

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.372 OF 2017

Mr. Vijay Manohar Jagtap)
Age : 38 years, Occ. Service,)
R/at. N-42, C/C-2, 31/2,)
Near Rameshwar Mahadev Temple,)
Trimurti Chauk, New Nashik)
CIDCO, Nashik 8) **...APPLICANT**

VERSUS

1. The State of Maharashtra,)
Through the Secretary,)
Public Works Department)
Mantralaya, Mumbai)

2. The Chief Engineer (Electric))
Public Works Circle, Mumbai)
Circle, Bandhkam Bhavan,)
Near C.S.T., Mumbai) **...RESPONDENTS**

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

Ms. Archana B.K, learned Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Ms. Medha Gadgil (Member) (A)

DATE : **11.04.2023.**

PER : **Ms. Medha Gadgil (Member) (A)**

J U D G M E N T

1. In this case the Applicant seeks appointment to the post of Vehicle Driver under Scheduled Caste Category vide Advertisement dated August 2014 for the Public Works Department, Nashik.

2. Brief facts of the case are as under :-

In this case the Respondent No.2, the Chief Engineer (Electric), Public Works Circle, Mumbai, published Advertisement for Public Works Department, Nashik in the month of August, 2014 for three vehicle driver posts, one each for Scheduled Caste, Scheduled Tribe Caste and Nomadic Tribe (C) respectively. The applicant appeared for the Written Examination which was conducted on 28.09.2014, wherein the applicant secured 90 marks, out of 120 marks. After clearing the written examination the final select list was published on 04.05.2016 in which one Mr. Pagare Sachin Wamanrao figured at Serial No.1 in the S.C. Category. He was issued appointment order and was posted at Dhule by order dated 19.05.2016. He joined the said post and continued to work till November, 2016. However, he submitted an application on 16.11.2016 stating that his posting at Dhule was causing him inconvenience and he requested the Superintending Engineer, P.W.D. Nashik to cancel the order of posting at Dhule. He further mentioned that he waived all his rights and accordingly in the month of November, 2016 the appointment of Mr. Pagare Sachin Wamanrao was cancelled.

3. The Applicant being waiting listing candidate requested Respondent No.1 to appoint him in place of Mr. Pagare. The learned Advocate for the Applicant pointed out that the Applicant visited the office of Respondent No.2 on 16.11.2016, 10.11.2016 and 20.04.2017 requesting him to appoint him on the vacant post of Mr. Pagare. Applicant made representation on 13.04.2017 to give him appointment as his name figured at Serial No.1 in the waiting list under the S.C. Category.

4. Learned Advocate for the Applicant in support of his submissions relied on the judgment of **Hon'ble Bombay High Court dated 22.01.2014 passed in Writ Petition No.4257/2013, Mr. Udaysing Jalamsing Valvi Versus The Secretary & Anr.** Learned Advocate has further produced the copy of G.R. dated 27.06.2008 wherein the duration of waiting list is being prescribed.

5. Learned Presenting Officer for the Respondents while opposing the Original Application has relied on the affidavit-in-reply dated 21.08.2017 filed on behalf of Respondent No.2 through Mr. Chandrasen D. Kavathe, Superintending Engineer in the office of the Superintending Engineer, Public Works Department (Electrical), Pune. She pointed out that Mr. Pagare had already joined the service on 19.05.2016. However, he found his posting inconvenient hence he resigned within six months from the date of joining the said post. She further relied on Clause 9 of Government Resolution dated 19.10.2007. In the said affidavit it is stated as :

“As per the Govt. Resolution, if the post is vacant for the reason
(i) the candidate is not joined though selected,
(ii) the candidate is disqualified due to the reason of Caste Certificate or any other reason for the post held, in these circumstances the department is required to think about the list of the waiting candidate. The period of waiting list is one year and one year has not over as per the Govt. Resolution, this is not the fact to be considered regarding the subject of the applicant.”

6. In the judgment of **Mr. Udaysing Jalamsing Valvi (supra)** the Respondent had failed to take action by not appointing the Petitioner and kept the post vacant for undisclosed reason. The post remained vacant in this case because the appointed candidate failed to join the post within the prescribed period. Hence, we are able to distinguish this case, as in the present matter Mr. Pagare had already been appointed on the said post and worked there for a period of about six months. So this clearly does not constitute the vacancy. We are also able to distinguish the judgment of **Mr. Udaysing Jalamsing Valvi (supra)** in which the applicant never joined the service. So the facts in the present case are different from the said judgment.

7. In view of the facts and circumstances of this case as well as settled position of law, O.A. stands dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

prk