

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 690 OF 2015

DISTRICT : MUMBAI

Shri Ranjig Babanrao Kawade,)
C/o: Shri Kamlesh Ghumre,)
Advocate, High Court,)
85, 8th floor, Mittal Chambers,)
Nariman Point, Mumbai 400 021.)...**Applicant**

Versus

1. The Collector,)
Raigad, Collector Office,)
Alibaug, Dist-Raigad 402 201)
2. The Sub Divisional Officer,)
[SDO], Tal-Panvel,)
Dist-Raigad.)
3. The State of Maharashtra,)
Through its Secretary,)
Mantralaya,)
Mumbai 400 032.)...**Respondents**

Shri Kamlesh Ghumre, learned advocate for the Applicant.

Ms Neelima Gohad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 13.04.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri Kamlesh Ghumre, learned advocate for the Applicant and Ms Neelima Gohad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 10.12.2014 issued by the Respondent no.1 rejecting the request of the Applicant to appoint him to the post of Talathi, from Open-PAP category from the waiting list, as the person originally selected from that category rejoined but resigned during the currency of the waiting list.

3. Learned Counsel for the Applicant argued that the Applicant belongs to open category and has a valid


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Project Affected Person (PAP) Certificate. The Respondent no. 1 issued an advertisement on 5.6.2014 to fill inter alia posts of Talathis, in various Sub-divisions of the district. The Applicant had applied from Open-PAP category. The examination was held on 22.6.2014 and the Selection List was published on the same day, i.e. 22.6.2014. One Shri S.B Ujgare was selected from Open-PAP category. He joined duties and later resigned on 30.8.2014. The Applicant was placed at Sr. No. 1 in the waiting list from Open-PAP category. On 10.9.2014, the Applicant made a representation to the Respondent no. 1 that the Applicant may be appointed as Talathi from Open-PAP category, by operationalizing the waiting list, as he is at Sr. No. 1 in the waiting list. However, by order dated 10.12.2014, the Applicant's prayer was rejected by the Respondent no. 1 on the ground that G.R dated 19.10.2007 does not permit filling up of a vacancy from waiting list, if a person, who was selected has joined, even if such a person was to resign later before expiry of the validity of the waiting list.

4. Learned Counsel for the Applicant argued that the PAP Certificate of Shri Ujgare was not found to be valid, and the matter is still pending before Aurangabad Bench of High Court. Shri Ujgare joined only for a day or two, and for all practical purposes, the post was never filled. The Applicant is, therefore, fully eligible to be appointed as Talathi from Open-PAP post.

5. Learned Presenting Officer (P.O) argued on behalf of the Respondents that para 9 of the G.R dated 19.10.2007 permit operationalizing of the waiting list only if a selected candidate does not join or if he is disqualified. In the present case, Shri Ujgare joined on 28.8.2014 and resigned by letter dated 5.9.2014 requesting that his resignation may be accepted w.e.f 30.8.2014. As Shri Ujgare has joined, the vacancy arising out of his subsequent resignation cannot be filled by operationalizing the waiting list.

6. We are rather disappointed that Learned Presenting Officer is relying on G.R dated 19.10.2007. A subsequent G.R dated 27.6.2008 has replaced para 9 of old G.R dated 19.10.2007. This Tribunal based on judgments of Hon'ble Supreme Court and Hon'ble Madras High Court has held in a few cases that even if a person, who is selected and joins, but later resigns, the resultant vacancy can be filled by operationalizing the waiting list, if it (waiting list) was valid on the date when such vacancy occurred. In the present case, select list was published on 22.6.2014. Shri Ujgare, who was selected from Open-PAP category for the post of Talathi, sought resignation from that post from 30.8.2014. Even if the date of acceptance of his resignation of Shri Ujgare, i.e. 22.1.2015 is considered, (as per para 8.1 of the affidavit in reply of the Respondent nos 1 and 3 dated 2.12.2015), the waiting list was valid. The Applicant's



case should have been considered for appointment for the post of Talathi from Open-PAP category as admittedly he was at Sr. No. 1 in the waiting list.

7. Another fact may also be considered. Shri Ujgare was selected from PAP category. He had submitted PAP Certificate issued by District Resettlement Officer, Beed dated 14.7.2006. The validity of PAP Certificate of Shri Ujgare is not fully established, as there is dispute about the ownership of the land which was acquired by the State. If the land is held not owned by the family of Shri Ujgare by Hon'ble Aurangabad Bench of High Court, his PAP Certificate will become invalid. It appears that Shri Ujgare was appointed without his PAP Certificate being authenticated. This will also support the case of the Applicant, even under para 9 of the G.R dated 19.10.2007, which is as stated above, no longer applicable.

8. Having regard to the aforesaid facts and circumstances of the case, the Applicant is held eligible to be considered for appointment to the post of Talathi from Open-PAP category by operationalizing the waiting list, subject to his PAP Certificate being found to be valid. The Respondents will give necessary orders of appointment to the Applicant within a period of three months from the date of this order provided the Applicant is otherwise fit for such appointment. This Original

Application is allowed accordingly with no order as to costs.

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

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 13.04.2016
Dictation taken by : A.K. Nair.

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