

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 392 OF 2021

DISTRICT:- A'BAD / NAGPUR /
NASIK/ YAVATTMAL/
BULDHANA/WARDHA/
A'NAGAR/JALGAON/SOLAPUR
/NANDED/LATUR

1. Pravin Ramesh Hivrle,
Age: 29 years, Occ.: Nil,
R/o. at Namantar Colony,
Siddharth Nagar, N-12,
HUDCO, Dist. Aurangabad.
2. Mohit Kishor Kanojiya,
Age: 26 years, Occ.: Nil,
R/o. Plot No. 487, Near NIT
Ground, Hiwari Nagar,
Dist. Nagpur.
3. Pooja Dattatray Gurule,
Age: 28 years, Occ.: Nil,
R/o. at Post Khopadi Bk,
Tq. Sinnar, Dist. Nashik.
4. Shishupal Bhimrao Ladekar,
Age: 26 years, Occ.: Nil,
R/o. at Post Babhulgaon
Shivaji Square Babhulgaon,
Tq. Babhulgaon, Dist. Yavatmal.
5. Atul Ramchandra Dhole,
Age: 29 years, Occ.: Nil,
R/o. at Pot Khapa (Guldan),
Tq. Narkhed, Dist. Nagpur.
6. Chetan Dilip Bharambe,
Age: 26 years, Occ.: Nil,
R/o. at Pot Matergaon, Village
Machchhindrakhed, Tq. Shegaon,
Dist. Buldhana,

7. Vinod Ramchandraji Mate,
Age: 29 years, Occ.: Service,
R/o. at Post Manas Mandir,
Dafe Layout Karla Road,
Dist. Wardha
8. Abhijit Vishnu Nandurkar,
Age: 26 years, Occ.: Nil,
R/o. Shantiniketan Society
Waghapur Road, Dist. Yavatmal.
9. Bharat Macchindra Agale,
Age: 29 years, Occ.: Nil,
R/o. at Post Shirasgaon,
Tq. Newasa, Dist. Ahmednagar.
10. Dimpal Ishwar Patil,
Age : 24 years, Occu. Nil,
R/o. Plot No. 6, Gut No. 80/1/2/a
Shiv Colony, Asha Baba Nagar,
Dist. Jalgaon.
11. Deepali Govind Suryawanshi,
Age: 26 years, Occ.: Nil,
R/o. 41/170, New Budhwar Peth,
Mahatma Phule Chowk,
Dist. Solapur.
12. Shubham Sanjay Dhudkewar,
Age: 27 years, Occ.: Nil,
R/o. at Post Barad, Tq. Mukhed,
Dist. Nanded.
13. Pavan Balbhim Kamble,
Age: 27 years, Occ.: Nil,
R/o. Laxmi Colony, Old AUSA Road,
Dist. Latur.

.. **APPLICANTS**

V E R S U S

1. The State of Maharashtra
Through the Principal Secretary,
Public Works Department,
Mantralaya, Mumbai-400 032.

2. The Superintending Engineer,
Public Works Circle,
Mumbai 400 001.
3. The Secretary,
General Administration Department,
Mantralaya, Mumbai 400 032. .. **RESPONDENTS.**

APPEARANCE : Shri Ajay S. Deshpande, learned
counsel for the applicants.
: Shri M.S. Mahajan, learned Chief
Presenting Officer for the respondents.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI BIJAY KUMAR, MEMBER (A)**

DATE : 20.09.2022

ORAL ORDER

[Per : Hon'ble Justice P.R. Bora, Vice Chairman]

Heard Shri Ajay Deshpande, learned counsel for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent authorities.

2. Aggrieved by the communication dated 19.6.2021, whereby respondent No. 1 has declined to consider the request of the applicants for issuing orders of appointment to

the wait-list candidates, the applicants have preferred the present Original Application.

3. All the applicants are diploma holders, Civil Engineers and some of them are also holding the degree of B.E. as well. On 5.9.2019, respondent No. 2 had published an advertisement for filling up 405 posts of Junior Engineer (Civil). The examination in that regard has been conducted by the Mahapariksha Portal online. The examinations were held online between 11.2.2019 and 14.2.2019. On 2nd July, 2019 respondent No. 2 declared the result of the said examination. Respondent No. 2 on 9.7.2019 declared select list of 405 candidates. On 11.7.2019 respondent No. 1 issued appointment orders to 300 candidates from the said select list. On 16.8.2019 the appointment orders were issued to more 70 candidates and on 15.2.2020, remaining 35 candidates were given the appointment orders. However, as many as, 19 candidates did not join till 29.10.2020.

4. The applicants, therefore, submitted representations to respondent No. 1 to fill the aforesaid 19 unfilled seats by exhausting the waiting list in order of merit. Initially there was no such waiting list prepared. It however, came to be

prepared on instructions from the Government based on Government Resolution dated 19.10.2007 and was forwarded to the Government by respondent No. 2 vide his covering letter dated 13.11.2020. According to the applicants, their names are appearing in the said waiting list. The applicants, therefore, had made representations seeking appointment on the unfilled seats. The representation was however, not accepted and their request was declined by respondent No. 1 vide communication dated 17.2.2021. Aggrieved by, the applicants have preferred the present Original Application. According to the applicants, their request has been wrongfully rejected by the respondents on the ground that the period of wait-list has lapsed.

5. The respondents have resisted the contentions raised in the application by filing their joint affidavit in reply. The sum and substance of the stand taken in the affidavit in reply is that no waiting list was prepared and, as such, there was no question of filling 19 unfilled seats from amongst the candidates in the so-called waiting list. It is further contended that the list which has been forwarded by respondent No. 1 along with his covering letter dated

13.11.2020 is not a waiting list but an information providing category-wise list of remaining candidates, who have received more marks than cut off. The respondents have, therefore, prayed for dismissal of the application.

6. Shri Ajay Deshpande, learned counsel appearing for the applicants at the commencement of his arguments invited our attention to the Government Resolution dated 13.6.2018 issued by the General Administration Department, whereby the procedure has been prescribed for filling up Group 'B' & 'C' posts through direct recruitment. He more particularly emphasized clauses 12 & 13 thereof. Clauses 12 & 13 read thus,-

“१२. निवडसूचीत समाविष्ट करावयाच्या उमेदवारांची संख्या:-

निवडसूची ही प्रवर्गानिहाय तयार करण्यात यावी व त्यामध्ये समाविष्ट करावयाच्या उमेदवारांची संख्या पुढीलप्रमाणे असावी:-

प्रवर्गानिहाय रिक्त पदांची संख्या	निवडसूचीमध्ये समाविष्ट करावयाच्या उमेदवारांची संख्या
1	3
2 ते 4	रिक्त पदे अधिक रिक्त पदांच्या 100 टक्के किंवा 5 यापैकी जे अधिक असेल ते.
5 ते 9	रिक्त पदे अधिक रिक्त पदांच्या 50 टक्के किंवा 10 यापैकी जे अधिक असेल ते.
10 ते 49	रिक्त पदे अधिक रिक्त पदांच्या 30 टक्के किंवा 15 यापैकी जे अधिक असेल ते.
50 किंवा याहून अधिक	रिक्त पदे अधिक रिक्त पदांच्या 25 टक्के.

वरीलप्रमाणे अतिरिक्त उमेदवारांच्या संख्येची परिगणना करताना उमेदवारांची संख्या अपूर्णाकात येत असल्यास पुढील पूर्णांक संख्या विचारात घेण्यात यावी.

13. निवडसूचीची कालमर्यादा:-

1) निवड समितीने तयार केलेली निवडसूची 1 वर्षासाठी किंवा निवडसूची तयार करताना ज्या दिनांकापर्यंतची रिक्त पदे विचारात घेण्यात आली आहेत त्या दिनांकापर्यंत, यापेकी जे नंतर घडेल त्या दिनांकापर्यंत विधीग्राह्य राहिल. त्यानंतर ही निवडसूची व्यपगत होईल.

2) निवड समितीने तयार केलेल्या निवडसूचीमधून ज्येष्ठतेनुसार उमेदवारांची नियुक्तीसाठी शिफारस केल्यानंतर शिफारस केलेला उमेदवार सदर पदावर विहित मुदतीत रुजू न झाल्यास किंवा संबंधित पदाच्या सेवाप्रवेश नियमातील तरतुदीनुसार, किंवा जात प्रमाणपत्र/अन्य आवश्यक प्रमाणपत्रांची अनुपलब्धता/अवैधता किंवा अन्य कोणत्याही कारणास्तव नियुक्तीसाठी पात्र ठरत नसल्याचे आढळून आल्यास अथवा शिफारस केलेला उमेदवार रुजू झाल्यानंतर नजिकच्या कालावधीत त्याने राजीनामा दिल्यामुळे किंवा त्याचा मृत्यू झाल्याने पद रिक्त झाल्यास, अशी पदे त्या त्या प्रवर्गाच्या निवडसूचीतील अतिरिक्त उमेदवारांमधून वरिष्ठतेनुसार उतरत्या क्रमाने भरण्यात यावीत. मात्र, अशी कार्यवाही निवडसूचीच्या कालमर्यादेत करण्यात यावी.

7. Learned counsel thereafter brought to our notice the letter dated 13.11.2020, which is at annexure 'A-2' at paper book. Learned counsel pointed out that in paragraph No. 3 of the said letter it has been specifically stated that the waiting list was annexed with the said letter, which was prepared in accordance with the Government Resolution dated 19.10.2007. Learned counsel during the course of his arguments tendered across the bar the office copies of the request letter submitted by applicant No. 1 viz. Pravin

Ramesh Hivrale with the respondents. Applicant No. 1 in the said letter had requested the respondents to fill unfilled seats from amongst the unexhausted merit list by publishing the waiting list. Learned counsel submitted that respondent No. 1 was under an obligation to notify the unfilled seats and to fill the said seats in order of merit and as per the guidelines issued in the Government Resolution dated 13.6.2018.

8. Learned counsel further submitted that the contention as has been raised on behalf of the respondents in their affidavit in reply that the period of wait-list had expired on 2.7.2020 is factually, as well as, legally incorrect. Learned counsel submitted that last appointments were made on 15.2.2020 of about 35 candidates from the select list of 405 candidates. Learned counsel submitted that 19 out of 405 candidates to whom the appointment letters were issued did not join and said seats have remained unfilled. Learned counsel further submitted that respondent No. 1 must have notified the said unfilled seats and was required to fill up the said unfilled seats from amongst the wait-list candidates.

9. Learned counsel further submitted that said unfilled seats were notified by respondent No. 1 on 13.11.2020.

Learned counsel further submitted that in view of the law laid down by the Hon'ble Apex Court, the wait-list will start operating from the said date and will expire at the end of one year thereafter. Learned counsel in order to buttress his arguments placed reliance on the judgment delivered by the Principal Seat of this Tribunal in O.A. No. 204/2021 with the companion OAs on 30.11.2021. Learned counsel submitted that the similar facts were involved in the said matter and the similar defence was raised by the respondents therein that the period of wait-list has expired.

10. Learned counsel further submitted that in the present matter also after 300 candidates in the select list were given the letter of appointments the Pandemic started and further process of appointment was slowed-down. Learned counsel further submitted that in any case the wait list was to remain in force till 12.11.2021 as the vacancies/unfilled seats were notified by respondent No. 1 on 13.11.2020, before which the applicants had approached respondent No. 1 with the written requests. According to the learned counsel, respondent No. 1 must have issued appointment orders in favour of 19 candidates in order of merit and having regard to category of

social reservation earmarked for such post. Learned counsel, therefore, submitted for allowing his application.

11. Learned Presenting Officer reiterated the contentions raised in the affidavit in reply and prayed for dismissal of the application.

12. We have carefully considered the submissions advanced on behalf of the parties. We have also perused the documents filed on record. Most of the facts are not in dispute. In view of the Government Resolution dated 13.6.2018 to which we have referred herein above and more particularly as provided in clause 12 thereof, respondent No. 1 must have included the names of 25% more candidates than the number of posts for which the recruitment process was carried out. The advertisement was published for filling up 405 posts. Respondent No. 1, therefore, must have included the names of at least 506 candidates. It is the matter of record that respondent No. 1 however, published the select list of 405 candidates only. It is not in dispute that the selected candidates were given appointments in phases. First 300 candidates were appointed vide order issued on 11.7.2019, next 70 candidates were given appointment orders on

16.8.2019 and last appointment orders were issued on 15.2.2020 to 35 candidates. It is not in dispute that out of the aforesaid 405 candidates 19 did not join. The applicants have placed on record the information received to them under Right to Information Act from the respondents revealing the breakup of 19 unfilled seats, which is as under: -

Open -5, Open (Sports Persons) -1, Open (Woman)-5,
Open (Disabled)- 1, SEBC (Female) -1, S.C. (Female) -1
SEBC -1, OBC-2 and S.C.-2.

The copies of letters, which the applicants have tendered on record reveal that in the month of January, 2020 they have made a request to the respondents to fill unfilled 19 seats by publishing waiting list. Respondent No. 1 however, declined to consider the said request.

13. Two grounds are taken by respondent No. 1 for declining the said request, first was that no wait list was in existence; and second that even it be there it could not have been exhausted after lapse of one year of its preparation. First reason as has been cited is apparently not acceptable in view of the Government Resolution dated 13.6.2018. In view of the guidelines issued in the aforesaid Government Resolution by the G.A.D., respondent No. 1 was under an

obligation to prepare the select list of 506 candidates when the recruitment process was being carried out for filling up 405 posts. Respondent No. 1 had included only 405 names in the select list prepared by it. However, it appears that subsequently from the instructions received from the Government waiting list was prepared by respondent No. 1 and was forwarded to the Government with covering letter dated 13.11.2020. The copy of the said covering letter and the waiting list annexed thereto are there on record.

14. Now it has to be examined whether there is any force in the contention raised on behalf of the respondents that the period of one year has lapsed and hence, the said waiting list had become inoperative. According to respondent No. 1, since the result of the examination was declared on 2.7.2019 the select list prepared on the basis of the said examination had become inoperative on 2.7.2020. In the letter dated 17.2.2021 written to applicant No. 1 the respondents have taken the aforesaid stand.

15. The stand taken by the respondents that wait-list had lapsed on 2.7.2020 is wholly incorrect and unacceptable for many reasons. It is noticed by us that the Government

authorities are not completely aware of the legal position in respect of operation of waiting list and at what time the wait list can be said to have lapsed. Exactly the same issue was for consideration before the Hon'ble Apex Court in the case of **State of Jammu AND Kashmir and Others Vs. Sat Pal, (2013) 11 Supreme Court Cases 737**. In the said matter the facts were like thus:

(i) The Public Works Department of the State of J&K had conducted a process of selection for recruitment against the post of Junior Engineer (Civil) Grade-II. Sat Pal, the respondent in the matter before the Hon'ble Apex Court had also participated in the selection process. He had successfully passed the examination. He figured in the final merit/select list of Scheduled Caste candidates prepared at culmination of the selection process. Since there were more meritorious candidate than Sat Pal in the Scheduled Caste category they were offered the appointments and Sat Pal was in the waiting list. Having learnt that some Scheduled Caste candidates above him in the merit list had not joined, Sat Pal made a representation to the concerned authorities seeking appointment against available vacancy. In his representation Sat Pal mentioned the name of Trilok Nath as one of the selected candidates, who had been offered appointment, but not joined. In his representation Sat Pal also specifically mentioned

that his name figured in the select/merit list immediately after the name of Shri Trilok Nath. Representation of Sat Pal, since was not decided by the authorities, he filed the Writ Petition before the Hon'ble J&K High Court. In the said Writ Petition Sat Pal raised a specific plea that though Trilok Nath had been offered appointment on 22.4.2008, he did not join. Sat Pal also placed on record the communication dated 5.5.2008 issued by the Chief Engineer (R & B) Department narrating that the Trilok Nath was not interested to join the subject post. In the petition before the Hon'ble High Court the respondents took a plea based on the prevalent rule that waiting list was valid only for one year and since the said period has lapsed Sat Pal was not entitled for the appointment on the unfilled post because of non-joining of said Trilok Nath. The Hon'ble High Court after having considered the rival contentions disposed of the Writ Petition at the admission stage by directing the appointing authority to examine claim of Sat Pal for appointment against the subject post by keeping in mind the communication dated 5.5.2008 issued by the Chief Engineer (R&B) Department, Jammu, affirming that Trilok Nath, did not join. The concerned department however, again rejected the request of Sat Pal for the following reasons: -

“(i) In view of the fact that the waiting list issued in respect of the recruitment has outlived its validity way back in May, 2008 itself, he cannot be granted appointment in accordance with the same.

(ii) And that for the above-said reason, vacancies cannot be filled at a belated stage.”

(ii) Sat Pal, aggrieved by the aforesaid rejection filed contempt petition before the Hon’ble High Court. In the contempt the High Court again gave some more time to comply with the order earlier passed and to file the report of compliance. The State Authorities challenged the order passed in the contempt petition by filing the Special Leave Petition before the Hon’ble Apex Court. The Hon’ble Apex Court rejected the petition filed by the State with the following observations, which are reproduced in paragraph 11 of the said judgment, which read thus,-

“11. In view of the factual position noticed hereinabove, the reason indicated by the appellants in declining the claim of the respondent Sat Pal for appointment out of the waiting list is clearly unjustified. A waiting list would start to operate only after the posts for which the recruitment is conducted, have been completed. A waiting list would commence to operate, when offers of appointment have been issued to those emerging on the top of the merit list. The existence of a waiting list, allows room to the appointing authority to fill up vacancies which arise during the subsistence of the waiting list. A waiting list commences to operate, after the vacancies for which the recruitment process has been conducted have been filled up. In the instant controversy the aforesaid situation for

operating the waiting list had not arisen, because one of the posts of Junior Engineer (Civil) Grade-II for which the recruitment process was conducted was actually never filled up. For the reason that Trilok Nath had not assumed charge, one of the posts for which the process of recruitment was conducted, had remained vacant. That apart, even if it is assumed for arguments sake, that all the posts for which the process of selection was conducted were duly filled up, it cannot be disputed that Trilok Nath who had participated in the same selection process as the respondent herein, was offered appointment against the post of Junior Engineer (Civil) Grade-II on 22.4.2008. The aforesaid offer was made, consequent upon his selection in the said process of recruitment. The validity of the waiting list, in the facts of this case, has to be determined with reference to 22.4.2008, because the vacancy was offered to Trilok Nath on 22.4.2008. It is the said vacancy, for which the respondent had approached the High Court. As against the aforesaid, it is the acknowledged position recorded by the appellants in the impugned order dated 23.8.2011 (extracted above), that the waiting list was valid till May, 2008. If Trilok Nath was found eligible for appointment against the vacancy in question out of the same waiting list, the respondent herein would be equally eligible for appointment against the said vacancy. This would be the unquestionable legal position, in so far as the present controversy is concerned.”

In view of the law laid down as above by the Hon'ble Apex Court the stand taken by the respondents in the present matter has to be rejected. In the instant matter also though the recruitment process was conducted for filling up of 405 posts the said number of posts were actually not filled up. As

has been held by the Hon'ble Apex Court waiting list commences to operate after the vacancies for which the recruitment process has been conducted have been filled up. In the present matter the aforesaid situation had not arisen because 405 posts for which the recruitment process was conducted were not filled up. The unfilled posts were notified by the respondents on 13.11.2020. In our opinion, the waiting list in the instant matter would commence to operate from the said date. The applicants have placed on record the written request made by applicant No. 1 with the respondent authorities seeking his appointment, to fill up the unfilled posts. Such application was filed by applicant No. 1 on 17.1.2020. The respondents must have considered the said application. Last 35 appointments were issued by the respondents on 15.2.2020. The respondents, therefore, could not have declined the request made by the applicants on the ground that the period of wait list has lapsed on 2.7.2020. In the circumstances, we are inclined to allow the present Original Application. Hence, the following order: -

ORDER

The respondents are directed to issue orders of appointments to the eligible candidates in the unexhausted

merit list / wait list in order of their merit and having regard to category of unfilled posts i.e. social and special reservation, against which such appointment is to be made, within 8 weeks from the date of this order.

MEMBER (A)

VICE CHAIRMAN

O.A.NO.392-2021 (DB)-2022-HDD