

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

DISTRICT: PUNE

ORIGINAL APPLICATION NO.788 OF 2018

1. Shri Sandeep V. Palve)
O/of Deputy Commissioner of Labour,)
Pune Mumbai Road, Bungalow No.5,)
Shivajinagar – 411 005.)
2. Shri Dadarao S. Chavhan)
O/of Assistant Labour Commissioner,)
Gramodhar Bhavan, 168, Raviwar Peth,)
Powai Naka, Satara – 415001.)..... **Applicants**

Versus

1. The State of Maharashtra, through)
The Principal Secretary (Labour))
Industries, Energy and Labour Depart.)
Mantralaya, Mumbai – 400 032.)
2. The Additional Labour Commissioner,)
Pune Division, Bungalow No.5,)
Pune – Mumbai Road, Shivajinagar,)
Pune – 411 005.).....**Respondents**

With

ORIGINAL APPLICATION NO.789 OF 2018

1. Shri Gajanan Damodhar Dhakne)
R/at C/o. Shri Gajanan Nagare,)
Flat No.310, Saptagiri Heights, Opp. Old Orbis)
School, Keshavnagar, Mundhwa, Pune 411036)

Versus

1. The State of Maharashtra, through)
The Principal Secretary (Labour))
Industries, Energy and Labour Depart.)
Mantralaya, Mumbai – 400 032.)

2. The Additional Labour Commissioner,)
 Pune Division, Bungalow No.5,)
 Pune – Mumbai Road, Shivajinagar,)
 Pune – 411 005.).....**Respondents**

Smt. Punam Mahajan, the learned Advocate for the Applicants.

Smt. Kranti Gaikwad, the learned Presenting Officer for the Respondents in O.A. No.788/2018.

Smt. Archana B. K., the learned Presenting Officer for the Respondents in O.A. No.789/2018.

CORAM : JUSTICE SHRI A. H. JOSHI, CHAIRMAN
 SHRI P. N. DIXIT, MEMBER (A)

PER : SHRI P. N. DIXIT, MEMBER (A)

RESERVED ON : 23.10.2018

DELIVERED ON : 31.10.2018

ORDER

1. Heard Smt. Punam Mahajan, the learned Advocate for the Applicants, Smt. Kranti Gaikwad, the learned Presenting Officer for the Respondents (O.A.788/18) and Smt. Archana B. K., the learned Presenting Officer for the Respondents (O.A.789/18).

Brief facts of the case:-

2. 31 posts of Clerk-cum-Typist in the office of the Additional Commissioner of Labour, Pune District, Pune were advertised. Out of 31 posts, 9 posts were to be filled in from Open General Category and 6 posts from other Open Categories viz. female, ex-servicemen, Project affect and physically disabled.

3. The Applicants are belonging to open category. The select list was published by the Respondent No.2 in March, 2017. The Applicant Nos.1 & 2 scored 186 marks. On 17.03.2017 after verification of the documents, the

Applicants were given letter of appointment on 17.04.2017 and joined on the post of Clerk-cum-Typist.

4. Meanwhile O.A. No.89/2018 was filed by Samir Rafiq Bagwan praying for the following reliefs:-

“6.6 (b) That, by appropriate order and direction Respondent No.2 may be ordered and directed to modify and or rectify and or quash and set aside the select list of Open-General category and to include the Applicant’s name and remove of the name of the Respondent No.3 and to issue appointment order to the Applicant.”

(Quoted from page no.4 of the O.A.)

In the said O.A.No.89/2018 on 07.08.2018, this Tribunal noted as under :-

“Learned P.O. states as follows that the matter has been reexamined and it is likely that applicant may have to be selected and in that event some candidate may lose ranking in the merit and those candidate will have to be given notice for their displacement.”

(Quoted from Anx.-A4, page 47 of the O.A.)

5. In compliance with the order passed by this Tribunal in O.A.No.89 of 2018, the Respondent No.2 revised the select list and published the revised list on 10.08.2018. Four persons who did not belong to Open Category but had got higher marks figured in the list namely :-

Sr. No.	Name	Caste	Marks
1.	Shri Gajanan Bhikaji Munde	NT (D)	192
2.	Shri Chetan Prakash Nagrale	S.C.	192
3.	Shri Hanslal Karulal Rahangadale	S.T.	190
4.	Shri Pravin Baburao Turkhade	S.T.	188

(Quoted from page no.6 of the O.A.)

6. These four persons were earlier mentioned against the posts reserved for their category and in earlier select list, their names were shown against their category, as they had filled in the forms from that particular category.

7. In the result applicants’ ranking in list of candidates liable to be selected receded. The Applicants’ names do not figure in the revised select list.

8. Therefore, the Applicants have been called upon to explain as to why the services of the Applicants should not be terminated for which the Applicants were served with the show cause notice dated 21.08.2018, in pursuance of the

revised select list. Copy of the show cause notices is at Annexure A6, page 52 & 54, Annx. A7-55(A) and 55(C).

9. Applicants have approached this Tribunal and challenged the show cause dated 21.08.2018.

10. The Applicants have made the following prayers :-

“9 (a): That this Hon’ble Tribunal be pleased to quash and set aside the showcause notice dated 21/8/2018 and be further pleased to direct the Respondents to absorb the Applicants and continue them in service, with all consequential service benefits.

10 (a): That this Tribunal be pleased to stay the effect and operation of the showcause notice dated 21/08/2018.”

(Quoted from page no.9 of the O.A.)

11. Interim protection was granted to the Applicants to the effect that any adverse action taken it shall be with 30 days notice to the applicants.

12. After reply to show cause notice, the Respondent No.2 has decided to terminate applicants’ services and gave them notice of 30 days which is dated 17.09.2018.

13. The Applicants have amended the O.A. to meet the changed circumstances.

14. In support of their claims, the Applicants have amended the O.A. The averments contained in pleadings read as follows:-

“6.9 (A): The Applicants submit that after the interim order dated 31.08.2018 was passed by this Hon’ble Tribunal, the Respondent No.2 has issued another notice dated 17.09.2018, as per which the services of the Applicants will be terminated w.e.f 17.10.2018. The show cause notice is issued mechanically without considering the letter and spirit of the interim order of this Tribunal dated 31.08.2018 which was issued on the basis of the decision of the Hon’ble Supreme Court in *Vikas Pratap Singh & Ors V/s. State of Chattisgarh & Ors* and other Companion Appeals. The ratio of the Hon’ble Supreme Court was not considered by the Respondent No.2 and therefore the Showcause Notice dated 17.09.2018 is illegal and bad in law. Copy of the Showcause Notice dated 17.09.2018 is annexed and marked as Annexed-A7.

6.9 (B) : The Applicants crave the leave of this Hon’ble Tribunal to refer to the judgment of the Supreme Court in *Vikas Pratap Singh & Ors V/s.*

State of Chattisgarh & Ors. Copy of the judgment is annexed and marked as Annexure-A8.

- 6.10 : The Applicants submit that there are 5 to 6 vacancies available in the cadre of Clerk cum Typist and the Applicants can be easily accommodated on these posts, without disturbing any of the persons selected, as per the revised select list. The Applicants are next in the merit list, as both the Applicants have scored 186 marks and the last person from Open General Category in the merit list Shri Anand Hirasingh Jadhav has secured 186 marks. The Applicants name do not figure in the revised select list for two reasons viz. the persons from the NT(D), SC, OBC, who were earlier shown in their respective category have now been shown against the posts earmarked for open Category, as they have secured more marks. The other reason is that Shri Anand Hirasingh Jadhav who has also secured 186 marks is senior in age to the Applicants.
- 6.11.1 : The reservation policy is wrongly applied by the Respondent No.2, the rigors of the wrong application of such policy cannot be visited upon the persons who are selected as a result of such wrong application of reservation policy. The Applicant No.1 and 2 have already been selected and appointed as Clerk cum Typist. They are working for last 18 months, therefore their services cannot be terminated.
- 6.11.3 : The equity is in favour of the Applicants and the Applicants can be easily accommodated as there are atleast 5 to 6 vacancies in the post of Clerk cum Typist without disturbing the revised select list. The Applicants are next in the merit list, as they have secured 186 marks and the last person selected from the Open General Category has also secured 186 marks.
- 6.11.4 : The Applicants have not committed any fraud or made any misrepresentation. They were given appointment and therefore they left their earlier assignments and stopped participating in any selection process for securing appointment. The Applicants will be prejudiced and suffer detriment, if they are removed from service after almost more than one year and four months.
- 6.11.4 (A) : The Showcause Notice dated 17.09.2018 is illegal and bad in law, as the ratio of the Hon'ble Supreme Court in Vikas Pratap Singh & Ors V/s. State of Chattisgarh & Ors (vide Annexure-A8) is not considered in its true letter and spirit by the Respondent No.2. The Hon'ble Supreme Court has held in this case that the rigors of the wrong application of such policy cannot be visited upon the persons who are selected as a result of such wrong application of reservation policy. The Applicants services are to be terminated on the basis of that Applicants are selected on the basis of wrong application of reservation policy. The Applicants case is covered by the decision of the Hon'ble Supreme Court. The impugned Showcause Notice

dated 17.09.2018 is liable to be quashed and set aside on this ground alone.

6.11.5 : The Applicants have participated in the selection process and have been selected by the selection body. The posts are vacant and therefore the Applicants can be absorbed against these vacant posts.

6.12 : The Applicant has a strong prima facie case on merits and if the interim relief is not granted to the Applicant, grave prejudice is likely to be cause. The balance of convenience lies in favour of the Applicant.”

(Quoted from page nos.6A, 7, 7A & 8 of the O.A.)

15. In support of the claim, the learned Advocate for the Applicants has relied on the judgment given by the Hon’ble Supreme Court in **Civil Appeal No.8351 of 2017 & Ors. in Gaurav Pradhan & Ors V/s. State of Rajasthan & Ors.** The relevant paragraphs are as under:-

“48. In view of the foregoing discussion, we are of the considered opinion that the candidates belonging to SC/ST/BC who had taken relaxation of age were not entitled to be migrated to the unreserved vacancies, the State of Rajasthan has migrated such candidates who have taken concession of age against the unreserved vacancies which resulted displacement of a large number of candidates who were entitled to be selected against the unreserved category vacancies. The candidates belonging to unreserved category who could not be appointed due to migration of candidates belonging to SC/ST/BC were clearly entitled for appointment which was denied to them on the basis of the above illegal interpretation put by the State. We, however, also take notice of the fact that the reserved category candidates who had taken benefit of age relaxation and were migrated on the unreserved category candidates and are working for more than last five years. The reserved category candidates who were appointed on migration against unreserved vacancies are not at fault in any manner. Hence, we are of the opinion that SC/ST/BC candidates who have been so migrated in reserved vacancies and appointed should not be displaced and allowed to continue in respective posts. On the other hand, the unreserved candidates who could not be appointed due to the above illegal migration are also entitled for appointment as per their merit. The equities have to be adjusted by this Court.

49. On the question of existence of vacancies, although learned counsel for the appellant submitted that vacancies are still lying there, which submission however has been refuted by the learned counsel for the State of Rajasthan. However, neither appellants had produced any details of number of vacancies nor the State has been able to inform the Court about the correct position of the vacancies. We thus for adjusting the equity between the parties issue following directions:

(1) The writ petitioners/appellants who as per their merit were entitled to be appointed against unreserved vacancies which vacancies were filled up by

migration of SC/ST/BC candidates who had taken relaxation of age should be given appointment on the posts. The State is directed to work out and issue appropriate orders for appointment of such candidates who were as per their merit belonging to general category candidates entitled for appointment which exercise shall be completed within three months from the date copy of this order is produced.

(2) The State shall make appointments against the existing vacancies, if available, and in the event there are no vacancies available for the above candidates, the supernumerary posts may be created for adjustment of the appellants which supernumerary posts may be terminated as and when vacancies come into existence.”

16. At the time of hearing, the Applicants have placed reliance on following judgments :-

Sr. No.	Case No. & date of Judgment	Name of Parties	Court	Page Nos.
1.	(2013) 14 SCC 494 (Civil Appeal Nos.5318-19 of 2013) & Ors., dated 09.07.2013	Vikas Pratap Singh & Others V/s. State of Chhattisgarh & Ors.	Hon' ble Supreme Court	1-12
2.	(2009) 1 SCC 768 (Civil Appeal Nos.6444-49 of 2018) & Ors., dated 04.11.2008	Tridip Kumar Dingal & Ors. V/s. State of West Bengal & Ors.	Hon' ble Supreme Court	13-30
3.	(1993) 3 SCC 591 SLP (C) No.16256 of 1992 & Ors., dated 13.07.1993	Dr. M. S. Mudhol & Anr. V/s. S. D. Halegkar & Ors.	Hon' ble Supreme Court	31-35
4.	R.A. No.8/ 2016 in O.A.No.289 / 2015 & 620/15 with M.A.1818/2016, R.A.11/2016 in O.A.289/2015 & 620/2015 with M.A.210 & 212/2016 and R.A.22/2016 in O.A.289 & 620/2015 with M.A.360 & 361/2016, dated 18.11.2016	Sandeep B. Pawar & Ors. V/s. The State of Maharashtra & Ors.	This Tribunal	36-60
5	Civil Appeal No.8351 of 2017 (Arising out of SLP (C) No.30603 of 2014) & Ors., dated 18.08.2017	Gaurav Pradhan & Ors. V/s. State of Rajasthan & Ors.	Hon' ble Supreme Court	61-121
6	Civil Appeal Nos.1133-1135 of 2010 , dated 01.02.2010	Rakhi Ray & Ors. V/s. The High Court of Delhi & Ors.	Hon' ble Supreme Court	122-132

17. The Respondents have refuted the arguments and grounds by the Applicants by way of Affidavit. The Affidavit reads as under:-

“2. At the outset I say and submit that Mr. Samir Bagwan who filed O.A. No. 89/2018 challenged the said selection process on the ground of reservation policy. In the said O.A. No. 89/2018, at the time of hearing, it was submitted by the Presenting Officer that the respondents are willing to re-examine the issue by taking corrective measures. Hence, the matter was adjourned to 29.6.2018 for submitting compliance report. A copy of the order dated 12.6.2018 is enclosed herewith and marked as **Exhibit R-1**.

2.1 Accordingly, the Respondents have taken corrective steps and revised the earlier select list on the basis of ratio laid down by this Hon’ble Tribunal in O.A. No. 524/2017 with O.A. No. 841/2017 and G.A.D. G.R. dated 18.10.1997. A copy of the judgment/order dated 2.11.2017 passed in O.A. No. 524/2017 with O.A. No. 841/2017 is enclosed herewith and marked as **Exhibit R-2**. A copy of the G.R. GAD dated 18.10.1997 is annexed hereto and marked as **Exhibit R-3**. Hence, as per revised list the present applicant is not selected. The copy of Revised List is enclosed herewith that marked as **Exhibit R-4**.

2.2 In the above facts and circumstances, it is submitted that the Respondent has every right to reexamine the selection list to find out any errors in it and to correct it, so to see that justice is done to the meritorious candidates and as such the Respondent has every right to terminate the services of the applicant as the selection was made on the basis of MPSC Standing Order and not on the basis of GAD directions

3. I say and submit that the Respondent No. 2 considered the order of Hon’ble Tribunal in O.A. no. 524/2017 with O.A. no.841/2017 in its true latter and spirit. Hence the earlier selection was examined and corrective steps were taken by the respondent as assured to this Hon’ble Tribunal in O.A. no. 89/2018. This is to submit that during the proceedings before this Hon’ble Tribunal in O.A. No. 89/2018 the Respondent No. 2 came to know that he has to follow reservation policy as mentioned in GR. No. शासन निर्णय क्र. बीसीसी-1097/प्र.क्र.63/97/16-ब, Dated 18.10.1997 and on the basis of Judgment of Hon’ble Tribunal in OA No. 524 of 2017 in the case of Shri. Rahul Darbar Pawar & Ors. Vs. State of Maharashtra & Ors.with OA No. 841 of 2017 Shri. Ramkrushna Tukaram Dalvi V/s. State of Maharashtra, copy of which is already Annexed vide Exh. M-2. As a result, the earlier selection list which was based MPSC Standing Order was reexamined and it was corrected on the basis of General Administration Department directions and the ratio laid by this Hon’ble Tribunal. As a consequence the candidates belonging to reserved category who has scored same marks than the applicant who belongs to open category has to be selected as per guidelines laid down in GAD GR dated 18.10.1997 because they are senior in age.

3.1 I further say and submit that it is true that the applicant was issued notice dated 17.09.2018 for pointing out the said position and the reasons for which he cannot be absorbed in available vacancies since the vacancies.

4. I say and submit that there are total 52 posts of peons out of which 31 posts are filled in. Thus there are 31 peons working on the establishment of Additional Commissioner of Labour, Pune. The Government has directed to send the proposal abolishing 25% of the sanctioned post of the peon. Thus a proposal of abolishing 15 posts is sent to Government and that the 15 posts are likely to be abolished. In view of this the total strength of the cadre of peon will come to 37. Thus 6 vacant posts will be available to be filled in and not 21 posts as claimed by the applicant. I further say and submit that without prejudice to the earlier submissions the Govt. has issued direction to every administrative department prohibiting recruitment and creating new posts unless and until staffing pattern is finalised and approved by the Govt. vide GR dated 25.5.2017. In view of this the respondent is unable to absorb the applicant in vacant post. A copy of GR dated 25.5.2017 is annexed hereto and marked as **Exhibit R-5**.

9. With reference to paragraph no.6.6, I say and submit that it is true that during the hearing of this case the Respondent agreed to reexamine the matter and sought time to take corrective measures. At the time of examining earlier select list of the Peon the Respondent No. 2 considered Judgment passed by this Hon'ble Tribunal in O.A. no. 524/2017 and O.A. no. 841/2017 and found that Shri. Anil Vitthal Peche belonging to reserved category has same marks as Shri Gajanan Damodhar Dhakne belonging to General category and as a result Shri Anil Vitthal Peche has to be selected in place of Shri Dhakne on the basis of G.A.D G.R. dated 18/10/1997 as he is senior in age.

12. With reference to paragraph no.6.9, I say and submit that as explained herein above reply to para 6.6, Shri. Anil Vitthal Peche, who belongs to reserved category, has scored 96 marks and the applicant who belongs to open category also scored 96 marks but in the revised corrected list Shri. Peche is selected for the post of Peon considering the ratio laid down by this Hon'ble Tribunal and GAD directions vide GR. No. शासन निर्णय क्र. बीसीसी-1097/प्र.क्र.63/97/16-ब, Dated 18.10.1997, as he is senior in age.

15. With reference to paragraph no.6.10(1), I deny that reservation policy is wrongly applied while revising the earlier selection list. This is to submit that the revision of the selection list was done on the basis of the ratio laid down by this Hon'ble Tribunal and the GAD directions in G.R. dated 18/10/1997."

(Quoted from Affidavit-in-Reply of the O.A., page no.46A)

18. The learned P.O. for the Respondents submits that :-

(a) The applicants belong to Open Category.

- (b) They are not aged barred for approaching any other selection process and have been given the appointment very recently.
- (c) The facts in the judgment passed by the Hon'ble Supreme Court are different as the petitioners in that case were in service for more than 5 years. The candidates in that case belonged to reserve categories and on the basis of "adjusting equity between parties"; the Hon'ble Supreme Court had directed to create supernumerary posts for adjusting the dismissed candidates.
- (d) In the present case, the facts are completely different.
- (e) **Hon'ble Supreme Court in the case of Rakhi Ray & Ors V/s. The High court of Delhi & Ors. (Civil Appeal No.1133-1135 of 2010).**
 Para 9 of the same reads as under:-
 "9. It is settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitution right under Article 14 read with Article 16(1) of the Constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such a deviation is permissible only after adopting policy decision based on some rational", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law. (Vide Union of India & Ors V. Ishwar Singh Khartri & Ors. (1992) Supp 3 SCC 84; Gujarat State Deputy Executive Engineers Association v. State of Gujarat & Ors. (1994) Supp 2 SCC 591; State of Bihar & Ors V. The Secretariat Assistant S.E. Union 1986 & Ors AIR 1994 SC 736; Prem Singh & Ors. v. Haryana State Electricity Board & Ors. (1996) 4 SCC 319; and Ashok Kumar & Ors. v. Chairman, Banking Service Recruitment Board & Ors. AIR 1996 SC 976)."
- (f) The candidates who have been displaced cannot be adjusted in the vacant post, in view of the direction from the Government prohibiting the recruitment and prohibition of creating new posts unless and until staffing pattern is finalized and approved by the Govt. vide G.R. dated 25.5.2017.
- (g) It is true that 12 vacancies do exist, however those pertain t the quota of promotions and those cannot be segregated for absorption of applicants because if this is done it would prejudice the aspirants

of promotion, who are not before this Tribunal in the array of respondents. Therefore, the submission by the Applicants to absorb them in vacant post cannot be considered.

(h) Therefore, O.A. be dismissed.

Findings and Discussion :-

19. The Respondents admits that :-

(a) The Respondents had prepared the select list on the basis of standing orders available with the M.P.S.C. and not on the basis of G.A.D.'s directions.

(b) Following the order passed in O.A. by one Shri Samir Bagwan, the M.P.S.C. had reexamined the selection list to find out any errors and to correct the same.

(c) Corrections in selection list have been made and revised list has been prepared in keeping with standing orders and the law in vogue.

(d) Consequently, the candidates belonging to Reserved Category who had secured higher marks than the Applicants who belong to Open Category have been selected.

(e) The M.P.S.C. has to and has further selected the candidate belonging to Reserved Category as per the guidelines of the G.A.D., since he was senior in age.

20. After considering the admitted position as is narrated in the forgoing paragraphs and rival submissions, we find that :-

(a) The move by the Respondent of admitting the error and taking corrective steps cannot be faulted.

(b) The judgment referred to by the learned Advocate for the Applicants is not relevant in the present case as the facts are different as pointed out by the learned P.O. and mentioned in para no.17.

(c) In various judgments relying upon by the Applicants, the duration for which the Applicants in those cases have served was considerably long length of service rendered by the concerned Applicants had resulted in denying them opportunity to look forward and exert to secure alternate employment.

- (i) In Gaurav Pradhan case the Candidates had put in five years service.
- (ii) In Vikas Pratap Singh & Others case, the Candidates had put in more than three years service.
- (iii) In case of Tridip Kumar Dingal's case, the Candidates had served for about four years in service.
- (iv) In case of Dr. M.S. Mudhol's case, the Candidates have served for nine years and by the time SLP was filed and appointments were thirteen years old.
- (v) In Sandip Bhaladas Pawar's case, the Candidates had become age barred though only two years services were rendered by them.

Therefore, none of the precedent relied upon by the Applicant do help the Applicants.

(d) It is evident from the fact on record that the Applicants have been appointed very recently. They are not age barred, there is no equity involved in dis-continuing them.

(e) As observed by the Hon'ble Supreme Court in Rakhi Ray's case (Supra), displacement of applicants would amount to 'denial and deprivation' of the constitutional rights under Article 14 read with Article 16(1) of the Constitution.

21. In view of the forgoing, observations and findings we hold that there is no merit in both the Original Applications and action taken by the Respondents does not call for or warrant any interference from this Tribunal.

O.A. No.789 of 2018

Facts and Law involved in present O.A. are concurrent with facts of O.A. No.877 of 2018, except rank in merit list of applicant, and case proceeds on same admitted facts, and same demand of protection of ground of adjustment of equity. Hence O.A.No.789 of 2018 follows the same course as in O.A.No.788 of 2018.

22. In view of the above, the interim relief granted earlier by this Tribunal is vacated forthwith.

23. The Original Applications are devoid of any merit and, therefore, are dismissed without any costs.

Sd/-
(P.N. DIXIT)
MEMBER (A)

Sd/-
(A. H. JOSHI, J.)
CHAIRMAN