

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.315 OF 2017

(Subject : Appointment)

DISTRICT : NASHIK

Shri Santosh Natha Salunke,)
Occ : Full Time Teacher at Technical High School at Malegaon,))
R/at. Sukan-A Row Bunglow No.4, Damodhar Nagar,))
Pandurang Chowk, Pathardi Fata, Nasik 422 010.)) **..... Applicant**

Versus

1. The State of Maharashtra,)
Through the Secretary, Skill Development &)
Entrepreneurship Department, Mantralaya,)
Mantralaya, Mumbai 32.)
2. The Chairman/ Secretary,)
Maharashtra Public Service Commission,)
Bank of India Building, 3rd floor,)
Mahatma Gandhi Road, Hutatma Chowk,)
Mumbai 1)
3. Dr. Deepak Bhagwanrao Patil,)
Full Time Teacher (Electronics))
Govt. Technical High School Center, Bhadkal Gate,)
Aurangabad.) **..... Respondents**

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

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents No.1 & 2.

Shri A. Sakolkar, learned Advocate for the Respondent No.3.

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

RESERVED ON : **17.06.2019**

PRONOUNCED ON : **19.06.2019**

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

J U D G M E N T

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant, Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents No.1 & 2 and Shri A. Sakolkar, learned Advocate for the Respondent No.3.

2. The Respondent No.1 directed the Respondent No.2 to conduct the recruitment process for filling 71 vacant posts of Principal / Vice-Principal on the establishment of Industrial Training Institute, Maharashtra Education Service, Class I (Junior). The Respondent No.2 published advertisement No.90/2013 on 1-11-2013. The Applicant being eligible for the post, therefore, he submitted his application, so also the Respondent No.3.

3. After the examination and scrutiny test, results were declared on 02.09.2015. In the examination the Applicant scored 133 marks and the Respondent No.3 scored 135 marks. As per the merit list recommendations were made by the Respondent No.2, but it was noticed by the Respondent No.1 that some of the candidates had applied for more than one post and as they opted for the higher post, consequently 41 posts were remaining vacant. The Respondent No.1, therefore, wrote letter to the Respondent No.2 on 04.02.2016 and requested to recommend the names of 41 candidates to fill the posts. Accordingly, the Respondent No.2 vide letter dt/16-9-2016 recommended names of 13 candidates from the waiting list. The name of Respondent No.3 was also recommended against the post which was reserved for Open Female Category.

4. It was the grievance of the Applicant that one candidate Smt. Swati Kadam did appear for verification of documents and no attempt was made by the Respondent No.1 to fill the post and this has prejudice to the interest of the Applicant. The Applicant also objected the recommendation of Respondent No.3 to

the post on the ground that the Respondent No.3 was not possessing requisite educational qualification and therefore, his recommendation was illegal.

5. After receiving the objection from the Applicant the Respondent No.1 again wrote letter to the Respondent No.2 and requested to recommend the candidates from the waiting list to fill the post of Smt. Swati Kadam, but it was informed by the Respondent No.2 that as the period of one year was expired from the date of declaration of the result, consequently there was no waiting list in existence, therefore, the Respondent No.2 refuse to make recommendation. When it was realised by the Applicant that his name was not recommended by the Respondent No.2, the Applicant filed the present Original Application and claimed the relief.

6. The Respondent No.2 submitted it's reply which is at page 97. It was contention of the Respondent No.2 that the Respondent No.2 followed the procedure as per rules and regulations and standing orders. It is submitted that the Applicant and Respondent No.3 were found qualified for the post reserved for Open Female Category and Applicant was below in the merit than Respondent No.3, therefore, the name of the Respondent No.3 was recommended. It is the contention of the Respondent No.2 that as per the standing order, waiting list expired after the period of one year from the date of declaration of the result and consequently the Respondent No.2 was unable to recommend the name of the Applicant in the year 2017. It is submitted that the Respondent No.2 has not violated any provisions of rules and regulations, and consequently the Application is misconceived.

7. The Respondent No.1 submitted that the reply is at page No.245. There is no dispute about the facts asserted by the Applicant. It is contention of the Respondent No.1 that initially the letter was written to the Respondent No.2 to

recommend the names of 41 candidates as 41 candidates opted for the higher posts. As there was no direction issued by the Government to fill the post of Smt. Swati Kadam, therefore, nothing could be done in that matter. It is contended that that one of the candidate Smt. Rajani Khobragade had filed Writ Petition No.10103 of 2015 in the Bombay High Court, Aurangabad Bench and the Hon'ble High Court by its order dated 16.04.2016 stayed the issuing of appointment letters to those candidates who secured 56 or less marks and those who were selected against female reservation and male candidates who were selected against the female reservation. It is contended by Respondent No.1, in view of the stay order the whole procedure relating to appointments was stayed and Respondent No.1 could not take any action. It is submitted that the Hon'ble High Court delivered judgment in Writ Petition No.10103 of 2015, filed by Smt. Rajani Khobragade on 31.03.2017 and dismissed the Writ Petition.

8. So far the allegations made by the Applicant against Respondent No.3 are concerned, it is submitted that the matter was referred to the Committee and to the Law and Judiciary Department to examine the case of Respondent No.3 and now the opinion is given by Law and Judiciary that the Respondent No.3 was not possessing required qualification for his appointment as Principal/ Vice-Principal. It was submitted by the Respondent No.1 that when the request was made to the Respondent No.2 to make recommendation as per the request of the Applicant, Respondent No.2 informed that as the waiting list was lapsed, therefore, it was not possible to make any recommendations. It is contended that the Respondent No.2 did not act in manner contrary to law, consequently there is no substance in the O.A.

After reading the reply submitted by Respondents No.1 and 2 now it is made clear that Respondent No.3 was not eligible. Now the question remains is whether

the action of the Respondent No.2 not recommending the name of the Applicant was justified in view of the standing order. Respondent No.1 has placed on record standing order which is at Exhibit – A, R-1, page 225. Clause D in the standing order says that while competing the period of limitation of waiting list, the period during which the recruitment process was stayed as per the judgment of the court shall be excluded.

9. It appears from the contention raised by the Respondent No.1, page 248 in its reply, it seems that in relation to the Advertisements No.89 of 2013, 90 of 2013 and 91 of 2013, Smt. Rajani Khobragade had filed Writ Petition No.10103 of 2015.

The relevant portion is as under :-

“(ii) Also in another related case in relation to the same advertisement viz.89/2013, 90/2013, 91/2013 one candidate Smt. Rajani Khobragade filed a writ petition 10103/2015 in High Court Bombay, Aurangabad Bench. The Hon’ble High Court on 16.04.2016 stayed the issuing of Appointment letters to those candidates who secured 56 or less marks and those who were selected against female reservation and those candidates who were selected from male candidates against the female reservation. Hence the Whole procedure related to appointments was stayed and Respondent No.1 could not take any action. Recently Hon’ble High Court in its judgment on 31.03.2017 dismissed the writ petition of Rajani Khobragade.”

10. It is pertinent to note that the Hon’ble Bombay High Court, Aurangabad Bench had stayed the issuing of appointment letters to the candidates who secured 56 or less marks and those who were selected against female reservation and those candidates who were selected from male candidates against the female reservation. It appears that the stay order was in operation from 16.06.2016 to 31.03.2017. In view of this stay order, as per Clause D in the standing order this period was liable to be excluded while computing the period of one year i.e. lapse of waiting list. It seems that Respondent No.2 did not consider this aspect due to which material injustice is caused. It also appears from the specific reply of Respondent No.1 that

initially recommendations were not called from the Respondent No.2 for filing the post of Smt. Swati Kadam.

11. The Applicant challenged the recommendation of the name of Respondent No.3 and now it is admitted by Respondent No.1 that the Respondent No.3 was not eligible for the post. In view of these discussions we are compelled to say that the applicant was eligible for the post and without considering the clause D of the standing order decision was taken by the Respondent No.2 that the waiting list lapsed after expiry of one year from the date of the result. In our firm view this approach of the Respondent No.2 was contrary to its own standing order, therefore, it cannot be justified. We therefore, accept that due to action of the Respondents No.1 and 2 injustice is caused to the applicant.

12. In view of this discussion, we accept the submission that the Applicant that he is entitled for the reliefs claimed in relief Clause (a), (b) and (c). Hence, the following order :-

ORDER

- (A) Original Application stands allowed in terms of prayer clauses (a), (b) and (c).
- (B) No order as to costs.

Sd/-

(A.D. Karanjkar)
Member(J)

Sd/-

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

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