

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

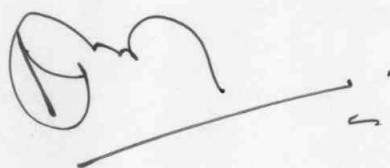
ORIGINAL APPLICATION NO.1027 OF 2014

DISTRICT : MUMBAI

Shri Parikshit J. Ambhore.)
Occ.: Nil, R/o. C/o. Santosh Ambhore,)
Building No.8, Room No.1203, Grit Height)
Ghatkopar, Mumbai 400 071.)
Address of Service of Notice :)
Shri A.V. Bandiwadekar, Advocate,)
Having Office at 9, "Ram-Krishna",)
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)...**Applicant**

Versus

1. The Director of Medical Education)
& Research, M.S, Mumbai, Having)
Office at Government Dental College)
& Hospital Building, 4th Floor, St.)
George's Hospital Compound,)
Mumbai - 400 001.)
2. The State of Maharashtra.)
Through the Principal Secretary,)
Medical Education & Drugs Dept.,)
Mantralaya, Mumbai - 400 032.)...**Respondents**



Shri A.V. Bandiwadekar, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)**

DATE : 09.01.2017

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This Original Application (OA) brought by a Scheduled Caste candidate on 1.12.2014 seeking to be appointed as Clerk-cum-Typist in the office of the 1st Respondent – Director of Medical Education pertains to the selection process for which the examination was held on 1.3.2009. The 2nd Respondent is the State of Maharashtra in Medical Education and Drugs Department.

2. We have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer (PO) for the Respondents.

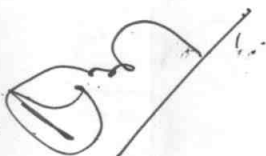
3. The Applicant claims that he cleared the written examination for the said post. He scored 148 marks out of 200 and in the merit list, he was at Serial No.340. He was



apparently shown to be a candidate from the category of Scheduled Caste. He was called to the Office of the 1st Respondent for verification of the original documents on 29.5.2009. His choice for the place of posting was taken. He kept waiting in vain for being called to join duties but in vein. He was waiting for it because he thought that the vacancies would accrue either because those who were above him, might not join the post or might resign after having joined it. He came to know that the 1st Respondent from time to time kept on issuing orders of appointment to the said post in favour of the wait-listed candidates as per their ranking and categories. Every time, a Clerk in the Office would assure him that though it would take some time, he will receive an order of appointment. In the meanwhile, a ban was imposed in the year 2010 on the fresh appointments, but it is the case of the Applicant that on 22nd September, 2011, the 2nd Respondent informed the 1st Respondent that the State had no objection to give appointment to the Backward Class candidates for the purposes of clearing the backlog. This development rekindled the hope in the Applicant of being appointed. The life span of the select list of 2009 came to be extended up to the year 2013. S/Shri B.N. Ramteke, S.S. Halburge, A.B. Uke and M.D. Hivrale from the same category were appointed and in that connection, there is a reference to an

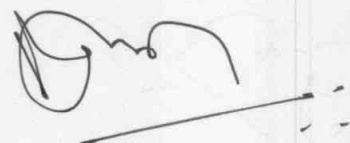


order dated 19.12.2011. In May, 2014, the Applicant contacted the Office of the Respondent on phone, but he was told that thenceforth, no more vacancies would be filled up because fresh Advertisements would be issued. The Applicant invoked his rights under the provisions of Right to Information Act and sought information about the candidates to whom, till that point in time, the orders of appointment came to be issued. He got the information on 1.7.2014 to the effect that till then, a candidate belonging to SC category at Serial No.77 having scored 148 marks was issued the appointment order and thereafter, no more orders of appointment were issued. It is further pleaded by the Applicant that he had earlier brought a similar proceeding before this Tribunal by way of OA 967/2014 thereby challenging the order dated 16.9.2014 passed by the 1st Respondent under which he declined to offer the order of appointment to the Applicant to the said post in one of the six vacancies, which according to the Applicant were available. The matter was heard by the Tribunal on 5.11.2014 but the learned Advocate for the Applicant requested for leave to withdraw the same with liberty to file a fresh one with appropriate prayers and reliefs, which request was granted. Pertinently, one does not find on record a copy of the said order much less a copy of the OA itself. So be it. We proceed further.



4. The Applicant has raised several grounds in support of his claim. It is his case that the proper operationalization of the select list and the waiting list had not been done because in the first go, even the meritorious candidates from the category of Scheduled Caste should have been included in what can be called list of Open candidates and then, the next step could have been for filling up the reserved posts which were 35 according to the Applicant. Although the life of the waiting list would be according to the Applicant one year from the date of its publication in accordance with the G.Rs. dated 19.10.2007 and 27.6.2008. But in this case, a ban on recruitment having been enforced under a G.R. dated 5.6.2010 initially for one year which was subsequently increased that impediment would not apply. According to the Applicant, the State Government had informed the 1st Respondent that it had no objection to the Backward category candidate being appointed. According to the Applicant, 29 out of 35 candidates from that category had accepted the order of appointment and reported for duty leaving six posts vacant, and therefore, the case of the Applicant deserved favourable consideration.

5. By way of amendment, new grounds have been incorporated. Apart from what has already been discussed



above, it is the case of the Applicant that the 1st Respondent is bound to comply with the directions of the State Government and no candidate could be deprived of his legitimate right to being appointed. In this set of facts, the relief sought is for a declaration that the move of the 1st Respondent not to operate the merit list was illegal in respect of 35 vacancies and mandatory directions were sought for issuance of order of appointment in favour of the Applicant who was at Serial No.80.

6. It needs to be noted quite carefully that the earlier OA was got withdrawn voluntarily by the Applicant on 5.11.2014.

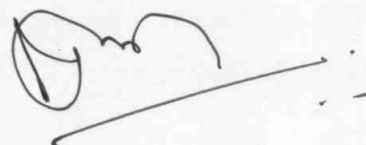
7. The Respondent No.1 filed first Affidavit-in-reply through Mr. P.D. Dorve, Chief Administrative Officer in the Officer of the 1st Respondent. Repeated claims were laid that the selection process was transparent, clear and correct. It is the case of the Respondents that 14 out of 35 posts reserved for the Scheduled Caste category candidates were within the limits of the metropolis of Bombay for which the appointments would have to be made by the Maharashtra Public Service Commissioner (MPSC). As far as the rest of the State is concerned, 21 posts were up for grab. According to the said Respondents, the place of the



Applicant in the merit list was below the last appointed candidate, and therefore, he had no shoulder to cry on. In Para 6.11, it was pleaded with reference to the ban on recruitment imposed on 5.6.2010 that, that ban was partially lifted on 22.9.2011 in case of the candidates from Backward Class category, but in the ultimate analysis, after having made operational in relation to the Backward Class category only, in Para 10.2, it was pleaded that the Government vide its communication of 31.5.2013 informed the 1st Respondent to continue the recruitment process of 2009 which was going on since before 5.6.2010 and fill up all categories of the candidates.

8. The above is the broad factual parameter which the parties have presented for the determination of the fact at issue. The record would show that when the matter became 'Part Heard' before this very Bench on 15.2.2016, this Bench framed six questions on which a proper Affidavit was directed to be filed. The questions were inter-alia as follows :

"a) That the result of selection to the post of Junior Clerk-Typist pursuant to the examination held in 2009 was declared.

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b) It appears that there were total 35 vacancies reserved for SC category. These vacancies were from backlog so the posts must have been vacant. Whether the orders were issued for all the 35 posts after declaration of the result may be clarified. If so, on what dates orders were issued and if not, if the orders were issued in staggered manner the reasons for the same may be explained.

c) The dates on which orders were issued along with the copy of the orders may be placed on record.

d) It appears that a large number of candidates probably did not join as a result, the waiting list was utilised up to Sr. No.77. The number of persons who did not join may be mentioned.

e) Why the process was stopped at the stage it was stopped may be clarified.

f) The date till when the waiting list was valid as per the orders of the Govt. may be mentioned and if during that period there were vacancies why the orders were not issued by operating the waiting list beyond Sr. No.77 may be clarified."

9. Another order was made on 30.8.2016 by us and instead of paraphrasing the same, it also needs to be reproduced.

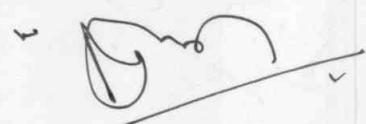
"Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

The learned P.O. is being instructed by Shri L.S. Mane, Office Superintendent, Medical Education & Drugs Department, Mumbai.



As the arguments of the Applicant resumed, we find that by our order of 15.2.2016, we had given detailed directions which can for the purpose of understanding be called questionnaire which was very relevant to a proper decision of this OA. By an Additional Affidavit filed by Mr. G.N. Baddare, Chief Administrative Officer dated 10th March, 2016, the answers have been given. However, as the argument proceeded, we were taken through the record and proceedings including so called information at Pages 157 & 158 of the Paper Book. The said information only mentions the names of the candidates who did not report for joining despite the letters of appointment and their number is six. On Page 158, there is a similar list of another six candidates and both the lists are for the year 2009. If we have correctly understood the submissions especially when the learned P.O. on instructions said that in 2014, a fresh advertisement was given. The whole thing if we might say so is messed up mainly because of the fact that though the questions raised by us on 15.2.2016 were clear, the information is not complete and the supporting documents are not annexed. Even in the 2nd list at Pages 157 & 158 even elementary details, etc. have not been set out. With this, therefore, absolutely no assistance has been rendered to us even as it consumed fair amount of public time. We shall therefore impose costs on the person concerned who is the maker of the said Affidavit and give further directions to fully clarify the points raised by us on 15.2.2016 with the aid and assistance of supporting documents. It is made clear that if even now, our directions are not complied with, then perhaps we shall be left with no alternative but to hold that the candidates upto Serial No.80 should have been and may be appointed. The maker of the above referred Affidavit shall pay cost of Rs.5000/- within two weeks from today and the compliance of this order shall be made within the said time limit.

S.O. to 14th September, 2016. Hamdast."

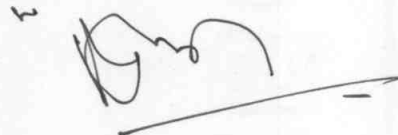


10. The sum total of information supplied with a great deal of difficulty is that the list was cleared up to Serial No.76 and the present Applicant was at Serial No. 80 and hence, was not appointed. The results were declared on 27th April, 2009. In so far as 35 vacancies in the category of Scheduled Caste was concerned, the case of the Respondents is all about 14 vacancies being required to be filled up by the MPSC, etc. which has already been discussed hereinabove. A large number of orders and the copies of a large number of appointments made in this category are annexed and if we have correctly counted them which trouble has not been taken by the said Respondent, in any case, the number is more than 30 but the essence of matter is not the number but the fact that it is not as if, the appointments were not given. They in fact were given and it is quite clear that nobody who scored lesser marks than the Applicant was appointed. In what is Para 2(d) at Page 187, the explanation given is that the waiting list was operationalized up to Serial No.76 only such required vacancies were filled up till that number implying thereby that the list up to the name of the Applicant did not reach as it were.

11. The above discussion must have made it quite clear that the process that began way back in the year



2009 continued to slowly move along at slow pace. In the meanwhile, the bar on fresh recruitment came in 2010 which was partially released in this particular case but by the time, it was 2013, the operationlization of the list have become complete. We are still not in a position to comprehend as to what was the relief claimed in the earlier OA by the Applicant and what precise order was made by this Tribunal. However, one aspect of the matter is very clear and that is that the constitutional mandate is that the appointment to the public services should be with impeccable transparency and no deserving candidate should be eliminated by someone less qualified and less meritorious than him. This quite clearly has not happened. It appears that the Respondents decided that a fresh Advertisement would be issued. They are well within their rights and powers to do so and in the absence of mala fides, there can be no judicial intervention in that behalf. Having examined most carefully the various factual aspects of the matter in the light of the principles applicable hereto, we do not find anything in the process which could be called to be marred by any vitiating vice. It is not possible for us to find and we must repeat that, anybody scoring lesser than the Applicant has not scored a march over him. That being the state of affairs, we do not think, there is any case for our interference.

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12. For the foregoing, the Original Application stands hereby dismissed with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
09.01.2017

Sd/-

(Rajiv Agarwal)
Vice-Chairman
09.01.2017

Mumbai

Date : 09.01.2017

Dictation taken by :

S.K. Wamanse.

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