

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8134 OF 2013

Jitendra Dayaldas Fulwani,
Age: 31 Years, Occu.: Service,
R/o.: Bhusawal, Dist.: Jalgaon .. **Petitioner**

Versus

1. Chairman and Managing Director,
2. The Executive Director (HR),
3. The Chief Engineer (HRD),
All these respondents no. 1 to 3
are officers of Maharashtra State
Electricity Transmission Company Ltd.
having Corporate Office in "E" Block,
Plot no. C-9, "Prakashganga", 7th Floor,
Bandra-Kurla Complex, Bandra (East),
Mumbai-51
4. The Chief Engineer,
EHV (CC O&M) Zone,
Maharashtra State Electricity
Transmission Company Ltd., 3rd Floor,
City Arcade, Ingale Nagar, Jail Road,
Nashik
5. The Superintending Engineer,
Maharashtra State Electricity Transmission
Company Ltd., Bhusawal, Dist.: Jalgaon
6. The Executive Engineer,
Maharashtra State Electricity Transmission
Company Ltd., 400 kV RS Division,
Khadka-Bhusawal, District Jalgaon

7. Ram Tukaram Shelke,
C/o. Office of the Executive Engineer,
MSETCL, Testing Division, Solapur,
Juni Mill Compound, Murarji Peth,
Solapur-413 001
8. Vijay Baburao Aware,
C/o. Office of the Chief Engineer,
State Load Despatch Centre,
Thane Belapur Road, Airoli,
Post: Airoli, Navi Mumbai – 400 708
9. Umesh Shankar Bhagat,
C/o. Office of the Chief Engineer (P&D),
MSETCL, Prakashganga, Plot No.C-19,
E-Block, Bandra Kurla Complex,
Bandra (E), Mumbai – 400 051
10. Amlesh Ankushrao Lonare,
C/o. Office of the Superintending Engineer,
MSETCL, 2nd Floor, Vidyut Bhavan,
Katol Road, Nagpur-13
11. Niting Wasudeo Angaitkar,
C/o.: EHV (O&M) Dn., MSETCL, Yavatmal,
3rd floor, Vidyut Bhavan, Arni Road,
Yavatmal-445 001
12. Yogesh Gopal Pachpande,
C/o. Office of the Chief Engineer (P&D),
MSETCL, Prakashganga, Plot No.C-19,
E-Block, Bandra Kurla Complex,
Bandra (E), Mumbai – 400 051
13. Abhijit Chandrakant Dhamale,
C/o. EHV O&M Division, Kolhapur,
MSETCL, Bapat Camp,
Post: Market Yard,
Kolhapur-416 005

14. Kishor Chandrakant Holey,
C/o. Office of the Chief Engineer (STU),
MSETCL, Prakashganga, Plot No.C-19,
E-Block, Bandra Kurla Complex,
Bandra (E), Mumbai – 400 051 .. **Respondents**

Mr. Ajay S. Deshpande, Advocate for the
Petitioner.

Mr. V. S. Badakh, A.G.P. for the Respondent /
State.

Mr. S. V. Adwant, Advocate for Respondent No. 3.

**CORAM: S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.**

DATE: 03rd DECEMBER, 2018

ORAL JUDGMENT (Per S. V. Gangapurwala, J.):

1. Rule. Rule returnable forthwith. With the
consent of learned counsel for respective parties
matter is taken up for final hearing.

2. The petitioner is working as Deputy Executive
Engineer with respondent at Bhusawal. The
respondent nos. 2 and 3 issued an Advertisement
No. 3 of 2011 inviting applications for various
posts including the post of Executive Engineer
(Transmission). The petitioner pursuant to the
said advertisement applied for the post of

Executive Engineer (Transmission) and Deputy Executive Engineer (Transmission) in the selection process from open competition category. Four posts of Executive Engineer (Transmission) were available for open competition category. The petitioner was selected for the post of Deputy Executive Engineer (Transmission) and appointment order is issued to him for the post of Deputy Executive Engineer (Transmission). The petitioner claims appointment to the post of Executive Engineer (Transmission).

3. Four persons above the petitioner found their place in the selection list. The petitioner was placed at serial no. 1 in the wait list. The select list and the wait list was published on 20.10.2011. Two persons on or about February and May – 2012 were promoted, and two posts of Executive Engineer (Transmission) as on 31.03.2012 from open category were vacant. The petitioner made an application to consider him for appointment as he is at serial no. 1 in the wait

list. On or about 26.11.2012, the respondents informed the petitioner that the selected candidates are appointed and have joined their duties. There is no scope in operating the wait list. The petitioner pursuant to the present writ petition seeks direction against the respondents – authorities to issue appointment order in his favour, thereby appointing him on the post of Executive Engineer (Transmission) as per the Advertisement No. 3 of 2011.

4. Mr. Deshpande, learned Advocate for the petitioner, strenuously contends that after having been successful in the selection process he was kept in the wait list at serial no. 1 from open competition category. The note to the advertisement clarifies that the number of vacancies and reservation for Backward class indicated for different categories is provisional and likely to change. Said change will not be notified either in newspaper, on website or intimated to the candidates. Condition no. 11

pursuant to the result of the recruitment for the Executive Engineer (Transmission) clarified that the select list will not confer any right on the candidate for immediate appointment as the select list is meant for the entire year i.e. 2011 – 2012. The appointment letters will be issued taking into account availability of the vacancies, reservation for backward classes etc. The note in the advertisement and Clause 11 would suggest that the list is meant for entire year 2011 – 2012, and as and when the vacancy occurs for the post of Executive Engineer (Transmission) during the entire year 2011 – 2012, the select list and / or the wait list would be operated and the vacancy shall be filled in from them. Two vacancies existed as on 31.03.2012 i.e. within the period of five months from the publication of the select list. The case of the petitioner is required to be considered as against those vacancies.

5. Mr. Deshpande, the learned Advocate further submits that the respondents are governed by the

Maharashtra State Electricity Board Classification and Recruitment Regulations, 1961 (hereinafter referred to 'Regulations - 1961'). Regulation 29(a) of the Regulations - 1961, provides that the selection committee concerned may recommend names of suitable candidates selected after due advertisement to be kept on the wait list for consideration against posts reserved for direct recruitment, and such list may be deemed to be valid for 12 months. The Technical Board, Accounts Board, Board (Administration) and Technical Director are authorised to extend the validity of the wait list of the candidates selected by various selection committees for the posts in the respective streams, whenever considered necessary. It further states that such persons who are likely to be absorbed in appropriate vacancies within a reasonable period may be informed of their names having been kept on the wait list for being absorbed in future vacancies. The learned counsel submits that Regulation 29 (a) of Regulations -

1961, specifically empowers the persons in the wait list to be considered for absorption towards future vacancies. Regulation 29 (a) of Regulations - 1961 has not been adhered to but is flouted by the respondents.

6. Mr. Deshpande, learned Advocate for the petitioner further submits that Regulation 29 (a) of Regulations - 1961, is invoked on number of occasions and the future vacancies i.e. more number of posts than advertised have been filled in by the respondents from the wait list candidates. The learned Advocate refers to the appointment of Mr. Desai S. M., Mr. Deo Rajiv Mukund, Mr. Pande Vasant Dinkarrao and Mr. Khachane Vilas Krishna. Mr. Kachane was appointed on the post of Executive Engineer after 10 months. The wait list candidates were given appointment. The learned Advocate referring to the judgment of the Apex Court in case of Prem Singh and others Vs. Haryana State Electricity Board and others reported in 1996 SCC (4) 319, submits that

in the said case the Apex Court has safeguarded the appointments made against the future vacancies that had arisen because of the retirement of some persons. It was observed that anticipated vacancies can be considered. In the present case, because of the promotion the post of Executive Engineer became vacant and there was no impediment to absorb the petitioner who was at Serial No. 1 of the wait list to the post of Executive Engineer. The respondents are conveniently applying Regulation 29 (a) of Regulations – 1961, in favour of the persons they want to favour at the same time is discriminating the petitioner.

7. Mr. Deshpande, the learned Advocate further submits that the participation in the subsequent selection process in the year – 2014, and the petitioner being unsuccessful in the same would not affect the right of the petitioner to claim appointment pursuant to Advertisement No. 3 of 2011, wherein the petitioner was selected at serial no. 1 in the wait list. The learned

Advocate submits that even the claim of the petitioner was forwarded by respondent no. 4 to the Chief General Manager (HR). The same ought to have been considered. The learned Advocate submits that on the subsequent vacancy one Mr. Rajurkar candidate in the wait list from Advertisement No. 7 of 2016, was given appointment to the post of Chief Engineer (Transmission). This shows the arbitrary act of the respondents. The learned Advocate also relies on the following judgments to buttress his submission that in case of vacancy the claim of the candidate in the wait list can be considered-

(i) State of J & K. and others Vs. Sanjeev Kumar and others dated 24.02.2005 in Appeal (Civil) No. 1396 – 1397 of 2005.

(ii) In judgment of the Punjab and Haryana High Court in a case of Varun Kumar Vs. Haryana Staff Selection Commissioner and others dated 17.07.2013 in CWP No. 15403 of 2011.

(iii) The judgment of the Division Bench of this Court in a case of Rajabhau Shamrao Chavan Vs. The State of Maharashtra and another dated 18.02.2010 in Writ Petition no. 6380 of 2009.

(iv) The judgment of the Gujarat High Court in case of Patel Rakeshkumar Dharamdas Vs. State of Gujarat and others decided on 06.05.2011.

(v) The learned counsel also relies on the judgment of the Apex Court in case of BSNL and others Vs. Abhishek Shukla and another in dated 08.04.2009 in Civil Appeal No. 2239 of 2009.

8. Mr. Adwant, the learned Advocate for respondent no. 3 submits that the petitioner was selected in the wait list at serial no. 1 for the post of Executive Engineer (Transmission). Four posts were meant for open category. All four selected candidates had joined the post and continued. In view of that, the petitioner cannot

claim any right to be appointed. Once the post advertised are filled in and candidates have joined on all the posts it is not necessary to operate the wait list. The learned Advocate submits that the petitioner does not get any right to claim appointment only because his name figured in the wait list. The learned Advocate relies on the following judgments of the Apex Court-

- (i) Manoj Manu and another Vs. Union of India reported in (2013) 12 SCC 171,*
- (ii) Vijay Kumar Pandey Vs. Arvind Kumar Rai and others reported in (2013) 11 SCC 611,*
- (iii) State of Orissa and another Vs. Rajkishore Nanda and others reported in (2010) 6 SCC 777,*
- (iv) Rakhi Ray and others Vs. High Court of Delhi and others reported in (2010) 2 SCC 637,*
- (v) Mukul Saika and others Vs. State of Assam and others reported in (2009) 1 SCC 386,*
- (vi) K. Vijaya Lakshmi Vs. State of A.P.*

reported in (2013) 5 SCC 489,

(vii) Suneeta Aggarwal Vs. State of haryana and others reported in (2000) 2 SCC 615,

(viii) All India SC & ST Employees Association and another Vs. A. Arthur Jeen and others reported in (2001) 6 SCC 380

So also, the judgment of the High Court of Bombay in a case of *Apurba Kumar and others Vs. The Institute of Banking Personnel Selection and others dated 02.10.2018 in Writ Petition (L) No. 1064 of 2017.*

9. According to the learned Advocate, the appointment of Mr. S. S. Rajurkar from the wait list candidate to the post of Chief Engineer pursuant to the advertisement of 2016 was as one time measure as there was an urgency to fill in the post of Chief Engineer (Transmission). The noting itself states that such operation of the wait list shall not have bearing on any past and future cases and instances.

10. We have considered the submissions canvassed by the learned counsel for respective parties.

11. The respondent nos. 1 to 4 issued advertisement bearing no. 3 of 2011 inviting applications for various posts. The petitioner applied from open competition category for the post of Executive Engineer (Transmission), and also for the post of Deputy Executive Engineer (Transmission). The petitioner was selected and issued the appointment order for the post of Deputy Executive Engineer (Transmission). The petitioner was kept in the wait list for the post of Executive Engineer (Transmission). Four posts were meant for Executive Engineer (Transmission) from open competition category. The four persons in the select list above the petitioner accepted the appointment orders and joined the posts. As per the advertisement all four posts meant for the Executive Engineer (Transmission) are filled in. The note to the advertisement clarifies that the number of vacancies and reservation for Backward

class indicated for different categories is provisional and likely to change and that would not give any right to the candidate. The condition no. 11 provides that select list will not confer any right on the candidates of immediate appointment as the select list is meant for entire year and the appointment orders will be issued taking into account availability of the vacancies reserved for backward class. The note to the advertisement and condition no. 11 as referred supra would not enure to the benefit of the petitioner. The said clause is suggestive of the fact that the wait list is operated for one year and the appointment orders will be issued taking into account availability of the vacancies. The said stipulation would not give an indefeasible right to the petitioner to claim appointment against the future vacancies. The said clause does not cast an obligation on the respondents to make appointment from the wait list. The condition at serial no. 11 is to be construed in respect of

vacancies advertised and the process of selection *vis-a-vis* the number of vacancies invited and advertised for such selection. Regulation 29 (A) of Regulations – 1961, relied by the respondents only suggest that the persons who are likely to be absorbed in appropriate vacancies within reasonable period may be informed of their names kept on the wait list for being absorbed in future vacancies. The said Regulation is an enabling Regulation, however, it does not cast an obligation on the respondents to join the persons from the wait list for future vacancies. It only gives a discretion, and enables the concerned officials of the department to extend the wait list where ever considered necessary. It would depend upon the exigency of the circumstance to be considered by the officials of the concerned department. The said Regulation would not give an inviolable right to the wait listed candidate for appointment on future vacancies.

12. The law as to the right of the persons in the

wait list to be appointed on future vacancies is well settled and need not be a subject matter of debate.

13. The Apex Court in a case of Surinder Singh and others Vs. State of Punjab and another in Appeal (Civil) 5807 of 1997 observed thus -

"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 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."

The Apex Court in case of State of Punjab Vs. Raghubir Chand Sharma reported in (2002) 1 SCC observed thus -

"With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently. The circular order dated 22.03.1957, in our view, relates to select panels prepared by the Public Service Commission and not a panel of the nature under consideration. That apart, even as per the circular orders as also the decision relied upon for the first respondent, no claim can be asserted and countenanced for appointment after the expiry of six months. We find no rhyme or reason for such a claim to be enforced before courts, leave alone there being any legally protected right in the first respondent to get appointed to any vacancy arising subsequently, when somebody else was appointed by the process of promotion taking into account his experience and needs as well as administrative exigencies".

Further the Apex Court in case of Mukul Saikia Vs. State of Assam (2009) 1 SCC 386

observed thus -

"At the outset it should be noticed that the select list prepared by APSC could be used to fill the notified vacancies and not future vacancies. If the requisition and advertisement was only for 27 posts, the State cannot appoint more than the number of posts advertised, even though APSC had prepared a select list of 64 candidates. The select list got exhausted when all the 27 posts were filled. Thereafter, the candidates below the 27 appointed candidates have no right to claim appointment to any vacancy in regard to which selection was not held. The fact that evidently and admittedly the names of the appellants appeared in the select list dated 17.07.2000 below the persons who have been appointed on merit against the said 27 vacancies, and as such they could not have been appointed in excess of the number of posts advertised as the currency of select list had expired as soon as the number of posts advertised are filled up, therefore, appointments beyond the number of posts advertised are filled up, therefore, appointments beyond the number of posts advertised would amount to filling up future vacancies meant for direct candidates in violation of quota rules. Therefore, the appellants are not entitled to claim any relief for themselves. The question that remains for consideration is whether there is any ground for challenging the regularisation of the private respondents."

14. It is an accepted position on record that the petitioner had applied for the post of Executive Engineer (Transmission) from open competition

category. The said four posts were filled in and all four persons from the select list joined the posts. Subsequently, due to promotion of one of the person working as Executive Engineer, the post became vacant. The vacancy had arisen in future after the issuance of the advertisement in question, preparation of the select list and the persons from select list appointed. It would be considering the case for future vacancy. The proposition that may be culled out from the judgment of the Apex Court referred supra is that the vacancies cannot be filled in over and above the number of vacancies advertised. Filling up the vacancies over the notified vacancies amounts to filling up all future vacancies and is not permissible. The wait list is operative only under the exigency, that if any selected candidates do not join, then person from the wait list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency as a matter of policy decision pick up

person in the order of merit from the wait list. Once the appointments are made against the advertised posts the select list gets exhausted and those who are placed below the last appointee cannot claim appointment against the posts which subsequently become vacant or available.

15. The reliance placed by the petitioner in appointment of Mr. S. S. Rajurkar, from the wait list persons pursuant to the Advertisement No. 7 of 2016 would not come to the aid of the petitioner. It has been noted that because of the urgency said case is considered and such operating of the wait list is a one time measure and shall not have bearing on any past and future cases. No precedence for future cases and reference for past cases of this case be taken.

16. The petitioner had participated in the selection process of the year – 2014, for the post of Executive Engineer, however, was not selected and fresh candidates pursuant to the said

recruitment process have been appointed. They are legitimately and validly appointed.

17. It is held that, the petitioner is not entitled for appointment pursuant to the selection process of 2011. The appointment of respondent nos. 7 to 11 pursuant to the advertisement of 2014 would not be affected.

18. The writ petition as such is dismissed, however, with no order as to costs. Rule is discharged.

[R. G. AVACHAT, J.] [S. V. GANGAPURWALA, J.]

marathe