

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.512 OF 2019

DISTRICT:- AURANGABAD

Vinod s/o. Rangnath Dandge,
Age : 46 years, Occ. Service as Registrar,
Government College of Art
and Design, Aurangabad.
R/o. Anand Pratik Apartment,
Flat No.1, Nandanwan Colony,
Aurangabad, Tq. & Dist. Aurangabad.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through:- Secretary,
Medical Education and Drugs
Department, Mantralaya, G.T.Hospital
Complex Building, 9th Floor,
Lokmanya Tilak Marg, Mumbai-400 001.
2. The Maharashtra Public Service Commission,
Main Office, 5 ½, 7th & 8th Floor,
Kuprej, Telephone Nigam Building,
Kuprej, Mumbai-400 001.
Through its Secretary.

...RESPONDENTS

APPEARANCE : Shri Shamsundar B. Patil, Advocate
for the Applicant.
: Shri N.U.Yadav, Presenting Officer
for the respondents.

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

Decided on : 19-04-2022

**O R A L O R D E R
(PER: JUSTICE SHRI P. R. BORA)**

1. Heard Shri Shamsundar B. Patil, learned Advocate for the applicant and Shri N.U.Yadav, learned Presenting Officer appearing for the respondents.

2. The facts relevant for decision in the present O.A. in brief are thus:

(i) Maharashtra Public Service Commission (MPSC) had issued advertisement on 23-10-2012 bearing no.312/2012 for 5 posts of Administrative Officer, State General Services Group-B, on the establishment of Medical Education and Drugs Department of the Government of Maharashtra. Out of the said 5 posts, one post was reserved for SC candidate. The applicant being eligible for the said post had applied for the said post. Applicant underwent the selection process by appearing in the written examination, facing oral interview etc. In the written examination, applicant got 45 marks out of 100 and in oral interview, he secured 13 marks out of total 25. He stood at Sr.No.7 in the merit list

published by the MPSC. One Shri Kadam Vilas Dhondu though was belonging to SC category, since secured more meritorious position and received highest marks, he was shown to have been selected and recommended as Open candidate. One Shri Pradip Babasaheb Sakate was another candidate coming from SC category, who was at Sr.No.3 in the merit list, was, therefore, selected and recommended for the seat reserved for the SC category. Said Shri Pradip Babasaheb Sakate, however, did not join even after getting the joining time extended thrice. Last such extension was granted till 31-10-2018. Shri Sakate did not join till the said date nor made any correspondence with the Government whether he is joining or not. Even thereafter, one more opportunity was given to said Shri Sakate to join on the subject post vide letter dated 13-05-2019, however, even thereafter Shri Sakate did not join.

(ii) The applicant is the next candidate from SC category and is at Sr.No.7 in the merit list. Applicant, therefore, made an application on 10-06-2019 praying for his appointment on the said post since the selected candidate namely Shri Sakate had not joined the said post. However, respondents did not consider the request of the applicant. Aggrieved by the inaction on part of the respondents in not

considering his request, the applicant has approached this Tribunal by filing the present O.A.

(iii) One Shri Uday Shankarrao Vanjari, then Joint Commissioner (Aurangabad Division), Food and Drugs Administration, Maharashtra State, Aurangabad has filed affidavit in reply on behalf of respondent no.1 whereas one Smt. Sukhada Sanjay Amrite, then Deputy Secretary in the office of Maharashtra Public Service Commission has filed the affidavit in reply on behalf of respondent no.2. Common contention in both these affidavits is that the request of the applicant has not been considered since the period of wait list has expired and as such though the applicant was the next candidate in the merit list after Shri Pradip Sakate, he was not given appointment.

3. Learned Counsel for the applicant submitted that the reason as has been assigned by the respondents is illegal and erroneous. Relying on the judgment delivered by the Principal Bench of the Tribunal at Mumbai on 30-11-2021 in a group of **O.A.No.204/2021 & Ors.**, learned Counsel submitted that the facts in the present O.A. being similar to the facts involved in the said matters, the application of the applicant be allowed.

4. Learned P.O. reiterating the contentions raised in the affidavits in reply filed on behalf of the respective respondents submitted that the wait list was declared on 16-05-2017 and thus the period of waiting list i.e. one year had expired on 15-05-2018. Learned P.O. relied upon the judgment of the Division Bench of the Hon'ble Bombay High Court rendered in **Writ Petition No.5621/2015** delivered on 03-07-2018. Learned P.O. prayed for rejecting the O.A. being devoid of any merit.

5. We have carefully considered the submissions advanced by the learned Counsel appearing for the parties. It is not in dispute that on the only seat reserved for SC candidate Shri Pradip Sakate was given appointment since he was the second highest meritorious candidate in the SC category. It is also not in dispute that said Shri Sakate did not join the post inspite of obtaining extension for joining on the said post thrice. It is also not in dispute that lastly on 13-05-2019 one more opportunity was given to Shri Sakate by respondent no.1, however, even thereafter Shri Sakate did not join. It is also not disputed by the respondents that applicant vide his letter dated 10-06-2019

has prayed for appointment on the said post by sending a written request in that regard.

6. MPSC has referred to its Rules of Procedure (Amendment) 2016. Said amendment to the Rules of Procedure is as follows (p.b.p.71):

*“MAHARASHTRA PUBLIC SERVICE COMMISSION
Amendment to the Rules of Procedure*

No. ROP/2016/II.— In exercise of its functions as stipulated under Article 320 of the Constitution of India, the Maharashtra Public Service Commission hereby makes the following rules further to amend the Maharashtra Public Service Commission Rules of Procedure, 2014, namely :—

1. (1) These rules may be called the Maharashtra Public Service Commission Rules of Procedure (Amendment), 2016.

(2) These rules shall be deemed to have come into force on 31st May 2016.

2. In rule 10 of the Maharashtra Public Service Commission, Rules of Procedure, 2014.

(1) In clause (a) of sub-rules (8), for the words “or up to the publication of subsequent advertisement” the words “or till the declaration of result of subsequent Competitive Examination” shall be substituted.

(2) for clause (b) of sub-rule (8), the following shall be substituted, namely :—

“(b) (i) In case of Direct Recruitment, the reserve list (waiting list) shall be operative for the period of one year from the date of declaration of the result or till the declaration of result of the subsequent recruitment process for the same post, whichever is earlier :

Provided that, the reserve list (waiting list), for the teaching posts such as Assistant Professor, Associate Professor and Professor under the Medical Education and Drugs Department of the Government shall be operative for the period of two years from the date of declaration of result or till declaration of result of the subsequent recruitment process for that post, whichever is earlier.

(ii) In case of Limited Departmental Competitive Examination, the reserve list (waiting list) shall be operative for the period of one year from the date of declaration of the result or till declaration of the result of the subsequent Examination for the same post whichever is earlier”.

(3) after clause (b) of sub-rule (8) so substituted, the following shall be added, namely :—

“(c) While calculating the period of operation or period of validity of the reserve list (waiting list) under clause (a) or sub-clauses (i) and (ii) of clause (b) of this sub-rule, the period for which any order of court or tribunal staying the operation of the result or restraining the appointment, shall be excluded”.

*PRADEEP KUMAR,
Secretary,
Maharashtra Public Service Commission,
Mumbai.*

Mumbai,

dated 28th December 2016.”

(reproduced ad-verbatim from p.b.p.71 of O.A.)

7. As provided in the aforesaid Rules, in case of direct recruitment the reserve list shall be operative for the period of one year from the date of declaration of the result or till the decision of the result of the subsequent recruitment process for the same post whichever is earlier.

8. As noted above, learned P.O. has relied upon the judgment delivered by the Division Bench of the Hon'ble Bombay High Court rendered in **Writ Petition No.5621/2015** cited supra. We have carefully gone through the contents of the said judgment. The said judgment may not apply to the facts of the present case. In the said matter, admittedly, the date of subsequent examination was declared and the request was made to MPSC for recommending the names of the candidates from wait list after the said date. MPSC denied the said request on the ground that the date of subsequent examination was already declared.

9. In the present matter, it is not the defence of the respondents that the date of subsequent examination for the same category of post has been declared. However, the respondents are stuck up to the stand that the period of one year has lapsed from the date of declaration of the result of the examination in which the applicant had appeared.

10. The question which falls for our consideration in the present matter is "*since when the waiting list starts to operate*". Similar question was before the Hon'ble Supreme

Court in the case of **State of Jammu and Kashmir and Ors. V/s. Sat Pal [(2013) 11 SCC 737]**. In the said matter, Hon'ble Supreme Court has held that waiting list does not become operational till any of the posts for which the recruitment process was conducted remains unfilled because of non-joining of the selected candidate or because of his refusal to join. The wait list starts to operate from the date the selected candidate did not join or refuses to join. In the present matter, undisputedly, one of the posts remained unfilled till 13-05-2019. The applicant had requested for his appointment on 10-06-2019. In our opinion, the respondents must have, therefore, considered the request of the applicant.

11. The documents on record reveal that one of the candidates in the select list, namely, Shri Sakate had sought extension in his joining period till 31-10-2018. However, till the said date said candidate did not join and further did not cause any further communication whether he is willing to join on the said post. The documents on record further show that respondent no.1 even thereafter waited for sufficient long time i.e. till 13-05-2019 and since even till that date the abovenamed selected candidate did not resume the duties, the Joint Commissioner (Legal) Food

and Drugs Administration, communicated to respondent no.1 the said fact.

12. In our opinion, the selection process commenced vide advertisement no.312/2012, was still incomplete till 13-05-2019. Even if we consider the date of 31-10-2018 till which one of the selected candidate was granted extension of time to join, the recruitment process was undoubtedly not completed till the said date. In the circumstances, till the said date no occasion has arisen for inviting the names of the candidates in the waiting list. Till the said date the waiting list had not become operational. It became operational on 31-10-2018 since the selected candidate was given extension of time to resume on the subject post till the said date but he did not join. As stated above, on 10-06-2019, the applicant made a request for his appointment on the said post being the next meritorious candidate in the SC category. On the said date, the period of wait list cannot be said to have expired. Undisputedly, the next selection process had not commenced.

13. The contention of MPSC that the wait list had lapsed on 15-05-2018 cannot be accepted for one more reason that even the appointments of the candidates in the main

select list were issued after 15-05-2018. It is the matter of record that the appointments to the selected candidates were for the first time issued on 18-05-2018. If the contention of the MPSC is to be accepted, then the appointments of the selected candidates in the main list also cannot be sustained being made beyond the period of one year. We reiterate that the wait list becomes operational only after the selected candidate fails to join or refuses to join. In the instant matter, the selected candidate did not join till 31-10-2018. The wait list thus became operational from the said date and would remain alive till expiry of one year therefrom i.e. up to 30-10-2019. The applicant has made a request for his appointment before expiry of the said period and hence the respondents must have considered his request. The reason for which the respondents have declined to accept the request of the applicant cannot be sustained and deserves to be set aside.

14. For the reasons stated above we are inclined to allow the present O.A. Hence, the following order is passed:

O R D E R

- (i) Respondent no.2 i.e. the MPSC is directed to recommend the name of the present applicant to

respondent no.1 for to be appointed on the post of Administrative Officer, State General Services Group-B on the establishment of the Food and Drugs Administration, within 4 weeks from the date of this order, and in turn respondent no.1 shall issue the order of appointment in favour of the applicant within two weeks thereafter.

(ii) O.A. is allowed in the aforesaid terms with no order as to costs.

(BIJAY KUMAR)
MEMBER (A)

(JUSTICE P.R. BORA)
MEMBER (J)

Place : Aurangabad
Date : 19th April, 2022