

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10330 OF 2017

1. Ashok Arjunrao Khillare,
Age : 42 Years, Occu. : Nil,
R/o Parwatinagar Jayakwadi,
to Hudco Road, Parbhani,
Tal and Dist: Parbhani.
2. Gajanan Sayanna Kamble,
Age : 47 Years, Occu. : Nil,
R/o Supangaonkar Niwas,
Near Ayurvedic College,
Jawahar Colony, Osmanabad,
Tal. And Dist : Osmanabad.
3. Nitin Pawals Ghorpade,
Age : 36 Years, Occu. : Nil,
R/o Rahuri (kh), Tal: Rahuri,
Dist: Ahmednagar.
4. Akash Prakash Chakral,
Age : 29 Years, Occu. : Nil,
R/o Civil Hudco, Ganesh Chowk,
Savadi Road, Ahmednagar,
Tal and Dist: Ahmednagar.
5. Avinash Gopalrao More,
Age : 35 Years, Occu. : Nil,
R/o 1133/1, Tirupatinagar,
Akoli Road, Sainagar,
Amrawati, Tal & Dist. Amrawati.
6. Ganesh Saraichand Rathod,
Age : 29 years, Occu. : Nil,

R/o Mundwadi Tanda,
Post Mundwadi, Ta. and
Dist. Aurangabad.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Animal Husbandry and Fishery
Department, Mantrayalay,
Mumbai.

2. Mahtam Phule Krushi Vidyapith
Rahuri, Tal : Rahuri, Dist.
Ahmednagar
Through its Vice Chancellor.

.. Respondents

Shri Anand V. Indrale Patil, Advocate for Petitioners.
Shri S. B. Yawalkar, Addl.G.P. for the Respondent No. 1.
Shri M. N. Navandar, Advocate for the Respondent No. 2.

**CORAM : S. V. GANGAPURWALA AND
SUNIL K. KOTWAL, JJ.**

Closed for Judgment on : 26.07.2018

Judgment Pronounced on : 28.09.2018

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

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioners seek directions against the respondents to conclude the recruitment process initiated for the post of (Clerk)

Class – III cadre pursuant to advertisement dated 07.12.2011.

3. Mr. Patil, the learned advocate for petitioners submits that, the respondent No. 2 issued advertisement on 07.12.2011 under special drive for filling up the backlog of reserved category for Class III and Class IV cadre posts. Pursuant to the advertisement petitioners applied. The petitioners belong to reserved category. The petitioners had appeared for written examination. The result was declared. The selection list was prepared on 25.11.2013. The document verification of selected candidates was made on 04.12.2013, on 12.12.2013 the list of selected candidates was displayed on the notice board of the university and on 01.01.2014 appointment orders were issued in favour of selected candidates. There were certain vacant posts existing, which were to be filled in from the candidates in the wait list. The petitioners were in the wait list of Class III post (Clerk). The verification of their documents was also conducted by the respondent No. 2 on 20.03.2015. On 20.04.2015 the selection committee approved the selection list for issuing appointment orders in favour of wait listed candidates, however in the said meeting the selection committee received telephonic communication from the office of the Hon'ble Agriculture Minister that the Hon'ble Minister has stayed the entire recruitment process undertaken by the respondent No. 2/university and as such appointment orders were not issued in

favour of petitioners. The petitioner No. 1 under application dated 31.08.2015 addressed to the respondent No. 2 requested for issuance of appointment order. Similar requests were also made by petitioners from time to time. The petitioners also had represented to the Hon'ble Chancellor. Under communication dated 23.02.2016 the Hon'ble Chancellor intimated the respondent No. 2 university to take appropriate decision on the representation of the petitioners. On or about 02nd July, 2016 the office of the Agriculture Department of the State of Maharashtra under communication dated 02.07.2016 informed the respondent No. 2/university that the State of Maharashtra through Agriculture Department has vacated stay granted by the Hon'ble Minister to the recruitment process and it further directed the respondent No. 2/university to complete the recruitment process as per the law and to submit report in that respect. In spite of the said communication, the respondent No. 2/university did not issue appointment orders in favour of petitioners. The learned counsel submits that, such an action is illegal.

4. The learned counsel further submits that, the respondents cannot take a stand that the wait list has lapsed after one year. In fact, the respondents had contemplated appointing the petitioners, but it was only on account of stay granted by Department of Agriculture, the appointment orders were not issued. Subsequently stay is vacated after two years and further

directions were given by the Department of Agriculture to the respondent No. 2/university to take steps to complete the recruitment process. The appointment order ought to have been given. The learned counsel relies on the judgment of the Division Bench of this Court in Writ Petition No. 6902 of 2010 dated 04th October, 2010. The learned counsel submits that, the stand of the respondents that under new rules, the ratio of appointment of clerk by nomination and promotion has undergone change and that now the posts may not be available for the reserved category candidates cannot be accepted. The position as on the date of the vacancy is created has to be considered. The learned counsel relies on the judgment of the Apex Court in a case of **Prem Prakash Vs. Union of India and others** reported in ***1984Suppl (1) SCC 687*** and in a case of **N. T. Deven Katti Vs. Karnataka Public Service Commission** reported in ***(1990) 3 SCC 157***. The learned counsel submits that, if the vacancy exists, then the next candidate in the select list has to be considered for appointment. The learned counsel relies on the judgment of the Apex Court in a case of **Jainarainram Vs. State of Uttar Pradesh** reported in ***(1996) 1 SCC 332***. The learned counsel for the petitioner also relies on the judgment of the Apex Court in a case of **State of Jammu and Kashmir and others Vs. Sat Pal** reported in ***(2013) 11 SCC 737***. The learned advocate also relies on the judgment of the Apex Court in a case of **Bishnu Biswas and others Vs. Union of India**

and others reported in (2014) 5 SCC 774 to submit that, if the selection process in the midst is scrapped, some of the candidates would be ineligible on account of being age barred.

5. Mr. Navandar, the learned advocate for the respondent No. 2/University strenuously contends that the petitioners had applied for the post of clerk-cum-typist. There were total 65 posts of clerk-cum-typist advertised. The candidates who were appointed after due selection and joined are 52, 13 candidates did not join. The wait list was opened on 01.12.2014. The wait list is to be considered for a period of one year. The total candidates from wait list were 13. The Chairman of the selection committee granted approval to the document verification from the wait listed candidates from 09.03.2015 and their document verification was done on 20th March, 2015. Ten candidates who had appeared for document verification were found eligible. The meeting of the selection committee was scheduled on 20th April, 2015 for selecting the candidates, but on 19th April, 2015 a complaint was received by the Hon'ble Minister of Agriculture and directions were given to stop the recruitment process to the then Registrar. The stay was lifted by the State Government on 02nd July, 2016. On 06th September, 2016 guidance was sought from the State Government as regards filling of the backlog for appointment for the post of clerk-cum-typist from the candidates in the wait list. On 22.09.2016 and thereafter on 17.05.2017 the

Government gave guidance as regards filling of backlog for the post of clerk-cum-typist from the wait listed candidates. The learned counsel submits that, on or about 27.06.2008, the State had issued Government Resolution that prescribes the validity of select list for one year only and after one year the wait list would stand lapsed. On 06.09.2016 clarification was sought from the State Government for issuance of orders to the candidates of Class III and IV category from the wait list. The Government under letter dated 23.09.2016 communicated that the G. R. dated 27.06.2008 is specific for Class III cadre, and guidance need not be sought. As the post cannot be filled in from the wait listed candidates after one year, the petitioners cannot claim any right.

6. The learned counsel further submits that, as per G. R. dated 14.01.2016, the ratio of appointment by promotion has been revised from 25% to 50% for the post of clerk-cum-typist. The Executive Council has given approval in its 314th meeting under resolution No. 11/314 dated 30th April, 2016 for adopting the revised ratio of nomination and promotion to the post of clerk-cum-typist in the ratio of 50 : 50 viz 75% by nomination and 25% by promotion. Earlier said ratio was 75 : 25. The number of posts available for appointment through nomination has also undergone change, so also the reservation. There are total 238 sanctioned posts of clerk-cum-typist. Due to change in policy by the State Government for appointments to be made to the post of

clerk in the ratio of 50 : 50 for nomination and promotion the reservation has undergone change. From S.C. Category the total reserves posts were 15 and one post is filled in excess from S.C. category. There is no vacancy. The petitioner Nos. 1, 2, 3 and 7 are from S.C. Category. Statement is made that the petitioner No. 7 is not interested to join. The petitioner Nos. 1, 2 and 3 cannot be appointed on the post of clerk-cum-typist, as there is no vacancy. The petitioner No. 4 is claiming post from S.B.C. Category. There were two posts for S.B.C. and both posts are filled in. In view of that, he also cannot be considered. The petitioner No. 5 is claiming the post from O.B.C. category. Even he cannot be given appointment. Total posts reserved were 23 and in excess two posts are filled in. From V. J. -A category there are total four posts reserved. Three posts are filled in and one post is lying vacant. The petitioner No. 6 can be issued appointment order on the post of clerk-cum-typist as stated in the affidavit. The decision taken by the State Government on 14.01.2016 is policy decision and same cannot be subject matter of challenge. Wisdom of the policy issued by the State cannot be questioned and cannot be judicially scrutinized by the Court. The learned counsel relies on the judgment of the Apex Court in a case of **State of Punjab and others Vs. Ram Lubhaya Bagga and others** reported in (1998) 4 SCC 117. The learned counsel submits that, the petition being devoid of merits be dismissed.

7. Mr. Navandar, the learned counsel further submits that, the wait list candidates are not entitled to be appointed against the unfilled posts as of right. The learned counsel relies on the judgment of the Apex Court in the case of Raj Rishi Mehra Vs. State of Punjab reported in *Lex (SC) 2013 8 22*. The learned counsel further submits that, no vested right is created in the petitioners. The learned counsel relies on the judgment of the Apex Court in a case of Sanjoy Bhattacharjee Vs. Union of India reported in *(1997) 4 SCC 283*.

8. Upon hearing the submissions of the learned counsel for respective parties and going through the pleadings on record, following undisputed facts emerge.

9. The respondent No. 2 issued an advertisement for filling 65 posts of clerk-cum-typist under advertisement dated 07.12.2011. The select list was published on 12.12.2013. Only 52 candidates had joined. Thirteen candidates from the select list did not join. The petitioners were in the wait list. The total candidates in the wait list were thirteen. For the remaining 13 posts, the candidates from the select list had not joined and the wait list was operated. The petitioners are the candidates selected in the wait list. The document verification of the candidates from the wait list was conducted on 20th March, 2015. Ten candidates appeared for document verification and were found eligible. The petitioners were found eligible. The meeting of the selection

committee was scheduled on 20th April, 2015. On 19th April, 2015 the Hon'ble Minister for Agriculture directed the Registrar of the respondent No. 2 to immediately stop the further process and the selection process was stayed under the letter of the State Government dated 12.05.2015. The State Government lifted the stay to the recruitment process for the post of clerk-cum-typist on 02nd July, 2016. In the said letter the State Government communicated to the respondent No. 2 that, barring the post of labour, the Government has lifted the stay over the recruitment process for other posts and the respondent No. 2 shall proceed to take the steps with regard to the vacant posts as per the Government Resolution dated 02.06.2015, 23.09.2014, 14.01.2016 and 16.07.2015.

10. It would appear that, these petitioners were in the wait list. Their document verification was conducted and they were found eligible. The further step was of issuance of appointment order for which meeting was scheduled on 20th April, 2015. However, on 19th April, 2015 the further recruitment process was stayed. Fifty two candidates were already appointed. For thirteen vacant posts, wait list was to be operated. Up to 02nd July, 2016, the recruitment process was stayed under the orders of the State Government. It is certainly not the fault of the petitioners that the recruitment process was not continued further. Pursuant to the same recruitment process 52 candidates have been issued with appointment order and are working.

Thirteen candidates whom appointment orders were issued did not join. As such apart 52 posts were filled in, 13 posts remained vacant for which wait list was operated, further process of document verification was conducted and these petitioners were found eligible.

11. It is true that mere name in the wait list would not give the petitioners indefeasible right to seek appointment. Certainly, if stay would not have been granted a day prior, selection committee would certainly have considered cases of the petitioners for appointment. The plight of the petitioners is required to be considered. Some of the petitioners would become age bar with the passage of time. The respondents are taking a dual stand. In the additional affidavit filed by the respondent No. 2, it is stated that, the case of the petitioners cannot be considered as in the year 2016 the ratio for appointment for post of clerk-cum-typist from nomination and promotion has undergone change. Earlier the 75% posts of clerk-cum-typist were to be filled in by nomination and 25% were required to be filled by promotion and now the said ratio has been changed to 50 : 50 and because of the same the posts for reserved category from nomination quota has undergone change. Rules as on the date when vacancy had arisen and posts were to be filled in will have to be considered. Reference can be had to the judgment of the Apex Court in a case of V. Y. Rangaiah Vs. J. Sreenivasa Raod : S. Srenivasa Rao reported in (1983) 3

SCC 284. The apex Court in para No. 9 of the said judgment has observed thus :

"The vacancies which occurred prior to the amended rules would be governed by the old rule and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub Registrar Grade II will be according to the new rules on the zonal basis and not on the Statewide basis and therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

12. The respondent No. 2/university in its additional affidavit has very categorically stated that, considering the change in reservation, the petitioner No. 6 claiming from V.J.-A category can be issued with appointment order on the post of clerk-cum-typist. However, as far as other petitioner Nos. 1 to 5 are concerned, it is stated that, no vacancy exists from that reserved category. When they had applied and the selection process was undertaken, the vacancy existed for them. In view of the judgment of the Apex Court in a case of **V. Y. Rangaiah Vs. J.**

Sreenivasa Raod : S. Srenivasa Rao (supra), the posts would be required to be considered as on the date when the vacancy had arisen. The respondents have shown their willingness to appoint the petitioner No. 6 on the vacant post. The same analogy should be applied to petitioner Nos. 1 to 5 also, considering the position on the date vacancy existed.

13. In the light of the above, considering the fact that, the respondent No. 2 has shown its willingness to issue appointment order to the petitioner No. 6, we direct the respondent No. 2 to consider petitioner Nos. 1 to 5 also for issuance of appointment order from the respective reserved categories as on the date the vacancy existed as per the advertisement. The said exercise shall be done within a period of two (2) months from today. It is made clear that, the appointment of these petitioners shall be considered from the date appointment orders are issued to them and not from the earlier date.

Rule is made absolute in above terms. No costs.

Sd/-

[SUNIL K. KOTWAL, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Sept. 18

Bhalchandra
Sudhakar
Bodke

Digitally signed
by Bhalchandra
Sudhakar
Bodke
Date:
2018.09.28
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