

WRIT PETITION NO.10904 OF 2016

Suresh s/o Bhujangrao Ingole,
Age: 42 years, Occ: Nil,
R/o. At post Sukali (Veer),
Tq. Kallamnuri, Dist. Hingoli. ..PETITIONER

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Maharashtra State Road
Transportation Corporation,
(M.S.R.T.C.), Mantralaya,
Mumbai-32.
2. The Regional Manager,
Maharashtra State Road
Transportation, (M.S.R.T.C),
Divisional Office, Railway
Station road, Aurangabad
Division, Aurangabad.
3. The District Controller,
Divisional Office,
Maharashtra State Road
Transportation Corporation,
(M.S.R.T.C.) Division Beed.

Mr Subhash K. Savangikar, Advocate for petitioner;
Mr V.S. Badakh, A.G.P. for respondent No.1;
Mr Suraj R. Bagal, Advocate for respondent No.3;

**CORAM : SHANTANU S. KEMKAR &
NITIN W. SAMBRE, JJ.**

(2)

Reserved on : 29th August, 2017
Pronounced on : 11th October, 2017

JUDGMENT : [PER NITIN W. SAMBRE, J.]

Rule. Rule made returnable forthwith. By consent, heard finally.

2. This petition is by a selected candidate praying for issuance of directions to the respondents to issue appointment order for the post of 38.Art 'A' (Junior) Blacksmith, Beed Division, State Transport Department, District Beed (hereinafter shall be referred to as 'the post' for sake of brevity).

3. The facts giving rise to filing of the present petition are as under :

Vide advertisement No. 3 of 2014, certain vacancies were advertised for Mumbai and Beed Division by respondent-State Road Transport Corporation, which includes post referred supra, to which the petitioner is claiming right of

(3)

appointment.

4. It is the case of petitioner that after having cleared H.S.C. examination, he cleared his Industrial Training Institute certificate course of trade Wireman after undergoing careerism for two years from 1994 to 1996 from Industrial Training Institute, Basmatnagar.

5. In addition, he claims that he did apprenticeship with M.S.E.B.(O. & M.) Division, Hingoli from 2nd April, 1998 to 1st April, 2000 in the trade of Lineman and possessed provisional apprenticeship certificate from 5th January, 2001. A final certificate to that effect by the competent authority is issued in favour of petitioner.

6. According to him, he worked with Gurudatta Electrical Company from 1st February, 2002 to 21st September, 2012. As such, is having experience of working in the field of electrification.

7. The petitioner is claiming to be belonging

(4)

to scheduled caste category, holding caste certificate to that effect. Having come across the aforesaid advertisement, the petitioner applied for the post of Art 'A' (Junior) Blacksmith. He cleared written examination conducted on 23rd March, 2014 having secured 42 marks out of 100. His documents, thereafter, were verified and he appeared for interview on 7th August, 2014. The result of the said examination was declared by respondent authorities, wherein his name has appeared at Serial No. 18 for the post of Art.'A' (Junior) Blacksmith and final select list was published on 6th September, 2014, wherein the name of petitioner could be noticed at Serial No.8.

8. It is the case of petitioner that one Sunil Ramkrushna Yeshwante filed Writ Petition No.7162 of 2014, as the said candidate was not permitted to appear for practical examination. In the said petition, since the petitioner has claimed selection and appointment against the same post, for which, the present petitioner was selected, the petitioner was not given appointment order. As

(5)

such, he persuaded with the respondents and having come to know that the petition preferred by the said Sunil was already dismissed on 17th July, 2015 by the Division Bench of this Court, he approached the respondents seeking appointment on the 'post'. According to him, he preferred representations and also persuaded the matter with the respondents, however, his attempts were not responded by the respondents, which prompted him to file this petition with reliefs as claimed herein above.

9. The respondents resisted the claim of the petitioner. According to respondents, though the petitioner belongs to reserved category, however, his candidature for Art. 'A' (Junior) Blacksmith (hereinafter shall be referred to as 'post') was considered from open category. According to them, in Writ Petition No. 7162 of 2014 preferred by one Sunil, this Court vide order dated 14th August, 2014, directed to keep one post vacant and as such, post against which, the petitioner has lodged his claim, was required to be kept vacant.

(6)

10. It is further claimed by the respondents that vide Circular dated 15th May, 2014, issued by respondent State Transport Corporation, validity of the select list is for one year from the date of publication. According to them, since the period of one year has already over, as select list was published on 6th September, 2014, which was valid up to 5th September, 2015, the petitioner cannot be granted appointment even though this Court in Writ Petition No. 7162 of 2014 directed to keep one post vacant against which the petitioner is claiming appointment.

11. Considered rival submissions. Certain undisputed facts of which this Court must take note of that the petitioner, pursuant to his requisite qualification was permitted to appear for the written examination conducted on 23rd March, 2014 and was declared successful. After his documents were found to be in order, he was called for interview and final select list dated 6th September, 2104 includes his name at Serial No.8 for 'the post' in question.

12. From the aforesaid factual position, it could be inferred that the petitioner hold appropriate qualification and on merit also, he was qualified for being appointed having been included in the select list at Serial No.8 for the post in question.

13. This Court is sensitive to the position of law, which governs the field of appointment in case of selection of candidate. The Supreme Court in the case of **S. S. Balu & anr. vs. State of Kerala & ors.** reported in (2009) 2 Supreme Court Cases 479, has stated well settled proposition of law that selected candidate has no legal right to seek appointment unless he establishes his selection is in accordance with rules and he was otherwise found suitable and eligible. The arbitrariness or discriminatory act on the part of respondent – employer could be considered from the conduct of granting appointment to the similarly placed candidate ignoring the claim of person like petitioner. Said principle is an exception to

(8)

proposition of law that selected candidate has no absolute right to claim appointment. Appropriate support to that effect from the judgment of Apex Court in the matter of **S.S. Balu and anr. vs State of Kerala and ors** (cited supra), in para 12 to 15 has observed thus :

"12. There is another aspect of the matter which cannot also be lost sight of. A person does not acquire a legal right to be appointed only because his name appears in the select list. [See Pitta Naveen Kumar & ors. vs. Raja Narasaiah Zangiti & ors. (2006) 10 SCC 261]. The state as an employer has a right to fill up all the posts or not to fill them up. Unless a discrimination is made in regard to the filling up of the vacancies or an arbitrariness is committed, the concerned candidate will have no legal right for obtaining a writ of or in the nature of mandamus. [See Batiarani Gramiya Bank vs. Pallab Kumar & ors. (2004) 9 SCC 100] In Shankarsan Dash vs. Union of India

(9)

[(1991) 3 SCC 47], a Constitution Bench of this Court held: (SCC pp. 50-51, para 7)

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

(10)

13. In State of Haryana vs. Subash Chander Marwaha [(1974) 3 SCC 220], this Court held: (SCC p.226, paras 10-11)

"10. The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed. Indeed, if the State Government while making the selection for appointment had departed from the ranking given in the list, there would have been a legitimate grievance on the ground that the State Government had departed from the rules in this respect...

11. It must be remembered that the petition is for a mandamus. This Court has pointed out in Rai Shivendra Bahadur (Dr.) v. Governing Body of the Nalanda College (AIR 1962 SC 1210) that in order that mandamus may issue to compel an authority to do something, it must be shown that the statute imposes a legal duty on that authority and the aggrieved party has a legal right under the statute to enforce its performance. Since there is no legal duty on the State Government to appoint all the 15 persons who are in the list and the petitioners have no legal right under the rules to enforce its performance the petition is clearly

misconceived."

14. In *Pitta Naveen Kumar vs. Raja Narasaiah Zangiti* [(2006) 10 SCC 261], this Court held: (SCC p.273, para 32)

"32.A candidate does not have any legal right to be appointed. He in terms of Article 16 of the Constitution of India has only a right to be considered therefor. Consideration of the case of an individual candidate although ordinarily is required to be made in terms of the extant rules but strict adherence thereto would be necessary in a case where the rules operate only to the disadvantage of the candidates concerned and not otherwise..."

15. In *State of Rajasthan & ors. vs. Jagdish Chopra* [(2007) 8 SCC 161], this Court held:(SCC pp.164-65, paras 9 and 11)

"9. Recruitment for teachers in the State of Rajasthan is admittedly governed by the statutory rules. All recruitments, therefore, are required to be made in terms thereof. Although Rule 9(3) of the Rules does not specifically provide for the period for which the merit list shall remain valid but the intent of the

(12)

legislature is absolutely clear as vacancies have to be determined only once in a year. Vacancies which arose in the subsequent years could be filled up from the select list prepared in the previous year and not in other manner. Even otherwise, in absence of any rule, ordinary period of validity of select list should be one year. In State of Bihar v. Amrendra Kumar Mishra (2006) 12 SCC 561, this Court opined: (SCC p.564, para 9)

"9. In the aforementioned situation, in our opinion, he did not have any legal right to be appointed. Life of a panel, it is well known, remains valid for a year. Once it lapses, unless an appropriate order is issued by the State, no appointment can be made out of the said panel."

It was further held: (Amrendra Kumar case, SCC p.565, para 13)

"13. The decisions noticed hereinbefore are authorities for the proposition that even the wait list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed

period."

11. It is well-settled principle of law that even selected candidates do not have legal right in this behalf. (See Shankarsan Dash v. Union of India (1991) 3 SCC 47, and Asha Kaul v. State of J&K (1993) 2 SCC 573)".

14. True it is that selection does not confer absolute right to seek appointment, however, the said proposition is required to be considered in the backdrop of peculiar facts of the present case.

15. Both the parties are in agreement of the fact that Writ Petition No. 7162 of 2014 was preferred by unsuccessful candidate, in which this Court passed interim order on 14th August, 2014 to keep one post vacant. It could be inferred from the pleadings of the respondents that the said 'post' is still lying vacant with the respondents.

16. In view of operation of interim order, passed in Writ Petition No.7162 of 2014, even before displaying final select list dated 6th

(14)

September, 2014, one 'post' was required to be kept vacant, over which the petitioner is having better claim. The said petition came to be dismissed on 17th July, 2015 and as such, the embargo on the right of respondents to fill in post in question was lifted.

17. For the period from 14th August, 2014 till 17th July, 2015 i.e. for more than 11 months, in view of operation of interim order, 'the post' in question was not filled up.

18. It is to be noted that the respondents, in view of above operation of stay and in the backdrop of Condition No.7 of the Circular dated 15th May, 2014 have come out with case that the validity of select list, is for one year, which period is already over and as such, the petitioner cannot be granted appointment though he is named in select list.

19. So far as the above referred statement of the respondents is concerned, it is to be noted

(15)

that filing of the writ petition and grant of interim relief in the said petition was beyond the control of present petitioner. Since the petitioner is not party to the said Writ Petition No.7162 of 2014 filed by one Sunil, he cannot be blamed for operation of interim relief against the respondents qua filling of 'the post'. The maxim '*Actus Curiae Neminem Gravabit*' speaks of that act of the Court shall prejudice none is required to be appreciated in the backdrop of factual matrix of this case. The petition preferred by unsuccessful candidate, in which, interim order was operating, came to be dismissed on 17th July, 2015 and as such, neither the petitioner nor respondents are required to be blamed for it.

20. Appropriate support can be drawn from the judgment of the Apex Court in the matter of **Karnataka Rare Earth & anr. vs. Senior Geologist, Department of Mines & Geology & anr.** reported in (2004) 2 Supreme Court Cases 783, para 10 of which reads thus:-

"10. In *South Eastern Coalfields Ltd. (2003)* 8 SCC 648, this Court dealt with the effect on the rights of the parties who have acted bona fide, protected by interim orders of the Court and incurred rights and obligations while the interim orders stood vacated or reversed at the end. The Court referred to the doctrine of *actus curiae neminem gravabit* and held that the doctrine was not confined in its application only to such acts of the Court which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the Court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution which is attracted. When on account of an act of the party, persuading the Court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the Court would not have been

(17)

passed. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the Court, or (b) to make restitution for what it has lost."

21. As such, the period from 14th August, 2014 till dismissal of the petition i.e. 17th July, 2015 is required to be ignored from the period of one year of validity of select list.

22. The respondents in their reply have come out with plea that the appointment to the petitioner was not granted for the reason of operation of interim relief in the petition and expiry of period of one year for which select list was valid. Both these reasons, in our opinion, are required to be overlooked in the backdrop of above referred reasons, as the petitioner cannot be blamed for the same.

23. The fact remains that the selection of the petitioner was having regard to the satisfaction of condition of required qualification and merit. He

(18)

was found otherwise suitable and eligible for the post and as such, the name was included in Serial No.8 in final select list. In the aforesaid backdrop, the act on the part of the respondents in refusing to consider the claim of the petitioner for appointment, particularly when he was not to be blamed for any delay is required to be appreciated. Such act of non considering the claim for appointment of the petitioner to 'the post' in question after this Court dismissed Writ Petition No. 7162 of 2014 thereby vacating interim order has to be termed as arbitrary and discriminatory act as other similarly placed candidate, like that of petitioner, is already given appointment.

24. As stated herein above, the post against which the petitioner is claiming appointment is lying vacant with the respondents. In the aforesaid background, in our opinion, the case for showing indulgence in extraordinary jurisdiction is made out. In view of above, it is directed that the respondents shall consider the candidature of the petitioner for granting appointment to the post of

(19)

38.Art 'A' (Junior) Blacksmith, Beed Division of Maharashtra State Road Transport Corporation, District Beed, provided he is otherwise not disqualified and post is still vacant.

25. Rule made absolute in above terms with no order as to costs.

(NITIN W. SAMBRE, J.) (SHANANU S. KEMKAR, J.)

Tupe