

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.895 OF 2015

DISTRICT : SANGLI

Shri Pradeep Uttam Shelke,)
R/o. C/o. Sitaram Methe,)
Brahim Puri, Miraj, Dist. Sangli.) **..APPLICANT**

VERSUS

1. The District Collector,)
Ratnagiri, having office at Ratnagiri.)

2. The State of Maharashtra,)
Through Principal Secretary, (Revenue))
Revenue & Forest Department,)
Having office at Mantralaya,)
Mumbai 400 032.)

....RESPONDENTS

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

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN
SHRI R.B. MALIK, MEMBER(J)

DATE : 21.11.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, learned Counsel for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 03.08.2015, of the Respondent No.1 rejecting the Applicant's representation for appointment to the post of Steno-typist from the waiting list, consequent upon resignation of the person selected, who had resigned during the validity of the waiting list.

3. Learned Counsel for the Applicant argued that the Respondent No.1 had conducted selection process in the year 2014 for selection of various posts including that of one post of Steno-typist. The post was from Open category and the Applicant has applied for the post. The select list was published on 01.12.2014 and the Applicant was at Serial No.2, in the list. As there was only one post of Steno-typist, the person at Serial No.1 Smt. P.S. Jadhav was appointed to the post of Steno-typist. Smt. Jadhav joined the post on 22.12.2014. She resigned and was relieved on 25.06.2015. In the context the period for which she served was substantial. She had become a part of the administration and then she resigned. Learned Counsel for the Applicant argued that as per G.R. dated 27.06.2008, the waiting list remains valid for one year. The Applicant, therefore, applied to be appointed to the post of Steno-typist on 29.06.2015 by operationalizing the

waiting list. However, his representation was rejected by impugned order dated 03.08.2015. Learned Counsel for the Applicant stated that this Tribunal in a number of cases, has held that a vacancy filled and then becoming available due to person appointed earlier resigning during the currency of waiting list, can be filled by operationalizing the waiting list.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents, that once all the posts are filled on the basis of selection list, the waiting list becomes invalid. Waiting list can be used only when a selected candidate either does not join or he is found ineligible. In the present case, Smt. Jadhav was selected for the post of Steno-typist and once she joined, the waiting list become invalid. He cited the judgment of Hon'ble Supreme Court in the case of **Public Service Commission, Uttranchal Vs. Mamta Bisht and others : (2010) 12 SCC 204** and some other judgments in support of his contention.

5. We find that this Tribunal in a number of Original Applications including O.A.No.1094 of 2012 (12.08.2014), O.A.No.446/2015 (26.02.2016) (this judgment was upheld by Hon'ble High Court by judgment dated 22.06.2016 in Writ Petition No.3625 of 2016) has held that waiting list can be operationalized, if a candidate who has joined subsequently resigns, during the period of validity of the waiting list. Government Resolutions dated 19.10.2007 and 27.06.2008 were interpreted in these judgments. Contention of the Respondents regarding interpretation of these Government

Resolutions in the present O.A., therefore, need not detain us. The only issue to be decided is whether the light of the judgments cited by learned P.O., a vacancy once filled can be again filled, if the selected person joins and resigns during the validity of waiting list.

In Mamta Bisht's case (supra) Hon'ble Supreme Court has held that :-

“8. It is a settled legal proposition that vacancies over and above the number of vacancies advertised cannot be filled up. Once all the vacancies are filled up, the selection process comes to an end. In case a selected candidate, after joining resigns or dies, the vacancy so occurred cannot be filled up from the panel, which stood already exhausted (vide Rakhi Ray Vs. High Court of Delhi.)”

In the case of **Rakhi Ray & Others Vs. High Court of Delhi & Others : (2010) 2 SCC 637**, Hon'ble Supreme Court has referred to an earlier judgment viz. **Gujarat State Deputy Executive Engineers' Association Vs. State of Gujarat : 1994 SCC (LLS) 1159**.

6. Learned Advocate Shri Bandiwadekar argued that in the case of Gujarat Deputy Executive Engineers (supra), Hon'ble Supreme Court has held that the posts can be filled up from waiting list, if vacancies arise due to resignation during the currency of waiting list. This judgment is given by a three judges Bench of Hon'ble Supreme Court. In Rakhi Ray's case, an earlier judgment of Hon'ble Supreme Court in

the matter of **State of Punjab Vs. Ragbir Chand Sharma (2002) 1 SCC 113** has been quoted, which reads :-

“4. with the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently.”

Learned Advocate Shri Bandiwadekar argued that in Rakhi Ray's case (supra) the issue regarding the vacancies arising out of resignation of a person selected, during the currency of waiting list has not been specifically discussed. As a result, the judgment in Gujarat Deputy Executive Engineer's case should be followed.

7. Learned P.O. argued that both the judgments in Gujarat State Deputy Executive Engineers' case (supra) and Rakhi Ray's case are delivered by three judges Bench of Hon'ble Supreme Court. Learned Advocate Shri Bandiwadekar has relied on the judgment of this Tribunal in O.A.No.446/2015 dated 26.02.2016 in which, judgment of Hon'ble Supreme Court in **Gujarat State Deputy Executive Engineers Association Vs. State of Gujarat** was quoted. Para 8 of the aforesaid judgment reads as follows :-

“8. A candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join. But once the selected candidates join and no vacancy arises due to resignation etc. or for any reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it.”

This Tribunal held that G.R. dated 27.06.2008 provided that waiting list would remain valid for one year from the date of preparation of select list and ordered that if a person, who was selected and joined and subsequently resigned during the validity of the waiting list, the waiting list can be operationised. This decision was upheld by Hon’ble Bombay High Court in Writ Petition No.3625 of 2016 based on the decision of the Hon’ble Supreme Court in the case of Gujarat State Deputy Executive Engineering Association (supra). Learned Advocate Shri Bandiwadekar stated that Hon’ble Bombay High Court in the case of **Amruta Babaji Mozar Vs. Kandabai Babaji Mozar and Another, 1994 Mh.L.J. 1663** has held that :-

“Where the High Court has considered a decision of the Supreme Court and has put its own gloss thereon, that gloss is binding on all the Courts in the State concerned until outweighed by a later decision of the Supreme Court or larger Bench of the High Court.”

Learned Advocate Shri Bandiwadekar argued that once Hon'ble Bombay High Court has upheld judgment of this Tribunal based on the judgment of Hon'ble Supreme Court in Gujarat Deputy Executive Engineer's case, this Tribunal is precluded from taking any other view.

It is seen that the judgment of Hon'ble Supreme Court in Rakhi Ray's case is delivered on 01.02.2010 by a three judges Bench, while the judgment in Gujarat State Deputy Executive Engineers Association's case is delivered by a 3 judges Bench on 10.05.1994. Judgment in the case of **State of Punjab Vs. Raghubir Chand Sharma : (2002) 1 SCC 113**, quoted with approval in Rakhi Ray's case, is also later in point of time after judgment in Gujarat Deputy Executive Engineers Association's case. In the present case judgment in Rakhi Ray's case, which is later than the decision of Gujarat State Deputy Executive Engineers Associations case was not considered by this Tribunal or Hon'ble Bombay High Court. As per the law of interpretation, the later judgment of Hon'ble Supreme Court, delivery by a co-ordinate Bench should prevail. This has been held by Hon'ble Bombay High Court in the case of Amruta Babaji (supra).

8. Hon'ble Supreme Court in Rakhi Ray's case (supra) has held that once all vacancies in a select list are filled, waiting list become meaningless and cannot be pressed in service anymore. Any vacancy due to resignation etc. cannot be filled up from the waiting list. Rule of Rakhi Ray was not applicable to the facts in the Original Applications detailed in

paragraph 5 above. The impugned order of the Respondent No.1 does not require any interference. This Original Application is dismissed with no order as to costs.

**Sd/-
(R.B. MALIK)
MEMBER(J)**

**Sd/-
(RAJIV AGARWAL)
VICE-CHAIRMAN**

**Place : Mumbai
Date : 21.11.2016
Typed by : PRK**

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