

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1691 OF 2014

Mr. Datatraya Gajanan Shendkar & ors. Petitioners
vs
The President, District Selection
Committee and ors. Respondents

Ms. Vaishali Jagdale for the petitioners.
Mr. Sanjeev J. Rairkar for respondents 2 and 3.
Mr. V. N. Sagare, AGP for respondent No.4.

**CORAM: ANOOP V. MOHTA AND
G. S. KULKARNI, JJ.**

DATE : August 08, 2016

ORAL JUDGMENT (Per Anoop V. Mohta J.):

The Petitioners have prayed for appointment on the post of Health Workers (Male) (Sprayer) under open category along with the other benefits. They have filed this Petition and made prayers on 11 February 2014, based upon an Advertisement dated 25/04/2012.

2 Respondent No.1 issued an advertisement in a daily newspaper calling applications for 62 posts of Health Worker (Male)

(Sprayer) out of which 29 posts were reserved for Open category. The Petitioners appeared in the interview on 29/05/2012. The Petitioners, being selected, their names listed in the waiting list published by Respondent Nos. 2 & 3 under the Open Category (Petitioner No.1 at serial No. 2, Petitioner No.2 at serial No.3 and Petitioner No.3 at serial No.8). On 15 April 2013 and 3 June 2013, Respondent No.2 wrote to the Director, Health Services, Mumbai, Deputy Secretary, Rural Development, Mantralaya, Additional Chief Secretary, Public Health Department, Mantralaya, that the posts were vacant due to the non appointment of 11 candidates as there were fault in their experience certificates, further Respondent No.2 sought directions from the above authorities in the matter of recruitment of the 11 candidates. Only on 16 September 2013, the Petitioners submitted a representation to Respondent No.3 to fill the vacant posts in from the waiting list candidates. On 18 January 2014, the desk officer Mantralaya had directed that as per the Maharashtra Zilla Parishad District Services (Recruitment) Rules, 1967, Respondent No. 2 is the appointing authority and Respondent No.4 is the authority for administration related decisions and hence they are the only competent authority to take decision in the matter of 11 candidates

whose experience certificates were found faulty.

3 Admittedly, the Petitioners were in the waiting list. The Respondents, for various reasons, including above, could not appoint candidates from the waiting list, including the Petitioners. The Petitioners made the representation on 16.09.2013 as recorded above, not within a year. Respondents could not fill in the posts within one year. We have to consider the case of the Petitioners in view of the above facts and the following the law.

4 The Supreme Court in *Kulwinder Pal Singh and anr v. State of Punjab and ors*¹ observed as under :

“10 It is fairly well-settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as well. The name of a candidate may appear in the merit list but he has no indefeasible right to an appointment (vide *Food Corporation of India and Ors. v. Bhanu Lodh and Ors.*, (2005) 3 SCC 618; *All India SC & ST Employees' Association and Anr. v. A. Arthur Jeen and Ors.*, (2001) 6 SCC 380 and *Union of Public Service Commission v. Gaurav Dwivedi and Ors.*, (1999) 5 SCC 180.

11 This Court again in the case of *State of Orissa and Anr. v. Rajkishore Nanda and Ors.*, (2010) 6 SCC

1 (2016) 6 SCC 532

777, held as under:

“14 A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory Rules and in conformity with the constitutional mandate.

16 A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required.”

17 Learned Counsel for the Appellants submitted that the Appellants have been pursuing the matter for about eight years and even today there are vacancies in Punjab Judicial Service and thus prayed that direction be issued to the Respondents to consider the case of the Appellants as against the existing vacancies. This contention does not merit acceptance. Appointment to an additional post or to existing vacancies would deprive candidates who were not eligible for appointment to the post on the date of submission of the applications mentioned in the advertisement but became eligible for appointment thereafter.”

5 The reliance placed by the learned counsel appearing for the Petitioners on the judgment of the Supreme Court in *State of J & K v. Sat Pal* in Civil Appeal Nos. 938-939 of 2013 dated 5 February 2013 is of no assistance on facts itself as the claim was made during the

validity of the selection list. A Division Bench judgment dated 22.01.2014 in Writ Petition No.4257/2013-Mr. Udaysing Jalamsing Valvi v. The Secretary, District Selection Committee, Raigad and anr is also referred and relied. In that case also, the situation was different as the representation was made immediately within the time period so prescribed (one year). The Petitioner was at waiting list No.1 and, therefore, the Division Bench has ordered appointment.

6 Therefore, taking overall view of the mater and considering the events so recorded above and as the lapse of time, in our view, itself dis-entitle the Petitioners to claim benefits based upon the waiting list of 2012. It is not the case that the waiting list candidates below the Petitioners are appointed. The Court cannot direct to appoint or fill in the posts after lapse of time. This is not the case of any malafide or discrimination or arbitrary action. The Respondents could not fill the posts for want of above clarification so recorded above. The late receipt of clarification now cannot be foundation to appoint the Petitioners after lapse of such time. The writ petition is accordingly dismissed.

7 There shall be no order as to costs.

8 In view of dismissal of the writ petition, Civil Application
No. 3187/2015 is also disposed of.

(G. S. KULKARNI, J.)

(ANOOP V. MOHTA, J.)