

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

ORIGINAL APPLICATION NO. 431 OF 2016

WITH

MISC. APPLICATION NO. 153 OF 2017

DISTRICT : KOLHAPUR

Dr. Adhikrao s/o. Dhanaji Jadhav)
Age: 53 years, Occ. Assistant Professor,)
R/o. B-5 Teacher Quarters, Shivaji University,)
Kolhapur-416004.)...**Applicant**

VERSUS

1. The State of Maharashtra,)
Through, The Principal Secretary (Textile),)
Department of Co-operation, Marketing)
& Textile, Mantralaya, Mumbai- 400 032.)
2. Maharashtra Public Service Commission,)
Through its Secretary,)
5,7,8 Cooprage Telephone Wing Building)
Mumbai-400 021.)
3. Shri Shivraj Arunkumar Ghorpade,)
Age: major, Occ.: service Joint Chief)
Executive Officer, Officer of the Vasundhara)
Water Shed Development Agency, 1st Floor,)
Central Administrative Building,)
Pune 411001.)

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4. Shri Bhimppa Basappa Mastoli,)
Age: major, Occ.: service)
Superintending Agriculture Officer,)
Office at Trade Center, New Shahupuri)
3rd floor, Kolhapur-416001.) **Respondents**

Shri N.D. Batule, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : **Shri Rajiv Agarwal, Vice-Chairman**
Shri R.B. Malik (Member) (J)

DATE : **09.08.2017.**

PER : **Shri Rajiv Agarwal (Vice-Chairman)**

J U D G E M E N T

1. Heard Shri N.D. Batule, learned Advocate for the Applicant, and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. This O.A. has been filed by the Applicant seeking recommendation from the Respondent No.2 for appointment to the post of Director of Sericulture, M.S. from the waiting list.

3. Learned Counsel for the Applicant argued that the Respondent No.2 has issued advertisement for the post of Director of Sericulture, Maharashtra State on 15.07.2015.

The Applicant had applied for the aforesaid post and was interviewed by the Respondent No.2 along with others. The result of the selection process was declared by the Respondent No.2 on 22.04.2016 and the Applicant was placed at Sr. No. 3 in the list. The person at Sr. No. 1 was recommended by the Respondent No. 2 for appointment to the post of Director. The Selection process was not fair and the selection of the Respondent No.5 may be quashed.

4. During the pendency of this O.A., the Applicant filed in M.A. No. 153/2017 and he effectively abandoned the challenged to the selection list published by the Respondent No.2 on 22.04.2016. The Applicant prayed that the Respondent No.2 may be directed to recommend his name, as the person who was recommended by the Respondent didnot join the post. The person at Sr. No.2 viz. Shri B.B. Mastoli has also informed the Respondent No.1 in writing that he is not interested in joining the post. The Applicant is third in the merit list and therefore he may be recommended for appointment to the post of Director.

5. Learned Presetting Officer (P.O.) argued on behalf of the Respondents that the list for selection to the post of Director was valid upto 21.04.2017. This Applicant was not placed on the waiting list. There is no procedure that a person way down the merit list is offered appointment, if persons above him in the list do not join the post. In the present case, Shri Ghorpade was recommended by the

Respondent No.2 by letter dated 27.04.2016 for appointment to the post of Director. However, Shri Ghorpade did not join. The Government did not offer appointment to the person next in the list. The question of offering it to the Applicant does not arise. The Government has now decided to fill the post of Director of Sericulture by posting an officer belonging to the India Administrative Service. The Applicant has no claim to the post, as he was neither on the top of the merit list or not even as at Sr. No.2. Initially he was challenging the selection process and when he came to know that the selected person has not joined and person next in the list is not interested, he has filed this M.A., seeking a totally different relief.

6. The Respondent No.1 was asked to place on record copies of file notings regarding appointment to the post of Director of Agriculture. It is seen that as recommended by the Respondent No.2, an appointment letter was issued to Shri Ghorpade. He was asked to undergo medical examination. However, Shri Ghorpade did not appear before the standing Medical Board at Kolhapur. As Shri Ghorpade did not join the post of Director, he was again asked to join within 30 days by letter dated 13.10.2016. However, he did not join. On 26.12.2016, the Respondent No.1 wrote to the Respondent No.2, seeking advice whether to appoint a person from the waiting list or to issue a fresh advertisement. The reply of the Respondent No.2 was given on 06.03.2017, and it was informed that if the name from waiting list was called, it should be done up to 21.04.2017. The Respondent No.1

could not take a final decision to seek recommendation from M.P.S.C. from the waiting list till 21.04.2017. It was, thereafter, decided by the Respondent No.1 to fill the post of Director by posting on I.A.S. officer. The moot question is whether the Applicant has any vested right to be appointed as Director of Sericulture, when he was not recommended by M.P.S.C. He was not even number 2 in the merit list. Though the Respondent No.2 was contemplating calling name of a candidate from the Respondent No.2 from the waiting list, it was not done during the validity of the waiting list. The Applicant would not have been eligible to be recommended from waiting list also. His case is based on his claim that the person at Sr.No. 2 in the merit list had also declined to join the post. However, this assertion, even if true, is of no consequence as the person at Sr. No. 2 in the Merit list was never offered appointment by the Respondent No.1, as he was never recommended by the Respondent No.2. The whole claim of the Applicant is based on conjectures and surmises.

7. Hon'ble Supreme Court in the case of **Union of India & others Vs. S. Vinodh Kumar & others: (2007) 8 SCC 100** has held that a wait listed candidate has no vested right to be appointed. In the present case, the Applicant was not even wait listed. He was no.3 in the merit list for a solitary post. He has no legal right to claim that the Respondent No.2 should recommend his name and the Respondent No.1 should appoint him as Director.

8. The Applicant in the O.A. has challenged the very merit list dated 22.04.2016 finalised by the Respondent No.2. However, after coming to know that the recommended candidate has not joined and perhaps the person next in the merit list may also not join, he has in effect abandoned the reliefs sought by him in the O.A. and substituted those reliefs by the relief in M.A. We are not convinced that the Applicant has made out a case for our interference. We are not inclined to give any instructions or directions to the Respondents.

9. Having regard to the aforesaid facts and circumstances of the case, this O.A. and M.A. are dismissed with no order as to costs.

Sd/-

(R.B. MALIK)
MEMBER (J)
09.08.2017

9-8-17

Sd/-

(RAJIV AGARWAL)
(VICE-CHAIRMAN)
09.08.2017

Date : 09.08.2017

Place : Mumbai

Dictation by : N.M.Naik