

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.314 OF 2017  
(Subject : Appointment)**

Shri Jitendra Jagannath Patil, )  
Occ. Full Time Teacher at Government Technical High )  
School Nashik. R/at. Flat No.1, Adarsh Pride Apts., )  
Vanashri Colony, DGP Nagar – 2, Ambad, )  
Nashik 422 010 ) ..... Applicant

**Versus**

1. The State of Maharashtra, )  
Through the Secretary, )  
Skill Development & Entrepreneurship )  
Department, Mantralaya, Mumbai 32. )

2. The Chairman/ Secretary, )  
Maharashtra Public Service Commission, )  
Bank of India Building, 3<sup>rd</sup> floor, )  
Mahatma Gandhi Rd., Hutatma Chowk, )  
Mumbai 1. )

..... Respondents

Shri K.R. Jagdale, the learned Advocate for the Applicant.

Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Respondents.

**CORAM** : **SHRI P.N. DIXIT, VICE-CHAIRMAN(A)**  
**SHRI A.D. KARANJKAR, MEMBER(J)**

**RESERVED ON** : **10.06.2019**

**PRONOUNCED ON** : **13.06.2019**

**PER** : **SHRI A.D. KARANJKAR, MEMBER(J)**

**J U D G M E N T**

1. Heard Shri K.R. Jagdale, the learned Advocate for the Applicant and Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Respondents.

2. The advertisement was published by the Maharashtra Public Service Commission (M.P.S.C.) vide annexure Exhibit-B which is at page 12 to fill the post of Principal / Vice Principal, Industrial Training Institute, Maharashtra Education Services, Class-II. The Applicant applied for the post which was reserved for Blind or Low Vision Candidate. The mark list was published and names of Shri Sali and Shri Kulkarni were recommended by the Maharashtra Public Service Commission to the Government for filling two vacant posts under the category reserved for Blind or Low Vision candidates.

3. Shri Sali had also applied for the higher post and he was selected to that post, consequently he gave up his claim to the lower post, therefore, Shri Bhadane was recommended for that post.

4. It is the case of the Applicant that Shri Kulkarni did not appear for the verification of documents, consequently that post remained vacant and as the Applicant had secured 81 marks, therefore, as per the merit list, Applicant's name should have been recommended by the M.P.S.C. to the Government, but it was not done. It is the grievance of the Applicant that letter dated 04.02.2016 was written by the Respondent No.1 to the Respondent No.2 i.e. M.P.S.C. informing that though 191 posts were to be filled, as some of the candidates applied for more than one post, therefore, there was likelihood that 41 posts remaining vacant in Group A and Group B and consequently, as it would take long time for the fresh recruitment, therefore, the Government asked Respondent No.2 to recommend the names of 41 candidates from the waiting list. Accordingly, the M.P.S.C. recommended the names of the candidates from the waiting list, but the name of the Applicant was not recommended, therefore, the Applicant approached this Tribunal for the grievance.

5. It is the submission of the Applicant that the action of M.P.S.C. and the Respondent No.1 is discriminatory and violative of the principles of natural justice, in view of the provisions under Article 16 of the Constitution of India. It

is further submitted that till today one post reserved for the candidate with blindness or low vision category is lying vacant and inspite of it no effort was made by the Respondent No.1 to fill the said post. It is submitted that it was social obligation on the Respondent No.1 to provide employment to physically handicapped candidates, as for implementing the policy of the State two posts were reserved for blind or low vision candidates. Under these circumstances, it is submitted that direction be given to the Respondent No.2 to recommend the name of the Applicant for appointing him on the posts of Principal irrespective of the fact that waiting list is lapsed due to expiry of one year.

6. The application is opposed by the Respondent No.2 vide reply which is at page 53. There is no dispute about the fact that the Applicant applied for the post under reserved category for blind or low vision candidate. As also candidates Shri Sali, Shri Bhadane and Shri Kulkarni applied in the same category. It is not dispute that Shri Sali scored 95 marks, Shri Bhadane and Shri Kulkarni scored 86 marks and the Applicant scored 81 marks. It is the contention of the Respondent No.2 that Shri Sali applied for the post as per both advertisements i.e. Advertisement No.90 of 2013 and Advertisement No.91 of 2013 under Group A and Group B. Shri Sali was selected for both the posts but he accepted the Group-A services. It is submitted that for one post reserved for blind or low vision candidate name of Shri Kulkarni was recommended and lateron name of Shri Bhadane was recommended in place of Shri Sali for another post. It is not in dispute that Shri Kulkarni did not appear for the verification of documents and that post is vacant till today.

7. It is contention of the Respondent No.2 that letter was written by Respondent No.1 on 04.02.2016 and the Government requested Respondent No.2 to recommend the names of 41 candidates from the waiting list. It is submitted that decision was taken by the Government to call recommendations to fill only 41 posts and consequently this letter was written. It is submitted that there was no request made by the Government to fill the remaining posts and consequently there was no reason for the M.P.S.C. to recommend the name of

the Applicant. It is also contention that the result of examination was declared on 08.09.2015, the waiting list lapsed after expiry of one year and consequently, it was not permissible to recommend the name of the Applicant.

8. Respondent No.1 also submitted reply which is at page 148 and on the basis of similar allegation the application is opposed.

9. One more ground of attack is made by the Respondent No.2. It is contention that M.P.S.C. is juridical person and as per Rule 21, M.P.S.C. can be sued through its Secretary. It is contended that M.P.S.C. is sued through Chairman, though the proceedings is not tenable.

We have heard oral submissions of the Applicant and Respondents No.1 and 2. So far as the contention that the proceedings itself is not maintainable as the M.P.S.C. is sued through the Chairman is concerned, on perusal of the title of the Original Application it seems that the M.P.S.C. is sued through the Chairman / Secretary, therefore, it is not necessary to examine the contention.

10. After hearing all the facts and after examining the documents it emerges that Shri Sali scored 95marks, Shri Kulkarni scored 86 marks, therefore, initially names of Shri Sali and Shri Kulkarni were recommended. Shri Sali was selected for Group A and Group B posts. Shri Sali opted for Group A post, consequently, one post reserved for blind or low vision candidate remained vacant, therefore, Shri Bhadane who scored 86 marks was recommended to fill the 2<sup>nd</sup> post.

11. As it is not in dispute that Shri Kulkarni did not appear for the verification of the documents, consequently the post remained vacant. It is pertinent to note that it was for the Respondent No.1 to examine and verify the documents. It was realized by Respondent No.1 that Shri Kulkarni did not appear for verification of documents consequently Respondent No.1 was unable to appoint Shri Kulkarni. This was sufficient to note that one post reserved for blind or low vision candidate remained vacant. In this situation we would like to examine the

contention of Respondents. Respondents have contended that in opinion of Respondent No.1 it was necessary to fill only 41 posts and it was not necessary to fill the remaining posts and consequently letter dated 04.02.2016 was written and Respondent No.2 was asked to recommend the names of 41 candidates from the waiting list. It is submitted that the decision was taken by the Respondent No.1 to fill 41 posts of the candidates who have applied for more than one posts and for these reasons as they opted for one post the other post remained vacant. In order to examine whether this could be a reasonable and proper it is necessary to consider the legal position.

12. The legal position is examined by Hon'ble Apex Court in case of **Shankarsan Dash, Appellant V. Union of India, Respondent, AIR 1991 SC 1612**, the Hon'ble Constitution of the Bench of the Apex Court in paragraph 7 of the judgment observed as follows :-

*"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment tests, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha, (1974) 1 SCR 165: (AIR 1973 SC 2216), Miss Neelima Shangla v. State of Haryana, (1986) 4 SCC 268 : (AIR 1987 SC 169), or Jitendra Kumar v. State of Punjab, (1985) 1 SCR 899 : (AIR 1984 SC 1850)."*

Now in this background it must be examined whether the action of the Government only to consider some of the candidates is reasonable and fair on the touch stone of the provisions under Article 16 of the Constitution of India. No doubt under Article 16 of the Constitution of India power is conferred on the State to make the discrimination on the ground of gender, caste, physical

disability but it must be only for the benefit of weaker section of the society. The State has no absolute power to adopt, choose and pickup the policy. The action of the State must stand on test of reasonability which is laid down under Article 16 of the Constitution of India. Therefore, when the decision is taken by the State only to pick up some of the candidates from the waiting list, disregarding the fact that other candidates are also on waiting lists and that too irrespective of their merit, whether such action can be accepted as reasonable. The law is that the State is bound to record and disclose sound and cogent reasons for picking up some of the candidates and for not picking up some of the candidates.

In case of state of Karnataka v C.Lalitha 2006 Supreme Court Cases (L & S) 447 it is laid down that Art. 16 and 14 directs parity in employment, all persons similarly situated should be treated similarly irrespective of the fact that only one person has approached the court. In view of this legal position, as the respondent No.1 called recommendation for filling 41 posts including the post of Shri Sali, it was necessary to call recommendation to fill the post which remained vacant as Shri Kulkarni not turned up, but it was not done.

13. In the present matter it happened that as per letter dated 04.02.2016 Respondent No.1 requested the Respondent No.2 to recommend the names of 41 candidates from the waiting list only to fill 41 posts which were remained vacant as the 41 candidates who applied and were selected for two posts or more. It must be noted that the Respondent No.1 disregarded the fact that the post of one blind or low vision candidate remained vacant as selected candidate did not appear for verification of documents, but no steps were taken by the Government. When letter dated 04.02.2016 was written by Respondent No.1, Respondent No.1 was aware of the fact that as Shri Kulkarni did not appear for verification of documents and one post reserved for blind or low vision candidate had remained vacant but no steps were taken. It was the duty of the Respondent No.1 to fairly implement the policy of the Government to provide

employment to physically handicapped candidates and in order to implement that policy two posts were reserved for blind or low vision candidates. Therefore it was incumbent on the Government to direct Respondent No.2 to recommend the name of the candidate from the waiting lists of blind/low vision candidates. The applicant wrote letters to the respondents No.1 & 2 but, ultimately it was informed to the applicant that as the period of one year expired from the date of result, therefore, the waiting list lapsed and nothing could be done. In our opinion this approach of the Respondent No.1 was totally in violation of the spirit under Article 16 of the Constitution of India.

It is pertinent to note that no response to letter dated 04.02.2016, the Respondent No.2 made recommendation to the Respondent No.1 along with its letter dated 16.06.2016, names of the candidates to fill the Group A & B posts were recommended. It is pertinent to note that the names of candidates belonging to open category were also recommended to fill 41 posts and in respect of name of Shri Sali, name of Shri Bhadane was recommended. It is important to note that as a result of this action of the Respondent No.1 even open category candidates could get the employment but the Applicant who is blind or low vision candidate could not secure the place though he was entitled.

14. In view of this background, we are compelled to say that this action of Respondent No.1 is absolutely discriminatory and arbitrary and it has caused grave injustice and prejudice to the Applicant. If this action of the Respondent No.1 is examined in view of the observations made by the Hon'ble Apex Court in case discussed above, then no inference is possible other than the decision of the Respondent No.1 was arbitrary. In this regard we would like to point out that Respondent No.1 has nowhere given explanation or reasons why decision was taken to fill only 41 posts which remained vacant as some of the candidates opted for other higher posts and in absence of reasons we are bound to say that action of Respondent No.1 not giving opportunity of employment to the Applicant is violation of the principles under Article 16 of the Constitution of

India. The Applicant being physically handicapped candidate was entitled to have benefits of the reservation as per the policy of the Government, but the respondent No.1 without any reasonable ground has deprived him, therefore we accept that the applicant is entitled for the relief. In result we pass the following order :-

**ORDER**

- (1) Respondent No.1 is directed to appoint the Applicant on the post applied.
- (2) This order shall be complied within the period of three months.
- (3) No order as to costs.

Sd/-

**(A.D. Karanjkar)**  
**Member(J)**

\*prk

Sd/-

**(P.N. Dixit)**  
**Vice-Chairman(A)**