

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 628 of 2023 (D.B.)

- (1) Vikas S/o Mahadev Pawar, Aged 28 years, Occ. Student,
R/o Bhose, Pawarmala, Tal- Pandharpur, Shewate,
Dist. Solapur-413315.
- (2) Suchet S/o Sanjay Banne,
Aged 23 years, Occ. Student, R/o 7/937, Samrat Ashok Nagar,
In front of Awale Maidan, Tah. Ichalkaranji, Dist. Kolhapur-416115.
- (3) Pravin S/o Bhagwanrao Misal, Aged 27 years, Occ. Student,
R/o At post Khokermoha, Khokermoha, Dist. Beed-414205.
- (4) Ajaykumar S/o Omprakash Varma, Aged 26 years, Occ. Student
R/o 61, Dwarka Nagar, Omgarjana Chowk, Omgarjana Temple,
North Solapur, Indiranagar (N.V), Solapur- 413004.
- (5) Ankit S/o Bhagwan Khiradkar, Aged 28 years, Occ. Student,
R/o Bhangura, Chikhli, Tal. Malkapur, Buldhana-443112.
- (6) Umesh S/o Balasaheb Dhembre, Aged 26 years, Occ. Student,
R/o Nipani Pimpalgaon, Ghansawangi Jalna, Jalna-431209. (deleted)
- (7) Saurabh S/o Subhashrao Ingole, Aged 26 years, Occ. Student,
R/o 12, Shree Krishna Apartment, Ashirwad Nagar Road,
Sanjay Gandhi School, Raakas Layout, Bidipeth, Nagpur-440024.
- (8) Dhananjay S/o Subhash Gavhane, Aged 28 years, Occ. Student
R/o At Takalgav, Post. Ahervahegaon, Takalgaon, Gevrai,
Beed-431127.
- (9) Gaurav S/o Bhaskar Pise, Aged 26 years, Occ. Student,
R/o Gurudeo Ward No. 01, At Post. Neri, Tah. Chimur,
Dist. Chandrapur-442904,
- (10) Nishikant S/o Ratnakar Patil, Aged 27 years, Occ. Student,
R/o 108B, Parola Road, Near Abhay College Road,
Swami Narayan Society, Dhule-424001.
- 11) Akshay S/o Jayprakash Dwivedi, Aged 27 years, Occ. Student,
R/o Shyamala Sadan, Near Bhalerao Public School,
Mogre Lay-out Gaorakshan Ward, Ballarpur, Chandrapur-442701.

(12) Akshay S/o Chandu Parihar, Aged 28 years, Occ. Student,
R/o Near Doodh Dairy, Swami Sitaramdas Ward. VTC-Ramtek,
Tah. Ramtek, Dist. Nagpur-441106.

(13) Toshitkumar S/o Damodhar Diwathe, Aged 31 years,
Occ. Student, R/o Near Unnati Medical Bus Stand Lakhandur,
At Post Lakhandur, Tah. Lakhandur, Dist- Bhandara-441803.

Applicants.

Versus

(1) The State of Maharashtra, through its Secretary,
Revenue and Forest Department, Mantralaya Mumbai-400032.

(2) The Settlement Commissioner and Director of Land Records
(M.S.) 2nd and 3rd Floor, New Administrative Building,
Opp. Council Hall, Agarkar Nagar, Pune-411001.

(3) The Deputy Director Land Records, Nagpur Region, Nagpur,
Old Secretariat Building. Ground Floor, Civil Lines,
Nagpur -440001.

Respondents.

Shri P.J. Mehta, Advocate for the applicants.

Shri M.I. Khan, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Date of Reserving for Judgment : 23rd April, 2024.

Date of Pronouncement of Judgment : 9th May, 2024.

JUDGMENT

(Delivered on this 9th day of May, 2024)

Heard Shri P.J. Mehta, learned counsel for the applicants
and Shri M.I. Khan, learned P.O. for respondents.

2. The regular Division Bench is not available. The Hon'ble
Chairperson, M.A.T., Principal Bench, Mumbai issued Circular
No.MAT/MUM/JUD/469/2023, dated 24/04/2023. As per the direction

of Hon'ble Chairperson, if both the parties have consented for final disposal, then regular matter pending before the Division Bench can be disposed off finally.

3. As per the M.A.T., Principal Bench, Mumbai office order / letter No.MAT/MUM/JUD/1350/2023, dated 21/11/2023, the Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai has given direction to this Tribunal to decide the Division Bench matters if the matter is covered by the Judgments of Hon'ble Supreme Court, Hon'ble High Court and the Benches of the M.A.T. etc. Hence, the matter is heard and decided finally with the consent of learned counsel for both the parties.

4. During the course of submission, the learned counsel for applicants has pointed out that applicant no.6 has filed Pursis on 11/01/2024 stating that he is appointed as per the appointment order dated 28/12/2023 on the post of Surveyor. Therefore, he prayed to delete his name. Hence, the name of applicant no.6 be deleted.

5. The applicants are well qualified and are eligible for appointment to the post of Surveyor and Clerk-Typist, Group-C Collective 4 under the Land Records Department. The respondent no.2 in consonance with the approval of respondent no.1, issued advertisement on 20/07/2021 to fill up the various vacant posts by way

of direct recruitment by a common advertisement. In the said advertisement, the posts from various regions were advertised. All the applicants are concerned the posts advertised for the Nagpur region. In the said advertisement, total 189 posts were advertised from various categories for Nagpur region. In the said advertisement, 28 posts were shown horizontally reserved for ex-serviceman category, out of which 3 posts were shown reserved from S.C. category, 3 posts were shown reserved from S.T. category, 1 post was shown reserved from S.B.C. category, 3 posts were shown reserved from O.B.C. category, 3 posts were shown reserved from E.W.S. category and 15 posts were shown against unreserved category.

6. The applicants fulfilled all the requisite criteria, therefore, they applied for the said posts. The applicant no.1 applied from EWS category. The applicant nos.2,3,4,7,8,10 applied from general category, applicant no.5 applied from SBC category, applicant nos.6,11 applied from EWS category, applicant nos.9,12,13 applied from OBC category, by virtue of certificates issued by the Competent Authority to that effect.

7. After due scrutiny of online application forms submitted by the applicants, they were called upon to participate in the written examination. Accordingly, the applicants remained present in the written examination. On the basis of the marks obtained by them, they

were found selected in the merit list / result and waiting list published by respondent no.2 on 28/04/2023. The name of applicant no.1 is at sr.no.1 in EWS general having secured 158 marks, the name of applicant no.2 is at sr.no.9 in open general having secured 166 marks, the name of applicant no.3 is at sr.no.6 in open general having secured 166 marks, the name of applicant no.4 is at sr.no.3 in open general having secured 168 marks, the name of applicant no.5 is at sr.no.1 in SBC general having secured 164 marks, the name of applicant no.6 is at sr.no.4 in EWS general having secured 158 marks, the name of applicant no.7 is at sr.no.7 in open general having secured 166 marks, the name of applicant no.8 is at sr.no.5 in open general having secured 166 marks, the name of applicant no.9 is at sr.no.4 in OBC general having secured 164 marks, the name of applicant no.10 is at sr.no.8 in open general having secured 166 marks, the name of applicant no.11 is at sr.no.3 in EWS general having secured 158 marks, the name of applicant no.12 is at sr.no.1 in OBC general having secured 164 marks, the name of applicant no.13 though applied from OBC general is at sr.no.11 in open general having secured 164 marks.

8. The respondent no.2 has also published revised advertisement thereby notifying the increased number of posts from 189 to 197. Accordingly, the number of posts horizontally reserved for

ex-serviceman category, were also increased from 28 to 29 posts by increasing 1 post from OBC category.

9. In the select list published by respondent no.2, out of 29 posts horizontally reserved for ex-serviceman category only 4 posts were filled in from open category and the rest of 25 posts from various categories enumerated in the advertisement were kept vacant due to non-availability of ex-serviceman candidates in the respective categories. As such 25 posts out of 29 posts horizontally reserved for ex-serviceman category are kept vacant by respondent no.2.

10. Immediately after the knowledge about the aforesaid facts, some of the applicants have made representation to respondent nos.2 and 3 on 02/05/2023 with reference to the G.Rs. dated 16/03/1999, 13/08/2014 and 19/12/2018 thereby pointing out to respondent nos.2 and 3 that if the candidates from horizontal reservation are not found, then candidates from the respective category who are found eligible and are in the waiting list of the respective category, ought to have been selected against the horizontal reserved posts for ex-serviceman category as per abovementioned Government G.Rs.

11. The respondents have not taken into consideration the representation made by the applicants. Therefore, the applicants approached to this Tribunal for the following reliefs –

“ (8) (1) Direct the Respondent No. 2 and 3 to act in accordance with law and consider the candidature of the applicants for selection and thereafter appointment, from their respective categories as mentioned in para No. 7.4, from the post reserved for the Ex-servicemen category due to non availability of the Ex-Servicemen category candidates, if otherwise found eligible.

2) Direct the Respondent No. 2 and 3 to give all emoluments and benefits admissible to the post in question including deemed date of appointment from the date of appointment of the other candidates selected in the same recruitment process.

3) By way of interim relief be further pleased to direct the Respondent No. 4 not to fill in the posts out of 25 vacant posts of Ex- servicemen category qua the claim of the applicants, till the final disposal of the present original application.

(4) Ad-interim relief in terms of the prayer clause (2) may kindly be granted.”

12. The reply is filed by R-2&3. There is no dispute about the advertisement etc. and marks obtained by applicants in the category they belong. It is submitted that on 29/04/2023, the select and wait list were published. Those lists show the names of applicants were in the wait list. Out of 29 posts reserved for ex-serviceman, only 4 persons from open category were available and remaining 3 S.C. and S.T., 1 SBC, 4 OBC, 3 EWS and 11 Open and therefore total 25 candidates from ex-serviceman category were not available. On 30/06/2023 those 4 candidates from ex-serviceman category were given appointment.

13. The respondents relied on the G.R. dated 16/04/1981 and as per this G.R., the posts are to be kept vacant if the respective categories candidates are not available. Hence, the O.A. is liable to be dismissed.

14. The learned counsel for applicants Shri P.J. Mehta has pointed out the Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.6064/2014, decided on 05/09/2018 and the Judgments of this Tribunal in O.A.No.279/2022 decided on 16/09/2022 and in O.A.No.416/2022 decided on 16/11/2022.

15. From the Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Nikhil Satosh Choudhari Vs. State of Maharashtra and Others** in Writ Petition No.6064/2014, decided on 05/09/2018, it is clear that when the specific category candidates from ex-serviceman are not available, then other candidates who are in the select / wait list in the respective categories shall be given appointment. The operative part of the order is reproduced below –

"II. Respondent Nos. 1 and 2 shall consider the petitioner and respondent No.3 for appointment to the post of Measurer from the OBC category as the persons from the OBC EX-serviceman and OBC part time are not available, pursuant to the said advertisement. Same shall be considered within a period of four weeks.

18. The advertisement in respect of Nagpur region is reproduced below –

अ.क्र.	जातीचा प्रवर्ग	समांतर आरक्षण								एकूण पदसंख्या
		माजी सैनिक	प्रकल्पग्रस्त	भूकंपग्रस्त	महिला	खेळाडू	अंशकालीन	अनाथ	समांतर आरक्षण विरहीत	
६	अनु. जाती	३	१	०	७	१	२	०	१	२३
	अनु.जमाती	३	१	०	६	१	२	०	७	२०
	वि.जा.अ	०	०	०	१	०	०	०	०	१
	भ.ज. ब	०	०	०	०	०	०	०	०	०
	भ.ज. क	०	०	०	२	०	०	०	०	२
	भ.ज. ड	०	०	०	१	०	०	०	०	१
	वि.मा.प्र.	१	०	०	१	०	०	०	२	४
	इ.मा.व.	३	१	०	७	१	२	०	८	२२
	ईडब्ल्यूएस	३	१	०	६	१	२	०	६	१९
	अराखीव	१५	५	२	२९	५	१०	१	३०	९७
	एकूण	२८	९	२	६०	९	१८	१	६२	१८९
	दिव्यांगाकरीता राखीव -एकूण-८ (अल्पदृष्टी-१, श्रवणदोष-१, अस्थीव्यांग-१, स्वमग्नता/भंदबुद्धी व वरील एकापेक्षा अधिक जास्त प्रकारचे दिव्यांग-५)									

19. There is no dispute that the name of applicant no.1 is at sr.no.1 in EWS general having secured 158 marks, the name of applicant no.2 is at sr.no.9 in open general having secured 166 marks, the name of applicant no.3 is at sr.no.6 in open general having secured 166 marks, the name of applicant no.4 is at sr.no.3 in open general having secured 168 marks, the name of applicant no.5 is at sr.no.1 in SBC general having secured 164 marks, the name of applicant no.6 is at sr.no.4 in EWS general having secured 158 marks, the name of applicant no.7 is at sr.no.7 in open general having secured 166 marks, the name of applicant no.8 is at sr.no.5 in open general having secured 166 marks, the name of applicant no.9 is at sr.no.4 in OBC general having secured 164 marks, the name of applicant no.10 is at sr.no.8 in open general having secured 166 marks, the name of applicant no.11 is at sr.no.3 in EWS general having secured 158 marks, the name of applicant no.12 is at sr.no.1 in OBC general having secured 164 marks, the name of applicant no.13 though applied from OBC general is at sr.no.11 in open general having secured 164 marks.

20. There is no dispute that they are shown in the select / wait list. They are not appointed only because the ex-serviceman category candidates were not available and therefore 25 posts are kept vacant. In view of the Judgment of the Hon'ble Bombay High Court, Bench at

Aurangabad in the case of ***Nikhil Satosh Choudhari Vs. State of Maharashtra and Others*** (cited *supra*), it is clear that if the ex-serviceman category candidates are not available, then the respective candidates in the same category shall be appointed. The applicants are in the same category / social reservation of ex-serviceman which are shown in the advertisement. Therefore, the respondents should have appointed all the applicants. During the pendency of this O.A., the respondents have appointed applicant no.6. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The respondent nos. 2 and 3 are directed to appoint applicants nos.1 to 5 and 7 to 13 who are secured qualifying marks and who are in the respective categories as given in the advertisement in place of ex-serviceman of the respective categories, after furnishing / verification of required Certificates of the categories claimed by the applicants, if the posts are vacant.
- (iii) Applicant no.6 is already appointed. His name is deleted.
- (iv) The respondents shall comply the order within a period of three months from the date of receipt of this order.
- (v) No order as to costs.

Dated :- 09/05/2024.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 09/05/2024.