

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 282 of 2017 (DB)

Shri Vijay S/o Namdeoji Paydalwar,
Aged about 28 years, Occ. Nil,
R/o Waghmare Layout, Parsodipeth, Umred,
Tahsil Umred, District Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Industrial Energy and Labour Department,
Mantralaya, Mumbai-400 032.
- 2) State of Maharashtra,
through its Secretary, Finance Department,
(fol &1), Mantralaya, Mumbai-400 032.
- 3) The Commissioner of Labour,
Kamgar Bhawan, E Block, C-20, Bandra,
Kurla Sankul, Bandra (East), Mumbai-52.
- 4) Additional Labour Commissioner,
(The Regional Selection Committee),
4th floor, Administrative Building no.2,
Civil Lines, Nagpur.

Respondents

S/Shri A.P., K.P. Sadavarte, Advocates for the applicant.

Shri A.M. Khadatkar, learned P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 283 of 2017 (DB)

Ku. Sarika Istaru Badwaik,
Aged about 35 years, Occ. Nil,
R/o Shashtri Ward, Opp. Gajanan Mandir,
Station Road, Tiroda, District Gondia.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Industrial Energy and Labour Department,
Mantralaya, Mumbai-400 032.
- 2) State of Maharashtra,
through its Secretary, Finance Department,
(fol #1), Mantralaya, Mumbai-400 032.
- 3) The Commissioner of Labour,
Kamgar Bhawan, E Block, C-20, Bandra,
Kurla Sankul, Bandra (East), Mumbai-52.
- 4) Additional Labour Commissioner,
(The Regional Selection Committee),
4th floor, Administrative Building no.2,
Civil Lines, Nagpur.

Respondents

S/Shri A.P., K.P. Sadavarte, Advocates for the applicant.

Shri A.M. Khadatkar, learned P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 284 of 2017 (DB)

Ku. Gunlata d/o Moreshwar Gujarkar,
Aged about 28 years, Occ. Nil,
R/o Gurada Road, Behind Petrol Pump,
Samartha Nagar, Lakhani, District Bhandara.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Industrial Energy and Labour Department,
Mantralaya, Mumbai-400 032.
- 2) State of Maharashtra,
through its Secretary, Finance Department,
(fol #1), Mantralaya, Mumbai-400 032.
- 3) The Commissioner of Labour,
Kamgar Bhawan, E Block, C-20, Bandra,
Kurla Sankul, Bandra (East), Mumbai-52.
- 4) Additional Labour Commissioner,
(The Regional Selection Committee),
4th floor, Administrative Building no.2,
Civil Lines, Nagpur.

Respondents

S/Shri A.P., K.P. Sadavarte, Advocates for the applicant.

Shri A.M. Khadatkar, learned P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 352 of 2017 (DB)

Shri Vishal Rameshwar Shelke,
Aged about 25 years, Occ. Nil,
R/o Post at village Murhadevi, Tq. Anjangaon (Surji),
District Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Industrial Energy and Labour Department,
Mantralaya, Mumbai-400 032.
- 2) State of Maharashtra,
through its Secretary, Finance Department,
(fol &1), Mantralaya, Mumbai-400 032.
- 3) The Commissioner of Labour,
Kamgar Bhawan, E Block, C-20, Bandra,
Kurla Sankul, Bandra (East), Mumbai-52.
- 4) Additional Labour Commissioner,
(The Regional Selection Committee),
4th floor, Administrative Building no.2,
Civil Lines, Nagpur.

Respondents

S/Shri A.P., K.P. Sadavarte, Advocates for the applicant.

Shri A.M. Khadatkar, learned P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 353 of 2017 (DB)

Shri Mohdzakir Sheikhhasan Sheikh,
Aged about 25 years, Occ. Nil,
R/o Post at village Anjangaon (Surji),
Tq.Anjangaon (Surji),
District Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Industrial Energy and Labour Department,
Mantralaya, Mumbai-400 032.
- 2) State of Maharashtra,
through its Secretary, Finance Department,
(fol &1), Mantralaya, Mumbai-400 032.
- 3) The Commissioner of Labour,
Kamgar Bhawan, E Block, C-20, Bandra,
Kurla Sankul, Bandra (East), Mumbai-52.
- 4) Additional Labour Commissioner,
(The Regional Selection Committee),
4th floor, Administrative Building no.2,
Civil Lines, Nagpur.

Respondents

S/Shri A.P., K.P. Sadavarte, Advocates for the applicant.

Shri A.M. Khadatkar, learned P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 875 of 2017 (DB)

Ku. Vaishali d/o Lalit Gaidhani,
Aged about 23 years, Occ. Nil,
R/o C/o Lalit Atmaram Gaidhani,
Bazar Ward no.5, Lakhani,
District Bhandara.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Industrial Energy and Labour Department,
Mantralaya, Mumbai-400 032.
- 2) State of Maharashtra,
through its Secretary, Finance Department,
(fol #1), Mantralaya, Mumbai-400 032.
- 3) The Commissioner of Labour,
Kamgar Bhawan, E Block, C-20, Bandra,
Kurla Sankul, Bandra (East), Mumbai-52.
- 4) Additional Labour Commissioner,
(The Regional Selection Committee),
4th floor, Administrative Building no.2,
Civil Lines, Nagpur.

Respondents

S/Shri A.P., K.P. Sadavarte, Advocates for the applicant.

Shri A.M. Khadatkar, learned P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J) and
Hon'ble Shri Shree Bhagwan, Member(A).**

COMMON JUDGMENT

PER : V.C. (J).

(Delivered on this 5th day of October,2018)

Heard Shri A.P. Sadavarte, learned counsel for the applicants and Shri A.M. Khadatkar, learned P.O. for the respondents.

2. The applicant O.A. in O.A. 282/2017 has been selected for the post of Peon in OBC (PAP) category. The applicant O.A. in O.A. 283/2017 has been selected for the post of Peon in OBC (female) category. The applicant O.A. in O.A. 284/2017 has been selected for the post of Peon in OBC (female) category. The applicant O.A. in O.A. 352/2017 has been selected for the post of Peon in OBC (general) category. The applicant O.A. in O.A. 875/2017 has been selected for the post of Peon in OBC (female) category, whereas, the applicant O.A. in O.A. 353/2017 has secured his position sr.no.1 in Open (general) category in the waiting list and it is his case that he should have been in the select list.

3. The applicants in response to the advertisement no.02/2014 applied for the posts of Peon, Group-D category under

various sub-categories as already stated. The advertisement was issued by respondent no.4, the Additional Labour Commissioner (The Regional Selection Committee), Nagpur on 13/08/2014. Admittedly, all the applicants participated in the examination and recruitment process and they were selected as already stated. The applicants were waiting for the appointment orders, but could not get it. The applicants therefore approached the respondent no.3 and it was communicated to the applicants that due to G.R. dated 14/01/2016 issued by the Finance Department, 25 % posts of Group-D are eliminated and therefore the applicants' appointment orders were not issued.

4. According to the applicants, the G.R. dated 14/01/2016 issued by the Finance Department gives guidelines for granting promotion to the Clerical cadre from Group-D posts the percentage of promotee has been increased from 25% to 50% from clerical cadre and it was decided to amend the Recruitment Rules of Group-D posts in pursuance of the G.R. dated 14/01/2016. According to the applicants, the said G.R. cannot be used retrospectively. The applicants in O.A. Nos.282,283,284, 352 and 875 of 2017 are therefore claiming following reliefs :-

“(i) it be held that the G.R. dated 14/01/2016 issued by the Finance Department is not made applicable to the Advertisement no.02/2014 issued by respondent no.2.

(ii) Direct the respondents to proceed with the recruitment/ selection process and thereby appoint the applicants as per merit list for the post of Peon, Group-D category.

(iii) Direct the respondents to appoint the applicants for the post of Peon, Group-D category in view of the Advertisement no.02/2014 issued by respondent no.4.”

5. The applicant in O.A.No. 353 of 2017 in addition to above, is claiming the following relief :-

(iii) Direct the respondents to consider the claim of the applicant for the post of Peon, Group-D category as he has applied within one year from the date of publication of waiting list.

6. In all the O.As. separate reply-affidavit has been filed on behalf of respondent nos.1,3 and 4. It is stated that the Recruitment Rules for the post of Group-D will be revised as per G.R. dated 14/01/2016 and in the advertisement itself it is mentioned in condition no.16 that the selected candidates will be given appointment on available vacancies and no correspondence will be entertained and further that mere selection of candidate will not confer any right to claim appointment. It is further stated that in condition no.10 of the advertisement makes it crystal clear that

number of posts may vary and therefore the number of vacant posts may increase or decrease.

7. The learned counsel for the applicants have also placed on record written notes of arguments. According to the learned counsel for the applicants vide G.R. dated 14/01/2016 issued by the Finance Department 25% sanctioned posts were eliminated. However said G.R. cannot be made applicable retrospectively since the recruitment process in these cases has been initiated in the year 2014 and the advertisement no.02/2014 is regarding the vacancies arose and available for recruitment in the year 2014 only and therefore the Circular dated 16/09/2016 cannot be used retrospectively.

8. From the argument put forth by the learned counsel for respective parties, it seems that there is no dispute that the respective applicants have applied for Group-D posts in view of the advertisement dated 13/08/2014. All the applicants except the applicant in O.A.353/2017 have been selected, whereas, the applicant in O.A.353/2017 has been kept on wait list at sr.no.1. Even though the recruitment pertains to the year of 2014, admittedly no appointment orders have been issued in respect of applicants. There is nothing on the record to show that any candidate juniors to any of the applicants have been appointed.

The only question therefore to be considered is whether mere selection on the posts will give right to the applicants to claim appointment.

9. The another material question to be considered is that the respondents have issued G.R. dated 14/01/2016 whereby it was decided to enhance the percentage of promotees from Group-D to Group-C posts from 25% to 50% and therefore it was decided to take stock of the posts available and it was also decided not to issue any fresh appointment order till that time and therefore the appointment orders have been stalled. It seems that vide letter dated 13/04/2017 in O.A. 284/2017 it was intimated to the applicant therein i.e. Ku. Gunlata Moreshwar Gujarkar that the process of appointment of Peon has been stopped in view of the letter of Labour Commissioner, Mumbai dated 09/02/2017 and therefore no appointment order can be issued. Similar intimation was given to the respective applicants in all the O.As. making it clear as to why their appointment orders cannot be issued.

10. The vide material G.R. dated 14/01/2016 following decision has been taken :-

^ I kkl; iz kkl u foHkxkp; k fnukd 10 e32005 P; k 'kkl u fu.kz kko; s ox&3 P; k fyi hd l dxkthy 25 VDds insox&4 P; k depk& kae/ku i nklurhusHkj.; kr ; rkr- R; kl kBh l ai/krkuh fdeku , l -, l-l h- mRrh.kzvl .ksxjt,psvkgS Vady[ku@, e, l l hvk; Vh ph l x.kd vgrk i klr d#u ?ks; kl kBhR; kkk i nklurhuarj 2 o"kkph emr ns; kr ; r vkgS

f'k{k.kkpk l ožij i d kj o r; kj gkskk; k r#u oxkđ R; kđ; k f'k{k.kkl vuut #u jkst xkj kP; k l dkh mi yC/k gksksr l p 'kkl ukrthy ekfgrh o ræKkukpk vf/kd oki j i kgrk 'kkl ukP; k foHkkxkrthy mi yC/k euđ; cGkP; k l jpur i .k dkGku#i cny gksksvko'; d > kysvkg

l gk0; k dmb; oru vk; ksksusv'kh f'kQkj l dsh vkgdhl] xV&M e/lthy deþk&; kđ; k xV&d e/lthy Jskho/kLkl kBh fofgr 'kqkf.kd vgrk /kkj.k dj.kk&; k deþk&; kauk dfu" B fyfi dkl kj [; k i nkoj l kekou ?ksksuf'prp mfpr Bjy-

jkT; l jdkjh prfjkZskh deþkj e/; oriz l ðkVusus vl sfuonu fnys vkgdhl ^l /; k prfjkZskh l oxkđ 70 rs 75 VDds deþkj , l , l l h, p, l l h i noh o i n0; ðrj i noh mRrh.kz deþkj dk; Ĵr vl u R; kauk 'kkl dh; dkepk plxyk vuđko vkg 'kkl ukus prfjkZskh deþk&; kauk i nklurh ns; kps25 VDdpsfud" k jnn d#u 25 VDdsrs50 VDdsi ; Ĵ ok<foY; kl 'kkl dh; dkepk fui Vkj k mRre i dksjgkby- egjk"Vkrthy prfjkZskh deþk&; kđ; k eatij i nđ; k 25 VDdsi nsdeh dsh rjh pkyrthy-^{**}

deþkj l ðkVuph l nj ekx.kh] l gk0; k oru vk; ksksph f'kQkj l] ox&4 P; k deþk&; kauk vf/kdph l dkh ns; kph xj t] 'kkl ukP; k dk; Ĵ /nrhthy ekfgrh ræKku o b&vkdhl i zkkypk ok<r k oki j] dkGku#i 'kkl ukP; k euđ; cGkr cny o euđ; cGkP; k i fj.kkedlj d oki jkph vko'; drk ; k ckchpk fopkj d#u 'kkl u [kkyhi æk.ksfu.kz ?kr vkg

'kkl u fu.k&

1- xV&d e/lthy tkLrhr tkLr 25 VDdsi nsxV&M e/lthy vgrki klr deþk&; kæ/kau Hkj.; kph vV l qkkjhr d#u gh e; kzk 50 VDdsi ; Ĵ dj.; kr ; r vkg r l p l nj l oxkđ; k l oki ds k fu; ekr vko'; d l qkkj.kk dj.; kr ; rhy-

2- xV&M l oxkđrthy tsdeþkj 'kkyk i jh{k mRrh.kz vkg i .k Vdys[ku@l æ.kd vgrk /kkj.k djr ukgh R; kauk l /; kP; k rjrmhi æk.ksvdys[ku@l æ.kd vgrk i klr d#u ?ks; kl kBh 2 o"kkpk vo/lh ns; kr ; by-

3- v½ xV&M l oxkđrthy tsdeþkj 'kkyk i jh{k mRrh.kz ukgh R; kauk 'kkyk i jh{k mRrh.kz gks; kl kBh , dqk 3 l dkh o , duk 1 o"kkph v/; ; u jtk eatij dj.; kr ; by-

c½ xV&M l oxkđrthy T; k deþk&; kauk okgupyd Ogko; kps vkg] R; kauk vko'; d vgrk /kkj.k dj.; kl , dqk 1 efgu; kph v/; ; u jtk eatij dj.; kr ; by- ; kclcr rif'kyokj l puk vyxfjR; k fuxĴer dj.; kr ; rhy-

4- *okgupkyd I dxlthy tsdepkjhfyi hd&Vdys[kd i nkph vgrk /kkj.k djhr vkgr R; kauk xV&d I dxlthyfyi hd&Vdys[ku i nkoj fu; D rh ns; kP; k I mHkkR I dki dsk fu; ekr vko'; d I qkkj.kk dj.; kr ; rhy-*

5- *xV&M I dxlR eatj i nka dh 25 VDds i ns fujfl r dj.; kl kBh izkkl dh; foHkkxkauk 6 efgu; kph epr ns; kr ; r vkgs R; kuq kj izkkl dh; foHkkxkauh dk; bkgb djkoh-***

11. In view of this G.R. dated 14/01/2016 it seems that the process of taking stock of the posts available is undertaken. The learned counsel for the applicants submits that for taking policy decision as referred above i.e. for enhancement of quota of promotion of employees from Group-D to Group-C as per G.R. dated 14/01/2016 it is necessary to amend the recruitment rules and the Government has not yet amended the rules and therefore on this ground the appointments cannot be denied to the applicants. In this regard it is material to note that the Government has taken policy decision to enhance the quota of promotion amongst Group-D employees and therefore the respondent wants to take stock of the situation and they have stopped the recruitment process. Admittedly, the applicants are not appointed and mere selection cannot give any rights to the applicants for appointment. Admittedly no juniors in the list to the applicants have been appointed and therefore it cannot be said that the applicants' right has been affected.

12. The learned P.O. has invited our attention to clause nos. 10 & 16 of the advertisement no.02/2014 it reads as under :-

^10- tkfgjkrhr ueq dj.; kr vkyyh , dqk i ns l kelftd o l ekukrj vkj {k.kk varxlrph i ns bR; knhph l q; k fu; ekud kj cny.; kph 'kD; rk vkgs

*16- fuoM >kyY; k menokjkauk mi yC/k fjDr vl .kk&; k o gkskk&; k fjDr i nkR; k mi yC/krud kj fu; Drh ns; kr ; by- ; k l cdkh menokjkd kcr dkskrkgh i =0; ogkj dj.; kr ; skkj ukgh vFkkR fuoM >kyh Eg.ktsfu; Drh feGy vl sukgh- ***

13. The plain reading of the aforesaid clauses clearly show that the respondents have reserved right to change the posts as per rules and it has been clearly stated that merely because the candidate is selected, he will not get right of appointment.

14. From the correspondence placed on record it seems that in view of the G.R. dated 14/01/2016 the various offices of the Government have been directed to take stock of the posts available to be promoted from Group-D category and the posts to be eliminated and the said task is under process. In such circumstances, the Government thought it proper not to issue fresh appointment orders as it has also to amend the recruitment rules.

15. The learned counsel for the applicants submits that the G.R. dated 14/01/2016 issued by the Finance Department cannot be used retrospectively and made applicable to advertisement no.02/2014 issued by respondent no.2. The learned P.O. has

placed reliance on the Judgment delivered by the Hon'ble High Court of Bombay Bench at Mumbai in case of **Rajiv Mohan Mishra vs. City and Industrial Development Corporation & Ors., reported in 2018 (2) Mh.L.J.,116.** In the said case it has been observed by the Hon'ble High Court that policy decision cannot be subjected to judicial review under writ jurisdiction and in a matter where a policy decision is challenge, Writ Court cannot go into adequacy of reasons given by the State for framing a policy.

16. The learned P.O. also placed reliance on the Judgment reported in 2017 (2) Mh.L.J.,622 in case of **Girja Mata Labour Cooperative Society Limited Vs. State of Maharashtra and ors.,** wherein it has been held that the Court can only interfere if the Govt. policy framed is irrational, arbitrary and unreasonable and thereby offend Article 14 of the Constitution of India.

17. We have perused the G.R. dated 14/01/2016 from which it seems that the Government has taken a policy decision to enhance the promotion quota to Group-D employees from 25% to 50%. Even without going in to merits of said decision, we failed to understand as to why such decision will hamper the process of recruitment of Class-IV employees. On the contrary if the

promotions are given to 25% more Peons to the posts of Clerk, the vacancies in the cadre of Peon will be increased and there is absolutely no reason as to why the respondent wants to stall the process of recruitment of Group-D employees. On the contrary the respondents will be in need of more posts of Peon since 25% more Group-D employees will be promoted. We can understand if the respondent wants to take stock of Class-III employees since the vacancies of Class-III employees will be affected because of the promotion to be given to more Class-IV employees.

18. It seems that the respondents have adopted different measures for different recruitments. The learned counsel for the applicants has invited our attention to one G.R. dated 16/07/2015 filed at P.B. page nos. 33 to 36 (both inclusive) in O.A.282/2017. In the said G.R. it has been stated as under :-

- 1- f'kk u fu.kz] foRr foHkkx fnukad 02@06@2015 vUo; sLFkki u dSY; k vi j e[; I fpo %I dk½] I keku; izkkl u foHkkx ; kR; k v/; {kr[kkyhy ojhy I ferhus i Lrko ri kl u i nHkjr h I mHkkr f'kQkjI dY; kl izkkl dh; foHkkxkus I {ke i kf/kdk&; kph eku; rk ?kou R; kckrps vksk i Fke dk<.ksvko'; d jkghy- R; kurj i nHkjr hckcr mfpr dk; bkgb djrk ; bdy- rI p]
- 1- fnukad 02@06@2015 i phz fu; phps vksk fuxTer dj.; kr vkysys vkgs] i jarqI ad/kr menokj # t>kysysukghr- v'kk ckrhr I ad/kr menokjkauk # twgls; kl i jokuxh ns; kr ; koh-
- 2- fuoM ; knhrhy [kf; k xVkrhy menokjkauk fu; ph ns; kr vkysyh vkgs ek= vkj{k.kkrhy menokjkr; k dxni =kph i MrkG.kh fnukad 02@06@2015 urj i qkz >kysyh vI Y; kus T; kauk fu; ph ns; kr vkysyh ukgh] v'kk menokjkauk fu; ph ?kko-
- 3- T; k i dzj.kh ekx.khi = i kBow menokjkr; k f'kQkj' kh vk; kskdMpu@ft Ygk fuoM I feR; kadMpu foHkkxkl @fu; ph i kf/kdk&; kl i klr >kY; k vkgs v'kk i dzj.kh ns[khy i nsHkj.; kl ephk jkghy-

4- T; k i dj. kh i nHkj rhl k Bh i nkph ekx. kh fuoM l feR; kulk o egkj k"V"ykdl dk vk; kxkl fnukd 02@06@2015 i phzi k Bfoyh vl sy o R; kuqkxkusfnukd 16@07@2015 i; r tkfgjkr ifl /n dj.; kr vkysyh vkgs v'kk tkfgjkrhr uem dj.; kr vkysyh i nshkj.; kl ehlk jkfgy-**

19. The learned counsel for the applicants also invited our attention to one letter dated 9/2/2017 issued by the Commissioner Labour, M.S., Mumbai which is at P.B. page nos. 26 & 27 (both inclusive) wherein there is a reference to one letter dated 29/12/2016 which states about the posts to be eliminated (fujfl r). Had it been a fact that the respondent wants to fill up promotional post of Class-III employees by promoting more employees from Group-D, as stated in the G.R. dated 14/01/2016, the posts can be eliminated for direct appointment to the Class-III cadre and not from Class-IV cadre. On the contrary the respondent will be in need of more Class-IV employees. We, therefore do not find any valid reason for not issuing appointment orders to the candidates who are already selected on merits. It not the case of the respondents that the recruitment process of 2014 which is under reference in these O.As. has been cancelled. In such circumstances, we are of the opinion that the G.R. dated 14/01/2016 is not at all relevant to recruitment process initiated through advertisement no.2/2014 and there shall be no reason for the respondents to stalled the process of recruitment on the basis of such G.R. Considering all these aspects, even though

appointment to the posts is not a right of the applicants, the respondents could not place on record any valid reason for not issuing appointment orders. We, therefore, pass the following order :-

ORDER

- (i) The O.As. are partly allowed.
- (ii) It is hereby declared that the G.R. dated 14/01/2016 issued by the Finance Department is not at all applicable to the advertisement no.02/2014 issued by respondent no.2. The respondents are directed to re-consider their decision whereby appointments are being denied to the respective applicants on the ground that the same cannot be issued in view of the G.R. dated 14/01/2016. The respondents are directed to take necessary decision in this regard within two months from the date of this order and same shall be conveyed to the respective applicants in writing. No order as to costs.

(Shree Bhagwan)
Member(A).

(J.D. Kulkarni)
Vice-Chairman (J).

Dated :- 05/10/2018.