

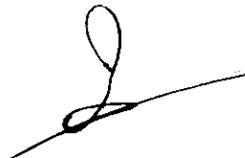
**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI  
ORIGINAL APPLICATION NO.30 OF 2019**

**DISTRICT : KOLHAPUR**

Shri Amit Ramesh Nangare, )  
Age 31 years, occ. Nil, R/at A/P Vadange, Tal. Karvir, )  
District Kolhapur 416 229 )..Applicant

Versus

1. Maharashtra Public Service Commission, )  
Through its Secretary, )  
5 ½ , 7 & 8<sup>th</sup> Floor, Cooperage Telephone Nigam )  
Building, M.K. Road, Cooperage, Mumbai )
2. The Commissioner, )  
Maharashtra State Excise, 2<sup>nd</sup> floor, )  
Old Octroi House, S.B.Singh Road, Fort, Mumbai)
3. The State of Maharashtra, )  
Through Principal Secretary, )  
Home Department, Mantralaya, Mumbai )
4. The State of Maharashtra, )  
Through Principal Secretary, )  
General Administration Department, )  
Mantralaya, Mumbai )..Respondents



Shri S.D. Patil – Advocate for the Applicant.

Smt. K.S. Gaikwad – Presenting Officer for the Respondents.

CORAM : Shri Justice A.H. Joshi, Chairman  
Shri P.N. Dixit, Member (A)  
RESERVED ON : 26<sup>th</sup> April, 2019.  
PRONOUNCED ON : 8<sup>th</sup> May, 2019.  
PER : Shri P.N. Dixit, Member (A)

### **J U D G M E N T**

1. Heard Shri S.D. Patil, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. In response to the 2017 advertisement for the post of Sub Inspector, State Excise, Class 'C', 37 posts were allotted for Scheduled Caste (SC). The Applicant belongs to the SC and appeared for the same. When the list of candidates eligible for recommendation was declared on 8.1.2018 the name of the Applicant did not figure in the same as he secured 116 marks and the cutoff for SC General Category was 116 marks. The Applicant was at merit No.991 in the merit list.

3. Based on the recommendations for 297 candidates, the candidate eligible and recommended at Sr. No.192 belonging to SC informed the Applicant that he has informed Respondent no.2 on 31.10.2018 that he did not propose to join.

4. The Applicant had approached the Respondent No.2 and submitted representation on 17.11.2018 to consider his candidature for the said post in the SC category as he was at Sr. No.5 in the waiting list. On 26.11.2018, Respondent no.1 and Respondent no.2 selected 4 candidates

from the SC category. However, the Applicant's prayer remained pending rather un-adverted.

5. According to the Applicant the fact that the candidate at Sr. No.192 communicated about his intention not to join, Respondent no.3 was under obligation to consider the Applicant, who was the first in the waiting list in the SC General category. Therefore, Applicant has filed present OA. According to the Applicant the conduct of Respondents in failing to consider his representation without any cause or reason amounts to be unfair and violative of fundamental rights guaranteed by the Constitution of India.

6. The Applicant has, therefore, prayed as under:

*"(IX) (d) By issuing directions and orders, this Hon'ble Tribunal be pleased to direct the Respondent no.2 and 3 to consider the candidature of the Applicant on vacant post from Scheduled Caste (General) category for the post of Sub Inspector, State Excise, Class-C, Maharashtra from advertisement bearing No.01 of 2017 dated 13.1.2017."*

(Quoted from page 16 of OA)

7. The Respondent no.2 has filed affidavit for opposing present OA. The same reads as under:

*"3. Similarly, after issuing the appointment orders of Sub Inspectors on 20.8.2018, one more candidate, Shri Pundalik Jadhav (Recommendation No.191 - SC - General) also had given written application on 30.10.2018 that he was also recommended on the post of State Goods and Service Tax Inspector and therefore was unwilling to join on the post of Sub-Inspector, State Excise. But to consider this post as vacant, first of all his appointment order should be cancelled."*



4. *At the time of sending the requisition letter for the waiting list candidates, the file was submitted for the process of cancellation of appointment order of Shri Pundalik Jadhav. Therefore, the requisition letter for 4 actual vacant posts from Scheduled Caste (General) category was sent on 19.11.2018 to the Government. And accordingly 4 candidates from waiting list (Scheduled Caste - General Category) were recommended by Maharashtra Public Service Commission to the Respondent No.2."*

(Quoted from page 158-159 of OA)

8. The affidavit by Respondent no.2 mentioned that as per the instructions issued by Respondent No.1 MPSC, waiting list is valid till one year from the result or the date of result of next examination whichever is earlier and as the final result was declared on 8.1.2018 the validity of one year is over. The affidavit further mentions as under:

- "5. ....  
*It is stated that sending the requisition for the waiting list candidates is purely an administrative decision and it is not the right of the waiting list candidates. The waiting list candidates are not recommended by the MPSC and hence they cannot ask to send the requisition to the MPSC as their right. Also the Respondents are in continuous process of recruitment of Sub Inspectors by MPSC. The examination for 2018 had been conducted and the result is also declared by MPSC in March 2019 and the requisition for 2019 has been sent to the MPSC with the approval of the Government. Therefore, there is no scope for accommodation of waiting list candidates as the provision does not provide for it. Therefore, the decision is taken by the Respondent no.2 not to send further requisition for 2017 result of MPSC and accordingly that decision will be conveyed to the Applicant regarding his application dated 26.12.2018. Therefore, requisition for the waiting list in all categories cannot be send now to the MPSC."*

(Quoted from page 159-160 of OA)

9. During the hearing, Shri S.M. Jagtap, Deputy Commissioner in the office of State Excise in the office of Respondent no.2 filed short affidavit which stated as under:

"2. ....  
It is also submitted that the Respondent has not taken any conscious decision not to send requisition for waiting list candidate regarding this matter."

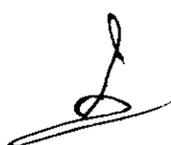
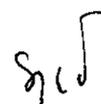
(Quoted from page 164 of OA)

Discussion and findings:

10. During hearing original record was produced by Respondent no.2. It has transpired from record that:-

- (a) *The candidate at Sr. No.192 belonging to SC had communicated to Respondent no.2 on 30.10.2018 making it clear that he did not propose to join.*
- (b) *A communication was processed by the respective staff immediately and put up for necessary orders regarding his cancellation and further requisition.*
- (c) *The waiting list had expired on 8.1.2019.*
- (d) *Only on 9.1.2019, Respondent no.2 took the decision mentioning that as the life of waiting list has expired the Respondent no.2 is not in a position to make the necessary requisition.*

11. Respondent no.2 has averred in the affidavit that, "sending the requisition is administrative decision and the candidate has no right asking it to act on the waiting list". The Respondent appears to be under the belief that administration has absolute prerogative to fail to act and said failure, indolence and neglect cannot be questioned.

12. It is already indicated that in response to the specific query the Respondent has admitted in their affidavit that the Respondent did not take any conscious decision not to send requisition for waiting list candidate in the present case.

13. This Tribunal cannot lose sight of the fact that vacancy subject matter is in:

- (a) State Excise Department, which is law enforcing and fetches revenue.
- (b) Government had identified the vacancies and it is well known that the department has crunch of staff.
- (c) The vacancy was from reserved SC category.
- (d) It is the policy of State to exert and strive to fill in the vacancies of SC category. The life of the wait list is not a matter of academic prescription.
- (e) Rules lay down that the candidate has to apply within the time fixed in the offer of appointment and if the candidate does not join or does not comply for grant of enlargement of time for joining, the competent authority has to fall back on the waiting list and if the waiting list already provided is exhausted call for the additional names.

14. Duty to fill in the notified vacancies has to be viewed as mandatory duty, observance whereof is not contingent on the wish of anyone from the rock bottom level i.e. Assistant or even matter of sweet will of the

Secretary, because the decision to create a post and to fill in is often reached at the level of the Government.

15. Moreover, the very stronger urge is all the more necessary particularly when the vacancy pertained to reserved category. Apathy to fill in the vacancy results in impinging upon the very sincerity of every officer in the department and may also not escape touching the doubting of integrity. Integrity will not barely mean not being corrupt. Not being fallible would also fall within the comprehension of excellent degree of integrity.

16. Therefore, it would be totally unbecoming for the Government officer to have said that a candidate cannot claim right for moving the Tribunal for a writ of mandamus that a direction be given to issue an order of appointment in his favour. Such an argument does not withstand the test of fair and good governance. This Tribunal would, therefore, elect to hold that it was duty of Respondents no.2 and 3 to send requisition to MPSC to send the list of alternate candidates due to failure and select candidate to join. MPSC would be under obligation to send additional candidates from same selection session by ignoring the human error and neglect on the part of Respondents no.2 and 3 to call for the candidates.

17. No candidate should be made to suffer due to inaction, indolence and negligence in performance of duty and obligation of good governance. The failure of the Respondents takes graver form of failure since the State considers that it is its primary duty and onus to fill in the vacancy belonging to SC and ST etc., which is the Constitutional obligation of the State. Hence, Applicant has made out a strong than the stronger case for grant of mandatory direction in terms of prayer clause IX(d), which reads as under and which is conceded :



*“(IX) (d) By issuing directions and orders, this Hon’ble Tribunal be pleased to direct the Respondent no.2 and 3 to consider the candidature of the Applicant on vacant post from Scheduled Caste (General) category for the post of Sub Inspector, State Excise, Class-C, Maharashtra from advertisement bearing No.01 of 2017 dated 13.1.2017.”*

(Quoted from page 16 of OA)

18. We further direct the Respondents no.2 and 3 to furnish requisition to the MPSC within fifteen days of receipt of this order of the Tribunal and Respondent no.1 shall carry out its compliance within further fifteen days. Respondents no.2 and 3 shall effect the necessary and consequential action after receipt of name within fifteen days.

19. We do not wish to part with this judgment and order without adding further our concern and expectations. We had no occasion in the past to issue a mandamus of present nature since no such prayer had come up before us. However, the situation that appointment was refused due to lapse of the waiting list is not new to us. It was noticed by us in many few cases that requisition for appointment was denied on account of life of waiting list having been expired. It is hoped that Government is conscious about the cost of selection of a candidate. The man hours spent from the date of ascertaining the need of personnel required till the receipt of list of candidates could be hundreds of man hours per candidate and hence the cost of selection per candidate could be voluminous and such cost could not be permitted to multiply sheerly due to indolence, negligence and lack of action on the part of the lower ladder or middle administration level of the administration, and weak or poor supervision of those placed at higher position.

20. We, consider it appropriate that the Chief Secretary with the aid of GAD and other departments shall device a procedure laying down the time limit where the waiting list shall not be allowed to lapse due to any reason attributable to the inaction on the part of administration.

21. We hope that a time frame/schedule be devised and an officer of the rank of Deputy Secretary should be made accountable for the adherence thereto. We shall highly appreciate if some action is taken and a report and compliance is furnished before this Tribunal by way of compliance of writ.

22. We direct the Registrar of this Tribunal to forward copy of this judgment and order to the Chief Secretary of the State with a Demo Official letter for personal attention of the Chief Secretary.

23. OA is allowed in the above terms. The Respondents are directed to complete the exercise as stated in para No.15 above.

24. We direct the parties to bear their own costs.

Sd/-

**(P.N. Dixit)**  
**Member (A)**  
**8.5.2019**

Sd/-

**(A.H. Joshi, J.)**  
**Chairman**  
**8.5.2019**

Dictation taken by: S.G. Jawalkar.

