

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 394 OF 2014

DISTRICT : SATARA

Shri Yogendra Hanmantrao Pol,)
Occ : Nil, R/o: A/P Kavathe, Tal-Wai,)
Dist-Satara.)
Add for service of Notice)
Shri A.V Bandiwadekar, advocate)
Having office at 9, "Ram Kripa",)
Lt Dilip Gupte Marg, Mahim,)
Mumbai 400 018.)...**Applicant**

Versus

1. The Chairman/Secretary,)
Maharashtra Public Service)
Commission, [M.S], Mumbai,)
Having office at 3rd floor, M.G Road,)
Fort, Hutatma Chowk,)
Mumbai 400 001.)

2. The State of Maharashtra,)
Through Principal Secretary,)
Food & Drugs Department,)
Mantralaya, Mumbai 400 032.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Mrs Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)
Shri R.B. Malik (Member) (J)

DATE : 26.08.2015

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and Mrs Kranti S. Gaikwad, learned Presenting Officer for the Respondents

2. This Original Application has been filed by the Applicant challenging the communication dated 23.4.2013 from the Respondent no.1 informing the Applicant that wait list in respect of selection to the post of Drug Inspector, Food & Drugs Administration, General State Service (Group-B) on the basis of

examination for which result was declared on 2nd & 3rd December, 2010 has expired and cannot be operated.

3. Learned Counsel for the Applicant argued that the Applicant has applied to the post of Drug Inspector, pursuant to the advertisement issued by the Respondent no. 1, on various dates, i.e on 21.12.2007 for 48 posts, 11.2.2008 for 32 back log posts and on 29.7.2008 for 16 posts. A screening test was held by the Respondent on 5.10.2008. The final results were declared on 2nd & 3rd December, 2010. The Respondent no. 1 recommended 83 candidates, 61 for current vacancies and 22 from backlog. Learned Counsel for the Applicant stated that the Applicant belongs to open category. As 12 persons who were recommended, did not join, the Applicant was eligible to be recommended from the waiting list. As per Rule 10(7) of the Rules of Procedure of the Maharashtra Public Service Commission, a reserve list up to 10% of the vacancies in each category is maintained and this reserve list lapses on the declaration of date of subsequent examination for the same category OR after a period of two years from the date of preparation of reserve list, whichever is earlier. Learned Counsel for the Applicant contended that the period of two years has been reduced to one year by amending Rule 10(7) on 17.11.2011 and does not apply to selections completed before that date. The new advertisement has been issued on 31.3.2015. The reserve list was actually prepared on



7.12.2010 as the recommendations were sent to the Government 4.12.2010 and 7.12.2010. The reserve list should have been valid for two years, i.e. up to 7.12.2012. Government has sought names from the waiting list from the Respondent no. 1 on 6.12.2012 and the Respondent no. 1 was bound to send the name from the reserve list. Learned Counsel for the Applicant argued that by order dated 26.8.2011, Hon'ble Bombay High Court, Aurangabad Bench in Writ Petition no. 5216/2011 has stayed the order of the Maharashtra Administrative Tribunal, which has quashed the selection made by M.P.S.C. However, there was no clarity whether the appointments could be given to the selected candidates. By order dated 15.12.2011, Hon'ble High Court permitted the Respondents to issue appointment orders subject to the result in the aforesaid Writ Petition. Learned Counsel for the Applicant argued that period of validity of the wait list should be counted from the date of order of Hon'ble High Court, i.e. 15.12.2011, permitting the Respondent to appoint candidates from the select list. He cited the judgment of Hon'ble Supreme Court in the case of **State of U.P Vs. Ram Swarup Saroj, reported in AIR 2000 S.C1097.**

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the select list was declared on 2.12.2010 and 3.12.2010. As per rules of procedure of M.P.S.C the wait list prepared along with

select list was valid for a period of one year. That period expired on 3.12.2011. The Government sought names from the Wait/Reserve list by letter dated 6.12.2012. By that time the validity of Wait List has expired and MPSC has rightly informed the Government that no names can be recommended from the Wait List. Learned Presenting Officer argued that impugned communication dated 23.4.2.2013 from MPSC to the Applicant is perfectly valid.

5. The issue to be decided in the present Original Application is the period of validity of the Wait List. There is no doubt that as per Rule 10(7) of the Rules of Procedure of the Maharashtra Public Service Commission, a reserve list of up to 10% of the vacancies is required to be maintained and this list lapses on the declaration of the date of subsequent examination for the same category of posts or after a period of one year (as per amendment dated 17.11.2011). The claim of the Applicant is that select list for the post of Drug Inspector, Group-B, declared on 3.12.2010 was quashed by the Aurangabad Bench of this Tribunal and that order was stayed by the Aurangabad Bench of the Bombay High Court on 26.8.2011. However, by order dated 15.12.2011 in W.P no 5216 of 2011, Hon. High Court actually permitted the Respondents to issue appointment letters to the selected candidates. This date should be treated as the date on which wait list came into existence. The

Applicant has relied on the judgment of Hon. Supreme Court in **Ram Swarup Saroj's** case (supra). Hon. Supreme Court has held:-

“The direction given by High Court to fill in the vacancy available in the category of Scheduled Caste candidates in the order of merit from out of the waiting list in a petition filed before expiry of the select list cannot be assailed on the ground that the select list has ceased to be valid on expiry of one year from the date of preparation thereof and an appointment from such list could not now be directed. Merely because a period of one year has elapsed during the pendency of litigation, the relief to which the respondent has been found entitled to by the High Court cannot be denied.”

In the present case, the letter from the Respondent no. 2 (page 24 of the Paper Book) makes it clear that though the Respondent no. 1 has recommended candidates by two list dated 4.12.2012 and 7.12.2012, the actual appointment were given only after judgment of Hon. High Court dated 15.12.2011 in W.P no 5216/2011. The Government has called names from the Wait List by letter dated 6.12.2012, i.e. within a period of one year, after the select list was operationalized. The period of one year for validity of the Wait List will have to be reckoned from the date of the order of Hon. High Court, i.e. 15.12.2011. As

such, the requisition of the Respondent no. 2 (State Government) by letter dated 6.12.2012 was within a period of one year and as held by Hon. Supreme Court, the Respondent no. 1 (M.P.S.C) could not have refused to send the names from the Wait List, merely on the ground that the period of one year is over and the Wait List has lapsed.

6. Having regard to the aforesaid facts and circumstances of the case, the Respondent no. 1 is directed to recommend names to the Respondent no. 2 as per the requisition letter dated 6.12.2012 by operationalizing the Wait List within a period of one month from the date of this order. The Original Application is disposed of accordingly with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 26.08.2015
Dictation taken by : A.K. Nair.