

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 72 OF 2023**

DISTRICT : THANE

1. Manohar Dadu Shende)
Residing at Dharkhind,)
Tal-Murbad, Dist-Thane.)
2. Kisan Parsharam Wagh,)
Residing at Durgapur, Post-Dasai,)
Tal-Murbad, Dist-Thane.)...**Applicants**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Tribal Development Department,)
Mantralaya, Mumbai 400 032.)
2. The Additional Tribal Development)
Commissioner, having office at)
Mahanagar Telephone Nigam Ltd)
Wagale Estate, Road No. 9,)
Thane [W].)...**Respondents**

Shri L.S Deshmukh, learned advocate for the Applicant.

Smt K.S Gaikwad, learned Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)**

DATE : 18.06.2024

J U D G M E N T

1. The applicants pray that the inaction on the part of Respondents in not filling all the posts of Secondary School Teachers of Ashram School in Thane District pursuant to the advertisement dated 12th December, 2018 is illegal and improper. Further the Respondents be directed to consider the case of the applicants for appointment to the post of Secondary School Teachers of Ashram School in Thane District and issue appointment orders in their favour.

2. Pursuant to the advertisement dated 12th December, 2018, for the post of Secondary School Teachers from eligible candidates for various posts, the applicants applied for the same. Applicants applied for General category subjects, as they hold B. Ed with History and Hindi subject. Learned counsel submitted that total 63 posts of Secondary & Higher Secondary School Teachers were advertised in three Districts viz., Thane, Palghar and Pune. The said advertisement also provides details of posts to be filled-in in each of the above referred Districts. As per the said advertisement 7 posts of Secondary School Teachers were advertised for Maths, Science, English and General Subjects (i.e., Marath, History, Geography and Hindi) in Thane District. Learned counsel further submitted that advertisement was issued for all the 100% appointments of the persons under Panchayats (Extension to Scheduled Areas), Act 1996, (PESA). Learned counsel has further submitted that for appointment under the PESA Act, the candidates who holds the Certificate of PESA of a particular area shall be appointed in the same District. Learned counsel has submitted that written examination was conducted and the Applicant No. 1 secured 56.23 marks and Applicant No. 2 secured 55.75 marks. Though the applicants were placed at Sr. Nos 94 &

118 respectively in the common merit list, however, they were at Sr. No. 3 & 7 in the merit list of Thane District. Learned counsel further submitted that so far as Palghar and Pune Districts are concerned, the Department filled up excess posts than the posts advertised. Learned counsel submitted that in Pune District in place of 6 posts advertised, 8 posts were filled in and in Palghar District instead of 50 posts, 51 appointments orders were issued. Learned counsel submitted that Respondent No. 2 selected and appointed three candidates in Thane District and four posts are not filled in. Thus, the action on the part of the Respondents is arbitrary and unreasonable. Learned counsel further submitted that candidates who secured lesser marks than the applicants are appointed in Palghar and Pune District.

3. Learned P.O relied on the affidavit in reply dated 4th March, 2023 filed by Pradeep B. Desai, Assistant Commissioner, in the office of Additional Commissioner, Tribal Development Department, Thane. Learned P.O relied on the Chart for the 7 posts available for Thane District and filled in as under:-

Sr No	Subject	Available posts	Posts filled
1.	Maths (English Medium School) Maths (Marathi Medium School)	1 0	0 0
2.	Science (English Medium School) Science (Marathi Medium School)	1 1	0 0
3.	English (English Medium School) English (Marathi Medium School)	1 1	0 0
4.	General Marathi/History, Geography/Hindi (English Medium School) (Marathi Medium School)	1	0
		7	0

The right side column shows that not a single post in Thane District was filled up. Learned P.O has submitted that in Thane

District three candidates were selected one for English subject and one for General subject. Out of three candidates selected, one Harsha Vishnu More, who was at Sr. No. 49 in the common merit list with 58.33 marks was not considered for appointment as she failed to produce the PESA Certificate and one candidate Hemangi Subhash Zalke, who was at Sr. No. 75 in the common merit list with 56.83 marks was absent for document verification. Further one more candidate was selected and he did not accept appointment as Secondary School Teacher but accepted appointment as Higher Secondary School Teacher. Thus, all the posts in Secondary School in Thane District remained vacant. Learned P.O has submitted that appointments were made as per the common merit list and no separate merit list was maintained District wise.

4. Learned P.O. on instructions has submitted that no policy decision was taken by the Tribal Department about putting cut-off marks for the selection of the post of Teachers in English medium and Marathi medium in the Secondary School. Learned P.O. has submitted that advertisement was issued on 12.12.2018. Examination was conducted on 24.02.2019 and result was declared in March, 2019. She has submitted that 3 candidates were selected for appointment as Teachers in Thane District.

(i) Ms. Harsha Vishnu More secured 58.33 marks

(ii) Ms. Hemangi Subhash Zalke secured 56.83 marks and

(iii) Mr. Milind Suresh Bhangre secured 55.48 marks.

Applicant No.1, Mr. Manohar Dadu Shende secured 56.23 marks and Applicant No.2, Mr. Kisan Parsharam Wagh secured 55.75 marks.

5. Learned P.O. pointed out the letter dated 22.09.2020 written by the Additional Commissioner Tribal, Thane to the Secretary,

Tribal Department. By this letter it is informed that because of the Election Code of Conduct in the year 2019 and thereafter due to Covid-19 pandemic many difficulties were faced in the recruitment process. Nearly 250 posts of the Teachers were vacant in the Tribal Schools and therefore the request was made to the Government that instead of going for the fresh recruitment, wait listed candidates from the recruitment process of the year 2018 be selected. Reminder letter was sent on 28.10.2020. By letter dated 01.03.2021 addressed to the Commissioner, the Department pointed out the Government decision dated 13.06.2018 stating that there is no provision of extension of wait list.

6. From the above Chart, it is crystal clear that 7 posts in Thane of English and Marathi of Secondary School were in filled up when the recruitment process was initiated for the appointment of teachers in Secondary School in December, 2018. Applicants No.1 and 2 have secured 56.23 (History General) and 55.75 (General – Hindi). The posts in Thane District for these two subjects are still vacant they were not filled up in recruitment process of the year 2018. It is submitted by the learned P.O. when there was denial from the Government on the ground of G.R. dated 13.06.2018 that wait list will lapse after one year as the opinion was given by the Secretary, Tribal Department, other Respondent did not take steps to fill up posts of Teachers in Thane District. Moreover, learned P.O. further pointed point that 100% recruitment of Talathi was challenged before the Hon'ble High Court in Writ Petition No.3854/2023 & Ors. in that W.P. statement was made by the State of Maharashtra through Advocate General that:-

“Government will not take decision on Selection Process which has been initiated pursuant to the issuance of the

advertisement and Notification in question could not in any case be completed before 31.08.2023.”

(emphasis placed)

The said statement was also accepted by the Hon'ble Supreme Court in SLP No.22109/2023 dated 13.10.2023, Samajik Vikas Prabodhini Vs. The State of Maharashtra & Anr. Paragraph 6 states as below:-

“6. A statement was made before the High Court that the process of filling up vacancies in pursuance of the impugned notification has been initiated but is not likely to be concluded. The same statement, this Court is apprised would continue till the next date of hearing.”

7. Mr Pradip B. Pol, Deputy Commissioner, Tribal Development Department, Shri Ravindra Jadhav, Deputy Secretary, Tribal Development Department and Smt Archana Tamore, Section Officer, G.A.D under Social Development Coordination are present. Pursuant to the statement made by the Ld. Advocate General before the Hon'ble High Court in W.P 2548/2023, the Government has issued letters on 20.9.2013 to all the concerned Departments wherein the recruitment process under the PESA area has stopped. By said letter it was informed that no person is to be appointed and the entire process of recruitment under the PESA area is stopped till 30.9.2023. By letter dated 13.10.2023, G.A.D informed the concerned Departments again that W.P 2548/2023 is dismissed and the directions were given to the Petitioners to file appeal before the Maharashtra Administrative Tribunal. However, the Petitioners approached the Hon'ble Supreme Court bearing SLP No. 22109/2023 and further directions are given by the Hon'ble Supreme Court that all the appointments of the 17 Cadres

under the PESA area are not to be filled in and recruitment is stopped. The said letters dated 20.9.2013 and 13.10.2023 are taken on record and marked as Court Exhibits I & II. The SLP is now fixed before the Hon'ble Supreme Court on 5.8.2024. Mr Pol explains that the recruitment of 7 posts was for English medium as well as Marathi medium schools. The candidates who secured Degree in B. Ed or D. Ed in which medium it matters when the candidate is given appointment in English or Marathi medium. Both the applicants have obtained Degree in Bachelor of Education in Marathi medium. Therefore, the candidature of these two candidates could not be considered for English medium.

8. Considered the explanation given by the officers present, we verified para 7 of the affidavit in reply dated 4.3.2023 filed by Pradeep B. Desai. The applicant No. 1 has secured 56.23 marks and who is eligible in General subject in Marathi medium. Applicant No. 2 who has secured 55.75 marks was eligible in Marathi medium for General subject. In column No. 4, 2 posts are shown for General subjects, Marathi, History, Geography and Hindi. Out of which 1 post is for English medium, General subject and 1 post for Marathi medium, General subject. As the medium of education of both the candidates for B. Ed course was Marathi, they could not be considered for appointment in Secondary School Teacher for General subjects in English medium but in Marathi medium. Learned P.O on instructions submitted that 3 candidates were selected from open General list, however, none of them joined and therefore, one post for General subject in Marathi medium fell vacant and it is available. The candidate who was selected for General subject has secured 56.83 marks and the Applicant No. 1 has secured 56.23 marks. Learned P.O on instructions has submitted that between 56.83 marks and 56.23 marks, there are no candidates in Thane District.

9. Considering the submissions of both the sides and especially the explanation given by the Department, we are of the opinion that so far as the recruitment to all the 17 Cadres under the PESA area are stopped by the Government, till the pendency of the S.L.P No. 22109/2023 before the Hon'ble Supreme Court, no order can be passed regarding recruitment today. At present though we are of the view that Applicant No. 1 is eligible and can be considered for appointment to the post of Secondary School Teacher in Marathi medium for General subject, his case is to be kept in abeyance till the decision of the Hon'ble Supreme Court in SLP No. 22109/2023.

10. There is one more objection raised by the learned P.O on behalf of the Respondents that the select list of the said recruitment process was published in March, 2019 and the requisition was sent by the Tribal Development Department on 12.12.2019. Therefore, the G.A.D has rejected to consider the names of the applicants on the ground that the wait list has lapsed and accordingly the Secretary, Tribal Development Department has informed the Additional Commissioner, Tribal Development Department that as per the opinion given by G.A.D on 8.3.2021, the wait list has lapsed.

11. It is to be noted that the Tribal Development Department has sent requisition before one year for the recruitment to the post of Secondary School Teachers in the place of vacancies which fell vacant on account of non-joining of the selected candidates and therefore when the requisition was made by the Department, it was necessary to immediately fill up the vacancies. We could not get satisfactory answer from the officers present from the Tribal Development Department when the requisition sent by the Additional Commissioner Tribal Development Department, why it

was not answered immediately. The Tribal Development Department sent letter to G.A.D about filling up the posts in December, 2020 when one year has already lapsed. For this delay on the part of the Tribal Development Department, Mantralaya, the applicant is not responsible. Hence, for this period as the requisition was made within one year and it was not responded within time, we are of the view that benefit of the wait list is to be given to the applicant. Hence, we pass the following order.

ORDER

- (a) The Original Application is partly allowed.
- (b) After the decision of the Hon'ble Supreme Court in SLP 22109/2023, the case of the Applicant No. 1 is to be considered for appointment for the post of Secondary School Teacher in Marathi School for General subject in Thane District.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 18.06.2024
Dictation taken by : A.K. Nair.