

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NOS.11/2019, 30/2019 AND
81/2019**

DISTRICT:- BEED, NANDED

ORIGINAL APPLICATION NO.11/2019

1. Bapurao S/o Arjun Dongar,
Age : 26 years, Occ. Education,
R/o Jatnandur, Tal. Shirur (K), District Beed.
2. Pallavi Sugriv Sagar,
Age : 26 years, Occ. Education,
R/o Lamjana, Tal.Ausa, District Latur.
3. Sandeep S/o Devidas Panchal,
Age : 26 years, Occ. Education,
R/o Halda, Tal.Kandhar, District Nanded.
4. Manorama Rajkumar Sunji,
Age : 26 years, Occ. Education,
R/o Basarge Bk., Tak. Gadhinglaj, Dist. Kolhapur.
5. Sushama Kundlik Ukey,
Age : 30 years, Occ. Education,
R/o Sanjay Nagar, Ward no.14, Deori,
Tal. Deori, Dist. Gondia.
6. Ganesh S/o Hiralal Gavhane,
Age : 25 years, Occ. Education,
R/o Ashwi Bk., Tal. Sangamner,
District Ahmednagar.
7. Prachi Anandrao Pandit,
Age : 24 years, Occ. Education,
R/o Waghala, CIDCO, New Nanded,
Tal. & Dist. Nanded.
8. Vinaya Dilip Nagrale,
Age : 25 years, Occ. Education,
R/o Amboda, Post. Dahegaon-Miskir,
Tal. & District Wardha.

9. Pushpa Kisan Khetade,
Age : 26 years, Occ. Education,
R/o. Room No.11, Takshsilla Building Colony No. 1,
JSW Hospital, Vashind, Tal. Shahapur, District Thane.

10. Shubhangi Gangaram Langhi,
Age : 25 years, Occ. Education,
R/o Sr.No.53/1/A, Sainath Colony, Vinayak Nagar,
New Sangavi, Pimple Gurav, Pune.

11. Vikas S/o Ratan Avhad,
Age : 26 years, Occ. Education,
R/o Near St. Luke's Hospital, Ward No. 1,
Shrirampur, Tal. Shrirampur, Dist. Ahmednagar.

12. Gunvant Shankar Padvi,
Age : 33 years, Occ. Education,
R/o Devpura Apartment, Near Cancer Hospital,
Peth Road, Panchvati, Nashik, Tal. & Dist. Nashik.

13. Sugriv Balaji Sirsath,
Age : 27 years, Occ. Education,
R/o New Renapur Naka, Sai Road,
Latur, Tal. & District Latur.

ORIGINAL APPLICATION NO.30/2019

Vaishali D/o Vishnu Mhaske,
Age : 26 years, Occ. Private Service,
R/o Dhanora, Tal. Ashti, District Beed.

ORIGINAL APPLICATION NO.81/2019

1. Manohar S/o Madhavrao Musale,
Age : 25 years, Occ. Education,
R/o. Tokwadi, Post. Bori Bk.,
Tal. Kandhar, District Nanded.

2. Karuna D/o Anil Mhatre,
Age : 26 years, Occ. Education,
R/o Khanav, Tal. Alibag, District Raigad,
Presently residing At N-4, CIDCO, Aurangabad,
Tal. & District Aurangabad.

...APPLICANTS

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
General Administration Department,
Mantralaya, Mumbai -32.

2. The Director (Administration),
Employees State Insurance Scheme,
Lal Bahadur Shastri Marg,
Mulund (W), Mumbai - 400080.

3. The Commissioner,
Office of Commissioner,
Employees State Insurance Scheme,
Panchdip Bhavan, 6th Floor,
N.M.Joshi Marg, Near Lower Parel Bridge,
Lower Parel, Mumbai.

...COMMON RESPONDENTS

APPEARANCE : Shri S.B.Solanke, Advocate for
Applicants.
: Shri V.G.Pingle, Presenting Officer
for respondents.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

Decided on : 15-04-2024

O R A L O R D E R
(PER: JUSTICE SHRI P. R. BORA, V.C.)

1. Heard Shri S.B.Solanke, learned Counsel for the Applicants in all the O.As. and Shri V.G.Pingle, learned Presenting Officer for the respondent authorities in respective matters.

2. In all these three O.As. the issues raised and prayers made are identical, we have, therefore, heard

common arguments in these matters and deem it appropriate to decide these O.As. by this common order.

3. On 17-08-2017 an advertisement was published by respondent no.2 for recruitment of 582 vacancies of Staff Nurse as well as some other posts. Subsequently, the number of posts was reduced to 422. Present applicants had applied for the said post and their names were included in the merit list. In the final selection list names of all these applicants have been included in the waiting list. Final selection list contained the names of 416 candidates out of which 44 candidates did not join. After having come to know that some candidates whose names have been recommended have not joined, the applicants approached the authorities concerned with a request for issuing appointment orders in their favour. Since their requests were not considered by the respondents, the applicants have preferred the present O.As. claiming the following reliefs:

“(b) This Hon’ble Tribunal may be pleased to direct the respondents, particularly the respondent no.2 to issue appointment orders in favour of the applicants on the post of Staff Nurse from their respective categories and for that purpose issue necessary orders.”

4. Learned Counsel appearing for the applicants submitted that by invoking provisions under Right to Information Act, applicants were required to collect information as about vacancies which could not be filled because of non-joining of the selected candidates. Learned Counsel has placed on record the information so received under the Right to Information Act.

5. Respondent nos.1, 2 and 3 have filed their joint affidavit in reply thereby resisting the contentions raised in the O.A. as well as the prayers made therein. It is contended that in respect of the recruitment process so carried out, one complaint was received allegedly by a retired Army Officer wherein he had complained that in the recruitment process carried out in pursuance of the advertisement dated 17-08-2017 the corrupt practices were adopted and the ineligible candidates and/or non-meritorious candidates have also been selected. It is further contended that because of the said complaint, respondents slowed down the further process of filling up the posts. It is further contended that waitlisted candidates cannot claim appointment as of right and it is the prerogative of the respondents whether to exhaust the waiting list or not.

6. It has also been contended that the waitlist was to remain in force for the period of next one year after it was published and the same now stand lapsed after the said period has expired. In the circumstances, according to the respondents, there is no waitlist as such in existence on the basis of which the applicants are claiming the relief. Respondents have placed reliance on the G.R. dated 27-06-2008. It is the contention of the respondents that they have followed the provisions under the said G.R. As provided in the said G.R. life of the waitlist is of one year from the date of its publication. On these grounds respondents have opposed for granting any relief in favour of the applicants in the present O.As.

7. We have duly considered the submissions made on behalf of the applicants as well as the respondent authorities. It is not in dispute that, initially 582 posts of Staff Nurse were advertised. There is further no dispute that subsequently said number was reduced to 422 and accordingly the merit list was prepared. There is further no dispute that out of 422 posts the appointment orders are issued in favour of 416 candidates as is revealing from the documents received to the applicants under the Right to

Information Act. It has also not been disputed by the respondents that, out of 416 candidates in whose favour the appointment orders were issued, 44 out of them did not join. The information which the applicants have collected under the Right to Information Act provides category-wise details of the candidates who did not join though appointment orders were issued.

8. The applicants have placed on record requests/ representations made by them to the Public Information Officer of the respondents. Composite application were made by them seeking information as about the vacancies and their requests to issue appointment orders in their favour. Since the respondents did not consider the said requests, they have approached this Tribunal by filing these applications claiming the reliefs which we have noted hereinabove.

9. We have gone through the affidavit in reply submitted on behalf of the respondents. In paragraph 4 of the affidavit in reply, it is the contention of the respondents that a person by name Mr. K.B.Pahilajani, retired Army officer and President of AIACSJF, having office at Vile Parle, Mumbai had made a complaint on 18-11-2017 to the

Anti-Corruption Bureau alleging that huge corruption has taken place in the recruitment of the Staff Nurse in the ESIS. It is, however, significant to note that in paragraph 5 respondents have further clarified that despite repeatedly asking the said complainant to submit the proof in respect of the allegations made, the said complainant did not show or submit any proof of the allegations made by him. If this is the case of the respondents then on the said ground there was no reason for them to stop the recruitment. When some of the selected candidates did not join, waitlisted candidates must have been given the appointments. It is further mentioned that there were court cases and that is another reason for not issuing appointment orders in favour of the present applicants. However, the averments taken in this regard are so vague that, relying on the same it cannot be contended by the respondents that they were prevented from making appointment on the said grounds. It is nowhere contended that there were restraining orders in some of the matters for carrying out the further recruitment process or not to give appointments to the waitlisted candidates.

10. Learned Counsel for the applicants has invited our attention to the letter/reply received from the office of

respondent no.3, Commissioner, Employees State Insurance Scheme. It is contended in the said letter that 'if the recommended candidates did not join within the given period of one month, appointments will be issued in favour of the waitlisted candidates.' If that was the stand of the respondents nothing has been explained as to why they did not stick up to the said stand taken by them earlier. The information which has been placed on record reveals that at the relevant time there were 774 vacancies of Staff Nurse. Respondents resolved to fill in 75% of the said posts which comes to 562. Lastly, respondents decided to fill in only 422 posts and accordingly corrigendum was issued.

11. As we have mentioned hereinabove, it is not in dispute that out of 422 recommended candidates the orders of appointment were issued in favour of only 416 candidates and from amongst the said candidates 44 candidates did not join. However, respondents have not assigned any sound reason or justification for not exhausting the waiting list. For not giving the appointments to the candidates in the waiting list, three reasons are assigned by the respondents; first that, there was a complaint received alleging that corrupt practices were adopted in selection of the candidates in the said

recruitment. We have already noted that it is the contention of the respondents themselves that retired army officer who made the complaint, though was repeatedly called upon to provide further particulars, did not give any particulars and no material was revealed substantiating the allegation made by the said officer. It is thus evident that, the complaint made by the said officer could not have been a reason for not filling in the unfilled posts from amongst the waitlisted candidates.

12. Another reason that there were court cases is too vague and was not substantiated by any evidence. It is not the case of the respondents that in any of the said matters, the competent court has restrained the respondents from making any further appointments or giving appointments to the waitlisted candidates. Thus, the ground so raised has also to be rejected. The third ground which has been raised on behalf of the respondents is that the waitlist has lapsed after period of one year of its publication and as such waitlisted candidates did not have any right to seek appointment.

13. Learned PO has brought to our notice Government Resolution dated 27-06-2008. It is true that,

as per clause 7 of the said G.R. the life of the select list or the waitlist is determined of one year from the date of its publication. It is, however, further observed in the said clause that, while preparing select list, if the recruiting agency or authority has taken into account the future vacancies then up till the said date, the select list or waiting list shall be operative and thereafter would get lapsed. In the instant matter, the select list and waiting list were admittedly prepared and published on 15-11-2017. According to the respondents the select list and wait list were therefore valid up to 15-11-2018. The ground raised that the waitlist lapsed on 15-11-2018, whether is sustainable is to be examined.

14. As held by the Hon'ble Apex Court in the case of **State of Jammu & Kashmir V/s. Sat Patl [2013 11 SCC 737]**, "waiting list becomes operational only upon filled up the vacancies for which the recruitment process was conducted. If a candidate who was offered appointment declines to join, the waitlist would remain valid till the declining date and the next candidate immediately below the declining candidate in that list will be eligible for the appointment." In the instant matter, respondents have not provided any information as to on which date it becomes

clear that, 44 candidates have declined to join the duties. From the said date the period of one year is to be counted. When the select list was published on 15-11-2017, there is reason to believe that the appointments must have been issued sometimes in the month of December. Respondents have not disclosed when the selected candidate declined to join and who was the candidate lastly declined to join.

15. The applicants have approached the respondents on 08-12-2017 seeking information from the respondents to declare as to how many candidates have resumed duties and how many posts were still then unfilled. The information was also sought by the applicants under the Right to Information Act. On 10-01-2018, respondent no.2 informed that if the candidates who have been appointed if had not joined within the period of one month candidates on the waiting list will be given appointment in their place.

16. Respondents have not denied or disputed the aforesaid letter and the information provided in the said letter. Contents of the aforesaid letter makes it clear that till 10-01-2018 it had not become clear as to how many candidates have declined to join the duties. In the

circumstances, as held by the Hon'ble Apex Court in the case of **Sat Pal**, *cited supra*, the waiting list could not have been lapsed in any case on 15-11-2018 as submitted on behalf of the respondents. It is significant to note that the present applicants approached the Hon'ble High Court by filing Writ Petition in the month of December, 2018 praying for directions against the respondents to give the appointments to the waitlisted candidates. Even the present O.A. has been filed before expiry of the period of one year from 10-01-2018. Thus, the reason assigned by the respondents that the waitlist has lapsed cannot be accepted.

17. In the case of **Angad Dnyanoba Shitale V/s. State of Maharashtra, through its Secretary, Power Department and Anr. [2021 6 SLR BOM (DB) 831]**, advertisement was issued for recruitment of Technician-3 as per Regulations of Maharashtra State Power Greed Corporation Limited (MSPGCL) and as per the advertisement select list and waitlist were to remain in force for one year from the date of its publication. Accordingly, waiting list published by them was to remain in force till 17-10-2017. The petition was, therefore, filed before the Hon'ble High Court on 15-09-2017 for directions to

consider the petitioners for appointment since MSPGCL has not considered the said request. It was argued on behalf of the respondents therein that selected candidate do not have indefeasible right to be appointed and existence of vacancies may not give them any legal right to claim the appointment. The argument so made on behalf of the MSPGCL was turned down by the Hon'ble Division Bench and the petition was allowed directing the respondents to consider the candidature of the petitioner for appointment on the posts of 33 Technicians, which had remained unfilled because of non-joining of the selected candidates. While allowing the petition, Hon'ble High Court has observed that respondent authorities cannot take undue advantage of their long process and resultantly say that the waiting list is now invalid. It was further held by the Hon'ble High Court that petitioners had approached the court before one year of the expiry of the wait list and had sought directions. In the circumstances, even there was no technical hurdle of the lapse of the waitlist by efflux of time. In the instant matter also the applicants approached the Hon'ble High Court and thereafter this Tribunal before lapse of period of one year which according to the documents on record was going to lapse in January, 2019.

18. It has to be further stated that waiting list is prepared with aim and object that in case some of the recommended candidates do not join, the Government may not have to carry out the entire process again for filling in few posts which may remain unfilled on the said ground. If that is the purpose of preparing waiting list and when 44 candidates did not join in whose favour the appointment orders were issued, there was no hurdle for the respondents to issue the appointment orders in favour of the candidates in the waiting list. It cannot be disputed that it is ultimately the choice of the Government to fill up all the posts or otherwise. Such right and authority vested in the Government is, however, not unfettered. If the Government decides not to fill up all the advertised posts there must be a sound justification for that. In the instant matter, all these elements are lacking. The decision of the respondents not to fill up 44 seats which have remained unfilled is not substantiated by any sound reason. Respondents have failed to justify the grounds which are put forth in justification of not filling the unfilled posts from amongst the waitlisted candidates. The Government cannot arbitrarily decide not to fill up the posts though recruitment process was undertaken in that regard. In the

instant matter, respondents have utterly failed in justifying their act of not giving appointment to the candidates in the waiting list. For the reasons elaborated as above, all these applications deserve to be allowed. In the result, following order is passed:

ORDER

[i] Respondents shall issue appointment orders to the candidates whose names are existing in the waiting list which was prepared by the respondents at the relevant time in order of merit and category-wise in accordance with the vacancies which are created because of non-joining of the 44 candidates.

[ii] Aforesaid exercise be carried out within 6 weeks from the date of this order.

[iii] Original Applications are allowed in the aforesaid terms, however, without any order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 15-04-2024.