

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.838/2016

Dated this the 24th day of April, 2017

**CORAM: HON'BLE SHRI ARVIND JAYRAM ROHEE,
MEMBER (J)
HON'BLE MS. B. BHAMATHI, MEMBER (A)**

Rajubhai Ramabhai Bhusara,
At & Post Khanvel,
Patalipada U/T of Dadra &
Nagar Haveli,
Silvasa-396230. ... **Applicant**
(By Advocate Shri S.V.Marne)

VERSUS

1. Union of India,
Through the Administration of
Union Territory of Dadra & Navar
Haveli,
Silvasa-396230.
2. The Inspector General of Police,
Administration of
Union Territory of Dadra & Navar
Haveli (Police Department) PHQ
Silvasa-396230.
3. Suraj Babubhai Raut (impleaded as
Room No.12, Block-I, intervenor
Type-II, Sector-IV, vide order dt.
Police Line, 24.1.2017on M.P.
Uttar Faliya Road, No.59/2017)
Silvassa,
Union Territory of Dadra &
Nagar Haveli-396230. ... **Respondents**
**(By Advocate Shri B.K.Ashok Kumar for
official respondents No.1 and 2 and
Shri G.K.Masand for private respondents)**

Order Reserved on : 17.3.2017

Order Pronounced on : 24.4.2017

ORDER

Per: Arvind J.Rohee, Member (Judicial)

The applicant who is presently working as Police Sub Inspector (PSI) in Union Territory of Dadra & Nagar Haveli at Silvassa, has grievance regarding the impugned order dt. 13.12.2016 (Annexure-A-1) issued by respondent No.2, thereby cancelling his candidature for the post of PSI. He therefore approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs :-

"a) This Tribunal may graciously be pleased to call for the records of the case from Respondents and after examination of the same, quash and set aside the order dated 13.12.2016 with all consequential benefits.

b) This Hon'ble Tribunal be further be pleased to hold and declare that the Applicant has been validly appointed to the post of Police Sub Inspector vide appointment order dated 16.8.2016.

c) Costs of the application be provided for.

d) Any other and further relief as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed".

2. The facts of the case run in small compass. The applicant belongs to Scheduled Tribe (ST) and is resident of Union Territory of Dadra & Nagar Haveli. He was initially appointed as Police Constable in the Police Department of U.T. Administration of Dadra and Nagar Haveli vide order dt. 1.6.2011 (Annexure-A-2). The respondent No.2 published an advertisement dt. 14.3.2016 (Annexure-A-3) inviting applications from open market for direct recruitment as PSI for the Union Territory of Dadra & Nagar Haveli, to fill up 6 (six) posts only with break up 4 (four) unreserved, one for Scheduled Tribe (ST) and 1 (one) for Scheduled Caste (SC). Since the applicant fulfilled the eligibility criteria he applied for the said post. After successfully going through the physical endurance test followed by a written test, his name was included in the select list dt. 29.7.2016 (Annexure-A-4) in ST category to which he belongs. Subsequently, vide letter dt. 8/8/2016 (Annexure-A-5) an offer of

appointment was issued to him. The applicant accepted the said offer. Subsequently, appointment order dt. 12.8.2016 (Annexure-A-8) was issued regarding appointment of the applicant on the said post of PSI on certain terms and conditions.

3. After his appointment, the applicant had undergone the basic training at the Headquarter Silvassa for a period of two months and thereafter he was deputed to New Delhi for further training in Police Training College. The applicant accordingly reported there. He was also paid the salary for the post of PSI in the pay band of Rs.9300-34800 plus Grade Pay Rs.4200/-. Copies of salary slips for the month of August to November, 2016 are produced on record vide Annexure-A-11 collectively.

4. On 10.10.2016 the applicant visited his native place on sanctioned leave for some private work. He resumed training programme after availing the leave. On 13.12.2016, the applicant received a telephonic call directing

him to attend the office of respondent No.2. However, no reason was disclosed for urgently calling the applicant while he was in the midst of Training. The applicant, accordingly attended the office of respondent No.2. He was then escorted in a police vehicle from Police Headquarter Silvassa to the office of Inspector General of Police at the adjoining Union Territory of Daman. There, he was handed over the impugned order dt. 13.12.2016 thereby cancelling his candidature on cross-verification of documents. The applicant was shocked to receive the impugned order unceremoniously.

5. The applicant submitted a representation dt. 15.12.2016 (Annexure-A-12) to the respondent No.1 for revocation of the impugned order. The applicant again resumed training on 16.12.2016 at New Delhi, where he was advised to challenge the impugned order and this is how the present O.A. is filed by him on 20.12.2016.

6. The reliefs sought as mentioned in

para No.1 above are based on the following grounds as mentioned in paragraph No.5 of the OA. For the sake of ready reference and convenience, those grounds are reproduced hereinbelow :-

a) The impugned order dated 13.12.2016 is ex-facie illegal, arbitrary, ab-initio void and deserves to be quashed and set aside.

b) The impugned order dated 13.12.2016 seeks to cancel the candidature of the Applicant for the post of Police Sub Inspector. However, as on the date of passing of the order dated 13.12.2016, the Applicant was no longer a candidate for selection for appointment as PSI. The Applicant had acquired the status of Police Sub Inspector as he was not only appointed to the said post vide appointment letter dated 12.08.2016 but also joined the said post on 16.08.2016. The Applicant has been drawing salary and allowances of the post of PSI since 16.08.2016. The Applicant has been drawing

salary and allowances of the post of PSI since 16.08.2016. The Applicant thus holds the post of Police Sub Inspector and is no longer a candidate for the said post. Therefore, the order dated 13.12.2016 seeking to cancel Applicant's candidature is totally erroneous and deserves to be set aside.

c) Though the order dated 13.12.2016 does not state in specific words that the services of the Applicant are terminated, the Applicant is being orally informed by authorities in the office of Respondent No.2 that the Applicant can no longer hold the post of Police Sub Inspector and he should join the post of Police Constable. In this manner the Applicant's appointment to the post of Police Sub Inspector is sought to be terminated.

d) The condition No.3 in offer of appointment dated 08.08.2016 specifically prohibits Respondent No.2 from terminating the services of the Applicant without giving one month's notice or salary in lieu thereof. The Applicant is neither given any notice nor

salary in lieu thereof. Therefore, the impugned order dt. 13.12.2016 having effect of termination of Applicant's service is illegal.

e) The Para 3 of the Offer of Appointment dated 08.08.2016, specifically states that services of the Applicant can be terminated only in accordance with the provisions of the CCS (Temporary Service) Rules, 1965 (for short, Temporary Service Rules). Rule 5 of the Temporary Service Rules provides for giving notice in writing of at least one month before terminating services of a temporary government servant. A copy of Rule 5 of Temporary Service Rules, annexed hereto and marked as **Annexure A-13**.

f) Even otherwise, the candidature of the Applicant cannot be cancelled nor his appointment be terminated as there are no valid grounds for doing so. At least no valid ground is shown in the order dated 13.12.2016. The said order dated 13.12.2016 states that 'Revised Merit List' is prepared under which ST seat is allotted to the candidate securing

highest marks as per the merit list. However, to the knowledge of the Applicant no revised merit list was published in any manner. The Respondent No.2 has not disclosed the name of the candidate who has supposedly secured higher marks than the Applicant in such revised merit list. The Respondent No.2 had published the merit list on the official website on 29.07.2016 in which the name of the Applicant was included against the only vacancy for ST. Thereafter the appointment order was issued to the Applicant on 12.08.2016 i.e. after 14 long days. The Respondents thus had sufficient time to correct the error, if any, in the select list. The aggrieved candidate also had sufficient time to raise his grievance. However, the fact that Respondent No.2 issued offer of appointment to the Applicant on 12.08.2016 followed by appointment order on 16.08.2016, indicates that no valid representation was made or pending till those dates. This shows that representation/complaint if any must have

been made long after publication of the merit list on 29.07.2016 as well as appointment of the Applicant on 12.08.2016. Unfortunately Respondents entertained such belated representation apparently to tweak the result of selection. The impugned action of the Respondents does not inspire confidence in the manner in which results are declared/modified. There is every possibility that the marks of the candidates might have been changed during past 4 months for the purpose of favouring particular candidate.

g) The least that was required to be done by Respondents was at least to publish the revised merit list along with marks of all the candidates and issue a show cause notice to the Applicant. However, the same is not done, therefore the impugned order deserves to be quashed and set aside.

h) The Applicant has earned appointment to the higher post of Police Sub Inspector through his hard work, sincerity and devotion to duty. The Applicant has already

experience of working with Police Department of U/T of Dadra & Nagar Haveli for more than 5 years and this is how the Applicant most suitable candidate to discharge the duties of post of Police Sub Inspector. There is a vast difference between the salary of the post of Police Constable (Pay Band 5200-20200 + GP Rs.2000/-) than that of Police Sub Inspector (PB 9300-34800 + GP 4200/-). There is difference of more than rupees 10,000/- in the gross monthly payment. The Applicant has a large family to support. The Applicant would be put to great prejudice if he is suddenly brought down from position of Police Sub Inspector to that of Police Constable.

7. The applicant also has sought following ad-interim relief as mentioned in paragraph No.9 of the O.A. The same is reproduced here for ready reference :-

a) Pending the hearing and final disposal of the Original Application, the operation, implementation and effect of the impugned order dated 13.12.2016 be stayed and the Respondents be restrained from terminating and/or cancelling the appointment of the Applicant as Police

Sub-Inspector and the Applicant be permitted to continue his training as Police Sub Inspector in the Police Training College, New Delhi.

b) Ad-interim relief in terms of prayer clause (a) above be granted".

8. This Tribunal after hearing learned Advocate for the applicant and on perusal of the record found a prima facie case in favour of the applicant and passed the following ad-interim order :-

" Considering the peculiar facts and circumstances of the case, 14 days time is granted to the respondents to file reply to the O.A. Since it is submitted by learned Advocate for the applicant that at present the applicant is undergoing departmental training at National Police College New Delhi and is not relieved so far in pursuance of the impugned order, we direct the respondents not to disturb the applicant from attending the training course, till the next date of hearing.

List the case on 03.01.2017.

Dasti".

9. On notice, the official respondents No.1 and 2 appeared and by a common reply dt. 3.1.2017 resisted the O.A. by denying all the adverse averments, contentions and grounds raised therein. It is, however, not disputed

that initially the applicant was appointed as Police Constable and on his provisional selection for the post of PSI, he joined the said post after submitting technical resignation of his previous service. The applicant's name was included in the provisional select list published on website of the Union Territory of Dadra & Nagar Haveli in ST category. However, subsequently, while the applicant was undergoing training, on the cross-verification of the documents of all the provisionally selected candidates, before uploading the final merit list an error was detected in the 'caste category' of some of the candidates in the merit list dt. 28.7.2016. It is stated that only 'caste category' of some of the candidates was wrongly reflected in the merit list and there was no error in the marks secured by the applicant or by any other candidate in the merit list. Upon correcting the 'caste category' of the candidates it was revealed that the candidates at Sl.No.8 (private

respondent No.3) and 13 also belong to ST category. However, through oversight they were shown against unreserved/open category and OBC candidate respectively. It was also found that the private respondent No.3 has secured highest marks i.e. 58.3 and since he also belongs to ST category, his name should have been included in the select list instead of applicant. The candidate at Sl.No.13 was also found to be ST candidate and he secured second position in merit. However, the applicant who has secured 55.66 marks only was wrongly declared as provisionally selected and hence the mistake was subsequently rectified by issuing the impugned order. It is stated that there is no illegality or impropriety in the impugned order. Since the provisional candidature of the applicant is cancelled, in effect he is sought to be terminated from the post of PSI as his appointment was due to in-advertent error.

10. It is stated that the appointment order issued to the applicant clearly

stipulates a clause that his services will be terminable on one month's notice from either side in accordance with the Central Civil Service (Temporary Service) Rules, 1965 (hereinafter, referred to as "Temporary Service Rules) without assigning any reasons. The Appointing Authority, however, reserves the right of terminating services forthwith or before the expiration of stipulated period of notice by making payment of a sum equivalent to the pay and allowances for the period of notice or the un-expired portion thereof. It is stated that the applicant will be on probation for a period of two years from the date of appointment. Provisions of Rule 5 of the Temporary Service Rules are also quoted to justify issuance of the impugned order.

11. It is further stated that vide Ministry of Home Affairs Memo No.4/10/66-Ests. (C) dated 26.8.1967 (Annexure-R-4) under Rule 5 of the Temporary Service Rules, the services of a temporary government servant who is not in quasi-permanent service can be terminated

at any time by notice in writing given either to the government servant who is not in quasi-permanent service by the appointing authority or to the appointing authority by the government servant. A decision was taken that the provisions of Rule 5 of Temporary Service Rules shall be invoked in case of persons appointed on probation where condition regarding termination of service without any notice during or at the end of the period of probation has been provided. Hence, it has been decided in consultation with the Ministry of Law that in case where such a provision has been specifically made in the letter of appointment, it would be desirable to terminate the services of the probationer/person on probation in terms of the letter of appointment and not under Rule 5 (i) of the Temporary Service Rules.

12. It is also stated that the offer of appointment clearly stipulates that appointing authority reserves the right to terminate service forthwith and without assigning any

reason and hence the impugned order was rightly issued, although it refers the provisions of Rule 5 of the Temporary Service Rules. The revised final list after due verification and rectification of mistake was published vide (Annexure-R-2) in which the private respondent No.3 has correctly been shown as belonging to ST category and the marks secured by him. The applicant has secured 55.66 marks and hence the private respondent No.3 being highest scorer in the same category whose name was included in the revised final list.

13. It is stated that since there is no change in the marks obtained by the applicant, the private respondent No.3 and the other candidate at Sl.No.13 in the provisional list, the mistake committed which was disclosed during verification was rectified by cancelling the candidature of the applicant. The applicant cannot claim the post since he has secured less marks than the private respondent No.3 and since both belongs to ST

category. The O.A. is, therefore, liable to be dismissed.

14. On 17.1.2017, the private respondent No.3 suo moto appeared and filed Miscellaneous Petition No.59/2017 for his impleadment as intervenor, since on account of applicant's invalid appointment his rights are affected. He has given personal details also including the Admit Card for physical endurance test and computer based written examination. After hearing both the parties, the said MP was allowed and the name of the private respondent No.3 was included in the array of parties.

15. The private respondent No.3 by a separate reply dt. 8.2.2017 resisted the O.A. by denying all the adverse averments, contentions and grounds raised therein. He stated that since on cross-verification before publication of the final merit list, it was revealed to the official respondents that respondent No.3 has been incorrectly shown as belonging to un-reserved category in the provisional select list although he has

secured 58.10 marks and was highest in the ST category. Admittedly the applicant has secured 55.66 marks and secured third position. The impugned order is therefore rightly issued.

16. It is also stated that before applying for the post of PSI, the R-3 was working as Administrative Assistant with Rogi Kalyan Sammittee of Shri Vinoba Bhave Civil Hospital Silvassa, U.T. of Dadra & Nagar Haveli. On issuance of the impugned order and publication of the final merit list which clarified that respondent No.3 has secured highest marks in ST category, he tendered technical resignation of his previous service on 21.12.2016 and was relieved on the same day on its acceptance by respondent No.1. However, since the applicant has secured the ad-interim order from this Tribunal the appointment order could not be issued to respondent No.3 and he could not report for joining the post of PSI. It is stated that since inception the applicant's appointment is illegal since he secured third position in merit in the same category and the

impugned order has been rightly issued, without notice to the applicant. Therefore, it cannot be said that there is any violation of the provisions of law. The O.A. is, therefore, liable to be dismissed. It is also stated that the R-3 is without any job since after 21.12.2016 on submitting his technical resignation of the previous post. It is, therefore, necessary to vacate the interim order. It is also stated that after issuance of the impugned order the official respondents have withdrawn the order regarding acceptance of technical resignation of the applicant and he was re-appointed to his original post of Police Constable. The applicant has not challenged this order of re-appointment.

17. The applicant submitted a rejoinder on 23.1.2017 denying all the adverse averments and contentions made by official respondents in the reply and reiterated the grounds stated in the O.A. It is further stated that for the month of December, 2016 the applicant was paid salary for the post of Police Constable and

not for the post of PSI, which he received for earlier 4 months, thereby causing huge monetary loss to him. The impugned order does not sustain for non-compliance of the provisions of Rule 5 of Temporary Service Rules and for violation of principles of natural justice. It is also stated that there cannot be cancellation of candidature as stated in the impugned order after the applicant is already appointed and joined the service. Hence, for this reason also the impugned order is bad. Number of discrepancies in respect of other candidates is also illustrated from the merit list as mentioned in paragraph No.5 of rejoinder. (However, in this O.A., the same is not relevant and could be considered as and when the concerned candidate if affected challenge the merit list). It is also stated that it is not specifically mentioned in the order of appointment that his services will be terminated without any notice. Hence, the provisions of Ministry of Home Affairs Memo

dt. 26.8.1967 are not applicable in the present case. It is stated that the applicant's service cannot be terminated without following the procedure prescribed under Rule 5 of the Temporary Service Rules. It is denied that the caste category of private respondent No.3 and the candidate at Sl.No.8 were inadvertently shown as unreserved or OBC respectively. It is not explained as to why such mistake was committed by the official respondents while publishing the merit list. It is denied that there was no change in the marks obtained by the private respondent No.3 and only his caste was wrongly reflected in the merit list. It is stated that marks of some of the candidates included in the final/second merit list have also been changed and hence the credibility of the entire selection process is doubtful.

18. The respondents then filed sur-rejoinder on 8.2.2017 and denied all the averments, contentions and grounds raised in the rejoinder by the applicant and reiterated

the grounds stated in the reply to the O.A. It is specifically denied that there was any change in the marks obtained by any candidate and only typographical error in mentioning the caste and in some cases date of birth was detected, which was rectified.

19. Initially, it was decided to consider the prayer of the respondents for vacation of ad-interim order passed in favour of the applicant. However, subsequently, the learned Advocates for the parties agreed that the matter may be heard finally since the pleadings were complete.

20. On 17.3.2017 we have heard the submissions of Shri S.V.Marne, learned Advocate for the applicant and the reply arguments of Shri B.K.Ashok Kumar, learned Advocate for the official respondent Nos.1 and 2 and that of Shri G.K.Masand, learned Advocate for respondent No.3.

21. We have carefully gone through the entire pleadings of the parties and the documents produced on record by them in

support of their rival contentions. We have also sought the original record pertaining the selection process which is produced before us by the official respondents. We have carefully gone through said record.

22. The learned Advocate for the private respondent No.3 was permitted to file written notes of arguments along with list of chronology of events and relevant citations. We have carefully perused the same also and the citations relied upon by the learned Advocate for the applicant and the official respondents during the course of oral submissions

Findings :-

23. The only controversy involved in this O.A. for resolution of this Tribunal is whether the impugned order dt. 13.12.2016 issued by R-2 is liable to be set aside as illegal, improper or incorrect on the grounds raised by the applicant and private respondent No.3 in the O.A.

24. Perusal of the original record

concerning selection process produced by the respondents revealed that the post of PSI being a Group 'B' Non-Gazetted post, examination of 100 marks is prescribed with break-up of 70 for written test, 10 marks for educational qualification and 20 marks as weightage for local candidates. The task of acceptance of the application forms its scrutiny, evaluation of answer sheets and preparation of the merit list was entrusted to outsourced agency viz. Tata Consultancy Services Limited. Different Committee were constituted to complete the selection process. The record further shows that in all 1280 online applications were received in pursuance of the advertisement issued and out of it 121 qualified for physical endurance test. They were then called for computer based written test and then provisional merit list was prepared. For this O.A., we are concerned with the select list for ST category only for which only one post was reserved as stated earlier.

25. As stated earlier, it is not disputed that both the applicant and the private respondent No.3 were serving with the official respondents in different Departments since before they applied for the post of PSI as direct recruits in pursuance of the advertisement issued. It is also not disputed that in the first provisional select list published by the official respondents the name of the applicant alone was included in ST category since there was only one post reserved for the said category. It is also obvious that before issuance of the appointment order to the applicant he submitted technical resignation to the Superintendent of Police Administration of Union Territory of Dadra and Nagar Haveli (his appointing authority) for the post of Police Constable and thereafter, he joined the post of PSI and was deputed to New Delhi where he is presently undergoing the training. It is also obvious that the impugned order was issued after cross-verification of the

documents of all candidates for publication of final merit list in order to ensure that it is free from mistake or lacuna.

26. It was then revealed that the private respondent No.3 and one Shri Surendrabhai Prabubhai Patel who had also applied under ST category, but were incorrectly exhibited as un-reserved category and OBC candidate respectively, have secured 58.10 and 56.2 marks respectively out of 100, whereas as per the original record the applicant has secured 55.66 marks only and is at 3rd position. However, since out of three successful candidates under ST category applicant alone was shown under the said category his name was included in the select list to the exclusion of respondent No.3. It is also obvious that the impugned order was passed by rectifying the mistake disclosed and thereafter the final merit list was published giving correct position in respect of applicant, the private respondent No.3 and the said Shri Surendrabhai Prabubhai Patel. Then only the respondent No.3

under the expectation that since he has secured highest marks in ST category he will get the appointment order on cancellation of applicant's appointment, he submitted technical resignation of previous post which was accepted.

27. In the light of the above admitted position on record, it is to be considered whether the impugned order is legally sustainable in the light of the submissions made by the learned Advocates for the parties.

28. To begin with, the impugned order Annexure-A-1 does not make any specific reference about the provisions of Temporary Service Rules and it simply mentions that the applicant was given provisional offer of appointment to the post of PSI and that his provisional candidature stands cancelled. For the sake of convenience and ready reference, the entire text of the impugned order is reproduced here :-

Administration of
U.T., of Dadra and Nagar Haveli
(Police Department)

PHQ, Silvassa

No.DNH/Police/Recruitment/PSI/2014/34 Dated :
13/12/2016

Read :- (i) Offer letter No.
DNH/Police/Recruitment/PSI/ 2014/77 dated
08/08/2016

(ii) Appointment Order No. DNH/Police/
Recruit/ PSI/Order/88 dated
12/08/2016.

O R D E R

Shri Raju Ramabhai Bhusara was given provisional offer of appointment and Appointment to the post of Police Sub-Inspector, vide letter No. referred to preamble (i) & (ii) above.

Upon a detailed cross verification of the documents of all the candidates in the merit list, an anomaly in the caste category as reflected in the list was detected. As per the revised merit list the P.S.I. ST seat is to be allotted to the ST candidate who is higher in the merit list.

Hence the provisional candidature of Shri Raju Ramabhai Bhusara to the post of Police Sub-Inspector stands cancelled. This has approval of the competent authority.

(HQ) Superintendent of Police

Dadra & Nagar Haveli
Silvassa

To

Shri Raju Ramabhai Bhusara,
At Post Khanvel,
Patlipada,
Post Khanvel,
Dadra & Nagar Haveli".

29. However, it is obvious from perusal of record that the applicant was provisionally selected for the post of PSI in ST category

after successfully facing the prescribed recruitment process. The offer of appointment (Annexure-A-5) clearly stipulates that the appointment will be purely on a temporary basis and until further orders. It is thus not disputed that the applicant was appointed on temporary service in a temporary post as defined in Rule 2 (d) of the Temporary Service Rules. Clause 3 of the appointment order makes a reference about termination of the service on one month's notice from either side in accordance with Temporary Service Rules without assigning any reason. It is also provided that the appointing authority reserves the right of terminating service forthwith or before the expiration of the stipulated period of notice by making the payment to the applicant of a sum equivalent to the pay and allowances, for the period of notice or the unexpired portion thereof.

30. In view of the aforesaid stipulation contained in the appointment order, the learned Advocate for the applicant submitted

that the impugned order is illegal since the applicant's candidature was cancelled and not his temporary appointment, that too without issuing one month's notice or payment of one month's pay as stipulated in Rule 5(1) of the Temporary Service Rules. As against this, the learned Advocate for the respondents submitted that although the provisions of Rule 5(1) of the Temporary Service Rules are not applied, still the impugned order cannot be said to be illegal for the reason that since beginning the applicant's appointment in ST category is illegal or improper for the reason that he is, in fact, third in merit list of the said category and respondent No.3 being at No.1 position, which was revealed on cross-verification of the documents of select list candidates before publication of the final merit list. As stated and discussed above, it is not disputed by the applicant that he has secured third position in the merit list, although he tried to contend that there was manipulation in the marks obtained by the R-3

and the other candidate. However, perusal of the original record rules out any such possibility of malpractices committed by the office of the respondents.

31. It is true that on issuance of appointment order and the applicant joining the post of PSI, he ceased to be a candidate who took part in selection process and becomes the temporary government servant from the date of his joining. This being so, we accept the contention of the learned Advocate for the applicant that there is no question of cancellation of the candidature of the applicant, as such and in fact the impugned order should have mentioned that his temporary appointment stands terminated. Even then it hardly makes any difference for the reasons stated in the further part of this order.

32. It is obvious from perusal of the impugned order that it has not been issued as per the provisions of Rule 5 of the Temporary Service Rules, since neither one month's notice was issued, nor one month's salary was

paid to the applicant at the time of issuance of the impugned order. However, the learned Advocates for the respondents have rightly pointed out stipulation No.4 in the appointment order which reads as under :-

"You will be on probation for a period of two years from the date of appointment, which period may be extended for further period at the discretion of the Competent Authority. On satisfactory completion of probation period, you will be considered for confirmation in the siad post".

The applicant accepted all the terms of the offer of appointment and after tendering technical resignation by him of the previous post, the appointment order dated 12.8.2016 (Annexure-A-8) was issued to him. In pursuance thereof, he joined the post of PSI on 16.8.2016, as stated earlier.

33. During the course of arguments, the learned Advocate for the respondents further invited our attention to the provisions of Ministry of Home Affairs Memo No.4/10/66-Ests. (C) dt. 26.8.1967 and submitted that services of the Government servant who is appointed on

probation in a temporary post can be terminated even without assigning any reason and without issuing any notice, as per the provision contained in the offer of appointment. The entire text of the aforesaid memo is reproduced here for ready reference :-

" Under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, the services of a temporary Government servant, who is not in quasi-permanent service, can be terminated at any time by a notice in writing given either by the Government servant who is not in quasi-permanent service to the appointing authority or by the appointing authority to the Government servant. A question has arisen whether this rule should be invoked also in the case of persons appointed on probation, where in the appointment letter a specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if any) has been provided. The position is that the Central Civil Services (Temporary Service) Rules, 1965, do not specifically exclude probationers or persons on probation as such. However, in view of the specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if any), it has been decided, in consultation with the Ministry of Law, that in cases where such a provision has been specifically made in the letter of appointment, it would be desirable to

terminate the services of the probationer/person on probation in terms of the letter of appointment and not under Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965".

34. It is thus obvious that the applicant being the probationer is also governed by the aforesaid provisions. Although it is not specifically mentioned in the offer of appointment that the service will be liable to be terminated without any notice, still from condition No.2 therein, it is obvious that the same is indirectly contemplated or implicit therein, since it is provided that applicant's appointment will be purely on temporary basis and until further orders. This being so, the applicant being probationer his services are liable to be terminated without assigning any reason and at any time till probation period is completed. This follows that there is no need to issue notice, in such cases for terminating the services of the probationer. In such circumstances of the case, the impugned order although not issued in compliance of the provisions of Rule 5 of the

Temporary Service Rules, still the applicant being a probationer and his appointment being purely on temporary basis and until further orders, it is pre-supposed that the same will be terminated without assigning any reason at any moment i.e. without issuing any notice. Hence, we are of the considered view that failing to follow the provisions of Rule 5 of the Temporary Service Rules is not fatal to the respondents since the impugned order, in fact, terminated the temporary service by virtue of the fact that he is a probationer. Further while on probation and undergoing a training it was disclosed that the respondent No.3 and Shri Surendrabhai Prabubhai Patel who were in fact ST candidates and have secured more marks than the applicant, were wrongly shown as general category and OBC candidate respectively and hence appointment order was issued to applicant who was wrongly shown as the only ST candidate and not to private respondent No.3, although he secured highest marks among the three ST candidates.

35. During the course of arguments, the learned Advocate for the applicant placed reliance on a decision rendered by Hon'ble Supreme Court in **Shrawan Kumar Jha and Ors. v. State of Bihar and Ors. {1991 Supp (1) SCC 330}** decided on 13.11.1990 and submitted that before cancellation of appointment order, holder of appointment orders are entitled to opportunity of hearing before cancelling their appointments. In other words, cancellation orders without complying with rules of natural justice is liable to be set aside. In that case the appellants who were 175 in number were appointed as Assistant Teachers by the District Superintendent of Education, Dhanbad by the order dt. 28th May, 1988. Before joining they were supposed to get their certificates and other qualifications verified from the authorities and were to join specified schools, by 4.7.1988. Although the applicants assert that they had joined their respective schools but this fact is denied by the State. Subsequently, by order dt.

2.11.1988, the Deputy Development Commissioner cancelled the appointment of the appellants which order was challenged. It was submitted on behalf of the State that this was so, because the District Superintendent of Education had no authority to make the appointments. It is thus obvious that the very fact of joining the service by the appellants in that case was in dispute, so also the competency of the Appointing Authority, so is not the case in the present O.A. In the light of the peculiar facts of that case, it was held that the appellants were entitled to opportunity of hearing before cancelling their appointments and hence the impugned orders of cancellation was set aside. It is obvious that the facts of the present OA are distinct and hence the ratio laid down cannot be made applicable.

36. The learned Advocate for the applicant further placed reliance on another decision rendered by Hon'ble Supreme Court in **Prabhudayal Birari v. M.P. Rajya Nagrik**

Aapurti Nigam Ltd. {(2000) 7 SCC 502}. In that case, the issue regarding termination of service without serving one month's notice or payment of one month's salary in lieu thereof, in contravention of specific condition to that effect mentioned in the appointment order was involved. The appellant approached Civil Court with a suit for declaration that the order of termination was illegal and that he be treated as continuing in service of the respondents. It was decreed by the Lower Court. In the first appeal preferred by respondents, the appeal was dismissed. Second appeal preferred to the High Court was however allowed. Further appeal to the Hon'ble Apex Court by the appellant/plaintiffs suit, it was held that termination being in contravention of the specific conditions mentioned in the appointment order, Lower Court was justified in decreeing the suit. The appellant in that case was therefore reinstated without payment of backwages.

37. It is true that in the present O.A.

there is a stipulation regarding termination of service in the offer of appointment in accordance with the provisions of Temporary Service Rules. However, it is obvious from record that the applicant's appointment in ST category in the present O.A. is illegal or improper since he secured third position in order of merit and the private R-3 the first position. We are of the considered view that stipulation regarding termination of service can be considered and invoked only if the initial appointment is valid and it cannot be attracted or taken into consideration when subsequently it was disclosed that the appointment itself is illegal or invalid. As stated earlier, on cross- verification of the documents the mistake committed inadvertently by the office of the respondents was disclosed and thereafter the impugned order was issued terminating service of the applicant, whose very appointment to the post of PSI is illegal or invalid for the reasons stated above. Further, in the case referred by the learned

Advocate for the applicant, it cannot be gathered that the appointment of the appellant in that case was illegal or invalid. Since it was valid the respondents were bound to follow the termination clause embodied in the offer of appointment. This being so, the present O.A. can be distinguished on facts and hence the ratio laid down in the case relied upon by the applicant cannot be made applicable.

38. As against this, the learned Advocate for the respondents have placed reliance on the following decisions :-

- "(1) **Sasidharan v. Reserve Bank of India**
{(1992) ILLJ 349 KER} Kerala High Court, decided on 23.6.1990.
- (2) **Union of India and Anr. v. Narendra Singh** {Civil Appeal No.5865/2007 decided on 13.12.2017}
- (3) **State of Gujarat & Ors. v. Arvind-kumar T. Tiwari & Anr.** {Civil Appeal No.6468 of 2012 decided on 14.9.2012}
- (4) **Rakesh Kumar Sharma v. Govt. of NCT of Delhi & Ors.** {Civil Appeal No. 6116 of 2013 decided on 29.7.2013}
- (5) **I.C.A.R. & Anr. v. T.K.Suryanarayan and Ors.** {SLP No.18567 of 1995 and 19103/1995 decided on 5.8.1997}

39. We have carefully gone through the

aforesaid decisions. It is obvious that none of them are applicable to the facts and issue involved in the present case, since they are on different points. In view of this, no reliance can be placed on those decisions to support the respondents contentions.

40. During the course of arguments the learned Advocates for the respondent No.3 submitted that after issuance of the impugned order the respondents vide order dt. 14.12.2016 have withdrawn the technical resignation of the applicant and he is re-appointed to the post of Police Constable. This order has not been challenged by the applicant in this O.A. which is filed on 20.12.2016. Even otherwise, since the impugned order is being set aside the consequences will be that the applicant will be entitled to be re-appointed in the parent cadre of Police Constable by withdrawal of his technical resignation by the respondents.

41. In the result, we do not find any substance in the present O.A. We hold that

the impugned order is perfectly legal, correct and proper in the peculiar facts and circumstances of the case, which needs no interference by this Tribunal.

42. Consequently, the O.A. stands dismissed. In view of dismissal of the O.A., ad-interim order dt. 21.12.2016 automatically stands vacated.

43. It is needless to say that the respondents shall call back the applicant from training who will be at liberty to join as Police Constable, since his technical resignation is already withdrawn by respondents. We, however, clarify that till passing of this order the applicant will be entitled to receive the salary for the post of PSI since he was deputed for induction training course.

44. In the facts and circumstances of the case, parties are directed to bear their respective costs of this O.A.

45. At this stage, Shri S.V.Marne, learned Advocate for the applicant requested for continuance of the interim order for a period of

two weeks, so as to facilitate him to approach the Hon'ble High Court. However, the request is disallowed.

(MS.B.BHAMATHI)
MEMBER (A)

(A.J.ROHEE)
MEMBER (J)

B.