

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.783 OF 2021

DISTRICT : PALGHAR

1. Vaman Ramesh Maule,)
2. Vivek Pavlus Dalvi,)
3. Avinash Shankar Bhusara,)
4. Rakesh Devaji Dumada,)
5. Ankush Laxman Ghegad,)
6. Bipin Ganpat Talha,)
7. Rohan Vishnu Tumbda,)
8. Kiran Mohan Mahale,)
9. Vinod Muliram Mahakal,)
10. Rajesh Vasant Borse,)
11. Aashwin Suresh Valvi,)
12. Pramod Manik Dumada,)
13. Nitin Markus Tandel,)
14. Khulya Vikya Kondhari)
All R/o Taluka Jawhar/Dahanu,)
District Palghar)..Applicants

Versus

1. The State of Maharashtra,)
Through Chief Secretary (Forest),)
Forest and Revenue Department,)
Mantralaya, Mumbai 400032)

2. Additional Principal Chief Conservator of Forest (Administration, II Class), Nagpur)
 Forest (Administration, II Class), Nagpur)
3. The Chief Conservator of Forest (Region), Thane,)
 Microwave Tower, 12 Bungalow Area, Kopari,)
 Thane (E) 400603)..Respondents

Ms. Manisha Devkar – Advocate for the Applicants

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

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
 Smt. Medha Gadgil, Member (A)

DATE : 12th April, 2023

J U D G M E N T

1. The Ld. Advocate for the applicants have submitted that all the 14 applicants are challenging the inaction on the part of the respondents in not appointing them as Forest Guards in Panchayats Extension Scheduled Areas (PESA) area of Thane.

2. Ld. Advocate has submitted that Respondent no.2 issued advertisement dated 12.8.2014 for 133 posts of Forest Guard in Thane District and 20 posts were reserved for Scheduled Tribe category. Select list was published on 16.11.2015. Total 41 posts of Forest Guard were reserved for the Scheduled Tribe as per the corrigendum dated 5.9.2014. Out of 41 posts the 24 posts were for Palghar and the 17 posts for Thane. All the applicants are from Palghar District. The GR was issued on 14.8.2014 whereby 20% posts were to be reserved for ST category. District Thane was bifurcated in two parts i.e. Thane and Palghar on

1.8.2014. This bifurcation has taken place 12 days prior to the date of advertisement.

3. Ld. Advocate for the applicants relied on notification dated 14.8.2014 whereby Govt. made it clear that the post of Forest Guard are to be filled in from local candidates from ST category i.e. from PESA. Ld. Advocate for the applicant relied on clause 13(2) of the GR dated 26.6.2015. As per this clause the Govt. declared the policy that 20% posts of the total vacant posts are to be filled up from local ST candidates. The word 'employee' is to be read and considered by the Govt. as 'candidate' for fresh recruitment. By this GR the ratio was changed and therefore 20% of 133 posts come to 27 posts. Out of the 41 posts, the 27 posts were to be filled in i.e. 6 for Thane and 21 for Palghar. In Thane 3 posts are vacant and 21 posts in Palghar are filled in.

4. Ld. Advocate for the applicants further submitted that selection process of these posts of Forest Guard was initiated on 12.8.2014. Merit list was published on 28.10.2015. Physical test was conducted on 19.9.2015. Applicants send representation on 29.1.2015. The application dated 5.4.2017 was placed before National S.T. Commission and order dated 13.6.2019 was passed by the National S.T. Commission directing the competent authority to consider and fill up 17 posts of Forest Guards.

5. Ld. Advocate for the applicants has referred to affidavit in rejoinder dated 25.8.2022 filed by the applicant wherein reference is made to the judgment and order dated 22.1.2014 passed by the Hon'ble Bombay High Court in Udaysingh Jamalsingh Valvi Vs. The Secretary, therein it is held that the action on the part of the respondents cannot be read against the petitioner and the waiting list cannot be said to be invalid. Ld. Advocate further submits that the same principles are followed by the Hon'ble

Bombay High Court, Bench at Aurangabad in Umesh Mohan Kumawat Vs. The State of Maharashtra & Ors. 2017(7) ALL MR 615.

6. Ld. Advocate further relied on the judgment of the Hon'ble Supreme Court in Chebrolu Leela Prasad Rao & Ors. Vs. State of Andhra Pradesh & Ors. (2021) 11 SCC 401. It has been held therein that in the recruitment in state services, imposing condition as to the residence of the candidate is illegal and same will be breach of fundamental rights guaranteed under Constitution of India.

7. Ld. CPO has argued that the Chief Conservator of Forest, Thane by letter dated 4.7.2019 informed the Additional Principal Chief Conservator of Forest, Nagpur that there are meritorious candidates having better marks than the applicants, who have not complained. Recruitment has started in 2016-17 and the waiting list is lapsed. The applicants did not come in the select list in Thane and Palghar. 3 posts in Thane are vacant for Ex-serviceman. However, due to unavailability of Ex-serviceman 3 posts are kept vacant.

8. She has further argued that all the 24 posts of Palghar are filled in and 3 posts in Thane District are vacant, which are reserved for Ex serviceman.

9. Ld. CPO pointed out the letter dated 6.8.2019 sent by respondent no.3 to respondent no.2 stating that applicants can be appointed at the posts vacant at Thane District in Forest Guard cadre and can be absorbed in Palghar District. However, no further action has been taken against the said approved note.

10. Ld. CPO has submitted that pursuant to order dated 13.6.2019 passed by National Commission for Scheduled Tribe, decision was taken

at the State level and Jt. Secretary, Revenue & Forest Department by letter dated 5.3.2020 communicated the decision of the Government to National Commission that, the State Government is unable to offer appointments to all the petitioners in view of lapsing of select list and also in the light of decisions of the Hon'ble Supreme Court in SLP No.591/1994 Gujrat State, Sub Executive Engineers' Association Vs. State of Gujarat and Ors. and Shankarsan Dash Vs. Union of India, AIR 1991 SC 1612.

11. We have considered the submissions and the judgments relied by both the sides. GR of 26.6.2015 of 20% is not applicable to the present recruitment in view of clause 13(5) of the GR. If the recruitment process is initiated in respect of the post of Forest Guard which is covered in clause 11 of the said GR, then the posts are to be filled up as per the roster and not as per 20%. The submissions of the Ld. CPO are acceptable that applicants did not come in the select list in Thane and Palghar and all the 24 posts of Palghar are filled in and 3 posts in Thane are vacant, which are reserved for Ex-serviceman. However, due to unavailability of Ex-serviceman 3 posts are kept vacant. The recruitment has started in 2016-17 and the waiting list is lapsed.

12. The judgments relied by the Ld. Advocate for the applicants are not applicable as the facts of the present case are different and the 3 posts which are vacant in Thane are reserved for Ex-serviceman and they cannot be given to the applicants. Moreover, the Govt. has informed by its communication dated 5.3.2020 that they are unable to offer appointment to the applicants in view of lapsing of the select list.

13. Thus, in view of the above, we hold that the applicants are not entitled to the reliefs prayed for and the OA deserves to be dismissed.

14. Original Application is dismissed. No orders as to cost.

Sd/-

(Medha Gadgil)
Member (A)
12.4.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
12.4.2023

Dictation taken by: S.G. Jawalkar.

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