

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.6982 OF 2015**Rahul S/o Ramchandra Magar Vs. The Collector & President,
District Selection Committee and others.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.A.G.Choudhari, advocate for the petitioner.
 Mr.S.Y.Mahajan, A.G.P. for the State.
 Mr.S.S.Tope, advocate for Respondent Nos.2 and 3.

**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**
Date : 27.09.2016.

PER COURT :

1. Heard.
2. Mr.Choudhari, learned counsel submits that pursuant to an advertisement dated 23.8.2014, the petitioner applied for the post of Pharmacist. The petitioner belongs to open category. The petitioner was kept in wait list at serial No.1. According to the learned counsel, one post of Pharmacist became vacant on account of resignation of one Nilesh Baburao Barkul, who has tendered his resignation. He was from open category. According to the learned counsel, petitioner made representation to appoint him on the said post. The said post is still vacant, however, the authorities have not

considered the same.

3. Mr.Tope, learned counsel for Respondent Nos.2 and 3 submits that the petitioner had applied pursuant to the advertisement dated 23.8.2014. Said Mr.Nilesh Barkul was appointed as a Pharmacist and was selected pursuant to advertisement and the selection process much prior to the selection process in which the petitioner had participated. On the date of advertisement, the Chief Executive Officer, had not accepted the resignation of said Barkul. The said post can not be said to be vacant as on the date of the advertisement. The learned counsel submits that the wait list would not operate in respect of the post which had become vacant on which a candidate was appointed on the basis of a different advertisement. The learned counsel relies on the judgment of the Apex Court in a case of “Shankarsan Dash Vs. Union of India” reported in AIR 1991 Supreme Court 1612(1). The learned counsel further submits that mere entry in the wait list does not give any vested right to the petitioner of getting appointed. The learned counsel also relies on the Government Resolution dated 19.10.2007 and submits that the wait list would operate only if the candidate who is selected pursuant to the same selection process does not join the post or is otherwise disqualified. In no other case the said wait list is to be operated. Learned counsel also relies on the letter dated 17.3.2010 issued by the State to the

Divisional Commissioner, Pune to substantiate his contention.

4. The learned A.G.P. also adopts the arguments of Mr.Tope, learned counsel for Respondent Nos.2 and 3.

5. We have considered the submissions. There can not be any dispute with the proposition put forth by Mr.Tope, learned counsel for Respondent Nos.2 and 3 in stating that the wait list would operate for filling in the vacant post arising pursuant to the same advertisement. The said proposition, naturally, has to be accepted in normal course.

6. In the present matter, we are concerned with the advertisement issued by the Respondent Nos.2 and 3 for filling in the post. The first three lines of the advertisement are relevant and material. The same is in vernacular language and reads as under :

“जिल्हा परिषद उस्मानाबाद व त्यांच्या अधिपत्याखालील
विभागांच्या आस्थापनेवरील खालील नमूद वर्ग-३ व ४
संवर्गातील सद्या रिक्त असलेल्या पदाच्या सरळ सेवा
भरतीसाठी तसेच माहे एप्रिल २०१५ अखेर रिक्त
होणा-या पदासाठी प्रतिकायादी तयार करण्यासाठी
शैक्षणिक अर्हतेनुसार पात्र उमेदवारांकडून स्पर्धा परीक्षेसाठी
(लेखी / मौखिक) शासन परिपत्रक क्रमांक :प्रानिमं १२१४/प्र.
क्र.(४३/१४) १३ अ मुंबई दिनांक ०५ जून २०१४”

7. Reading the same it is manifest that the advertisement was

given inviting applications for filling in the posts of Pharmacist that are already vacant and also the post that would become vacant up to end of April 2015. The parties are bound by the advertisement issued. It is not disputed that the petitioner had applied pursuant to the advertisement dated 23.8.2014 and was in wait list at serial No.1. One Mr.Nilesh Barkul, who was appointed on the post of Pharmacist and was selected pursuant to earlier advertisement had resigned and his resignation was accepted on 12.3.2015 with effect from 26.8.2014. It would appear that the said post has become vacant prior to end of April 2015.

8. The wait list would be operated for filling in the post according to advertisement. In view of the contents of the advertisement itself that the applications are invited for filling in the post that are vacant on the date of advertisement so also for the post that would become vacant upto end of April 2015, the arguments of learned counsel for the Respondents that the petitioner could not have been considered for the said post as the person who resigned from the said post was selected through different selection process can not be considered. It is not disputed that post of Pharmacist is vacant.

9. In light of the above, we pass the following order :

a) The Respondent Nos.1 to 3 shall appoint the petitioner on the vacant post of Pharmacist in case there is no other legal

impediment and the petitioner is otherwise eligible expeditiously within a period of six (6) weeks from today.

b) The Writ Petition is disposed of. No costs.

(K . L . WADANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.27.09.2016.
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