

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.1027 OF 2019

District : Mumbai

Shri Laxman Digambar Surnar,)
Occupation : Service, At present R/O.)
Flat No.32/2251, Abhyudaya Nagar,)
4th floor, Nutan Co-operative Housing)
Society, Kala Chowky, Sewree, Mumbai) **....Applicant**

Versus

1. The State of Maharashtra,)
Through the Principal Secretary,)
General Administration Department,)
Madam Cama Marg, Mantralaya,)
Mumbai.)

2. The Secretary,)
Maharashtra Public Service)
Commission, having office at)
Cooperage Telephone Nigam)
Bldg., Maharshi Karve Marg,)
Mumbai 01) **....Respondents**

Ms. V.K. Jagdale, learned Advocate for the Applicant.

Ms. K.S. Gaikwad, learned Presenting Officers for the Respondents

DATE : 25.07.2023

CORAM : JUSTICE MRIDULA BHATKAR, CHAIRPERSON

MS. MEDHA GADGIL, MEMBER(A)

J U D G M E N T

1. Applicant prays that Respondent be directed to appoint the applicant on the post of Assistant Section Officer, Class-B on the vacant post in view of resignation tendered by earlier candidate who belonged to NTC Category.

2. Learned Advocate for the Applicant has submitted that the Applicant had applied for the post of Assistant Section Officer, Class-B in the NT(C) category pursuant to the advertisement dated 26.04.2017. Learned Advocate has submitted that the Applicant has secured 146 marks. Applicant's name appeared at Serial No.2 in the wait list. On 21.04.2018 the merit list was published and out of 107 posts, 41 selected candidates did not join. Therefore, on 14.08.2018, the General Administration Department (GAD) communicated the M.P.S.C. informing the list of 41 candidates who have not accepted the posts and further informed to M.P.S.C. about the non joining of 41 candidates and the vacancy to be filled up from the waiting list. Thereafter by communication dated 17.12.2018 the G.A.D. communicate that out of 41 candidates, 13 candidates have not joined and 4 candidates left the service within one year. Hence, 17 vacancies were left. On 15.01.2019, M.P.S.C. published the 2nd waiting list for these 17 vacancies. Thereafter one Mr. Nilesh Manohar Rupnar, who was appointed in NT(C) Category tendered his resignation on 31.12.2018. Hence, one post in NT(C) Category was vacant. On 05.03.2019 the Government called the list of 13 more candidates on account of 7 candidates not joining the post and 5 candidates left the service and against one member case is pending. Thereafter, the M.P.S.C. published 3rd wait list of the candidates on

18.03.2019. However, the post of NTC Category which fell vacant on account of resignation of Mr. Nilesh Manohar Rupnar was not shown. Therefore, the applicant filed RTI application on 16.04.2019 requesting for the documents in respect of the post filled up by M.P.S.C. after publication of the 3rd wait list. The M.P.S.C. vide letter dated 16.05.2019 supplied the said information to the Applicant.

3. Learned Advocate for the Applicant relies on the communication dated 23.07.2019 sent by the G.A.D. to the M.P.S.C. informing that one Mr. Rupnar has resigned before the request for 3rd wait list was made. At that time the G.A.D. was not made aware by the Industry, Energy and Labour Department about the resignation of Mr. Rupnar and therefore that post was not asked for from M.P.S.C. and it was mentioned by G.A.D. in the said letter that the post of NTC Category be recommended.

4. Learned P.O. for the Respondent Ms. Gaikwad has submitted that the wait list has lapsed in the year 2019. Mr. Rupnar had joined and then resigned. Thus, it was not a clear vacancy. She has submitted that the M.P.S.C. has replied on 27.09.2019 to the letter of G.A.D. dated 23.07.2019 wherein it is specifically mentioned that the wait list has lapsed and under such circumstances the same cannot be reviewed in view of earlier judicial pronouncements. Learned P.O. in support of her submissions relied on the judgment of Hon'ble High Court in the case of **Maharashtra Public Service Commission Versus Shri Pankajkumar C. Dabhire in Writ Petition No.5621/2015 decided on 03.07.2018.**

5. We have considered the submissions made by learned Advocate for the Applicant and the facts of the case. It is true that Mr. Nilesh

Manohar Rupnar had joined earlier and then resigned and so it is not a clear vacancy. However, there is delay in certain requisition for the post of NTC category which fell vacant on account of resignation of Mr. Rupnar. However, it is unfortunate delay which cannot be compensated by passing the order which is inconsistent with the law. The wait list has lapsed after one year. In the case of **Shri Pankajkumar C. Dabhire (supra)** it is held that the validity period of one year is a reasonable period. The candidates who are wait listed cannot claim indefeasible right to recruitment. Further on the same point we rely on the judgment of Hon'ble Supreme Court in the case of **The State of Karnataka & Ors. v Smt. Bharathi S., Civil Appeal No.3062/2023 decided on 19.05.2023.** We have enquired whether any post in the recruitment process of the year 2018 is still vacant, so that the Applicant can be accommodated in NTC category. However, learned P.O. on instructions has informed that the M.P.S.C. has issued fresh advertisement where the earlier vacant posts are considered and accordingly the posts are advertised.

6. Under such circumstances, there is no merit in the case of the Applicant. Hence, O.A. stands dismissed.

Sd/-

(Medha Gadgil)
Member (A)

Sd/-

(Mridula Bhatkar, J.)
Chairperson

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