

**6 IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**ORIGINAL APPLICATION NO.204 OF 2021 WITH O.A.NO.205
OF 2021 WITH O.A.NO.429 OF 2021 WITH O.A.NO.642 OF
2021 WITH O.A.NO.693 OF 2021 WITH O.A.NO.674 OF 2021
WITH O.A.NO.675 OF 2021 WITH O.A.NO.754 OF 2021 WITH
O.A.NO.755 OF 2021 WITH O.A.NO.767 OF 2021 WITH
O.A.NO.798 OF 2021 WITH O.A.NO.895 OF 2021 (O.A.NO.652
OF 2021 NAGPUR)**

1) O.A.NO.204 OF 2021

Mr. Bhanudas Bapu Nimgire,)
Age : 28 years, Add : At Post Jeur,)
Tal Karmala, Dist. Solapur.) **...APPLICANT**

VERSUS

1. The State of Maharashtra,)
Through its Principal Secretary,)
[Accounts and Treasury])
Finance Department,)
Mantralaya, Mumbai 32)
2. The Director,)
Directorate of Accounts & Treasuries)
Thakarsi House, Mumbai Port Trust,)
Port, 3rd floor, J.N. Herediya Marg,)
Maharashtra State, Mumbai 400 001)
3. The Joint Director,)
Account and Treasuries,)
Nashik Division, Nashik, 2nd floor,)
LekhaKosh Bhavan, Collector Office,)
Compound, Nashik, District Nashik.) **...RESPONDENTS.**

WITH

2) O.A.NO.205 OF 2021

Smt. Shubhangi Jalindar Katkar,)
Age : 28 years,)
Add: Tejas Nagar Colony Bpt,)
Building No.3, Room No.38,)
Wadala East, Mumbai.) **...APPLICANT**

VERSUS

1. The State of Maharashtra,)
Through its Principal Secretary,)
[Accounts and Treasury])
Finance Department,)
Mantralaya, Mumbai 32)
2. The Director,)
Directorate of Accounts & Treasuries)
Thakarsi House, Mumbai Port Trust,)
Port, 3rd floor, J.N. Herediya Marg,)
Maharashtra State, Mumbai 400 001)
3. The Joint Director,)
Account and Treasury,)
Kokan Division, Kokan Bhavan,)
Room No.506,)
5th floor, CBD Belapur,)
Navi Mumbai 400 614)...**RESPONDENTS.**

WITH**3) O.A.NO.429 OF 2021**

1. Mr. Ashishkumar R Ghemud,)
Age : 38 years,)
Residing at : Village Shardanagar,)
Yeola Road, Kopargaon,)
Dist. Ahmednagar 423 601)
2. Mr. Dynaneshwar Gotiram Madake,)
Age : 26 years,)
Residing at : At Gadewadi,)
Tal. Shevgaon, Dist.)
Ahmednagar 414 503)...**APPLICANTS**

VERSUS

1. The State of Maharashtra,)
Through its Principal Secretary,)
Accounts and Treasury)
(Finance Department),)
Mantralaya, Mumbai 400 032)
2. The Director,)
Directorate of Accounts & Treasuries)
Thakarsi House, Mumbai Port Trust,)

Port, 3rd floor, J.N. Herediya Marg,)
 Maharashtra State, Mumbai 400 001)

3. The Joint Director,)
 Accounts and Treasury,)
 Nashik Division, 2nd floor,)
 Lekha Kosh Bhavan)
 Collector Office Premises, Nashik.)...**RESPONDENTS.**

WITH

4) O.A.NO.642 OF 2021

Ramdas S/o. Himmatrao More,)
 Age : 29 years, Occu. Unemployed,)
 R/at. Dahigaon, Post- Avhana, Tal. Sillod,)
 Dist. Aurangabad.) ...**APPLICANT**

VERSUS

1. The State of Maharashtra,)
 Through its Principal Secretary,)
 Finance Department, Mantralaya,)
 Mumbai 32.)
2. The Director,)
 Directorate of Accounts & Treasuries)
 Thakarsi House, Mumbai Port Trust,)
 Port, 3rd floor, J.N. Herediya Marg,)
 Maharashtra State, Mumbai 400 001)
3. The Joint Director,)
 Account and Treasuries,)
 Nashik Division, Nashik, 2nd floor,)
 LekhaKosh Bhavan, Collector Office,)
 Compound, Nashik, District Nashik.)...**RESPONDENTS.**

WITH

5) O.A.NO.693 OF 2021

Ms. Sonali D/o. Vitthal Ghanwat,)
 Age : 29 years, Occu. Unemployed,)
 R/at. At Pagori Pimpalgaon, Tal. Pathardi,)
 Dist. Ahmednagar.)...**APPLICANT**

VERSUS

1. The State of Maharashtra,)
Through its Principal Secretary,)
Finance Department, Mantralaya,)
Mumbai 32.)
2. The Director,)
Directorate of Accounts & Treasuries)
Thakarsi House, Mumbai Port Trust,)
Port, 3rd floor, J.N. Herediya Marg,)
Maharashtra State, Mumbai 400 001)
3. The Joint Director,)
Account and Treasuries,)
Nashik Division, Nashik, 2nd floor,)
LekhaKosh Bhavan, Collector Office,)
Compound, Nashik, District Nashik.)...**RESPONDENTS.**

WITH

6) O.A.NO.674 OF 2021

1. Mr. Laxmikant Madhusudan Ragji,)
Age : 43 years, Add : 202/A-Wing,)
Bhagyawan C.H.S. LTD.)
Near Ashoknagar Road,)
Datar Colony, Bhandup (East),)
Mumbai 400 042.)
2. Miss. Priyanka Ganesh Ambi,)
Age : 28 years,)
Add : Shreenath Apartment,)
'A' Wing, Flat No.4,)
City High School Road,)
Gaonbhag, Sangli 416 416)
3. Miss. Usha Shreeshail Ozi)
Age : 26 years, Add : A/P. Kothali,)
Samage Galli, Tal. Shirol,)
Dist. Kolhapur 416 101.)
4. Miss. Monika Sudhakar Rande,)
Age : 25 years, Add : Karade Plot,)
Anjangaon Road, Naka No.4, Akot,)
Dist- Akola)
5. Rahul Tryambak Satpute,)
Age : 28 years,)
Add : At/Post, Mahatpuri,)

Tal Gangakhed, Dist. Parbhani,)
 Mahatpuri, Gangekhed – 431 514.)...**APPLICANTS**

VERSUS

1. The State of Maharashtra,)
 Through its Principal Secretary,)
 Finance Department, Mantralaya,)
 Mumbai 32.)
2. The Director,)
 Directorate of Accounts & Treasuries)
 Thakarsi House, Mumbai Port Trust,)
 Port, 3rd floor, J.N. Herediya Marg,)
 Maharashtra State, Mumbai 400 001)
3. The Joint Director,)
 Account and Treasuries,)
 Nashik Division, Nashik, 2nd floor,)
 LekhaKosh Bhavan, Collector Office,)
 Compound, Nashik, District Nashik.)...**RESPONDENTS.**

WITH

7) O.A.NO.675 OF 2021

Mr. Khushal Ashok Pagare,)
 Age : 31 years,)
 Residing at Baramati Agro Ltd.,)
 Shetphalgadhe, Tal. Indapur, Dist. Pune.)...**APPLICANT**

VERSUS

1. The State of Maharashtra,)
 Through its Principal Secretary,)
 Finance Department, Mantralaya,)
 Mumbai 32.)
2. The Director,)
 Directorate of Accounts & Treasuries)
 Thakarsi House, Mumbai Port Trust,)
 Port, 3rd floor, J.N. Herediya Marg,)
 Maharashtra State, Mumbai 400 001)
3. The Joint Director,)
 Account and Treasury,)
 Kokan Division,)

Kokan Bhavan, Room No.506)
 5th floor, CBD Belapur,)
 Navi Mumbai 400 614.)...**RESPONDENTS.**

WITH

8) O.A.NO.754 OF 2021

Smt. Snehal Mahavir Nigave,)
 Age : 23 years,)
 Add : At Shivpuri, Post Kameri,)
 Tal : Walva, Dist, Singli 415 403)...**APPLICANTS**

VERSUS

1. The State of Maharashtra,)
 Through its Principal Secretary,)
 Finance Department, Mantralaya,)
 Mumbai 32.)
2. The Director,)
 Directorate of Accounts & Treasuries)
 Thakarsi House, Mumbai Port Trust,)
 Port, 3rd floor, J.N. Herediya Marg,)
 Maharashtra State, Mumbai 400 001)
3. The Joint Director, Local Fund Audit,)
 Local Fund Audit,)
 Pune Division Pune,)
 Lekha Kosh Bhavan, 3rd Floor,)
 Collector Office)
 Campus, Pune 411 001.)...**RESPONDENTS.**

WITH

9) O.A.NO.755 OF 2021

Smt. Shital Datatrau Dhumal,)
 Age : 39 years,)
 Add : 'Avadhut Niwas', Savitribai Fule)
 Society, Nandani Road, Jaysingpur.)
 Dist. Kolhapur.)...**APPLICANTS**

VERSUS

1. State of Maharashtra,)
 Through Additional Chief Secretary,)
 General Administration Department,)
 Mantralaya, Mumbai 400 032)

2. State of Maharashtra,)
Through Principal)
Secretary, (Accounts and Treasury),)
Finance Department, Mantralaya,)
Mumbai 400 032)
3. The Director,)
Directorate Accounts and Treasury)
Thakarsi House, Mumbai Port Trust,)
3rd Floor, J.N. Herediya Marg,)
Maharashtra State,)
Mumbai 400 001)
4. The Joint Director, Local Fund Audit,)
Local Fund Audit,)
Pune Division Pune,)
Lekha Kosh Bhavan, 3rd Floor,)
Collector Office)
Campus, Pune 411 001.)...**RESPONDENTS.**

**10) WITH
O.A.NO.767 OF 2021**

Smt. Sushma Achut Bansode,)
Age : 30 years, Add : Sr. No.103,)
Rajiv Gandhi Wasahat, Nehru-nagar,)
Near Laxmi-Bhairavnath Mandir,)
Pimpri, Pune)...**APPLICANT**

VERSUS

1. State of Maharashtra,)
Through Additional Chief Secretary,)
General Administration Department)
Mantralaya, Mumbai 400 032)
2. State of Maharashtra,)
Through Principal)
Secretary, (Accounts and Treasury),)
Finance Department, Mantralaya,)
Mumbai 400 032)
3. The Director,)
Directorate Accounts and Treasury)
Thakarsi House,)
Mumbai Port Trust, 3rd Floor,)
J.N. Herediya Marg,)
Maharashtra State,)
Mumbai 400 001)

4. The Joint Director,)
 Local Fund Audit,)
 Local Fund Audit,)
 Pune Division Pune,)
 Lekha Kosh Bhavan, 3rd Floor,)
 Collector Office)
 Campus, Pune 411 001.)...**RESPONDENTS.**

WITH**11) O.A.NO.798 OF 2021**

- Smt. Minal Suresh Giri,)
 Age : 31 years,)
 Add : Dev Nagar, Near Vivekanand)
 Hostel (Mulki), Wadgaon Road,)
 Yavatmal, 445 001.)...**APPLICANTS**

VERSUS

1. State of Maharashtra,)
 Through Additional Chief Secretary,)
 General Administration Department,))
 Mantralaya, Mumbai 400 032)
2. State of Maharashtra,)
 Through Principal)
 Secretary, (Accounts and Treasury),)
 Finance Department, Mantralaya,)
 Mumbai 400 032)
3. The Director,)
 Directorate Accounts and Treasury)
 Thakarsi House, Mumbai Port Trust,))
 3rd Floor, J.N. Herediya Marg,)
 Maharashtra State,)
 Mumbai 400 001)
4. The Joint Director,)
 Local Fund Audit,)
 Local Fund Audit,)
 Pune Division Pune,)
 Lekha Kosh Bhavan, 3rd Floor,)
 Collector Office)
 Campus, Pune 411 001.)...**RESPONDENTS**

WITH

**12) O.A.NO.895 OF 2021
(O.A.NO.652 OF 2021 NAGPUR)**

Smt. Babita Anandrao Kosarkar,)
Age : 27 years,)
Add : Vidharbh Housing Society,)
Jamanka Nagar, Yavatmal.)...**APPLICANT**

VERSUS

1. The State of Maharashtra,)
Through its Principal Secretary,)
(Accounts and Treasury),)
Finance Department, Mantralaya,)
Mumbai 32)
2. The Director,)
Directorate of Accounts & Treasury,)
Thakarsi House, Mumbai Port Trust,))
3rd floor, J.N. Herediya Marg,)
Maharashtra State,)
Mumbai 400 001)
3. The Joint Director,)
Account and Treasury,)
Kokan Division, Kokan Bhavan,)
Room No.506, 5th floor, CBD Belapur)
Navi Mumbai 400 614.)...**RESPONDENTS.**

Smt Punam Mahajan, learned advocate for the Applicants in O.A 204, 205, 429, 674, 675, 754, 755, 767, 798 and 895/2021 (O.A 652/2021 at Nagpur).

Shri A.B Chalak, learned advocate for the applicants in O.A 642/2021 and 693/2021.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)**

DATE : 30.11.2021

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. All the applicants are having the same grievance against the same Respondents and the issues involved therein are the same hence all these Original Applications are heard together and decided by common judgment.

2. The Respondent no. 2, Director, Directorate Accounts and Treasury has given advertisement dated 9.1.2019 for 930 posts in 24 Divisions for four cadres, namely, Accounts Clerk, Audit Clerk, Junior Accountant and Junior Audit Clerk. The applicants appeared for the examination for the respective posts. The applicants in O.A 642/2021, 693/2021, 429/2021 have cleared the examination and their names are mentioned in the waiting list and the names of the applicants in the other Original Applications are appearing in the select list, which were published by the Respondents in June, 2019. The Respondents after publishing the first list in June, 2019 also published the second list of the selected candidates on 20.1.2020. The Respondents appointed the candidates from the select list and thereby filled up 715 vacancies out of 930 vacancies from June, 2019 till March, 2020. Thus as on today, 215 vacancies in these four cadres in 24 Divisions are available.

3. The applicants found that the Respondents have not issued the orders of their appointment after March, 2020, hence some of them approached this Tribunal in March, 2021, with the prayer that the Respondents be directed to issue the appointment order of the applicants to the post of Accounts Clerk/Accountant with all consequential service benefits. During the pendency of the Original Applications, the Respondent-State passed the impugned order dated 9.8.2021. The Respondents by issuing the impugned order

dated 9.8.2021 and 12.8.2021, informed all the applicants that the select list has lapsed in view of the Government Resolution dated 13.6.2018. Thus, the process of recruitment of the year 2019 is closed and therefore, the selection of all the applicants was cancelled. The applicants therefore, have approached this Tribunal by filing the Original Applications. Similarly, some of the applicants who were also similarly placed challenged the expiry of the select list of 2019 Examination.

4. Learned counsel for the applicants Ms Punam Mahajan and Mr A.B Chalak have submitted that the candidates whose names were appearing in the select list were appointed before 18.3.2020. However, on account of nation-wide lockdown due to Covid-19 Pandemic the Respondents did not issue the further orders of appointment of the candidates whose names were also appearing in the select list. The verification of the documents of some of them was done by the Department either physically or on-line. Learned counsel for the applicants argued that due to Covid-19 Pandemic the Government offices were closed and no orders were issued thereafter from March, 2020 till June 2020. It is further submitted that the Respondents should have extended the period of select list for more period in view of this national calamity. The applicants are entitled to get appointment to their respective posts for which they are selected and it is obligatory on the part of the Respondents to issue the orders of their appointments which were delayed due to Covid-19 Pandemic, as it is not the fault of the applicants.

5. Learned counsel for the applicants Ms Mahajan, had submitted that the Government in its order of cancellation of the select list which was issued in August, 2021 has given only one reason that as per G.R dated 13.6.2018 the time period for the

select list is only one year and thereafter it lapsed. Thus, according to the Respondents, the first select list was published on 19.7.2019 and so after one year, i.e. on 18.7.2020 the said list lapsed. Learned counsel for the applicants submitted that no other reason is given in the impugned order. However, in the short affidavits in reply dated 11.11.2021 and 16.11.2021, which is filed by Shri Tanaji R. Pawar, Under Secretary, in the office of Addl. Chief Secretary, Finance Department, and affidavit in reply dated 13.10.2021, of Shri A.S Dige, Joint Director in the office of Joint Director, Accounts and Treasury, Konkan Division, the Respondents have pleaded another reason for not issuing orders of appointment. They have state that no recruitment is allowed due to Government Resolution dated 4.5.2020 issued by the Finance Department. Learned counsel for the applicants submitted that the reason of the said G.R cannot be considered while testing the correctness of the impugned orders. In support of her submissions, she relied on the judgment of the Hon'ble Supreme Court in the case of **RASHMI METALIKS LTD & ANR Vs. KOLKATA METROPOLITAN DEVELOPMENT AUTHORITY & ORS, (2013) 10 SCC 95**. The Hon'ble Supreme Court while dealing with the issue of the correctness of the bidding and the grounds mentioned in the tender, has observed that any other ground which is advanced later, need not be considered. It was held that:-

“This ground should have been articulated at the very inception itself, and now it is not forensically fair and permissible for the authority or any of the Respondents to adopt this ground for the first time in this second salvo of litigation by way of side wind”.

6. Learned counsel for the applicants further relied on the judgment of the Hon'ble Bombay High Court in **KALMATI R. YADAV Vs. CHANDRAPUR CITY MUNICIPAL CORPORATION, THROUGH ITS COMMISSIONER, CHANDRAPUR CITY**

MUNICIPAL CORPORATION, (2021) 4 AIR BOM R. 788, to substantiate the submission that if period of select list is relaxed it is not illegal in view of Pandemic. The Respondents have given the main reason that the select list lapsed in view of the provisions of the G.R dated 13.6.2018. Therefore, it is not correct and not legal for the Respondents to continue the said select list. This stand taken by the Respondents is not sustainable in law in view of the judgment in **KALAMAT R. YADAV's case (supra)**.

7. Learned counsel for the applicants Mr Chalak, while adopting the submissions of the learned counsel Mrs Mahajan, has further submitted that the candidates in the select list and wait list have right to get appointment when there are vacancies and this position of law is not res integra as the Hon'ble Supreme Court and Hon'ble High Court have held it accordingly in many cases. He relied on the judgments as follows:-

- (1) **R.S. MITTAL Vs. UNION OF INDIA, 1995 Supp (2) SCC 230.**
- (2) **RAJABHAU SHAMRAO CHAVAN Vs. THE STATE OF MAHARASHTRA & ANR, WRIT PETITION NO.6902 OF 2010 DATED 04.10.2010.**
- (3) **ASHOK ARAJUNRAO KHILLARE Vs. STATE OF MAHARASHTRA & ORS, W.P 10330 of 2017.**

8. Learned P.O opposed these applications and submitted that G.R dated 13.6.2018 specifically states that the select list/wait list got over after one year and thus it got over in June, 2020. More life cannot be given to the expired select list/wait list. Same view is expressed by all the Respondents in their respective affidavit in reply. She relied on the affidavit in reply dated 13.10.2021 of Mr A.S Dige, Joint Director in the office of Joint Director, Accounts and Treasury, Konkan Division, Navi Mumbai and Shri T.R. Pawar, Under Secretary, Finance Department, dated 11.11.2021. She

further submitted about the expiry of the select list/wait list in the order though the Tribunal cannot go beyond the reason given in those orders as per the ratio in **MOHINDER SINGH GILL's** case. However, in view of the exceptional circumstances, another reason given by the Respondent-State in the affidavit in reply that the Government has banned the recruitments due to critical financial position of the State, is also a valid reason and ground to cancel the selection of the applicants.

9. In **RASHMI METALIKS LTD's** case, the Hon'ble Supreme Court has referred to the case of **MOHINDER SINGH GILL & ANR Vs. THE CHIEF ELECTION COMMISSIONER, NEW DELHI & ORS, AIR 1978 SC 851**, where Their Lordships have observed as under:-

“8. The second equally relevant matter is that when the statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenged, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:

“9....public orders, publicly made in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public order made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

The ratio laid down in Mohinder Singh Gill's case (supra) is in fact applicable to the present set of facts. After perusal of the

orders of cancellation of the selection, we found that the reasons given therein are confined to only the Government Resolution dated 13.6.2018, that the life of the select list is only for a period of one year and it is expired. However, as rightly pointed out by the learned counsel for the applicants in the affidavit in reply filed by the Respondents the second reason mentioned is that as per G.R dated 4.5.2020 it is not possible for the Respondent-State on account of financial constraints to give new appointments hereafter. The Finance Department by the G.R dated 4.5.2020 has banned appointments in all the Departments, except Public Health Department and Medical Education Department. The said ban is still in force. Thus, the Respondents have expressed that they are powerless to give extension to the select list. It is not a correct stand.

10. In the case of **R.S. MITTAL Vs. UNION OF INDIA, 1995 Supp (2) SCC 230**, appeal was preferred before the Hon'ble Supreme Court in respect of selection of the candidate for appointment to the post of Judicial Member, Income Tax Appellate Tribunal, whose name is appearing in the select list. His name was recommended by the Selection Board in the year 1988. However, the Central Government did not make any appointment and issued fresh advertisement for the same in the year 1990. The appellant challenged the advertisement before the Central Administrative Tribunal that he should be appointed as a Judicial Member, I.T.A.T. The Tribunal had dismissed the application on the ground that the recommendations or mentioning name in the select list does not give any right to the applicant and secondly on the point that that the life of the Select Panel cannot go beyond 18 months which expired in July, 1989. The Hon'ble Supreme Court, set aside the said order and observed as under:-

“It is no doubt correct that a person on the select- panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority

cannot ignore the select-panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select-panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.”

11. In the Judgment of the **Hon'ble High Court of Judicature at Bombay Appellate Side, Bench at Aurangabad in RAJABHAU SHAMRAO CHAVAN Vs. THE STATE OF MAHARASHTRA & ANR, WRIT PETITION NO.6902 OF 2010 DATED 04.10.2010**, the Petitioner sought the order that his appointment order be issued on the post of Parichar, Class-IV. The advertisement was issued on 8.5.2006 for 143 vacancies of Parichar. The Petitioner has cleared the written examination and interview. The Government cancelled the entire process on 10.3.2008 on account of alleged mal practices. Some of the candidates approached the Court and the Court directed the Government to complete the entire selection process. Thereafter, waiting list was prepared on 24.8.2009 and the name of the applicant, who belonged to VJ(A) category was included in the waiting list. However, he was not given the appointment on the ground that waiting list which published on 24.8.2009 has lapsed after one year as per G.R dated 19.10.2007. The Respondent-State has given a reason that as per G.R dated 5.6.2010 the appointments of Class-III & Class-IV employees are stayed for a period of one year by the Government due to poor economical conditions and so the petitioner was not

given appointment. However, the Hon'ble High Court observed as under:-

“Reliance on the Government Resolution dated 5.6.2010 placed by the respondent No.2 is unsustainable and cannot be countenanced inasmuch as the said Government Resolution was issued much later in point of time from the date when the recruitment process was over and when the petitioner ought to have been issued an appointment order along with the other candidates, who were given appointment orders from the other categories, who were similarly circumstanced. The respondent No. 2 also cannot take shelter under the Government Resolution dated 19.10.2007 to contend that the wait list had lapsed after a period of one year from its publication. The respondents cannot be allowed to take advantage of their own wrong.”.

We find the ratio laid down in the said case useful in the present case as the process of publishing the select list has taken place in June, 2019 and some of the candidates were given appointments and they have also started working. However, the present applicants though they are similarly situated could not be given appointment because Government offices could not function due to Covid-19 Pandemic situation. We make it clear that it is not the inaction of the Respondent-State as we fairly understand the genuine difficulty of the Departments of the Respondent-State to function during Covid-19 Pandemic. In the State of Maharashtra, especially spread of Covid-19 the mortality rate in the first and second wave was very high. However, when non-functioning of the Government Departments is justified in Covid-19 Pandemic, the same relaxation/concessions is also to be advanced in favour of the present applicants.

12. In the judgment **of the Hon'ble Bombay High Court, Aurangabad Bench in the case of Ashok Arjunrao Khillare Vs. State of Maharashtra & Ors, W.P 10330 of 2017**, the Petitioner sought directions against the Respondent-State to conclude the recruitment process for the post of Clerk pursuant to the

advertisement dated 7.12.2011, to fill up the backlog in the reserved category. The Petitioners' names were included in the wait list. The documents were verified in March-April, 2015. The Committee approved the select list on 20.4.2015 for issuing the orders of appointment. However, the Minister of Agriculture, stayed the entire process telephonically. Thereafter, the Hon'ble Minister vacated the stay to the recruitment process on 2.7.2016. However, no orders of appointment were issued as the select list lapsed in between i.e. after one year. The Division Bench of the Hon'ble Bombay High Court observed that 52 of the candidates in the select list were already given the appointments and there were 13 vacant posts and the recruitment process was stayed under the order of the State Government. Under such circumstances, the Division Bench allowed the Writ Petition only on the ground that the select list was published prior to the stay granted by the Hon'ble Minister.

In the present case also the names of the applicants are included in the select list/wait list and as on today 215 posts are still vacant. So the Respondent-State cannot shirk from giving the appointments to the present applicants.

13. We in fact have passed orders from time to time, and the time of hearing in the orders dated 18.10.2021 and 16.11.2021 have specifically pointed out the order passed by the Hon'ble Supreme Court in M.A 665/2021 in Suo Moto W.P (Civil) No. 3/2020. The Hon'ble Supreme Court by order dated 23.9.2021 has taken suo moto cognizance of the pandemic and extended the limitation of filing suit, appeal, application or the proceedings by excluding the period from 15.3.2020 till 21.10.2021. Thus, the period of 1 ½ years is not to be computed as period of delay under the Limitation Act. In view of this cognizance taken by the Hon'ble Supreme Court relaxing the period of limitation for filing suit,

appeal, application or proceedings which is mandatory in the Limitation Act, we think that the said directions can also be made applicable mutatis mutandis by the Respondent-State to the delegated Legislation, which is the Government Resolution. The Hon'ble Supreme Court has also further specifically mentioned that the directions are issued by the Hon'ble Supreme Court under Articles 141 and 142 of the Constitution of India. In the present case, learned Presenting Officer, based on the instructions, advanced the submissions that the directions given by the Hon'ble Supreme Court were limited to the litigants who intended to file suit, applications, appeals and other proceedings for which period of limitation are prescribed under the general law of limitation of special laws and such reliefs are granted by the Hon'ble Supreme Court by exercising powers under Article 142 read with Article 141 of the Constitution of India. Therefore, such relief is not available to the Petitioner. We are aware that the Administrative Tribunal has to work within the limited parameters having limited powers of the judicial review which is restricted to the service jurisprudence and it has to perform a supplementary function to the High Court as held by the Hon'ble Supreme Court in the case of **L. CHANDRA KUMAR Vs. UNION OF INDIA & ORS, 1997 (2) SCR 1186**. We make it clear in these proceedings there is no issue of challenge to the said G.R dated 13.6.2018 but of relaxation of the date. The prayers are made only for the appointment of the applicants who were rejected on the ground that the select list is invalid after one year. We are quite surprised to come across the approach taken by the Respondents that they are powerless to give appointments to the applicants when 215 vacancies are available out of the posts which were advertised by the Respondents themselves and the names of the applicants are appearing in the select list/wait list. The reason for not giving the appointment to the applicants when the vacancies were available was only one that all the Government

offices stopped functioning due to nation wide lockdown. The lockdown gradually was partially lifted. However, till today all the departments and the machinery are working with certain restrictions which are to be followed. However, State of Maharashtra has started normal functioning as on today. Thus, it was not a fault on the part of the applicants who have appeared for the examination and cleared it. The verification of the documents of some of the applicants was done before and after the lockdown of the Covid-19 Pandemic physically or on-line. We point out the instances where the Respondent-State has modified the procedure under certain Acts for i.e. The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005, (ROTA) wherein the transfer of Government servants are to be made only during April or May. However, though it is a State Legislation, by special order it was modified and the transfer of the Government servants in State of Maharashtra were made after July 2021 till September, 2021. Thus, it is absurd to say that the Respondent-State has no powers to appoint these applicants when unprecedented Covid-19 Pandemic leading to nation-wide lock down. The reason of non-functionality due to Covid-19 Pandemic should have unqualified application to every duty/work in the Government. The Respondents cannot be selective in taking concession of doing less work in some matters and taking a very technical approach of time limit in some matters. The flexibility in the work schedule is the compulsive demand of the medical emergency due to Covid-19 Pandemic. Thus taking inconsistent stand of issuing orders to some similarly situated persons and denying others amounts to breach of Article 14 of the Constitution of India.

14. Further, we also take support of the judgment in **KALAMATI R. YADAV's case (supra)**, wherein the Petitioner challenged the

order of her disqualification by order dated 23.6.2021 passed by the Respondent-Corporation on the ground that she could not submit her Caste Validity Certificate, as the Petitioner is elected on 23.6.2019 from the reserved seat. The issue involved section 5B of the Maharashtra Municipal Corporation Act of 1949, under which the candidate contesting the elections, who has applied to the Caste Scrutiny Committee for verification of Caste Certificate can also file nomination and contest the election provided Caste Validity Certificate is produced within a period of 12 months from the date of election of such person. The Petitioner was elected and it was not disputed that when the Petitioner filed her nomination paper, she had applied to the Caste Scrutiny Committee to grant Caste Validity Certificate. However, she could not get the Certificate within time a period of 12 months from being elected and the said period expired on 23.6.2020. She challenged the order on the ground that the stand taken by the Respondents that there was a sudden countrywide lock-down imposed on 22.3.2020 followed by Covid-19 Pandemic, the Caste Scrutiny Committee could not hold sittings and the application filed by the Petitioner could not be decided. The Respondent-Corporation has given the reason that the requirement of Section 5B of the Act were mandatory and for want of compliance she was held disqualified. The Hon'ble High Court upheld the submission that the issuance of the Caste Validity Certificate within the aforesaid period of 12 months could not be attributed to the Petitioner and due to unprecedented Covid-19 Pandemic, the situation is to be treated and taken out of Section 5B of the said Act. The Hon'ble High Court has also referred to the directions given by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No. 3/2020, dated 23.3.2020, which is reproduced below:-

“23. The circumstances created by the COVID-19 crisis adversely affected the entire globe and human kind at large, thereby showing that it could not be said that the petitioner

was faced with individual hardship. The scale of the crisis is unprecedented, due to which the highest Court of the land was required to issue hitherto unknown directions. Due to the challenge faced by the entire country on account of COVID-19 crisis, the Hon'ble Supreme Court took suo motu cognizance and initiated proceedings in Suo Motu Writ Petition (Civil) No. 3 of 2020. In the order dated 23.3.2020, passed in the said proceeding, the Hon'ble Supreme Court took note of the situation and the resultant difficulties faced by the litigants across the country. To obviate such difficulties, the Hon'ble Supreme Court in the said order directed as follows:-

“This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/ all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceeding, irrespective of the limitation prescribed under the general law or Special laws whether condonable or not shall stand extended w.e.f 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities. This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.”

15. It was necessary to understand the said directions, where it is specifically mentioned that to file such proceedings in respective Court and Tribunals across the country including this Court, the limitation law is also made flexible to the other proceedings which is considered by the Hon'ble High Court. Further, the situation of

Pandemic is a national calamity and due to the effects of national calamity it is impossible for the Respondent-State so also the citizens to function. The Hon'ble High Court In **Kalamati's case (supra)** has given answer to such situation as under:-

“28. There is another angle from which the peculiar facts and circumstance of the present case can be viewed. The principle of *impotentia excusat legem* i.e. when there is a disability that makes it impossible to obey the law, the alleged disobedience of law is excused, is recognized in jurisprudence. This principle has been referred to in a recent judgment of the Hon'ble Supreme Court in the case of *Arjun Panditrao Khtkar v. Kailash Kushanrao Gorantyal*, wherein it has been that the mandatory requirement of law is to be excused when it is demonstrated that despite all efforts made by the party required to satisfy the mandatory requirement, due to no fault of such person, the requirement could not be satisfied. In the said case, the party had made all efforts for grant of requisite certificate under the provisions of the Evidence Act, but the concerned authority which was supposed to issue the certificate failed to issue the certificate to the party.”

Therefore, we say that the Respondent State also cannot be blamed for not issuing the appointment orders during the pandemic period. However, not considering the candidates in the select list on the ground that the select list is lapsed is not legal. While dealing with such matters when the representations are made to the Respondent-State, the situation is required to be understood and legal decision is required to be taken coupled with humanitarian approach.

16. Thus, giving appointment to these applicants beyond one year, i.e. after expiry of the select list or wait list is not illegal. On the point of applicability of the ratio laid down in **MOHINDER SINGH GILL's case (supra)**, we accept the submission of both the learned counsel for the applicants. However, there is a compelling circumstances for us to consider one more reason which is mentioned in the affidavit of Shri Sanjay Patil, and which is

categorically argued before us by the learned P.O, that is ban on recruitment under G.R dated 4.5.2020. The G.R dated 4.5.2020 was issued by the Finance Department on the background of Covid-19 Pandemic. The Covid-19 Pandemic has disturbed the financial conditions of the State of Maharashtra and therefore, the Finance Department has issued G.R with a view to cut the expenses and save the treasury. By this G.R, expenditure under various heads is given a cut. Clause 14 of the said G.R, prohibits the recruitment in all the Departments except Public Health Department and Medical Education Department. Under clause 15, in the year 2020 the transfers of Government servants were also not permitted. This G.R is a policy decision of the State of Maharashtra. Thus, it is a right policy decision taken by the Respondent-State in these critical times. The Respondent-State has to shoulder great responsibility and has all powers about the management of the funds of the State and the Courts cannot interfere and disturb the said policy which will disturb the restrictions on the expenditure.

17. However, certain facts are brought to our notice by both the learned counsel for the applicants, which we need to place it on record. The orders of appointments of Talathis are placed before us. It was pointed out that the recruitment process of Talathis in the State of Maharashtra was going on in 2020. However, the procedure of recruitment of Talathis in eight Districts was stopped due to Covid-19 Pandemic. However, the said restriction of G.R dated 4.5.2020 was lifted in 2021 by the Respondent-State and the Talathis in the said eight Districts, Aurangabad, Nanded, Nandurbar, Dhule, Ahmednagar, Beed, Solapur and Satara were given appointments. Learned counsel for the applicants pointed out that at certain places, teachers are also appointed. We would like to rely on the affidavit in reply filed by Suchitra Rane, Under

Secretary, G.A.D, dated 17.11.2021 wherein she has discussed about the temporary ban on recruitment process by G.R dated 4.5.2020 of the Finance Department. She has mentioned in her affidavit in reply that the said restrictions on the recruitment are still in place and are not withdrawn. We reproduce the relevant portion as stated in para 4 as follows:-

“Similarly, as per the Government Resolution dated 4.5.2020, of the Finance Department restrictions on recruitment are still applicable. Respondent no. 1 has opined on the file of Finance Department that if there is necessity of filing the above mentioned post to the Finance Department, it would be appropriate for the Finance Department to take a decision at the competent level regarding the appointment of the candidates under consideration.”

Thus, G.A.D has left this decision with the Finance Department regarding appointment of the candidates. Similarly, we also rely on the letter dated 17.8.2020 of Mr J.R Menon, Director, Accounts and Treasuries, addressed to the Principal Secretary, Accounts and Treasury, Finance Department, Mantralaya, Mumbai, where the G.R dated 4.5.2020 was referred to and it was pertaining to the recruitment process of 2019, which is the subject matter of these Original Applications. Mr Menon, has specifically mentioned that though there is a ban on recruitment process due to the G.R dated 4.5.2020, it is not correct to stop the recruitment process and appointments of the candidates in the select list/wait list, which was initiated vide advertisement of 2019. The select list/wait list is prior to Covid-19 Pandemic and therefore, these appointments cannot be covered as new recruitment under G.R dated 4.5.2020. He has specifically opined that the permission is to be given to appoint these candidates else, this will give rise to litigation. He has sought the said permission. However, it appears that the permission was rejected. Thereafter the Respondent-State has rejected the request

of Mr Menon, Director, Accounts and Treasury by giving reasons in August 2021 that the select list is lapsed.

18. On the background of these letters, we are of the view that the applicants are entitled to claim their appointment in view of the judgments of the Hon'ble Supreme Court referred to above. Needless to say that giving jobs to eligible unemployed candidates who have successfully cleared the examination amounts to uplifting the financial wellbeing of the people in the State of Maharashtra. It is also matter of humanitarian approach. We have requested the State Government again and again to consider the peculiar situation and the national calamity and the issue of unemployment in the State. However, the Respondent-State has taken a very technical approach which is unsustainable from the point of law and justice.

19. In the present case, these candidates have witnessed that other candidates who have cleared the examination similarly situated were given appointments from June, 2019 to March, 2020. Their documents were also verified in March, 2020 and the documents of some of the applicants were verified during the pandemic i.e. in June, 2020. The case of the Applicants is also covered under the doctrine of legitimate expectations. In the case of ***M/s. Ambuja Cements Ltd. Versus State of Himachal Pradesh reported in AIR 2019 HP 4***, legitimate expectation has been described in Halsbury's Laws of England, 4 Edition, in the following words :-

“81. Legitimate expectations. - A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the

authority, including an implied representation, or from consistent past practice.”

True that it is not being the right in enforcing as such, however the expectation ordinarily flows from a promise or established practice. As per the G.R. of 2018 the procedure of wait list in other Rules is generally for one year and the State has been practicing to keep up that promise to give appointments to the candidates in the select list, if there are vacancies during the life of the select list. This is the established practice. The applicants expect on the basis of earlier practice and promise that they would get appointment within one year as the vacancies are available. Had there not been a pandemic situation the Respondent-State would have definitely issued the appointment orders to all these applicants. Thus, there was only one hindrance i.e. lockdown due to pandemic. However, it is answered by the Hon'ble Supreme Court in *Suo Motu W.P (Civil) No. 3 of 2020* by relaxing the limitation and so also by the Hon'ble High Court in the case of **Kalmati Ramkrupal Yadav Versus Chandrapur City Municipal Corporation reported in (2021) 4 AIR Bom R 788.**

20. In view of the above, we pass the following order:-

- (a) The impugned orders dated 9.8.2021, 11.8.2021 and 12.8.2021 and all other orders in this respect in all the Original Applications informing the applicants that the select list/wait list is cancelled are unsustainable in law and hereby are quashed and set aside.
- (b) The Respondent-State shall issue the appointment order of the applicants after four months or when the ban on the

recruitment as per G.R dated 4.5.2020 is withdrawn/lifted, whichever is earlier.

- (c) The process of the appointment thereafter should be completed within four months.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 30.11.2021
Dictation taken by : A.K. Nair.