

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI  
ORIGINAL APPLICATION NO.1036 OF 2017**

**DISTRICT : THANE**

Shri Vijay Chhagan Gadave, )  
Age about 29 years, residing at Deep Apartment, )  
'B' Wing, Room No.101, Anand Koliwada, Mumbra, )  
Thane 400612 )..Applicant

Versus

1. The Collector, District Thane )  
2. Sub Divisional Officer, )  
Thane Division, Thane and Member Secretary, )  
District Selection Committee, Thane )..Respondents

Shri M.D. Lonkar – Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)  
Shri A.P. Kurhekar, Member (J)

RESERVED ON : 1<sup>st</sup> August, 2019

PRONOUNCED ON : 7<sup>th</sup> August, 2019

PER : Shri P.N. Dixit, Vice-Chairman (A)

## J U D G M E N T

1. Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

### Brief facts of the case:

2. The applicant appeared for selection to the post of Talathi. On 24.10.2016 the respondents published list of selected candidates and waitlisted candidates. The name of the applicant figures at Sr. No.1 in the waiting list. On 26.5.2017 one of the candidate resigned and his resignation was accepted on 2.10.2017 after almost 11 months and few days. The applicant made a representation to consider his case as he was first in the waiting list. By order 9.10.2017 the respondents rejected his representation. The relevant portion of the said order reads as under:

“प्रकरणी सामान्य प्रशासन विभाग यांचेकडील शासन निर्णय क्रमांक प्रा.निमं-२००७/प्र.क्र.४६/०७/१३-अ दिनांक १९/१०/२००७ व दिनांक २७/०६/२००८ अन्वये गट “क” प्रवर्गातील पदे भरताना अनुसरावयाची कार्यपध्दतीत निवडसूचीची कालमर्यादा निश्चित करणेत आली आहे. त्या अनुषंगाने “निवड समितीने तयार केलेली निवडसूची १ वर्षासाठी किंवा नवीन निवडसूची तयार करण्यासाठी सेवाभरतीची जाहिरात देण्यात येईल, त्या दिनांकापर्यंत यापैकी जो दिनांक आधी घडेल त्या दिनांकापर्यंत विधीग्रहण ठरेल. त्यानंतर ही निवडसूची व्यपगत होईल. 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 प्रमाणपत्री किंवा अन्य कोणत्याही कारणास्तव संबंधित उमेदवार नियुक्तीसाठी पात्र ठरत नसल्याचे आढळून आल्यास निवडसूचीतील अतिरिक्त उमेदवारांमधून अन्य उमेदवारांची मागणी निवड समितीकडे नियुक्ती प्राधिका-यास करता येईल.

अशी मागणी आल्यास निवड समितीने निवडसूचीच्या विधी ग्रहणयतेत्या अधिन राहून सदर निवड सूचीमधून ज्येष्ठतेनुसार व 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 असे नमूद केले आहे”

त्या अनुषंगाने जिल्हा निवड समिती मार्फत नियुक्ती करणेत आलेले अनुसूचित जाती (सर्वसाधारण) या प्रवर्गातील उमेदवार श्री. सचिन जाधव हे दिनांक ०१/२/२०१७ रोजी तलाठी या पदावर हजर झाले असून त्यांनी त्यांचे वैयक्तिक कारणास्तव तलाठी या पदाचा राजीनामा दिला आहे. जिल्हा निवड समितीने त्यांना कोणत्याही कारणास्तव अपात्र ठरविलेले नाही. तरी प्रकरणी वरील प्रमाणे नमूद शासननिर्णयानुसार संबंधित उमेदवार नियुक्तीसाठी पत्र ठरत नसल्याचे आढळून आसल्यास निवडसूचीतील अतिरिक्त उमेदवारांमधून अन्य उमेदवारांची मागणी निवड समितीकडे नियुक्ती प्राधिका-यास करता येईल. त्या अनुषंगाने जिल्हा निवड समितीने श्री.सचिन जाधव यांना कोणत्याही कारणास्तव अपात्र ठरविलेले नसल्याने उपरोक्त शासन निर्णयानुसार त्यांचेऐवजी आपणांस नियुक्ती देता येणार नाही. सबब आपला वरील नमूद संदर्भिय दिनांकाचा अर्ज निकाली ठेवणेत येत आहे.”

(Quoted from page 62-63 of OA)

3. Following another representation by the applicant the same was again rejected by order dated 17.10.2017. The same stated as under:

“सामान्य प्रशासन विभाग यांचेकडील शासन निर्णय क्रमांक प्रानिमं-२००७/प्र.क्र.४६/०७/१३-अ दिनांक १९/१०/२००७ व दिनांक २७/०६/२००८ मध्ये नमूद केले नुसार जिल्हा निवड समिती मार्फत नियुक्ती करणेत आलेले अनुसूचित जाती (सर्वसाधारण) या प्रवर्गातील उमेदवार श्री.सचिन जाधव हे दिनांक ०१/२/२०१७ रोजी तलाठी या पदावर हजर झाले होते. त्यांनी २४१ दिवस काम केले आहे. तदनंतर त्यांनी त्यांचे वैयक्तिक कारणास्तव तलाठी या पदाचा राजीनामा दिला आहे. जिल्हा निवड समितीने त्यांना कोणत्याही कारणास्तव अपात्र ठरविलेले नव्हते. उपरोक्त दिनांक १९/१०/२०१७ च्या शासन निर्णयातील परिच्छेद क्र.९ चे अवलोकन करता आपणांस श्री. सचिन जाधव यांच्या पदावर नियुक्ती देणे नियमोचित होणार नाही.

आपण दाखल केलेले मा. महाराष्ट्र प्रशासकीय प्राधिकरण मुंबई यांचेकडील दिनांक २६/२/२०१६ रोजीचे निर्णय व मा.उच्च न्यायालय मुंबई यांचेकडील दाखल रिट याचिका क्र.३६२५/२०१६ दिनांक २२/६/२०१६ रोजीचे आदेश हे संबंधित न्यायालयात दाखल झालेल्या विशिष्ट याचिकेबाबतचे आहे. मात्र या अनुषंगाने शासन स्तरावरून अदयाप कोणतेही शासननिर्णय निर्गमित करणेत आलेले नाही. त्यामुळे सध्या असतित्वात असलेल्या सामान्य प्रशासन विभाग यांचेकडील शासन निर्णय क्रमांक प्रानिमं-२००७/प्र.क्र.४६/०७/१३-का दिनांक १९/१०/२००७ व दिनांक २७/०६/२००८ अन्वये संबंधित उमेदवार नियुक्तीसाठी अपात्र असल्यास निवडसूचीतील प्रतिक्षा यादीतील उमेदवारांमधून अन्य उमेदवारांची मागणी निवड समितीकडे नियुक्ती प्राधिका-यास करता येईल. मात्र जिल्हा निवड समितीने श्री.सचिन जाधव यांना कोणत्याही कारणास्तव अपात्र ठरविलेले नसल्याने उपरोक्त शासन निर्णयानुसार त्यांचेऐवजी आपणांस नियुक्ती देता येणार नाही. सबब आपली विनंती मान्य करता येत नाही. यास्तव आपला वरील नमूद संदर्भिय दिनांकाचा अर्ज निकाली ठेवणेत येत आहे.”

(Quote from page 100-101 of OA)

4. Aggrieved by the above orders the applicant has made the following prayers:

*“15(a) This Hon’ble Tribunal be pleased to hold and declare that the impugned orders dated 9.10.2017 and 17.10.2017 issued by the respondents as illegal and bad in law and the same be quashed and set aside with further directions directing the respondents to select and appoint the petitioner to the post of Talathi with all consequential service benefits.”*

(Quoted from page 9 of OA)

5. The applicant has challenged the impugned orders mentioning that the waiting list was valid for one year and he had made representation to fill up the vacancy due to resignation within that period and therefore rejecting the same is illegal.

6. The Ld. Advocate for the applicant has relied on judgment and order dated 26.2.2016 passed by this Tribunal in OA No.446 of 2015 Shri Sagar Popatrao Desai Vs. The State of Maharashtra & Ors. and judgment and order dated 22.6.2016 passed by the Hon’ble High Court in Writ Petition No.3625 of 2016 The State of Maharashtra & Ors. Vs. Sagar Popatrao Desai confirming the order passed by this Tribunal. The facts of OA No.446 of 2015 are as under:

One Amit Subhash Katkar was duly selected and reported on 4.9.2013. He tendered his resignation on 25.9.2013. His resignation was accepted and became effective on 15.10.2013. The applicant Shri Sagar Popatrao Desai who was first in the waiting list approached this Tribunal. After examining the facts and GRs the OA was allowed and the respondents were directed to reconsider his case. As the orders given by this Tribunal were not complied, the applicant moved this Tribunal in OA No.888 of 2014 and stay was given by an interim order dated 29.9.2014

from filling up the vacancy in question. The respondents challenged this order in the Hon'ble Bombay High Court. On 22.6.2016 the Hon'ble High Court in W.P. No.3625 of 2016 confirmed the order by this Tribunal. The relevant portion of the order of Hon'ble High Court reads as under:

*“4. The very purpose of making a wait list is to ensure that in the event some vacancy arises immediately after all the seats are filled, either by virtue of resignation or otherwise, then it would not be necessary for the State Government to again start the process of fresh appointment, like advertisement, holding of written test, interview, etc. and the persons on the wait list, who are eligible, can be appointed.*

*5. In the present case, G. R. of 2008 stipulates that wait-list is to be kept alive for a period of one year. In this case one Amit Subhash Katkar joined the services on 4.9.2013. He, however, tendered his resignation on 25.9.2013. Respondent, therefore, was clearly eligible for being appointed in the said post. The Apex Court in the case of – Gujrat State Dyxen Association Vs. State of Gujrat [1994 (3) JT 559], has observed in para 8 and 9 as under:*

*“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 of 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 entire set of fresh candidates either from the open or even from service.”*

(Quoted from page 98-99 of OA)

7. Ld. Advocate for the applicant also relied on following judgments to clarify the words “immediately”:

(i) (1991) 1 SCC 301, P. Orr & Sons (P) Ltd. Versus Associated Publishers (Madras) Limited. The relevant portion reads as under:

“13. “Immediate” means at “once; without delay”. “Immediate” also means “directly connected; not secondary or remote”; “not separated by any intervening medium” (Black’s Law Dictionary, 5<sup>th</sup>

*edn.; Concise Oxford Dictionary, New 7<sup>th</sup> edn.). This clause no doubt denotes urgency.”*

(ii) (1991) 3 SCC 620, Rajendra & Ors. Vs. State of Madhya Pradesh. The relevant portion reads as under:

*“5. .... So far as the Local Health Authority being required to ‘immediately’ after the institution of prosecution send a copy of the report of the result of the analysis in Form III, its failure to do so instantly was held to be of no consequence, relying on a judgment of this Court in Tulsiram v. State of Madhya Pradesh, [1984] 4 SCC 487 wherein the word ‘immediately’ was interpreted to convey ‘reasonable despatch and promptitude’ intending to convey a sense of continuity rather than urgency.”*

(iii) 1995 Supp (4) SCC 275 Rao Mahmood Ahmad Khan Vs. Ranbir Singh & Ors. The relevant portion reads as under:

*“8. .... According to us the word ‘immediately’ connotes and implies that the deposit should be made without undue delay and within such convenient time as is reasonably requisite for doing the thing same day with all convenient speed excluding the possibility of rendering the other associated corresponding act and performance of duty as nugatory.*

*9. .... The meaning of the word ‘forthwith’ is synonymous of the word immediately which means with all reasonable quickness and within a reasonably prompt time.”*

8. The Ld. Advocate for the applicant also relied on the judgment of the Hon’ble Supreme Court in Regional Manager & Anr. Vs. Pawan Kumay

Dubey, (1976) 3 SCC 334. The relevant portion of the same reads as under:

*“7. We think that the principles involved in applying Article 311(2) having been sufficiently explained in Shamsher Singh’s case (supra) it should no longer be possible to urge that Sughar Singh’s case (supra) could give rise to some misapprehension of the law. Indeed, we do not think that the principles of law declared and applied so of have really changed. But, the application of the same law to the differing circumstances and facts of various cases which have come up to this Court could create the impression sometimes that there is some conflict between different decisions of this Court. Even where there appears to be some conflict, it would, we think, vanish when the ratio decidendi of each case is correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.”*

9. Ld. Advocate for the applicant relies on circular dated 28.2.2017 which reiterated the observations of this Tribunal in OAs No.59, 61 & 90 of 2016 decided on 14.12.2016. The same reads as under:

*“If a principle of general applicability is capable of being culled out from a particular pronouncement of this Tribunal, then similarly placed employees, though not before the Tribunal should be given the benefit thereof without actually moving this Tribunal for relief. If on the other hand, the relief is person specific, then of course, this direction will not apply.”*



10. Ld. Advocate for the applicant referred to the GR dated 13.6.2018 detailing the procedure as far as the waiting list is concerned. The relevant portion of the same reads as under:

“१३. निवडसूचीची कालमर्यादा :-

१) निवड समितीने तयार केलेली निवडसूची १ वर्षासाठी किंवा निवडसूची तयार करताना ज्या दिनांकापर्यंतची रिक्त पदे विचारात घेण्यात आली आहेत त्या दिनांकापर्यंत, यापैकी जे नंतर घडेल त्या दिनांकापर्यंत विधीग्रहू राहिल. त्यानंतर ही निवडसूची व्यपगत होईल.

२) निवड समितीने तयार केलेल्या निवडसूचीमधून ज्येष्ठतेनुसार उमेदवारांची नियुक्तीसाठी शिफारस केल्यानंतर शिफारस केलेला उमेदवार सदर पदावर विहित मुदतीत रुजू न झाल्यास किंवा संबंधित पदाच्या सेवाप्रवेश नियमातील तरतुदीनुसार, किंवा जात प्रमाणपत्र / अन्य आवश्यक प्रमाणपत्रांची अनुपलब्धता/ अवैधता किंवा अन्य कोणत्याही कारणास्तव नियुक्तीसाठी पात्र ठरत नसल्याचे आढळून आल्यास अथवा शिफारस केलेला उमेदवार रुजू झाल्यानंतर नजिकच्या कालावधीत त्याने राजीनामा दिल्यामुळे किंवा त्याचा मुत्यु झाल्याने पद रिक्त झाल्यास, अशी पदे त्या त्या प्रवर्गाच्या निवडसूचीतील अतिरिक्त उमेदवारांमधून वरिष्ठतेनुसार उतरत्या क्रमाने भरण्यात यावीत. मात्र, अशी कार्यवाही निवडसूचीच्या कालमर्यादेत करण्यात यावी.”

### Submissions by the Respondents:

11. The respondent no.1 has filed affidavit and contested the contentions raised by the applicant. The relevant portion of the same reads as under:

“22. With reference to contents of paragraph no.7.1, I say as follows: Although the facts and circumstances of case laws referred by applicant are same, and also the waitlist survive for 1 year as per GR, the candidate Shri Sachin Jadhav has resigned from his post after 241 days for his personal reasons and was not disqualified for any reason.

22.1 It is also submitted that Government of Maharashtra has not yet issued any new resolution or directions for recruitment process and hence respondent has to follow the GR dated 19.10.2007 and 27.6.2008. The

*reasons for not granting appointment to the applicant are given in earlier paragraphs contained in brief history.”*

(Quoted from page 109 of OA)

12. Ld. CPO has relied on the judgment of the Hon'ble Supreme Court in Manoj Manu & Anr. Vs. Union of India & Ors., (2013) 12 SCC 171. The relevant portion of the same is as under:

*“9. It can be clearly inferred from the reading of the aforesaid that it is not the case where any of these persons initially joined as Section Officer and thereafter resigned/left/promoted etc. thereby creating the vacancies again. Had that been the situation viz. after the vacancy had been filled up, and caused again because of some subsequent event, position would have been different. In that eventuality the UPSC would be right in not forwarding the names from the list as there is culmination of the process with the exhaustion of the notified vacancies and vacancies arising thereafter have to be filled up by fresh examination.”*

(Quoted from page 185 of OA)

13. The respondents have, therefore, submitted that the OA is without any merit and the same be dismissed.

14. Issue for consideration:

(i) Whether the person in the waiting list is eligible for appointment after the vacancy is filled in and one of the selected candidate resigns after prolonged period of more than eight months?

The reply is negative.

Discussion and findings:

15. As admitted by both the sides all selected candidates had joined. One of the candidate worked for a period of more than eight months and his resignation came to be accepted after a period of nearly nine months. Thereafter, the applicant wanted to be considered stating that the waiting list is valid for a period of one year and therefore the applicant deserves to be appointed. The candidate who resigned worked for 241 days and resigned for his personal reasons thereafter. The cases on which the Ld. Advocate for the applicant has relied had different facts. In the case decided by this Tribunal, the applicant had approached the Tribunal as the selected candidate did not join and it was in a short period of three weeks. The Tribunal had issued stay for filling up the vacancy, since the same was not complied with. Hence, the Tribunal had issued the order directing the respondents to give appointment to the applicant.

16. The Hon'ble High Court in their judgment have mentioned in para 4 that, *"in the event some vacancy arises immediately after all the seats are filled, either by virtue of resignation or otherwise, then it would not be necessary for the State Government to again start the process of fresh appointment, like advertisement, holding of written test, interview, etc. and the persons on the wait list, who are eligible, can be appointed."* The emphasis here is on the words, "vacancy arises immediately" and a candidate from the waiting list is to be considered to avoid repeating the same process for filling up the vacancies out of the exigencies mentioned above. Similarly, the GR dated 13.6.2018 has reiterated by stating that if the selected candidate does not join in short period and vacancy gets created, then the same should be filled in by a candidate from the waiting list. As observed by the Hon'ble Supreme Court, persons from the waiting list should be considered after the selected candidate resigns/left/promoted immediately.

17. The purpose of waiting list is to fill up the vacancies caused provided the eventuality occurs at reasonably short period. When the candidate joined and worked for eight long months and then resigned due to personal reasons, by no stretch of imagination it can be considered as immediate vacancy. Such vacancy has to be filled in by next recruitment else it will defeat the very purpose of providing fair chance for all the candidates. The Apex Court in the case of – Gujrat State Dyxen Association Vs. State of Gujrat [1994 (3) JT 559], observed that, 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 entire set of fresh candidates either from the open or even from service, has to be avoided.

18. The applicant has failed to demonstrate any sound reasons for interfering with the impugned orders.

19. For the above reasons, OA is devoid of any merits and is dismissed with no order as to costs.

Sd/-

**(A.P. Kurhekar)**  
**Member (J)**  
**7.8.2019**

Sd/-

**(P.N. Dixit)**  
**Vice-Chairman (A)**  
**7.8.2019**

Dictation taken by: S.G. Jawalkar.