

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.792 OF 2018**

DISTRICT : JALNA

1. Amol Parshuram Patil,)
2. Kishor Laxman Gaikwad,)
3. Reshma Pratap Kashid,)
4. Sachin Kalyanrao Ukirde,)
5. Shivanand Sudhakar Kokane,)
6. Sandipan Shivajirao Jagtap,)
7. Satish Baban Lande,)
8. Chandrashekhar D. Parulekar,)
- All C/o Shri S.S. Dere, Advocate, MAT, Mumbai)..Applicants

Versus

1. The State of Maharashtra,)
Through the Additional Chief Secretary,)
Finance Department, Mantralaya, Mumbai-32)
2. The Secretary,)
Maharashtra Public Service Commission,)
Floor 5-8, Cooperage MTNL Building,)
M.K. Road, Cooperage, Mumbai 400021)
3. The Commissioner,)
Sales Tax Department, GST Bhavan,)
Mazgaon, Mumbai-10)..Respondents

Shri S.S. Dere – Advocate for the Applicant

Miss 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 : 4th December, 2019

PRONOUNCED ON : 11th December, 2019

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

J U D G M E N T

1. Heard Shri S.S. Dere, learned Advocate for the Applicant and Miss S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

Admitted facts:

2. In response to the advertisement dated 5.7.2016 published by respondent no.2 (MPSC) for filling in 450 posts of Tax Assistants, the applicants in the present OA participated in the same. Merit list for the same was published on 17.2.2017. Out of these 450 posts, verification was conducted by the Commissioner, Sales Tax from 22.5.2017 to 24.5.2017 followed by reminders on 27.10.2017 and 14.11.2017. Even then 41 candidates did not turn up and therefore respondent no.3 (Commissioner, Sales Tax) sent demand on 14.12.2017 to the respondent no.1 (Finance Department) to fill up 41 posts. Accordingly on 17.3.2018 respondent no.1 sent requisition to fill up 41 posts from the waiting list to respondent no.2. It further stated that following the implementation of GST and shortage of manpower, 42 persons from the waiting list should be made available. Respondent no.2 informed respondent no.1 on 3.4.2018 that the final list has been published on 8.3.2017 and the

requisition from the waiting list from the State Government has been sent on 17.3.2018. As more than one year from 8.3.2017 is over, as per the standing orders of MPSC the waiting list is no more valid and therefore candidates from the waiting list cannot be made available. It also enclosed copy of Rules of Procedure issued by MPSC on 28.12.2016. The relevant provisions read as under:

“2. In rule 10 of the Maharashtra Public Service Commission, Rules of Procedure, 2014.

(2) for clause (b) of sub-rule (8), the following shall be substituted, namely:-

“(b) (i) In case of Direct Recruitment, the reserve list (waiting list) shall be operative for the period of one year from the date of declaration of the result or till the declaration of result of the subsequent recruitment process for the same post, whichever is earlier.”

(Quoted from page 57 of OA)

3. In response to the same on 16.5.3018 respondent no.1 wrote to respondent no.2 as under:

“सन २०१६ कर सहायक परीक्षेत पात्र होऊनही कागदपत्र तपासणीसाठी हजर न राहिलेल्या ४२ उमेदवारांपैकी जास्तीत जास्त उमेदवार माजी सैनिक प्रवर्गातील दिसून येतात. त्यांच्याऐवजी प्रतिक्षा यादीतील माजी सैनिक प्रवर्गातील उमेदवारांना कर सहायक भरतीची संधी उपलब्ध होऊ शकते.

संपूर्ण देशभरात दि.०१/०७/२०१७ पासून वस्तू व सेवाकर कायदा लागू करण्यात आला आहे. सदर कायद्याची प्रभावीपणे अंमलबजावणी करण्याकरीता वस्तू व सेवाकर विभागात मनुष्यबळाची कमतरता भासत असल्याने प्रतिक्षा यादीतील उमेदवार उपलब्ध करून देण्याची विनंती राज्यकर आयुक्त कार्यालयाने केली आहे.

तेव्हा प्रतिक्षा यादीवरील उमेदवारांची मागणी करण्यास या विभागाकडून झालेला ९ दिवसांचा विलंब क्षमापित करून राज्यकर आयुक्त कार्यालयाने केलेली विनंती तसेच माजी सैनिक प्रवर्गातील उमेदवारांबाबत सहानुभूतीपूर्वक विचार

करून विशेष बाब म्हणून कर सहायक परीक्षा २०१६ मधील प्रतिक्षा यादीतील ४२ उमेदवारांची शिफारस या विभागास करण्यात यावी.”

(Quoted from page 73-74 of OA)

4. Respondent no.2 took a decision that in view of the Rules of Procedure of the Commission no recommendation would be made for candidates from the waiting list. Respondent no.2 has taken a stand that it is the authority of the Commission to take the policy decision and considering the provisions of the Rules of Procedure, no recommendation would be made. (Additional affidavit by respondent no.2 page 127)

5. The applicants have submitted that the document verification of recommended candidates continued till 24.5.2017 and thus the selection process remained continued till 24.5.2017. The applicants have further stated as under:

“6.16(a) Therefore, in view of law laid down by Hon’ble Supreme Court in case of State of Jammu Kashmir Vs. Sat Pal (AIR 2013 SC 1258) that the waiting list commence to operate after the vacancies for which recruitment process has been conducted have filled up. The applicant states that therefore considering the principles laid down by Hon’ble Supreme Court in the above referred case the last date of acceptance/rejection of candidature after document verification by respondent no.3 shall be construed as a date for commencement of waiting list. Therefore, the requisition send by respondent no.2 dated 17.3.2018 and the respondent no.3 dated 14.12.2017, to the respondent no.1 was within the life of waiting list, and the selection process said to be in motion until the last stage of selection process completed by the respondent no.3.

6.16(b) The Applicant further states that as per the Rules of Procedure the word use by the Commission as declaration of the result, the Applicant states that the result of selection process set to be declared after the last

stage of the selection i.e. document verification by which entitlement of the candidates decides. Therefore, the selection process ends with last stage of the selection process.”

(Quoted from page 13A of OA)

6. The applicants have therefore prayed that respondent no.2 be directed to recommend candidates from the waiting list. In support of the same the Ld. Advocate for the applicants has relied on the following judgments:

1) AIR 2013 SC 1258, State of J. & K. & Ors. Vs. Sat Pal. The relevant portion of the same reads as under:

“11. A waiting list would start to operate only after the posts for which the recruitment is conducted, have been completed. A waiting list would commence to operate, when offers of appointment have been issued to those emerging on the top of the merit list. The existence of a waiting list, allows room to the appointing authority to fill up vacancies which arise during the subsistence of the waiting list. A waiting list commences to operate, after the vacancies for which the recruitment process has been conducted have been filled up.

12. The date of filing of the representation by the parties concerned and/or the date on which the competent authority chooses to fill up the vacancy in question, is of no consequence whatsoever. The only relevant date is the date of arising of the vacancy. It would be a different legal proposition, if the appointing authority decides not to fill up an available vacancy, despite the availability of candidates on the waiting list.”

2) Special Civil Application No.1282 of 2011 Patel Rakeshkumar Dharamdas Vs. State of Gujarat Through Secretary & Ors. decided by Hon'ble Gujarat High Court at Ahmedabad on 6.5.2011. The relevant portion of the same reads as under:

“22. When the legitimate entitlement of the petitioner arose at the time of interview itself, and as the appointment has been delayed by the respondents for untenable and unexplainable reasons which cannot be attributed to the petitioner, the ground of expiry of the waiting list cannot be sustained. Respondent No.3 was competent to offer appointment to the petitioner as per provisions of Government Resolution dated 18.09.2007, and there was no occasion to await sanction of respondent No.2. The petitioner, cannot, therefore, be penalized for the acts of omission of the concerned respondent.”

3) Writ Petition No.4257 of 2013 Mr. Udaysing Jalamsing Valvi Vs. The Secretary, District Selection Committee, Raigad & Anr. decided by the Hon'ble Bombay High Court on 22.1.2014. The relevant portion of the same reads as under:

“10. In our view, the appointed candidate if failed to appear within reasonable time and in the present case, never appeared for want of caste certificate and as the Petitioner being the next eligible candidate having validity certificate, ought to have been appointed in that year itself. The communication therefore so given and thereby rejected the claim of the petitioner shows non-application of mind to the facts, as well as, to the Government Circular itself. The Respondents cannot be permitted to deny the rights of the petitioner, as in our view crystallized as referred above, merely because the respondents failed to take action within the prescribed period of one year. Therefore, the respondents' failure to appoint the petitioner, within one year though post was vacant, in our view, is unacceptable situation. The respondents cannot act

arbitrarily, by not appointing the candidate by not following their own Circular within the prescribed period of one year. The submission of expiry of one year or lapse of waiting list is also unacceptable. Once the petitioner falls within the ambit of zone of consideration and eligible even otherwise, the inaction cannot be read against the petitioner to deny his right to be appointed on the vacant post.”

4) OA No.614 of 2017 Jeevan Nivruttirao Wader Vs. State of Maharashtra & Ors. decided by the Aurangabad Bench of this Tribunal on 25.9.2018. Relying on the judgment in the case of U.J. Valvi (supra) this Tribunal allowed OA No.614/2017.

5) Writ Petition No.4507 of 2015 Umesh Mohan Kumawat Vs. The State of Maharashtra & Ors. decided by the Aurangabad Bench of the Hon'ble Bombay High Court on 24.2.2016.

Observations and findings:

7. For the purpose of recapitulation we recall the sequence of events as under. Following the examination, list of the recommended candidates was announced on 15.3.2016. The process of verification continued till 14.12.2017 and the Commissioner, Sales Tax came to the conclusion that 41 candidates have shown no interest in joining and therefore these need to be filled from waiting list. Though communication was sent by Commissioner, Sales Tax to Finance Department on 14.12.2017, the Finance Department sent the requisition to MPSC on 17.3.2018. During hearing the Ld. CPO stated that the concerned persons in the State Government who delayed the communication have been issued show cause notice for the delay and lapses. Following these administrative delay and lapses the communication to MPSC was sent late by 9 days.

The additional Chief Secretary, Finance Department therefore requested the MPSC to condone the delay of 9 days and allow the waitlisted candidates to be recommended. During hearing the Ld. CPO on instructions submitted that there are 8 vacancies and the same have not yet been filled in.

8. It is true that MPSC as per the rules and standing orders of the Commission viz. the reserve list (waiting list) shall be operative for the period of one year from the date of declaration of the result or till the declaration of result and hence MPSC would not be in a position to go beyond the same.

9. However, in view of the peculiar circumstances in the present case where the Finance Department has stated that it is urgently looking forward to fill in the vacancies because of the implementation of GST and admitting that there is a delay of 9 days in the communication, it is necessary to deviate from the rules of procedure in the present case. Moreover, the State Government has also taken action against its staff for the delay. For the administrative lapses the candidates in the waiting list need not be punished. We would like to further add that this decision should not be taken as a precedent.

10. We do not propose to adjudicate on the issue whether the rights of the applicants crystallized from the date of actual appointment.

11. In view of the peculiar circumstances where there is admitted administrative lapse and there is urgent requirement to fill up the vacancies it would be appropriate that MPSC communicates names of persons in the waiting list as per the requisition made by respondent no.1 (Finance Department) in the State Government. This is particularly when there are 8 vacancies and the same have not been filled in.

12. We, therefore, direct respondent no.2 (MPSC) to act on the requisition dated 17.3.2018 and send the list of recommended candidates from the waiting list as per rules to the respondent no.1 within a period of four weeks from the date of this order. Seniority of these candidates would start from the date of joining.

13. For the reasons stated above, OA is partly allowed. No order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)
11.12.2019

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
11.12.2019

Dictation taken by: S.G. Jawalkar.