

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 440 /2015 (D.B.)

Deepak S/o Kisanji Lele,
Aged about 41 years, Plot No.90,
New Subhedar Layout, Nagpur-440 024.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
- 2) Principal Chief Conservator of Forest,
Civil Lines, Nagpur-1.
- 3) The President,
Regional Selection Committee cum
Chief Conservator of Forest (Regional),
Zero Miles, Nagpur.

Respondents.

Shri Bharat Kulkarni, Advocate for the applicant.

Shri H.K. Pande, P.O. for respondents.

**Coram :- Shri Shree Bhagwan,
Member (A) and
Shri A.D. Karanjkar, Member (J).**

JUDGMENT

Per : Member (J).

(Delivered on this 12th day of February,2019)

Heard Shri Bharat Kulkarni, learned counsel for the
applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. In response to the advertisement published in the year January,2014 the applicant applied for the post of Stenographer (Lower Grade) in Scheduled Caste (SC) category as one post was reserved for the said category. After the process the applicant's name was included in the select Waiting List at Sr.No.2. The candidate Shri Sharad Gopinath Salve who was at Sr.No.1 in the select Waiting List was appointed as Stenographer (Lower Grade), he joined the service and lateron he submitted resignation and on 13/02/2015 the resignation was accepted, consequently that post became vacant.

3. The applicant requested the respondents that as the post of Shri S.G. Salve who was selected in the waiting list at sr.no.1 became vacant, the applicant be appointed on that post. It is grievance of the applicant that the respondents did not consider his request and rejected his request relying upon the G.R. dated 19/10/2007. It is submitted that the action of the respondents rejecting his application is illegal, consequently it is prayed that the orders dated 17/03/2015 and 30/03/2015 be quashed and set aside and the applicant be appointed as Stenographer (Lower Grade) on the vacant post.

4. The learned P.O. has justified correctness of the order. It is submitted that the similar situation was examined by the Division

Bench of Maharashtra Administrative Tribunal, Nagpur Bench in O.A.No.249/2014. The Annex-R-II is the copy of the Judgment delivered on 05/08/2015 in O.A.No.249/2014 in case of **Shripad Namdeo Khirdekar versus State of Maharashtra & Ors.** In para-15 the learned Division Bench has observed as under :-

*“(15) This gives rise to the larger issue whether a wait listed candidate has a right to be considered after all available vacancies have been filled up by following the recruitment process. Hon’ble Supreme Court in **Madan Lal Vs. State of J&K (1995 AIR 1988)** has ruled that once the declared vacancies are filled up by candidates placed higher in the select list, that list gets exhausted having served its purpose. Para-23 of the judgment reads as follows -*

***Para 23** - It is no doubt true that even if requisition is made by the Government for 11 posts the public Service Commission may 'send merit list of suitable candidates which may exceed 11. That by itself may not be bad but at the time of giving actual appointments the merit list has to be so operated that only 11 vacancies are filled up, because the requisition being for 11 vacancies, the consequent advertisement and recruitment could also be for 11 vacancies and no more. It easy to visualise that if requisition is for 11 vacancies and that results in the initiation of recruitment process by way of advertisement, whether the advertisement mentions filling up of 11 vacancies or not, the prospective candidates can easily find out from the Office of the Commission that the requisition for the proposed recruitment is for filling up 11 vacancies. In such a case a given candidate may not like to compete for diverse reasons but if requisition is for larger number of vacancies for which recruitment is initiated he may like to compete. Consequently the actual appointments to the posts have to be confined to the posts for recruitment to which requisition is sent by the Government. In such an eventuality, candidates in excess of 11 who are lower in the merit list of candidates can only be treated as wait listed candidates in order of merit to fill only the eleven vacancies for which recruitment has been made, in the event of any higher*

candidate not being available to fill the 11 vacancies, for any reason. Once 11 Vacancies are filled by candidates taken in order of merit from the select list that list will get exhausted, having served its purpose”.

5. In para-16 the Division Bench has placed reliance on the Judgment in case of **Raj Rishi Mehra and Others vs. State of Punjab (AIR 2013 SC 3580) and Mukul Saikia Vs. State of Assam (AIR 2009 SC 747)**. In both the rulings, it was held that the life of the select list gets exhausted once the vacancies are filled in as per the selection list and the vacancies arising thereafter cannot be filled from the select wait list. The situation before the learned Division Bench was similar in that case also the respondent no.5 was appointed, lateron the respondent no.5 submitted his resignation and the applicant in that case requested to appoint him on the post which became vacant consequent to resignation of respondent no.5. Relying upon the law laid down by the Hon'ble Apex Court it was held by the learned Division Bench that as the selection list was exhausted and vacancy occurred lateron, therefore it was not permissible to fill the vacancy by appointing a candidate in the select list.

6. In view of this legal position in the present matter also as the candidate who was at sr.no.1 was appointed on the post, he joined the post, therefore, the recruitment process was completed. As the candidate Shri S.G. Salve resigned the service after joining,

consequently the respondents had not authority to appoint the applicant, but they were bound to fill that vacant post by recruitment, in view of the law laid down by the Hon'ble Apex Court.

7. In view of above discussion, we hold that there is no substance in the O.A., consequently, it is dismissed with no order as to costs.

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

(Shree Bhagwan)
Member (A).

Dated :- 12/02/2019.

*dnk.