

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 526 OF 2022

DISTRICT : AURANGABAD

Sachin s/o Dnyaneshwar Dahihande,)

Age. : 27 years, Occ. Nil,)

R/o Adgaon (Bk), Tq. & Dist. Aurangabad.)

.. APPLICANT

V E R S U S

1. The State of Maharashtra,)

Through Principal Secretary,)

Revenue and Forest Department,)

Mantralaya, Mumbai- 32.)

2. The District Selection Committee,)

@ District Collector,)

Ahmednagar.)

.. RESPONDENTS

APPEARANCE : Shri Avinash Khedkar, counsel holding
for Shri G.A. Rathod, Counsel for
Applicant.

: Shri V.R. Bhumkar, Presenting Officer for
respondent authorities.

CORAM : **JUSTICE P.R. BORA, VICE CHAIRMAN.
AND
VINAY KARGAONKAR, MEMBER (A)**

DATE : **01.11.2023.**

O R A L - O R D E R

1. Heard Shri Avinash Khedkar, learned counsel holding for Shri G.A. Rathod, learned counsel for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.

2. The applicant has preferred the present Original Application seeking direction against the respondents to recommend and give him appointment on the post of Talathi from Open category.

3. It is the case of the applicant that vide advertisement published on 27.02.2019, total 84 posts of Talathi were notified to be filled in by direct recruitment. The applicant applied for the said post from Open category. In the written examination, the applicant secured 174 marks out of 200. In the meanwhile of the said recruitment process, the seats, which were reserved for the candidates belonging to SEBC, were converted into Open and in the circumstances, number of seats reserved for Open category were increased. In an another development, the Government decided to fill in for the time being only 09 posts from the Open class. It further so happened that some of the candidates were found to have adopted mal-practice and their names were therefore removed from the list of recommended candidates. In the circumstances, against the seats of Open general category, the names of only 06 candidates were included in the said list. The modified waiting list also came to be published for the Open General candidates consisting of 03

names. The applicant stands at Sr. No. 01 in the waiting list in order of merit.

4. After it was noticed that the respondents have instead of 09 posts, which were declared to be filled in by Open General candidates, have recommended only 06 candidates, the applicant made an application seeking appointment in his favour on the ground that he stands at Sr. No. 01 in the waiting list. Since, the said request has not been considered by the respondents, the applicant has approached this Tribunal.

5. Learned counsel for the applicant submitted that in the advertisement itself it was declared that waiting list also will be prepared in order of merit. Learned counsel further tendered across the bar the G.R. dated 13.06.2018, which lays down guidelines for making appointment in the direct recruitment and the period, which is provided for selection list to be in operation. As provided in the said G.R., the selection list, as well as, waiting list were to remain in operation for the period of 01 year. Learned counsel pointed out that the applicant has come out with a request seeking appointment for him before expiry of that period. In the circumstances, learned counsel submits that the applicant deserves to be considered and

directions as are sought by the applicant deserve to be issued against the respondents.

6. Respondent no. 2 has filed the affidavit in reply thereby opposing the prayer made in the Original Application. Respondent no. 1 has not filed the affidavit in reply. It is the contention of respondent no. 2 that the respondent no. 1 vide communication dated 2.12.2020 has informed that excluding suspected candidates found in the recruitment process and posts from SEBC category, the appointment be given to the selected candidates. According to the said instructions, the final merit has been published and eligible and selected candidates have been given appointment. Respondent No. 2 has further contended that he has reserved the final selection list of the suspected candidates since offences have been registered against them at Kotwali Police Station, Ahmednagar u/s 420, 419, 417 of IPC and Section 66 d of Information Technology (Amendment) Act, 2008. It is further contended that since the applicant has secured 174 marks in the written examination, which were less than the candidate selected finally from the posts from Open category, the applicant has not been given the appointment. It is further contended that the candidate from Open General category has secured more marks

than the applicant was noticed to be doubtful candidate and hence, the said candidate has been listed in the group of doubtful candidates and even criminal action has been instituted against him. It is further contended that in order to avoid multiplicity of proceedings, the appointment is not given to the applicant.

7. Learned P.O. reiterated the contentions raised in the affidavit in reply filed on behalf of respondent No. 2. Learned P.O., referring to the letter dated 15.07.2022 (Exhibit R-3), whereby the applicant was informed that his application is disposed of, submitted that since out of 09 candidates to be recommended from Open General category, 03 were found doubtful and since criminal prosecution is launched against them, by reserving the decision in regard to those 3 candidates the next 06 candidates in order of merit have been recommended for their appointment and accordingly, the appointment orders are issued in their favour. Learned P.O. submitted that the respondents have rightly kept the said posts unfilled having regard to the criminal cases pending against them.

8. We have duly considered the submissions made on behalf of the applicant, as well as, the respondent authorities. It is not in dispute that name of the applicant stands at Sr. No. 01 in the waiting list in the category of Open General. It is also not in dispute that total 09 posts were to be filled in from Open General category. Admittedly, only 06 posts are recommended for to be filled in and 03 posts are kept vacant. From the record it is quite evident that 03 candidates, who were liable to be recommended from Open General category and who have secured more marks in order of merit, have not been given appointments and decision in their regard is kept reserved.

9. In the present matter, the issue of life of the waiting list may not arise for the reason that after declaration of the final selection list i.e. on 20.12.2021, within 01 years therefrom the applicant has preferred the present Original Application. It is the contention of the respondent no. 2 that he has acted as per the instructions received him from the State Government vide communication dated 2.12.2020. We have gone through contents of the said communication. We deem it appropriate to reproduce the said communication as it is in vernacular, which reads thus :-

1 of 1



Exh. R-2

महाराष्ट्र शासन
महसूल व वन विभाग,
मंत्रालय (मुख्य इमारत), पहिला मजला,
मादाम कामा मार्ग, हुतात्मा राजगुरु चौक,
मुंबई- ४०० ०३२

दूरध्वनी क्र. ०२२-२२७९३७५४

email ID : doe10.rfd@maharashtra.gov.in

क्र.पभमा-२०२०/प्र.क्र.११९/ई-१०

दिनांक- ०२ डिसेंबर, २०२०

प्रति,
जिल्हाधिकारी,
अहमदनगर.

विषय :- तलाठी पदभरती- २०१९ (नियुक्ती आदेशाबाबत)

- संदर्भ :- (१) मा. सर्वोच्च न्यायालय, नवी दिल्ली येथील दाखल सिव्हील अपील क्र.३१२३/२०२० [एस.एल.पी. (सिव्हील) क्र.१५७३७/२०१९], मधील आदेश दि.०९.०९.२०२०
(२) मा. उच्च न्यायालय मुंबई, खंडपीठ औरंगाबाद येथे दाखल रिट याचिका क्र.६५०३/२०२० दि.०६.११.२०२० चे आदेश
(३) आपले पत्र क्र.मह/आस्था/कार्या.५अ.२/१०५/२०२०, दि.१८.११.२०२०

महोदय,

मा. सर्वोच्च न्यायालयाचे दि.०९.०९.२०२० रोजीचे अंतरिम आदेश विचारात घेता, मा. उच्च न्यायालयाने रिट याचिका क्र.६५०३/२०२० मध्ये दि.०६.११.२०२० रोजी दिलेल्या आदेशाच्या अनुषंगाने सन-२०१९ तलाठी पदभरतीतील एस.ई.बी.सी. संवर्गातील पदे वगळता इतर प्रवर्गातील निवड झालेल्या उमेदवारांच्या नियुक्तीबाबत जिल्हाधिकारी, बीड यांना संदर्भाधीन समक्रमीकित दि.२७.११.२०२० च्या पत्रान्वये तत्काळ कार्यवाही करण्याबाबत कळविण्यात आलेले आहे. (सदर पत्राची प्रत सोबत जोडली आहे)

२. आपल्या संदर्भाधीन पत्रान्वये विषयाकित प्रकरणी मार्गदर्शन मिळण्याची शासनास विनंती केली आहे. त्यानुषंगाने कळविण्यात येते की, अहमदनगर जिल्हा सन-२०१९ च्या तलाठी पदभरतीमध्ये जिल्हा निवड समितीस आढळून आलेले शंकास्पद उमेदवार वगळून आणि पदभरतीतील एस.ई.बी.सी. संवर्गातील पदे वगळता इतर प्रवर्गातील निवड झालेल्या उमेदवारांच्या नियुक्तीबाबत कार्यवाही करण्यास याद्वारे शासन मान्यता देण्यात येत आहे.

आपला,

(डॉ. संतोष भोगले)

सह सचिव, महाराष्ट्र शासन

सोबत :- वरीलप्रमाणे

प्रत अग्रेषित,
विभागीय आयुक्त, नाशिक

D:\SANDIP BAGUL\तलाठी पदभरती - 2019\CR.119.2020 SEBC Note Beed.docx

Sandip Bagul

The second para of the aforesaid communication pertains to the recruitment in the District of Ahmednagar. What the State Government has directed is to issue appointments to the selected candidates excluding the candidates who were noticed to be doubtful. Respondent No. 2 has also not taken any definite stand that the results of the doubtful candidates were reserved, subject to outcome of the criminal cases pending against them. As such, we do not see any rational in keeping 03 posts unfilled.

10. The advertisement, which was initially published on 27.02.2019 was published for filling in 84 vacant posts of Talathi and in the said advertisement, the particulars of said 84 posts were provided. Vide subsequent advertisement/ Notification published on 01.02.2021, the number of posts was brought down from 84 to 80. The number of candidates whose names are included in the modified selection list is much less than 84. In the circumstances, to keep 03 posts unfilled may not be in the interest of State. Moreover, as we noted hereinabove, the respondent No. 2 has also not come out with a stand that the results of the doubtful candidates has been reserved or withheld subject to decision of the criminal prosecutions pending against them. Even otherwise, it is

difficult to say how much period will be required for the decision in the Criminal Cases filed against the said candidates. As such, the prayer made by the applicant deserves to be considered.

11. The applicant has received total 174 marks out of 200 marks in the interview and he stands at Sr. No. 1 in the modified waiting list prepared by the State. Though another 02 candidates in the waiting list have also secured 174 marks as has been earned by the applicant, the said 02 candidates are admittedly younger in age and in the circumstances, though all 03 candidates have secured equal marks, the person older in age will stand at a higher position.

12. The contention raised on behalf of the respondents that to avoid multiplicity of the litigations, they have resolved not to fill in 03 posts for the candidates of Open General category is also holly unacceptable. The vacant posts of Talathis cannot be kept vacant for indefinite period. From the record it appears that the names which are recommended are less than the number of vacancies notified. As such, the applicant has certainly made out a case for recommendation of his name being at Sr. No. 1 in the waiting list of the Open

General candidates. In the result, the following order is passed:-

ORDER

- (i) Respondents are directed to consider the name of the applicant for appointment on the post of Talathi from the Open General class and having regard to the vacancy position issue appointment order in his favour.
- (ii) There shall be no order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 01.11.2023

ARJ O.A. NO. 526 OF 2022 (APPOINTMENT)