

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.674, 675 & 1114 OF 2015

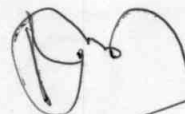
DISTRICT : JALGAON

ORIGINAL APPLICATION NO.674 OF 2015

Bharat s/o Sarjerao Karad,)
Age:31 years, Occu: Service Working))
as Craft Instructor, Govt. I.T.I.))
Bhusawal, Tq. Bhusawal,))
Dist. Jalgaon.))
R/o Tisgaon, Tq. Pathardi,))
Dist. Ahmednagar.) **)...Applicant**

VERSUS

1. The State of Maharashtra)
Through Principal Secretary,)
Skill Development &)
Entrepreneurship,)
Mantralaya, Mumbai - 32.)
2. The Director)
Directorate of Vocational Education))
Training, Mahapalika Marg,)
Mumbai - 1.)
3. The Secretary,)



The Maharashtra Public Service)
 Commission, Cooperage, Telephone)
 Exchange Building, Mharshi Karve)
 Road, Cooperage, Mumbai -21.)....**Respondents**

WITH

ORIGINAL APPLICATION NO. 675 OF 2016

DISTRICT :OSMANABAD

Lakshman s/o Krishna Nirmal,)
 Age:38 years, Occ: Service Working)
 as Math- Drawing Instructor,)
 Government I.T.I. Bhoom,)
 Tq. Bhoom, Dist. Osmanabad.)
 R/o Vijay Nagar, Sanja Chowk,)
 Osmanabad, Dist. Osmanabad.)...**Applicant**

VERSUS

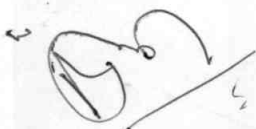
1. The State of Maharashtra & 2 Ors.)...**Respondents**

WITH

ORIGINAL APPLICATION NO. 1114 OF 2015

DISTRICT :PUNE

Shri Kishorkumar Narayan Lonkar,)
 Aged about 40 years, working as)
 Instructor, Government Shivaji)
 Technical High School, Laxmipuri,)
 Kolhapur and having residential address)



Post Lonikarbhur, Mahi Nala,
Pune- Solaur Road,
Taluka Haveli, District Pune.

)
)
)...Applicant

Versus

1. Maharashtra Public Service Commission, Through its Secretary, having Office at Bank of India Bldg., Fort, Mumbai.)
)
)
2. Government of Maharashtra. Through Principal Secretary, Skill Development & Entrepreneurship Dept., Mantralaya, Mumbai 400 032.)
)
)
3. The Director. Vocational Education & Training Skill Development & Entrepreneurship Dept, Mantralaya, Mumbai 400 032.)
)
)...Respondents

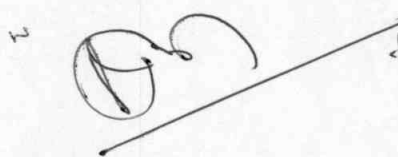
Shri A.A. Gharte & Shri M.D. Lonkar, Advocates for Applicants.

Smt. K.S. Gaikwad, Presenting Officer holding for Shri N.K. Rajpurohit, Chief Presenting Officer for Respondents.

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

DATE : 07.09.2016

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



JUDGMENT

1. These three Original Applications (OAs) admit to their disposal by this common Judgment. The relief claimed is a direction to the M.P.S.C. for revising the seniority list as a result of the vacancies accruing by the selection of a few candidates in the higher post and the Applicants seek the post at a lower level thus having been rendered vacant.

2. The Applicant in OA 674/2016 belongs to NT (D) category. The Applicant in OA 675/2016 belongs to the Scheduled Caste category while the Applicant in OA 1114/2015 is from OBC category. Three Advertisements bearing NOs. 89, 90 and 91 of 2013 came to be issued by the Respondent – MPSC. The Applicants have set out the details of the various posts which fall in what can be described as higher category and a few of them in the lower category. According to the 1st original Applicant, 16 posts came to be rendered vacant because those candidates came to be selected for both higher as well as the lower category of posts. In the 2nd OA, it is pleaded that 24 posts were rendered vacant for the same reason. The fact that those many candidates were selected for the higher post has been clearly admitted for example in Para 17 of the

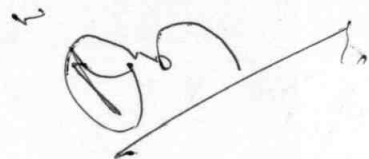


Affidavit-in-reply on behalf of the MPSC filed by Shri Maruti P. Jadhav, an Under Secretary (Page 50 of the Paper Book (P.B)).

3. We have perused the record and proceedings and heard Shri A.A. Gharte, the learned Advocate for the Applicants in the 1st two OAs, Shri M.D. Lonkar, the learned Advocate for the Applicant in the 3rd OA and Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.

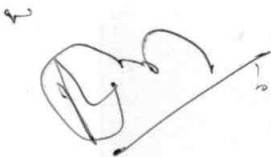
4. The issue, therefore, is as to whether the vacancies that come into existence in the lower category in view of the incumbents having been made it from both the categories could be offered to the Applicants, if they are otherwise found eligible and fit. In the general instructions to the candidates, a copy of which is Annexure 'P-2' to the Affidavit-in-Rejoinder at Page 99 onwards, the following recitals appear in Clause 3.14.4 in Marathi. The said Clause as well as next one needs to be quoted verbatim.

“३.१४.४ एकापेक्षा अधिक संवर्गाची पदे भरावयाची असल्यास ज्या पदासाठी अर्ज केला असेल त्या पदावरील नियुक्तीसाठी गुणवत्ताक्रमांकानुसार शिफारस केली जाईल. प्रथम पसंती दिलेल्या पदासाठी त्याची निवड होऊ शकली नाही तर गुणवत्ता क्रमांकानुसार दिलेल्या पदांच्या दुस-या, तिस-या या पुढील पसंतीप्रमाणे शिफारस करण्यात येईल. अंतिमतः दिलेल्या पसंतीक्रमानुसार आयोगाने एखाद्या पदासाठी शासनास शिफारस केल्यास इतर पदांसाठी दिलेले पसंतीक्रम रद्दबातल होईल.



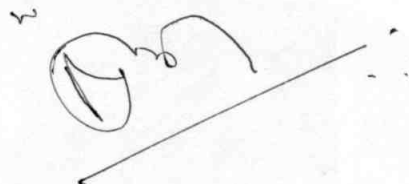
३.१४.५ ज्या पदासाठी उमेदवाराची शिफारस केली आहे, ते पद त्याने न स्वीकारल्यास अथवा अन्य कारणामुळे त्या पदावर नियुक्ती होऊ न शकल्यास त्याचा इतर पदांसाठी विचार केला जाणार नाही.”

5. Even otherwise, it appears to be quite rare that a particular person having been selected for the higher post would not accept it and prefer the lower one. If that were to be so, there should have been material to indicate the same.
6. A communication from the State Government to MPSC dated 4th February, 2016 in Marathi came to be furnished to us and the same forms the part and parcel of the record. It refers to the three Advertisements which are hereto relevant. It was mentioned therein that the names of 41 candidates came to be recommended for more than one post and a list of those candidates came to be annexed. An undertaking with regard to the preference for the higher posts was also submitted, and therefore, a large number of vacancies viz. 41 out of 191 existed. No Advertisement was issued for the post relevant heretofore from the year 2001. 50% of posts were lying vacant. Programmes were announced for a proper management of human resources in accordance with the policy of the Hon'ble the Prime Minister and the Hon'ble the Chief Minister. The Department herein concerned had a role to play, with the result the vacancies should be filled up



urgently. Two and half years have elapsed since the recommendations were made and in order to fill up the 41 vacancies, it will take a long time. The requests have been received from the candidates to be considered for these vacancies and six of them had filed OAs before this Tribunal (may be these OAs are part thereof). As per Rule 10(8)(b), once the recommendations were made by the MPSC, a waiting list of 50% of the candidates is maintained for a period of one year or till the issuance of the next Advertisement which is earlier. For the said posts, no Advertisement was issued and as on the day of this letter, the waiting list was alive, and therefore, it was requested that the recommendations be made for the said 41 posts.

7. The above discussion will make it very clear that the Applicants who apparently were otherwise eligible and fit for being appointed to one of the posts in the lower category could have been safely considered therefor. Since these OAs have remained pending, no issue of the lapse of time could be raised or accepted. We are, therefore, of the opinion that an appropriate order for the Applicants can be made which we do hereby do as follows.

A handwritten signature in black ink, consisting of a stylized 'G' followed by a flourish, is positioned above a single diagonal line that extends from the bottom left towards the right.

8. The Respondent No.3 is hereby directed to consider the case of these Applicants for being appointed to the posts they had applied for, bearing in mind, the observations in the preceding Paragraph and if found eligible and fit, recommend their names for being appointed thereto within four weeks from today. The State Government shall then take appropriate measures for appointing them within four weeks thereafter. These Original Applications are allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
07.09.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
07.09.2016

Mumbai

Date : 07.09.2016

Dictation taken by :

S.K. Wamanse.

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