

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 676/2019 (D.B.)

Hemant S/o Rambhau Shembekar,
Aged 34 years,
R/o Ward No. 9, Amrut Nagar,
Tahsil - Narkhed, 441304,
District Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Skill Development,
Employment & Entrepreneurship Department,
Mantralaya, Mumbai-32.
- 2) The Director of Vocational Education and Training,
3, Maha Palika Marge,
Mumbai - 400 001.
- 3) The Joint Director,
Vocational Education and Training,
Regional Office, Ghole Road,
Pune-411 005.

Respondents

Shri B.Kulkarni, Id. Advocate for the applicant.

Shri S.A.Sainis, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman &
Hon'ble Shri M.A.Lovekar, Member (J).**

JUDGMENT**Judgment is reserved on 10th Nov., 2022.****Judgment is pronounced on 07th Dec., 2022.****(Per:-Member (J))**

Heard Shri B. Kulkarni, learned counsel for the applicant and Shri S.A.Sainis, learned P.O. for the Respondents.

2. Case of the applicant is as follows. In response to advertisement dated 08.09.2014 (A-2) issued by respondent no. 2, the applicant submitted application online (A-3) for the post of Store Superintendent from open category. He was issued a hall ticket (A-4) for written test. Merit list dated 17.12.2016 (A-5) was published in which name of the applicant appeared at Sr. No. 6. Selected candidates who were above the applicant were either disqualified or unwilling to join. The applicant made several representations (A-6 collectively) to issue an appointment order but to no avail. As per information (A-7) received under the R.T.I. Act, in Pune Division five posts of Store Superintendent were vacant as on 30.06.2019. Hence, this original application seeking direction to respondents 2 & 3 to issue an order of appointment and posting to the applicant as Store Superintendent on the vacant post in Pune Division or to direct respondents 2 & 3 to decide representations of the applicant.

3. In his reply at pages 47 to 54 respondent no. 2 has averred that the candidates who were at Sr. Nos. 1 to 4 in the merit list were disqualified

and hence appointment order dated 13.08.2018 (A-R-6) was issued to the candidates at Sr. No. 5 by name Kawale Rajendra Bhujangrao but since he did not join, by communication dated 29.11.2018 (A-R-7) he was informed that his appointment was cancelled. Respondent no. 3 has further averred that in view of G.R. dated 27.06.2008 the select list was valid only for a period of one year and it stood lapsed thereafter because of which appointment cannot be given to the applicant. Further, it is averred that in Pune Region one post which is to be filled by nomination is vacant which was proposed to be filled by the advertisement in question.

4. In his rejoinder the applicant has averred that final select list was prepared on 06.08.2018 after it was approved by respondent no. 2 by letter dated 28.03.2018. Hence, the list was valid till 06.08.2019. In support to this contention the applicant has relied on communication dated 28.03.2018 (at page 79). This communication states:-

“उपरोक्त विषयाच्या अनुषंगाने कळविण्यात येते की, संचालनालयाच्या अधिपत्याखालील २०१४ च्या पदभरतीमध्ये उमेदवारांची विभागनिहाय जनरल मेरिट लिस्ट व उमेदवारांचा डाटा Excel मध्ये तयार करून संचालनालयाकडून सर्व प्रादेशिक कार्यालयांना पाठविण्यात आलेला आहे. सदर यादी संचालनालयाच्या संकेतस्थळावर PDF मध्ये प्रसिध्द करण्यात आली असून संदर्भ क्रमांक १ च्या पत्रान्वये Excel मध्ये जनरल मेरिट लिस्ट, वेटिंग लिस्ट, उमेदवारांची वैयक्तिक माहिती, शैक्षणिक माहिती, व अनुभवाची माहिती स्वतंत्र Sheet मध्ये देण्यात आलेली आहे.

तथापी, काही प्रादेशिक कार्यालयांनी सदर यादी प्रमाणित करून मागितली आहे. त्यानुसार Final Result Cum Provisional Merit List पदनिहाय प्रमाणित करून सोबत पाठविण्यात येत आहे. त्यानुसार आवश्यक ती पुढील कार्यवाही आपल्या स्तरावरून तात्काळ करण्यात यावी.”

5. In their additional reply respondents 2 & 3 have averred as under:-

“Say of the applicant is incorrect that vide letter dated 28.03.2018 respondent no. 2 has approved the merit list but the fact is that by letter dated 28.03.2018 the respondent no. 2 certified the selection cum merit list published by him as per letter dated 14.08.2017. In letter dated 28.03.2018 at reference no. 01, reference of letter dated 21.08.2017 is given. The copy of letter dated 21.08.2017 is annexed herewith as Annexure-R-4. The para 1 & para 4 of this letter dated 21.08.2017 is reproduced here:-

Para No. 1:- उपरोक्त विषयाच्या संदर्भिय पत्राच्या अनुषंगाने आपणांस कळविण्यात येते की, संचलनालयामार्फत सुरु असलेल्या पदभरतीबाबत दिनांक १४.०८.२०१७ रोजी प्रसिध्द करण्यात आलेल्या सुधारित निवड यादीतील उमेदवारांची आपल्या स्तरावर आवश्यक ती सर्व [कागदपत्रे/प्रमाणपत्रे](#) पडताळणी करण्यात यावी व कागदपत्रे पडताळणीअंती पात्र उमेदवारांना नियुक्ती आदेश देण्याची कार्यवाही करण्यात यावी. याबाबत संचालनालयाचे दिनांक १६.०६.२०१७ व दिनांक २०.०६.२०१७ पत्रान्वये नियुक्ती आदेश देण्याबाबतच्या सविस्तर सूचना आपणांस यापूर्वी पाठविण्यात आल्या आहेत.

Para No. 4:- तसेच विभागनिहाय व पदनिहाय तयार करण्यात आलेली सर्वसाधारण गुणवत्ता यादी व त्यासोबतच उमेदवारांनी ऑनलाईन अर्ज करतांना भरलेली माहिती (डेटा) सर्व प्रादेशिक कार्यालयांना उपलब्ध करून देण्यात येत आहे. त्यानुसार दिनांक १४.०८.२०१७ रोजी प्रसिध्द केलेल्या सुधारित निवड यादीतील जे उमेदवार रुजू होणार नाहीत त्यांच्या जागी गुणवत्तेनुसार प्रतिक्षा यादीतील उमेदवारांची निवड करून त्यांच्या प्रमाणपत्रांची पडताळणी करून पडताळणी अंती पात्र ठरलेल्या उमेदवारांना नियुक्ती आदेश निर्गमित करण्याबाबतची कार्यवाही प्रादेशिक कार्यालयांनी करावी.

So, it is crystal clear that selection list is published on 14.08.2017 and not on 28.03.2018. As per this selection list dated 14.08.2017 verification of documents is done on 06.08.2018 to find the eligibility of candidates at respondent no. 3 level."

6. In his additional rejoinder the applicant has stated that since approval to final select list was accorded by letter dated 28.03.2018, its period of validity was till 27.03.2019 and the applicant ought to have been given an appointment immediately after appointment of Kawale was cancelled by communication dated 29.11.2018.

7. It was contended by Advocate Shri Bharat Kulkarni that even if it is assumed for the sake of argument that the select list had lapsed before appointment could be given to the applicant, this had happened because of apathy of respondent no. 2 for which the applicant cannot be blamed

or penalized. To support this submission the applicant has relied on the following rulings:-

i) **Rajabhau S/o Shamrao Chavan Vs. State of Maharashtra & 1 another** (Judgment dated 04.10.2010 delivered by the Hon'ble Bombay High Court in W.P. No. 6902/2010). In this case it is held:-

“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.”

ii) **Deepak S/o Marotirao Narwad Vs. Maharashtra State Power Generation Company Limited and one another** (Judgment dated 15.02.2021 delivered by the Hon'ble Bombay High Court in W.P. No. 6779/2019). In this case it is held :-

“In process, it surfaces that in the present case ineligible candidates had figured in provisional select and/or wait lists above petitioner. The candidature of the petitioner appears to have suffered for no fault of his. Apart from aforesaid while corrective and rectifying action has been taken in the case of Mr. Velis who had not figured in any of the lists at all, since he had participated in the recruitment process, his case has been

considered, whereas, the petitioner appears to have been permanently branded as wait listed candidate despite the discrepant / defective applications of the other two V.J. (A) category ineligible candidates.

24. The scenario depicts on the day of verification and scrutiny, petitioner's candidature deserves treatment as a selected candidate. His name, in fact, has figured in the eligible candidate list, however, under the remark column, he is shown to have been wait listed candidate. Tag of wait list in eligible list would have no significance beyond showing its origin as shown in provisional list of 14-07-2017 and would have no efficacy, as status of the candidate under selection process would undergo evolutionary alteration”

8. Discussion made so far would show that under the circumstances which prevail in this case, it would not be open to the respondents to contend that appointment cannot be given to the applicant because select list has lapsed. The respondents themselves were lax in the matter. Immediate steps ought to have been taken to appoint the applicant after appointment of Kawale was cancelled. For laches on the part of the respondents the applicant cannot be made to suffer. This is the ratio of the judgments relied upon by the applicant.

9. Communication dated 18.04.2022 received from respondent no. 3 is placed on record by the ld. P.O.. It states:-

“प्रस्तुत प्रकरणी सादर करण्यात येते की, उच्च व तंत्र शिक्षण विभाग, शासन निर्णय क्रमांक आयटीआय-१००२/(२४७/०४)/व्यशि-२, दिनांक ३०.०९.२००६ अन्वये पुणे विभागात एकूण ५ पदे मंजूर करण्यात आलेली होती. (औद्योगिक प्रशिक्षण संस्था, औंध, पुणे येथे ०१ पद, औद्योगिक प्रशिक्षण संस्था, सातारा येथे ०१ पद, औद्योगिक प्रशिक्षण संस्था, कराड, जि. सातारा येथे ०१ पद, औद्योगिक प्रशिक्षण संस्था, सांगली येथे ०१ पद व औद्योगिक प्रशिक्षण संस्था, कोल्हापूर येथे ०१ पद अशी एकूण ५ पदे).

भांडार अधिक्षक पदाच्या Recruitment Rule दिनांक ०९.१०.१९९१ नुसार ७५% पदे ही पदोन्नतीने भरावयाची आहेत व २५% पदे ही सरळसेवेने भरावयाची आहेत. त्यानुसार दिनांक २९.०८.२०१४ नुसार एक पदाची जाहिरात देण्यात आलेली होती.

कौशल्य, रोजगार, उद्योजकता व नाविन्यता विभाग, शासन निर्णय क्रमांक व्यशिअ-२०२०/प्र.क्र.१०२/व्यशि-१, दिनांक ०७ एप्रिल, २०२२ अन्वये पुणे विभागात २ पदे मंजूर करण्यात आलेली आहेत. त्यामुळे भांडार अधिक्षक पदावरिल कर्मचारी अतिरिक्त ठरलेले आहेत. तसेच भांडार अधिक्षक पदाच्या Recruitment Rule दिनांक ०९.१०.१९९१ नुसार सद्यस्थितीत सरळसेवेने भरावयास पद उपलब्ध नाही.

तरी, सदर बाब मा. न्यायाधिकरणाच्या निर्देशनास आणून देण्यात यावी, ही विनंती.”

In the instant case direction deserves to be given to respondents 2 & 3 to suitably appoint the applicant on the post of Store Superintendent. Hence, the order:-

O R D E R

Respondents 2 & 3 are directed to suitably appoint the applicant to the post of Store Superintendent **within two months from today. The O.A. is allowed in these terms with no order as to costs.**

(M.A.Lovekar)
Member(J)

aps
Dated - 07/12/2022

(Shree Bhagwan)
Vice Chairman

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman
& Hon'ble Member (J).

Judgment signed : 07/12/2022.
on and pronounced on

Uploaded on : 08/12/2022.