

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 575 OF 2016

DISTRICT : SATARA

Shri Jayesh Arun Shirode,)
Occ : Nil, R/o: Plot no. 17,)
Kanchan Nagar, Ambad Road, Old Jalna.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Principal Secretary,)
Government of Maharashtra,)
Revenue & Forest Department,)
Mantralaya, Mumbai 400 032.)
2. The Divisional Commissioner,)
Pune Revenue Division,)
Revenue Commissionerate, Pune.)
3. The Collector, Satara And)
President of District Selection)
Committee, Satara.)...**Respondents**

Shri A.S Deshpande, learned advocate for the Applicant.

Shri K.B Bhise, learned Presenting Officer for the Respondents.

CORAM : Justice Shri A.H Joshi (Chairman)
Shri Rajiv Agarwal (Vice-Chairman)

RESERVED ON : 30.03.2017
PRONOUNCED ON : 13 .04.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri A.S Deshpande, learned advocate for the Applicant and Shri K.B Bhise, learned Presenting Officer for the Respondents.
2. This Original Application has been filed by the Applicant seeking appointment to the post of Talathi, as the candidates, who had secured marks equal to the Applicant had been selected, and the Respondents did not correctly calculate the vacancies, which were required to be filled. The Applicant has claimed, had the vacancies being correctly calculated and advertised, the Applicant would have been selected for the post of Talathi.

3. Learned Counsel for the Applicant argued as follows on his behalf:

The Respondent no. 3 had issued an advertisement on 9.6.2015, inter alia, to fill 52 posts of Talathi. It was mentioned that the number of posts could be increased or decreased. The Applicant had participated in the selection process and obtained 142 marks. Two other candidates obtained identical marks and were selected as they had higher educational qualification as compared to the Applicant. Learned Counsel for the Applicant stated that the State Government had issued G.R dated 2.6.2015, putting restrictions on filling vacant posts in the Government. No new posts were to be created and only 50% of the posts to be filled by direct recruitment or 4% of the posts in the cadre could be filled, whichever was lower. However, for some cadres, limit was 75%. For Talathi's cadre also, 75% vacant posts could be filled. Learned Counsel for the Applicant argued that G.R dated 27.6.2008 prescribes the method as to how the vacancies are to be calculated. Para 3(a) of this G.R provides that the likely vacancies till the year end in the year next to the year in which the selection is being done are to be considered as available for filling up. However, the Respondent no. 3, did not calculate the vacancies correctly and vacancies existing before the advertisement was issued were considered and as a result only 52

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vacancies in the cadre of Talathi were advertised. The number was worked out at 75% of 69 vacant posts till 31.5.2015. However, the likely vacancies till 31.12.2016 should have been considered as per G.R dated 27.6.2008. Learned Counsel for the Applicant argued that the Government had permitted to fill 100% posts of Talathis by G.R dated 3.10.2015, during the currency of the selection process. If the posts were correctly calculated, number would have been more than 52, and the Applicant was bound to be selected, as he scored marks equal to those obtained by two selected candidates. The Respondent no. 1 has rejected the claim of the Applicant, relying on earlier G.R dated 11.10.2007, which was modified by G.R dated 27.6.2008, which is legally untenable.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents as follows:

The Respondent no. 3 had advertised 52 posts of Talathis, based on the vacancies existing on 31.5.2015, which were 69 in number. As per G.R dated 2.6.2015, only 75% of the vacant posts could be filled. As the Applicant could not be selected for the vacancies available, he is not eligible to claim appointment at this stage. The Applicant is trying to misguide this Tribunal by wrongly interpreting various G.Rs. G.R dated 3.10.2105 is applicable prospectively and is not applicable to the present selection process and 100%



vacancies could not be filled. Learned Presenting Officer stated that the entire selection process was in accordance with G.Rs dated 2.6.2015 and 27.6.2008.

5. We find that the Applicant is seeking appointment on the post of Talathi on the equitable ground that he had scored 142 marks in the selection process and two other candidates, who had scored the same marks were selected, while he was kept in the waiting list. If there were a few more vacancies than 52 advertised, he would have been selected. His claim is that the Respondent no. 3 had not calculated vacancies in accordance with G.R dated 27.6.2008. Otherwise, number of vacancies would have been many more. The Respondent no. 1 had rejected the claim of the Applicant relying on the provision of G.R dated 19.10.2007, which was, in fact modified by G.R dated 27.6.2008.

6. Respondents no 2 & 3 have filed affidavit in reply dated 10.8.2016. In para 13 of the aforesaid reply, it is stated that:-

“Therefore, the present Respondent are conducted (sic) the said entire recruitment as per the guidelines given in the G.R dated 2.6.2015 as well as 27.6.2008. Hence the recruitment conducted by the present Respondent regarding issue is just, proper and legal in the eyes of the law.”

It is clear that the Respondent nos 2 & 3 have clearly admitted that vacancies were to be calculated as per G.R dated 27.6.2008. G.R dated 27.6.2008 (Exhibit 'C') has the following provisions, viz”:

“३. निवड प्रक्रियेचा कालबध्द कार्यक्रम व पुढील एक वर्षाची संभाव्य रिक्त पदे विचारात घेण्याबाबत :-

अ. दि.१९/१०/२००७ च्या आदेशातील परिच्छेद क.२ (क) व सदर आदेशासोबतच्या परिशिष्ट 'अ' मध्ये दर्शविल्यानुसार जिल्हा निवड समित्यांसाठी कालबध्द कार्यक्रम आखून देण्यात आला आहे. त्यानुसार आता यापुढे वरीलप्रमाणे कार्यवाही करताना जिल्हा परिषदा वगळून नियुक्ती प्राधिकारी यांनी त्यांच्या अधिपत्याखालील कार्यालयात पुढील कॅलेंडर वर्ष अखेरपर्यंत म्हणजेच डिसेंबर अखेरपर्यंत किती जिल्हास्तरीय पदे नामनिर्देशनाने भरतीसाठी उपलब्ध होतील (उदा.दि.१५ जून २००८ पूर्वी मागणीपत्र पाठविताना दि.३१ डिसेंबर, २००९ पर्यंत व १५ जून २००९ पूर्वी मागणीपत्र पाठविताना दि.१ जानेवारी, २०१० ते ३१ डिसेंबर २०१० पर्यंत याप्रमाणे दरवर्षी सेवानिवृत्ती, पदोन्नती इ.मुळे रिक्त होणारी पदे) यांचा अंदाज घेउन दरवर्षी १५ जूनपर्यंत जिल्हा निवड समितीकडे मागणीपत्र पाठवावे.”

In the present case, the advertisement was issued on 9.6.2015, i.e. before 15th June, 2015. The vacancies up to 31.12.2016 should have been considered. In the affidavit of the Respondent no. 3 dated 28.2.2017, it is stated in para 3 that:-

“3. I say that the said 69 vacancies of the Talathi cadre were available prior to advertisement dated 9.6.2015. Therefore, the present Respondent no. 3

issued advertisement for calling the applications for 52 posts, i.e. 75% of the 69 vacant posts prior to the said advertisement, i.e up to dated 31.5.2015, as per the rules and the Finance Department G.R dated 2.6.2015 and guidelines issued by superior authorities regarding recruitment from time to time.”

It is quite clear that the Respondent no. 3 had considered actual vacancies as on 31.5.2015. His claim that he had followed G.R dated 27.6.2008 is obviously incorrect.

7. In para 4 of the affidavit in reply dated 28.2.2017, the Respondent no. 3 has stated that till 31.1.2016, $12 + 16 = 28$ more vacancies would have occurred due to promotion and retirements. In fact, vacancies up to 31.12.2016 should have been considered. However, based on incomplete information furnished by the Respondent no. 3, total number of vacancies on 31.1.2016 would have been $69 + 28 = 87$, 75% of which comes to 65. The Respondent no. 3 should have advertised at least 65 posts of Talathi, if not 87, as 100% posts were permitted to be filled by G.R dated 3.10.2015. In the letter dated 23.1.2017, the Respondent no. 1 had informed the Respondent no. 3 (page 67 of the Paper Book), as follows:-

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३. विभागाच्या दिनांक ३.१०.२०१५ रोजीच्या पदभरती निर्णयाच्या संदर्भात आपणांस कळविण्यात येते की, शासन निर्णय, सामान्य प्रशासन विभाग, क्र. प्रनिम-२००७/प्र.क्र.४६/०७/१३-अ, दिनांक १९.१०.२००७ अन्वये नामनिर्देशनाच्या कोटयातील गट 'क' वर्गीय पदे भरताना अनुसरावयाची कार्यपध्दती, सदर शासन निर्णयाच्या सोबतचे परिशिष्ट 'अ' मधील परि.४ मध्ये पुढीलप्रमाणे नमूद केली आहे:-

“निवड समितीकडे विहित मुदतीनंतर प्राप्त झालेल्या मागणीपत्रांमधील मागणीवर पुढील वर्षाच्या कालबध्द कार्यक्रमानुसार विचार करण्यात यावा. परंतु संबंधित निवड समितीने ज्या संवर्गातील पदांसाठी अगोदरच कालबध्द कार्यक्रमानुसार जाहिरात प्रसिध्द केली असेल व त्याच संवर्गातील पदांचा दिनांक १५ जून नंतर परंतु लेखी परीक्षेच्या दिनांकाच्या लगतपूर्वीच्या महिन्याच्या अखेरपर्यंत प्राप्त झालेल्या मागणीपत्रांमध्ये समावेश असल्यास अशावेळी सदर मागणीमधील संबंधित संवर्गातील पदांचा समावेश निवडसूची तयार करण्यासाठी रिक्त पदांची संख्या विचारात घेताना करण्यात यावा व मागणीपत्रातील उर्वरित संवर्गातील पदांचा पुढील वर्षाच्या कालबध्द कार्यक्रमानुसार विचार करण्यात यावा.”

This letter from the Respondent no. 1 is inexplicable. There is no doubt that the G.R dated 19.10.2007 has been modified by G.R dated 27.6.2008 (Exhibit 'C', page 24 of the Paper Book). The Applicant is not claiming that the selection process pursuant to advertisement dated 9.6.2015, should be extended to cover 25% of the remaining post. His claim is that the number of vacancies were not calculated correctly. This claim is based on solid facts. Without going into the nitty-gritty of actual vacancies, which should have been advertised and without considering G.R dated 3.10.2015, the Applicant has made out a strong case, that he was eligible to be selected for the post of Talathi, as he had scored 142 marks, and other persons, who had obtained the same marks were selected. Only reason to deny him

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appointment that all the available vacancies, were filled. But the calculation for available vacancy was done in disregard to G.R dated 27.6.2008. Only 52 vacancies were advertised, while in actual practice, it would have been a minimum of 65, up to 31.1.2016. If the calculations were done in accordance with G.R dated 27.6.2008, likely vacancies up to 31.12.2016 should have been considered, and available vacancies would have been more than 65.

8. The Respondents have admitted in para 4 of the affidavit in reply dated 10.8.2016 that two other candidates, who scored 142 marks were selected:

“It is therefore, say that (sic) that two another candidates having secured equal number of marks have appointed (sic) because they both have higher educational qualification and stood prior in list than present applicant.”

The claim of the Applicant that he would have been selected, if the number of vacancies was more than 52 and that he had scored marks equal to marks obtained by two selected candidates is correct. It is seen that at least 65 vacancies should have been advertised. If the vacancies up to 31.12.2016 were considered, this figure would be more. If all 100% vacancies were to be filled, the number of vacancies, probably would be much more

than 52 vacancies advertised. However, without getting into those details, the Applicant has made out a case for granting him relief. He is granted relief as he is not selected, though the persons who scored equal marks were selected and his selection is not likely to adversely affect any other person.

9. Having regard to the aforesaid facts and circumstances of the case, the Respondent no. 3 is directed to offer appointment to the Applicant as Talathi, if he is otherwise found fit, within four weeks from the date of this order. This Original Application is allowed accordingly with no order as to costs.

Sd/- 1
(Rajiv Agarwal)
Vice-Chairman

Sd/- 2
(A.H Joshi (J.))
Chairman

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Place : Mumbai

Date : 13.04.2017

Dictation taken by : A.K. Nair.