

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NOS 451 & 631 OF 2022
DISTRICT : NASIK**

1. ORIGINAL APPLICATION NO. 451 OF 2022

Harshada Raghunath Gangurde)
Occ-Student, R/at 5, Deeplaxmi Row)
House, Near Samrat Sweets, Indira Nagar,)
Wadala Pathardi Road, Nasik-09.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Soil and Water Conservation Dept,)
Mantralaya, Mumbai 400 032.)
2. The Secretary,)
M.P.S.C, 5th, 7th & 8th floor,)
Cooperage Telephone Exchange Bldg,)
Maharshi Karve Road, Cooperage,)
Mumbai 400 021.)
3. Asmita Sidaram Koli,)
R/at : Plot No. T-18, Pratap Nagar,)
Near Suraj Port, Shahanurwadi,)
Durga Road, Aurangabad 431 005.)
4. Snehal S. Sawasakade,)
R/at: Ward No. 6, C/o: Saroj Meshram)
Old Bus Stop Road, Samata Colony,)
Near BSNL Office, Chandrapur,)
Nagpur 441 205.)...**Respondents**

2. ORIGINAL APPLICATION NO. 631/2022

Pranil Vishnu Topale,)
 Occ-Student, R/at Row House No. 124-A)
 Sector- 2E, Airoli, Navi Mumbai 400 708.)...**Applicant**

Versus

1. The State of Maharashtra)
 Through the Secretary,)
 Soil and Water Conservation Dept,)
 Mantralaya, Mumbai 400 032.)
2. The Secretary,)
 M.P.S.C, 5th, 7th & 8th floor,)
 Cooperage Telephone Exchange Bldg,)
 Maharshi Karve Road, Cooperage,)
 Mumbai 400 021.)
3. Shri Nitin Pundalik Dhum,)
 R/at : Flat no. 8, Shriya Apt,)
 Denavijay Colony, Sambhaji Chowk,)
 Near City Centre Mall, Nasik-422002)... **Respondents**

Shri S.S Dere, learned advocate for the Applicants.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

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

DATE : **24.03.2023**

J U D G M E N T

1. Both the Original Applications are heard together and disposed of by a common order as the issues involved are same regarding the opting out policy implemented by M.P.S.C.

2. The applicant in O.A 451/2022 prays that the Respondent no. 2, be directed to revise the result by cancelling the names of the selected candidates, i.e., Asmita Koli and Snehal Sawsakade, Respondents no 3 & 4, pursuant to final recommendation list and give appointment to the applicant in S.T-female category. The applicant in O.A 631/2022 prays that the Respondent no. 2 be directed to revise the result by cancelling the name of selected candidate Mr Nitin P. Dhum, Respondent no. 3. Both the applicants are aspiring to be appointed as Assistant Engineer pursuant to the advertisement No. 5/2019 dated 3.4.2019.

3. Learned counsel for the applicants have submitted that the advertisement for the Maharashtra Engineering Service Examination 2019 for multiple posts for Group A and Group-B post was issued on 3.4.2019. The Preliminary Examination was conducted on 23.6.2019 and the Main Examination on 30.9.2019. The applicants cleared both the Preliminary and the Main Examination. The applicants were short listed and called for interview. The Respondent-State published the final recommendation list on 13.4.2022, wherein the applicant's name was not there. Learned counsel has submitted that the applicant in O.A 631/2022 secured 190 marks and stood at Merit No. 2922. The cut-off marks for the S.T category is 191 marks. However, Mr Nitin P. Dhum, Respondent no. 3, in O.A 631/2022, secured 196 marks, (Merit No. 2805) and he was selected in the final recommendation list from S.T category. Learned counsel for the applicant has submitted that Mr Nitin P. Dhum, Respondent no. 3, though he was earlier selected and he is working as Junior Engineer, P.W.D, Nasik, his name was again included in the revised recommendation list dated 10.6.2022. Learned counsel for the applicant has submitted that the MPSC has issued Circular dated 16.11.2021, informing all the candidates should opt out

wherein if any candidate is selected for two posts or he is already working in any other Government establishment. Thereafter, Respondent no. 2, MPSC, issued pronouncement for opting out on 12.2.2022, 15.2.2022 and 16.3.2022. But Respondent no. 3 did not fill the form in time for opting out and hence the applicant lost his chance.

4. The applicant in O.A 451/2020 has filled the form in S.T, Female category. Learned counsel has submitted that the applicant cleared both the Preliminary and Main Examination. She was called for interview on 12.10.2021 and on 13.4.2022, Respondent no. 2 published the final recommendation list, wherein the applicant's name did not appear. The cut off marks for ST, Female category is 167 marks and the applicant secured 165 marks (Merit No. 3243). In the General Merit list, Ms. Asmita S. Koil, Respondent no. 3, secured 183 marks (Merit No. 3041) and Ms Snehal S. Sawsakade, Respondent no. 4, secured 169 marks (Merit No. 3213). Both are from S.T female category. Learned counsel has submitted that both the Respondents no 3 & 4 have not given their choice of opting out and they are already working in the Water Resources Department, in Nasik Region and Amravati Region respectively. Therefore, the Respondents no 3 & 4 have not joined as per the recommendation list and thus two posts are vacant in S.T female category.

5. Learned counsel for the applicants has submitted that the name of the applicants be recommended by M.P.S.C for appointment to the post of Assistant Engineer on the ground that the private Respondent no. 3 in O.A 631/2022 and Respondents no 3 & 4 in O.A 451/2022 are already appointed in Government service pursuant to the earlier selection process. This being multi-cadre examination, no waiting list is prepared and maintained. By

Notification dated 12.2.2022 the applicants were required to submit on-line the Post preference/opting out and web link and it was made available from 12.2.2022 to 20.2.2022. Learned counsel has submitted that the private Respondents have not opted out though they were selected in the earlier selection process, hence in the result the present applicants who are otherwise entitled to be appointed in the event of opting out of Respondents, are kept out of the select list. Learned counsel for the applicants has submitted that the object of the issuance of the Notification is to be taken into account by M.P.S.C itself. The purpose behind is to exhaust all the posts advertised by giving more opportunity to the candidates since there is no provision of wait list in the multi-cadre examination. Thus, the names of the Respondents who are already selected and got appointed to the same post in the earlier selection process, their names should not appear in the present select list. The private Respondents did not choose the 'Post preference' and therefore it appears that they were not interested in getting selected and appointed in the process of selection of 2019. Thus, the benefit of the situation is to be given to the applicants. Learned counsel for the applicant submitted that Mr Nitin Dhum, Respondent no. 3, in O.A 631/2022, has given the option on 22.6.2022 for not joining after three months.

6. Learned counsel for the applicants has relied on the averments made in para 6.10 of the Original Application that his case is to be considered on the ground of Article 16 of the Constitution of India. The provision regarding opting out was first introduced on 16.11.2021. The intention and object of MPSC of issuing the opting out provision is with a view that the post should not remain vacant and therefore the opting out provision was introduced.

7. Learned C.P.O for the Respondents drew our attention to the pronouncement dated 16.11.2021 of M.P.S.C wherein the choice of opting out was made available in the selection process. In the reply filed by MPSC, the Respondents have not made submissions about maintaining the waiting list. Respondent no. 3, Mr Nitin Dhum has not opted out within time framed by M.P.S.C, and therefore, the request of the applicants cannot be considered. Learned C.P.O, relied on the affidavit in reply dated 18.1.2023 filed by Shri B.P. Mali, Under Secretary in the office of Secretary, M.P.S.C, Mumbai. Learned C.P.O submitted that there is no violation of the applicant's right by the Commission. It is the choice of the properly selected candidate to opt out from the selection process or not. Learned C.P.O has further submitted that the Commission itself cannot delete the name of the selected candidates from the result, if the candidate does not opt for it through due procedure of opting out, which is on-line procedure. Learned C.P.O relied on clause 5 of the Circular dated 16.11.2021, wherein it is clearly stated that it is mandatory for the candidate to give the choice of 'opting out' from the selection process through the on-line system of the Commission within the specified period and no other procedure for 'opting out' from the selection process will be accepted or taken into consideration by the Commission.

8. The relevant sub-rule 8(a) of Rule 10, is reproduced below:-

"10. Appointment of Interview Committee and declaration of result.....

8(a) In case of recruitment by Competitive Examination wherever multiple cadre posts are involved the reserve list shall not be maintained. The posts fallen vacant due to non-acceptance of the offer of appointment by the candidates recommended, shall be filled in through subsequent Competitive Examination. When only single cadre is involved for selection by competitive examination, the reserve list shall be maintained for a period of one year from the date of declaration of result or up to the publication of

subsequent advertisement for recruitment to the same post, “whichever” is earlier.”

Learned counsel for the applicants has submitted that there is no enabling provision to make changes in the rule and even there is no opting out or relaxation in the rules. Despite this, the provisions of opting out was made. Learned counsel for the applicant further relied on Rule 18, which is reproduced below:-

“18. Matters not regulated:- In dealing with the matters for which no provision is made in these Rules, the Commission may regulate the proceeding in such a manner as they deem fit.”

9. Pending this Original Application, Mr Nitin P. Dhum, Respondent no. 3, who was present before this Tribunal has submitted in writing on 28.2.2023, wherein he has stated that he has already been appointed in Government service in the year 2017 through direct recruitment and working as Junior Engineer in P.W.D, Nasik Division and so he gave letter to MPSC on 22.6.2022 that his recommendation be cancelled. The said letter dated 28.2.2023 is taken on record and marked as Exh. 1. The laudable procedure introduced by M.P.S.C of opting out dated 22.10.2021 cannot be implemented due to the non adherence to the procedure by the candidates.

10. We have considered the case of the applicants very sympathetically. For the Examination of 2019 for filling up Multi cadre posts the M.P.S.C by pronouncement dated 12.2.2022 and 15.2.2022 had given the choice for opting out which was extended from 16.3.2022 to 21.3.2022. Mr Nitin Dhum, Respondent no. 3 in O.A 631/2022 did not take recourse of opting out, though he was in the merit list published on 22.2.2022 and final recommendation list dated 10.6.2022. He is already in service

working as Junior Engineer, Public Works Department, Nasik. However, he did not want to join and refused the recommendation. He should have communicated his choice of opting out during the period notified and prescribed by M.P.S.C. The learned counsel has rightly pointed out to Rule 18 of the 1983 Rules which is an enabling provision for M.P.S.C to take certain policy decision for effective implementation of the recruitment process. M.P.S.C made a very good policy of opting out with a view to make the posts available to more and more candidates in the Government sector. However, it is also mentioned in the policy that such time for opting out cannot be extended for a long period but it is restricted to that particular period which is prescribed by M.P.S.C. We do agree with the submissions of learned counsel for the applicants that the actual benefits of opting out process should reach to the candidates who are the next meritorious in the merit list. However, we cannot go beyond the procedure laid down by M.P.S.C, wherein it is specifically stated about the implementation of the opting out policy of the M.P.S.C. The email sent by Respondent no.3, dated 16.2.2022 cannot be said as opting out. The application dated 22.6.2022 sent by Respondent no. 3 is beyond the time limit prescribed by M.P.S.C.

11. On our query, the learned C.P.O has produced the proposal regarding the opting out policy, which was accepted by the Government. In the said proposal it was mentioned that the candidates who wants to opt out should himself apply and take decision, rightly so as the decision of opting out should be expressly voluntary. Further Respondents no. 3 & 4 in O.A 631/2022 have not given their choice of opting out till today though they are already in the Government service. Thus, two posts are vacant and the applicant is first meritorious person in merit. The case of the applicant cannot be considered as both the

Respondents no 3 & 4 have not given their choice of opting out within the time limit prescribed by M.P.S.C.

12. It won't be out of place to point out to the M.P.S.C that as per Rule 8A in Multi-cadre posts to avoid a chaotic situation, no waiting list can be maintained. However, the introduction of opting out is a laudable decision taken by M.P.S.C, hence M.P.S.C needs to be vigilant about the effective implementation of the opting out policy so that when the candidates like the Respondents in the present case do not go for opting out then resultantly the posts remain vacant and the eligible candidates who otherwise would have been in the merit list do not get the fruits of this opting out policy. We suggest that M.P.S.C should look into this aspect and find out some solution for effective implementation of the opting out policy.

13. In the result, we find no merit in both the Original Applications and they stand dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 24.03.2023
Dictation taken by : A.K. Nair.