

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.446 OF 2015

DISTRICT : SANGLI

Shri Sagar Popatrao Desai)
Age:30 Years,)
Designation: Nil)
Address for service of notice:-)
Krishna Koyana Building No. E-3/1,)
Warnali Vasahat, Vishrambaug, Sangli,)
(for the purpose of this O.A. only,)
address for service of notice)
shall be as under:-)
Adv. Pratap Patil,)
10, Sai Sadan, 4th floor, 68,)
Janmbhoomi Marg, Opp. Siddharth)
College Of Commerce,)
Fort, Mumbai - 400 001.)...Applicant

Versus

1. The District Collector, Sangli,)
Having Office at)
Rajawada Chowk, Sangli - 416 416.)
2. The Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai.)
3. The State of Maharashtra,)
Through General Administration)
Department, (Secretary))
Mantralaya, Mumbai.)...Respondents



Shri. P.V. Patil, Advocate for Applicant.

Shri. K.B. Bhise, Presenting Officer for Respondents.

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)**

DATE : 26.02.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. The Applicant is dragged to this Tribunal a third time over due either to the incorrigibility or lack of comprehension of simply worded judicial orders or deliberate defiance of the binding judicial orders and precedents including one of the Hon'ble Supreme Court, but quite certainly due to incongruity or something worse of subordinating the binding judicial orders to some instructions from the General Administration Department of the State of Maharashtra by two incumbents to the post of Collector Sangali vide their orders dated 19.09.2014 (Exh. 'D' page 23 of the Paper Book) and dated 13.04.2015 (Exh. 'H' page 37 of the Paper Book). The result is that the Applicant has been deprived of his legitimate right to join

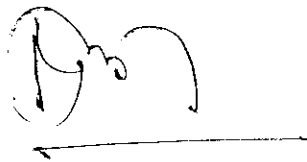


duties as Clerk Typist on the establishment of Collector Sangli.

2. The facts, despite attempts made during the process of reaching the conclusions as well as, as manifested by the orders themselves to deliberately make them complicated remain simple and uncomplicated.

3. We have perused the record and proceedings and heard Mr. P.V. Patil, the learned Advocate for the Applicant and Mr. K.B. Bhise, the learned Presenting Officer (P.O.) for the Respondents.

4. The Applicant competed for the post of Clerk Typist in responding to the advertisement of 24.05.2013. 33 posts were up for grabs. The results came out on 18.07.2013. The Applicant was first in the waiting list. One Shri Amit Subhash Katkar was duly selected. He reported on 04.09.2013. He tendered his resignation on 25.09.2013. That resignation was accepted and also become effective on 15.10.2013. A vacancy thus accrued. The Applicant being first in the waiting list sought appointment. In other words he sought operationalisation of waiting list. The said request was rejected citing a G.R. of 19.10.2007 (2007 G.R.). The Applicant moved us with



O.A.No.1243 of 2013 **(Sagar Popatra Desai Vs. The District Collector Sangli)**. We decided that O.A. on 14.08.2014. We held that the Respondent ignored a G.R. of 27.06.2008 (2008 G.R.). In 2007 G.R. clause 9 provided the period of validity of the select list. It read as follows (in Marathi):-

“ ९. निवडसूचीची कालमर्यादा:- निवड समितीने तयार केलेली निवडसूची १ वर्षासाठी किंवा नवीन सूची तयार करण्यासाठी सेवाभरतीची जाहिरात देण्यात येईल, त्या दिनांकापर्यंत यापैकी जो दिनांक आर्ध् घडेल त्या दिनांकापर्यंत विधीग्राह्य ठरेल. त्यानंतर ही निवडसूची व्यपगत होईल.”

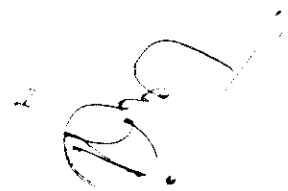
5. We found that the said clause 9 in fact came to be substituted by clause 7 of 2008 G.R. It read as follows:-

“ ७. निवडसूचीची कालमर्यादा:-

दि.१९/१०/२००७ च्या आदेशातील परिच्छेद क्र.९ येथील तरतुदीमध्ये बदल करण्यात येत असून यापुढे निवड समितीने तयार केलेली निवडसूची एक वर्षासाठी किंवा निवडसूची तयार करताना ज्या दिनांकापर्यंतची रिक्त पदे विचारात घेण्यात आली आहेत त्या दिनांकापर्यंत, जे नंतर घडेल त्या दिनांकापर्यंत विधीग्राह्य ठरेल. त्यानंतर ही निवडसूची व्यपगत होईल.”

6. We observed in paragraph nos. 4 and 5 as follows:-

“4. It is quite clear, therefore, that the Respondent did not notice the 2008 G.R. at all and made a short work of the case of the Applicant. In as much as, he relied solely on the 2007 G.R, we think he will have to re-consider the whole matter on the basis of 2008 G.R. We are sure that an objective and correct measure warranted by the facts without being too much influence by the technicalities and a move consistent with the peculiar facts hereof, will be adopted by the Respondent.



5. The Original Application is allowed. The impugned order of the Respondent rejecting the Applicant's request, which order is dated 2.12.2013 at Exh.'A' of the paper book (Page 11) is hereby quashed and set aside. The Respondent is directed to re-consider the case of the Applicant, in the light of the above observations, within a period of five weeks from today (i.e. 14th August, 2014). No order as to costs."

7. It will be quite clearly observed that we made it quite clear as to what would be the proper course of action warranted by the facts and we also made it quite clear that 2008 G.R. and not 2007 G.R. would govern the case at hand. The order therein impugned was based on 2007 G.R. and that impugned order was quashed and set aside.

8. For simple and plain understanding be it noted that there would be no hurdle or hitch in the appointment of the Applicant if 2008 G.R. was applied and that had to be applied. We must have thought that such a simple position would not be lost on the Collector who is a senior and experienced officer. Probably we hoped too much.

9. Before proceeding further we may mention that the position that obtained on these facts upon a proper analysis of the G.R.s relevant herefor was as above. But the law on such an issue is laid down the Apex Court. In



Secretary Tamil Nadu Public Service Commission Vs. The Secretary to Government Department of Personnel and Administration Reforms and others (W.A.No.1466 of 2008 And W.A.No.24 to 27 of 2009, dated 12.06.2009 (Madras High Court) a judgment of the Hon'ble Supreme Court is referred to in paragraph no.11. That was in the matter of **Gujrat State Dyxen Association Vs. State of Gujrat (1994 (3) JT 559.** Let us quote paragraph nos. 8 and 9 from that judgment of the Hon'ble Supreme Court.

“8. A candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join. But once the selected candidates join and no vacancy arises due to resignation, etc., or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it. He has no vested right except to the limited extent, indicated above, or when the appointing authority acts arbitrarily and makes

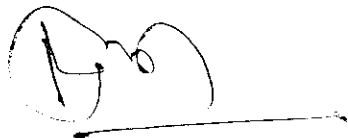


appointment from the waiting list by picking and choosing for extraneous reasons.

9. A waiting list prepared in an examination conducted by the Commission does not furnish a source or recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of the entire set of fresh candidates either from the Open or even from service."

In the case of Madan Lal & Ors. -Vs- State of J & K & Ors. (AIR 1995 SC 1088), having noticed relevant rule, the Supreme Court observed that

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the life of a selection list gets exhausted the moment all vacancies are filled up after the expiry of one year, whichever is earlier. That was a case in which the rule stipulated the life of a panel for a period of one year. Therefore, it will be evident that the persons, whose names are appearing in the waiting list, though may not have any vested right to be appointed, but have a limited right to claim appointment against the post, which were advertised pursuant to which waiting list prepared and in case of non joining of candidates or such advertised post falls vacant because of other circumstance.

10. The above then is the legal position based on the law laid down by the Hon'ble Supreme Court.

11. In the above set of circumstances the matter went before the Collector, Sangli (Shri Dipendra Singh Kushwaha). By the order dated 19.09.2014 (Ex-D) he rejected the request of the Applicant. It appears from his order that he sought and got guidelines from the Government (G.A.D.). He opined in effect that the vacancy accruing as a result of resignation by a selected candidate in the same process of selection could not be considered to be vacancy capable of being filled from the waiting list. He concluded thus

“ वरील सर्व वस्तुस्थितीचे अवलोकन करता इकडील पत्र क्र.मह. कार्या- 9/ आस्था - २/ आरआर - २४७२/२०१३ दिनांक - ०२ डिसेंबर २०१३ अन्वये कळविण्यात आलेला निर्णय उचित असलेल्या निष्कर्षापर्यंत पोहोचलो आहे. सामान्य प्रशासन विभाग, मंत्रालय मुंबई



यांचेकडील दिनांक १९.०९.२०१४ मार्गदर्शनाव्यये ही बाब अधोरेखित होत आहे. सबब मी जिल्हाधिकारी सांगली खालीलप्रमाणे आदेश पारित करित आहे.”

12. The applicant returned to this Tribunal with O.A.No.888 of 2014. By an interim order dated 29.09.2014 we restrained the Respondents from filling up of the vacancy in question. The 1st bench allowed withdrawal thereof with directions that if the Applicant made representation within four weeks it be decided expeditiously. The successor in the office of Collector (Shri Shekhar Gaikwad) decided the matter by his order dated 13th April, 2015 (Exhibit-H). He noticed the orders of this Tribunal and the judgments of the Hon'ble Madras High Court and Hon'ble Supreme Court discussed above. He discussed them and actually preferred the government orders over the said judgments. In para 9 he observed thus :-

“ ९. अर्जदार यांच्या विनंती व मा. महाराष्ट्र प्रशासकीय न्यायाधिकरणाचा दावा क्रमांक १२४३/१३ मधील निर्णय दिनांक १४/८/२०१४ अन्वये, 'श्री काटकर यांच्या राजिनाम्याने रिक्त झालेल्या पदावर श्री देसाई यांना नियुक्ती देता येईल किंवा कसे?' याबाबत मार्गदर्शन मागविलेले होते. त्यावर महाराष्ट्र शासन सामान्य प्रशासन विभागाने त्यांचेकडील पत्र क्रमांक-प्रानिमं-१२१४/२३७/(प्र.क्र.८८/१४)/१३ -अ, दिनांक १९ सप्टेंबर, २०१४ अन्वये 'शासन निर्णय, सामान्य प्रशासन विभाग दिनांक १९.१०.२००७ मधील परि.०९. अन्वये निवडसूची तयार करताना विचारात घेतलेल्या रिक्त पदांच्या व्यतिरिक्त नंतर रिक्त झालेल्या पदांसाठी सदर निवडसूचीमधून नियुक्तीसाठी उमेदवारांची शिफारस करता येणार नाही. सदरची रिक्त पदे नव्याने निवडप्रक्रिया करून भरण्यात यावी अशी तरतूद आहे.' 'लिपिक टंकलेखक या पदभरती प्रक्रियेनुसार श्री अमित सुभाष काटकर यांची सदर पदी

नियुक्ती झाली होती. श्री काटकर हे सदा पदावर रुजू झाले व नंतर त्यांनी राजीनामा दिला. अशा प्रकारे एखारे पद भरले जाऊन नंतर ते रिक्त झाले असल्यास, अशा पदावर निवडसूचीतील पुढील उमेदवारास उक्त शासन निर्णयातील तरतुदीनुसार नियुक्ती देता येणार नाही, असे मार्गदर्शन शासनाने केले आहे.

वरील सर्व वस्तुस्थितीचे अवलोकन करता, इकडील आदेश क्रमांक - मह. कार्या- 9/आस्था-२आरआर-९७८/१४, दिनांक १९ सप्टेंबर, २०१४ अन्वये दिलेला निर्णय योग्य असून त्यामध्ये बदल करणेची आवश्यकता नाही, असे माझे मत झालेले असून मी जिल्हाधिकारी, सांगली खालीलप्रमाणे निर्णय देत आहे.

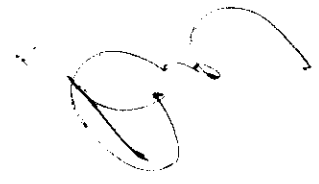
निर्णय

- १) श्री सागर पोपटराव देसाई यांनी दिनांक ०४ मार्च २०१५ रोजी केलेले पुनर्निवेदन फेटाळून लावणेत येत आहे व या निवेदानुसार केलेली मागणी देखील अमान्य करणेत येत आहे.
- २) सदर निकालाची समज सर्व संबंधितांना देणेत यावी.

दिनांक - १३ एप्रिल, २०१५
ठिकाण - सांगली

सही/-
(शेखर गायकवाड)
जिल्हाधिकारी, सांगली.”

13. Both the above orders cause dismay, disappointment and astonishment. They are totally erroneous. It seems the thought process was committed to a designed conclusion for some obscure reason. In such circumstances even a judicial forum will find itself struggling to remain within the conventional norm of employing temperate language. That is because once the Tribunal had passed the order then as a competent and in fact the only authority to implement if the Collector was in



duty bound to act in accordance therewith. The order of the Tribunal was so phrased as to be within the limits of official decency and grace. In fact by a clear reference to 2008 G.R. it was clear and it ought to have been so to the senior authority like the Collector that there was a vacancy and the provisions of 2008 G.R. would keep alive the list. Despite that a distinction was drawn between the manner in which the vacancy arose viz. by the resignation as opposed to the selected employee failing to do the needful in the matter and hence removed from service. That was completely in apposite. It was held in the second order that even if Clause 7 of 2008 G.R. substituted clause 9 of 2007 G.R. the second limb of clause 9 of 2007 G.R. would still remain applicable. That second limb reads as follows :

“ निवड समितीने तयार केलेल्या निवडसूचीमधून ज्येष्ठतेनुसार उमेदवारांची नियुक्तीसाठी शिफारस केल्यानंतर शिफारस केलेला उमेदवार सदर पदावर हजर न झाल्यास किंवा संबंधित पदाच्या सेवाप्रवेश नियमातील तरतुदीनुसार किंवा जाती प्रमाणपत्र किंवा अन्य कोणत्याही कारणास्तव संबंधित उमेदवार नियुक्तीसाठी पात्र ठरत नसल्याचे आढळून आल्यास निवडसूचीतील अतिरिक्त उमेदवारांमधून अन्य उमेदवारांची मागणी निवड समितीकडे नियुक्ती प्राधिकार्यास करता येईल. अशी मागणी आल्यास निवड समितीने निवडसूचीच्या विधी ग्राह्यतेच्या आधीन राहून सदर निवड सूचीमधून ज्येष्ठतेनुसार प्रवर्गानुसार पुढील उमेदवारांची शिफारस करावी. मात्र निवडसूची तयार करताना विचारात घेतलेल्या रिक्त पदांच्या व्यतिरिक्त नंतर मागणी आलेल्या किंवा रिक्त झालेल्या पदांसाठी सदर निवडसूचीमधून नियुक्तीसाठी उमेदवारांची शिफारस करता येणार नाही. सदरची रिक्त पदे नव्याने निवडप्रक्रिया करून भरण्यात यावी. त्यामुळे नव्याने पात्रता धारण करणाऱ्या उमेदवारांना संधी मिळेल.”

14. It is absolutely clear that the clinching fact was that Clause 7 of 2008 G.R. made a significant change in the matter of the longevity of the list and therefore by



relying upon the last quoted passage from 2007 G.R. the G.R. of 2008 could not have been stultified and made completely in effective. It is so simple as that. Therefore, we were compelled to make some uncomplimentary remarks about the Collectors who made the impugned orders.

15. The upshot is that the impugned orders cannot be sustained. The issue of the rights of the Applicant will have to be decided on the basis of the State of affairs such as they obtained when the earlier O.A.No.1243 of 2013 was instituted. And therefore, the circumstances that were made to happen by the Collectors, Sangli, contrived as it were, the Applicant cannot be made to suffer. But more importance than that is the fact that whatever may or may not happen to the applicant the deliberate defiance of the order of this Tribunal by the authority bound to implement it in almost utter disregard and bordering on contempt cannot be judicially tolerated. Therefore, we hold that the Collector, Sangli must appoint the Applicant within four weeks from today to the post of Clerk-typist.

16. The orders herein impugned are quashed and set aside. The Respondent No.1, District Collector, Sangli is hereby directed to appoint the Applicant to the post of



Clerk Typist within four weeks from today. This O.A. is allowed in these terms with no order as to costs.



Sd/-
(R.B. Malik)
Member-J
26.02.2016

Sd/-
(Rajiv Agarwal)
Vice-Chairman
26.02.2016

Mumbai
Date : 26.02.2016
Dictation taken by :sba