

applied to the post of clerk-typist pursuant to an advertisement in the newspaper, he passed the written test and he was placed at Sr. No. 1 on the wait-list. The last candidate Mr. Amit Subhash Katkar tendered his resignation after about 21 days, after he joined the services. The Respondent, therefore, made an application, requesting that since last candidate has resigned, he should be appointed in the said vacant post. His request was turned down by the Petitioners. The Respondent, therefore, approached the MAT. The MAT directed the Petitioners that Respondent should be appointed. However, in spite of the request made by the Respondent, Petitioners did not accept it. Initially, a direction was given to consider the Respondent for an appointment. Since, request of the Respondent was turned down, he approached the Tribunal again. Second application filed by the Respondent was allowed to be withdrawn with liberty to file a fresh application. Accordingly, Respondent preferred third application, which was considered by the Tribunal on merits, and after taking into consideration the relevant G. R./rule, the Tribunal directed the Petitioners to appoint the Respondent in the post of clerk-typist.

3. Learned AGP appearing for the Petitioners submitted that

when there was a time lag between resignation of an employee and an application for appointment by a general list candidate, then in such a case, wait list would not survive and the Respondent, therefore, would not be entitled to apply for being appointed. Learned AGP further submitted that since these facts have not been considered by the Tribunal, the impugned order may be set aside.

4. The very purpose of making a wait list is to ensure that in the event some vacancy arises immediately after all the seats are filled, either by virtue of resignation or otherwise, then it would not be necessary for the State Government to again start the process of fresh appointment, like advertisement, holding of written test, interview, etc. and the persons on the wait list, who are eligible, can be appointed.

5. In the present case, G. R. of 2008 stipulates that wait-list is to be kept alive for a period of one year. In this case one Amit Subhash Katkar joined the services on 4.9.2013. He, however, tendered his resignation on 25.9.2013. Respondent, therefore, was clearly eligible for being appointed in the said post. The Apex Court in the case of – ***Gujrat State Dyxen Association Vs. State of Gujrat [1994 (3) JT 559]***, has observed in para 8 and 9 as under:

“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 other 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. He has no vested right except to the limited extent, indicated above, or when the appointing authority acts arbitrarily and makes appointment from the waiting list by picking and choosing for extraneous reasons.

9. A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list, in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The

constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service.”

6. The Tribunal has rightly considered the judgment of the Apex Court and also the relevant G. R. and has given direction to the State Government to appoint the Respondent in the post of clerk-typist within four weeks. We do not see any reason to interfere with the well reasoned order passed by the MAT. Writ petition is therefore, dismissed with a direction that Respondent be appointed within a period of four weeks, unless he is appointed.

Sd/-
[M. S. SONAK, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemath