

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

COMMON ORDER IN O.A.NOS. 273, 275, 278, 279 & 280
ALL OF 2020

**DISTRICTS:- NASHIK,
OSMANABAD, SATARA, SANGALI
& SOLAPUR**

Kunal s/o Dilip Vadnere,

Age-25 years, Occu. Nil
R/o. 52, Gangapur Road,
Gowardhan,
A/P Nashik 422 222.

.. **APPLICANT IN
O.A. NO. 273/2020**

Ganesh S/o Ramling Panchal,

Age-25 years, Occu. Nil
R/o. A.P.: Pimpalgaon (Dola)
Tq. Kalmb Dist. Osmanabad.

.. **APPLICANT IN
O.A. NO. 275/2020**

Sambhaji s/o Hari Shinde,

Age-24 years, Occu. Nil
R/o. A.P.: Ambe, Tq. Pandharpur,
Dist. Solapur 413 304.

.. **APPLICANT IN
O.A. NO. 278/2020**

Vinayak s/o Vijay Satale,

Age-27 years, Occu. Nil
R/o. TCI Transport,
Mangalwar Petha, Madhav Nagar,
Miraj, Dist. Sangali.

.. **APPLICANT IN
O.A. NO. 279/2024**

Ravina d/o Ashok Patil,

Age-25 years, Occu. Nil
R/o. Shivaji Chok, Kale,
A.P.: Satara 415 104.

.. **APPLICANT IN
O.A. NO. 280/2024**

V E R S U S

1. **The State of Maharashtra,**
through the Principal Secretary,
Soil and Water Conservation Department,
Madam Kama Road, Hutatma Rajguru
Chowk, Mantralaya, Mumbai-32.
2. **The Commissioner,**
Soil and Water Conservation,
WALMI Premises
Kanchanwadi
A/P: Dist: Aurangabad.

.. RESPONDENTS

APPEARANCE : Smt. Sanjivani Deshmukh-Ghate,
learned counsel for the applicants.

: Shri V.R. Bhumkar, learned Presenting
Officer for the respondent authorities in
all these OAs.

**CORAM : JUSTICE SHRI P.R. BORA, VICE CHAIRMAN
AND
: SHRI VINAY KARGAONKAR, MEMBER (A)**

RESERVED ON : 22.07.2024

PRONOUNCED ON : 02.09.2024

COMMON ORDER

[Per : Shri Vinay Kargaonkar, Member (A)]

Heard Smt. Sanjivani Deshmukh-Ghate, learned
counsel for the applicants and Shri V.R. Bhumkar, learned
Presenting Officer for the respondent authorities in all these
OAs.

2. Since the facts and issues are identical in all these
Original Applications, the same are decided by this common
order.

3. The applicants applied for the post of Water Conservation Officer (Civil) in response to the advertisement dated 24.12.2018. They allege that they are being denied appointment due to the adoption of an illegal selection procedure. Forty-one vacant posts remain unfilled, which, according to the applicants, should have been filled based on merit. The respondents have not provided any reasonable explanation for keeping these 41 posts vacant. Through these OAs, the applicants seek a direction that the respondents consider their claims for appointment to the post of Water Conservation Officer (Civil), Group B (Non-Gazetted), against the vacant positions.

4. **The pleadings and arguments by the applicants: -**

(i) The applicants submit that they have passed diploma in Civil Engineering (DCE) from Polytechnic Institute and have requisite qualification for the post of Water Conservation Officer (Civil), Group-B (Non-gazetted). The respondents issued an advertisement on 24.12.2018 and called online applications from eligible candidates to fill up vacant posts of 282 of Water Conservation Officer (Civil). Out of 282 posts, 90 posts are for Open category and 192 posts are for reserved categories. The respondents have prepared interim selection and waiting list of 434 candidates on 20.07.2019. The applicants

waited for their selection call but respondent did not give any information about their status of selection and hence the applicants collected information using RTI on 15.10.2019. Information about appointment orders is given in the following table.

Order No.	Date	No of candidates
229	28.07.2019	138
317	8.8.2019	7
320	8.8.2019	1
325	16.8.2019	2
319	8.8.2019	79
349	5.9.2019	1
351 to 358	5.9.2019	8
362	9.9.2019	1
363	9.9.2019	1
369	12.9.2019	1
373	16.9.2019	1
379	19.9.2019	1
Total 20 orders		241 candidates

(ii) For filling 241 candidates, 20 orders were issued on various dates which itself shows the pick and choose method adopted by the respondents and also it proves that due process and transparency was not maintained in the selection process. When all candidates appeared for the same examination and selection was based on merit then total merit list and cut off adopted for open and various reserved categories should have been clearly published. The transparent method was intentionally avoided and 20 orders are issued for filling 241 posts.

(iii) The respondents have made selection and waiting list of 434 candidates although the advertisement was for 282 posts. Out of 282 posts 242 candidates were called

for training. Out of those 242 candidates 201 candidates joined the duty and 41 posts are still vacant. These 41 posts were not filled at all.

(iv) The selection list prepared by respondent No. 2 is in violation of the constitutional provisions and against the reservation policy. The ratio laid down by the Hon'ble High Court Mumbai in the case of **Asha D/o Ramnath Gholap Vs. State of Maharashtra (W.P. No. 3929/2015)** and the ratio laid down in the case of **Rajesh Kumar Daria Vs. Rajasthan PSC, (2007) 8 SCC 785** is not followed by the respondents. In view of the ratio laid down by the Hon'ble High Court Mumbai in W.P. No. 3929/2015 (cited supra), the respondents should have prepared merit list on the basis of marks gained in examination and allotted the post in open general categories by merit, irrespective of cast categories or without considering the gender of the candidate. After filling the Open General category, vertical reservation should have been considered as per Article 16(4) of the Constitution. The details in respect of caste category of the applicants and marks secured by them, serial number in waiting list, and the vacant posts are given in the table below:-

Seat No.	Cast Category	Marks	Sr. No. in caste category waiting	No. of vacant post
SWC_WCOG_0022514	OBC Male	121.5	Not in waiting list	6
SWC_WCOG_0001899	OBC Male	119.5	Not in waiting list	6

SWC_WCOG_0015082	SEBC	120	Not in waiting list	4
SWC_WCOG_0001429	SEBC General	120	Not in waiting list	4
SWC_WCOG_0028477	OBC Male	121.5	Not in waiting list	6

(v) The respondents have not updated the selection list by considering the fact that some candidates of the particular category have not joined. The respondents should have updated the list and considered the claim of the applicants from their respective categories and selected the applicants.

(vi) Some of the candidates were selected even though their names were neither in the selection list nor in the waiting list. The respondents did not update the waiting list and did not publish a fresh waiting list on departmental web site. This itself shows that the respondents did not follow the process transparently.

(vii) The applicants personally visited the respondent's office and requested them to consider them against the vacant posts, but the respondents did not take any cognizance and did not resolve the grievance of the applicant properly. Respondent No. 2 did not follow the correct procedure and stopped the selection process without considering the genuine claim of the applicants.

(viii) The applicants submitted the representation to respondent No. 2 and requested to select the applicants as

per their score in competitive examination. The applicants also requested the respondents to follow the settled policy of vertical reservation but their representation remained unanswered.

(ix) The applicants submitted that the respondents have denied the appointment to the applicants by adopting illegal selection procedure and by not recommending the applicants on the vacant posts. Fortyone vacant posts are still vacant and these vacant posts should be filled from this merit list itself. The applicants further submitted that the respondents have not provided any reasonable explanation as to why the posts are kept vacant.

(x) The applicants have relied on the judgment in the case of Sandeep Singh Vs. State of Haryana [(2002) 10 SCC 549: 2003 SCC (L&S) 800]. The Hon'ble Supreme Court in the aforesaid matter has held that, "the vacancies available should be filled up unless there is any statutory embargo for the same. In Virender S. Hooda V. State of Haryana [(1999) 3 SCC 696 : 1999 (L&S) 824 : AIR 1999 SC 1701."

5. Pleadings and arguments by the respondents.

(i) The respondents submitted that the legal provision in respect of reservation and due procedure of law was followed while filling the post of Water Conservation Officer, Group-B (Non-gazetted). During the recruitment process there is no violation of reservation policy or any other constitutional provisions regarding recruitment.

(ii) On the basis of marks secured a seniority lists of 282 and waiting list of 434 candidates was published for document verification. All the eligible candidates under different category were given uniform and fair opportunity to appear in the written examination. Proper procedure was followed while preparing category-wise selection and waiting list. Total transparent procedure was followed during the entire process of recruitment. Out of 282 seats 242 seats were filled as some of the candidates were rejected during the document verification. As per recruitment process 1:3 ratio is to be maintained for preparation of selection and waiting list. Therefore, 434 candidates were called for document verification.

(iii) In written examination candidates obtaining highest marks in their respective categories were selected and interim select list and waiting list as per the category was published.

(iv) There is no merit and substance in the present Original Application and hence it deserves to be dismissed with costs.

6. **Reasoning and Conclusions:**

(i) This case involves the actions of the respondents in the appointment process for post of Water Conservation Officer (Civil), Class B, Non Gazetted. The learned counsel for the applicant has strongly argued that the respondents engaged in a practice of Choose and Pick;

while selecting candidates who were not included in either the select list or the waiting list. The respondents arbitrarily selected some candidates and left 41 posts vacant. Although the respondents extended the selection process beyond the select list and waiting list, they stopped arbitrarily after selecting a few candidates, leaving several posts unfilled. The respondents initially filled the available posts by offering appointments to all candidates on the select list and subsequently to those on the waiting list. Despite this, some posts remained vacant.

(ii) To address this, the respondents decided to go beyond the waiting list to fill these vacancies. However, they did not fill all the remaining vacant posts; instead, they arbitrarily stopped after filling a certain number of positions. The respondents have not provided any justification for why they chose to fill only some of the vacant posts while leaving others unfilled.

(iii) The primary issue to be addressed is whether the respondents decision to fill some posts beyond the waiting list while leaving others vacant is arbitrary and discriminatory. The principle of non-arbitrariness is central to the rule of law and is enshrined in Article 14 of the Constitution of India, which guarantees equality before the law. Any action by the State or its instrumentalities must be fair, just, and reasonable. The respondents decision to fill only a portion of the remaining vacant posts after going beyond the waiting list appears to be arbitrary, as no clear or rational basis has been provided for this selective filling of posts. The absence of a

cogent explanation for filling only certain posts beyond the waiting list, while leaving others vacant, raises serious questions about the fairness of the process. This selective approach also violates the basic principle that any deviation from a uniform procedure must be justified by strong and reasonable grounds. When the respondents chose to go beyond the waiting list to fill vacant posts, it was incumbent upon them to fill all the remaining posts in order of merit. Selectively filling some posts and leaving others vacant, without adhering to the principle of fairness, undermines the very foundation of a fair selection process. The respondents' failure to follow a consistent and transparent procedure indicates a possible breach of the principles of natural justice. The candidates who were next in order of merit beyond the waiting list had a legitimate expectation of being considered for appointment when the respondents decided to fill vacancies beyond the waiting list. The arbitrary cessation of the appointment process, leaving some posts vacant, frustrates this legitimate expectation. The doctrine of legitimate expectation imposes an obligation on public authorities to act fairly in their decision-making process, especially when individuals are led to believe that they would be considered for certain benefits.

(iv) In view of the above, the actions of the respondents in selectively filling only some of the vacant posts beyond the waiting list, without any justifiable reason, appear to be arbitrary and discriminatory. Such actions are not only violative of the principles of fairness and equality but also disregard the merit-based selection

process. Therefore, when the respondents chose to go beyond the waiting list, they should have filled all the vacant posts in order of merit. The failure to do so and the unexplained cessation of the appointment process after filling only some posts cannot be sustained in the eyes of law.

(v) The applicants in OA 275/2020 and OA 273/2020, Mr. Ganesh Panchal and Mr. Kunal Vadhere respectively, both belong to the OBC general category. Mr. Ganesh Panchal secured 121.5 marks, while Kunal Vadhere secured 119.5 marks. The last candidate selected in the OBC general category, Mr. Akshay Kale, had also secured 121.5 marks.

(vi) It is noteworthy that Mr. Akshay Kale, who was selected with 121.5 marks, was not included in the waiting list. Despite having the same score as Mr. Ganesh Panchal, the respondents selected Mr. Kale but did not select Mr. Panchal, even though six posts in the OBC male category remained vacant. Given that six posts were still vacant in the OBC male category, the respondents ought to have considered all candidates who secured 121.5 marks, including Mr. Ganesh Panchal, for appointment. In order to maintain the fairness and consistency of the selection process, Mr Ganesh Panchal should be given the appointment order.

(vii) The applicants in OA 278/2020 and 279/2020, Mr Sambhaji Hari Shinde Mr Vinayak Vijay Satale, respectively, both belong to SEBC General

category. Both secured 120 marks. Last candidate selected in SEBC General category, Akash Dinkar Birajdar, had secured 120.5 marks. The last candidate selected in the SEBC General category was not from the waiting list but had scored 120.5 marks, while both applicants scored 120 marks. Despite exceeding the waiting list, the respondents did not fill all the posts, leaving four positions vacant. However, since the applicants scores are lower than that of the last selected candidate in the SEBC General category, their claim to be appointed to the vacant posts cannot be upheld. Therefore, given that the applicants' scores are lower, we are not inclined to interfere at this stage by issuing any positive direction to the respondents.

(viii) The applicant in OA 280/2020, Ms. Ravina Ashok Patil, belongs to the SEBC Female category and scored 101.5 marks. The last candidate selected from the SEBC Female category scored 102.5 marks. Both the applicant and the last selected candidate are on the waiting list. However, the respondents have not filled all the posts, leaving two positions vacant. Since the applicant is the last on the waiting list, with three candidates ahead of her, her claim to the vacant post cannot be considered on merit.

7. In the light of foregoing discussion, following order is issued:

ORDER

- (i) The respondent shall issue an appointment order to Mr. Ganesh Ramling Panchal, the applicant in OA No. 275/2020, within two months from the date of this order. His seniority shall be reckoned from the date of appointment of the last candidate appointed in the same recruitment process. However, no salary for the intervening period will be payable to Mr. Ganesh Panchal. OA 275/2020 is allowed in aforementioned terms.
- (ii) OA No 273/2020, OA 278/2020, OA 279/2020, OA 280/2020 are dismissed. No order as to costs.

MEMBER (A)**VICE CHAIRMAN****Place : Aurangabad****Date : 02.09.2024**

O.A.NO.275-2020 & Gr. (DB)-2024-HDD-Promotion