounced today for a period of two weeks from today.