

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

WRIT PETITION NO.12845 OF 2018

Maharashtra Public Service Commission,
Through the Secretary,
8th Floor, Cooperage Telephone Exchange Building,
Maharshi Karve Road, Cooperage, Mumbai.

..PETITIONER

VERSUS

(1) Shri. Jeevan Nivruttirao Wader,
Age: 34 years, Occupation: Advocate,
Resident of; At Junna,
Taluka Mukhed, District Nanded.

2. The State of Maharashtra,
Through the Secretary,
Home Department,
Mantralaya, Mumbai.

..RESPONDENTS

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Mr. Mukul S. Kulkarni, Advocate for the Petitioner.
Mr. Hanmant V. Patil, Advocate for Respondent No.1.
Mrs. G. L. Deshpande, AGP for Respondent No.2.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAHALE, JJ.**

Closed for Orders on : 17.01.2019.

Order Pronounced on : 15.02.2019.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. Pursuant to the advertisement published by the petitioner dated 04.07.2015 for filling up 175 posts of Assistant Public Prosecutor, Gr. A, the respondent no.1 applied. The respondent no.1 was at serial no.1 in the wait list. Four candidates

issued with the appointment order did not join. The respondent no.1 filed Original Application bearing No.614/2017 before the Maharashtra Administrative Tribunal, Aurangabad seeking directions to recommend the name of the applicant therein for the post of Assistant Public Prosecutor. The Original Application is allowed under the judgment and order dated 25.09.2018. The petitioner is directed to recommend the name of respondent no.1 for appointment to the post of Assistant Public Prosecutor. The M.P.S.C. assailed the said judgment in the present writ petition.

2. Mr. Kulkarni, learned counsel for the petitioner strenuously contends that the results were declared on 16.09.2016. The recommendation was made for 174 candidates. Thereafter, on 28.09.2016 additional amended recommendation list was sent to the Government by the petitioner. Five candidates who were issued the appointment order did not join. The learned counsel submits that the wait list can be operated for a period of one year from the date of declaration of result or up to the publication of the subsequent advertisement for recruitment to the concerned post whichever is earlier. The learned counsel relies on the Maharashtra Public Service Commission Rules of Procedure, 2014. More particularly, Clause 10 (8) (a). The learned counsel submits that as the results were declared on 16.09.2016, the wait list lapsed on 15.09.2017. After the said date, no

candidate from the wait list could as of right claim appointment. The learned counsel to buttress his submission relies on the judgment of the Apex Court in a case of **Gujarat State Dy. Executive Engineer's Association Vs. State of Gujarat and Ors.** reported in 1994 Supp (2) SCC 591. The learned counsel relying on the judgment of the Division Bench of this Court in a case of **Maharashtra Public Service Commission Vs. Pankajkumar C. Dabhire & Ors.** in Writ petition No.5621 of 2015 dated 03.07.2018 submits that after lapse of one year, the wait list could not have been operated. According to the learned counsel, the requisition was made by the State Government after the lapse of one year of the declaration of the result and as per Rule 10 (8) (a) of the Maharashtra Public Service Commission Rules of Procedure, 2014, the petitioner could not have forwarded the name of the candidates from the wait list. The Tribunal did not consider the said Rules in its correct perspective and thereby arrived at erroneous conclusion.

3. The learned counsel further submits that even a candidate whose name is included in the merit list has no vested right to be appointed and the date of one year has to be calculated from the date of publication of result. The learned counsel relies on the judgment of the Apex Court in a case of **State of U.P. Vs. Bibhakar Dwivedit and Others** reported in (2003) 12 Supreme Court Cases 62.

4. Mr. Patil, learned counsel for respondent no.1 submits that five candidates who were issued the appointment order from the select list did not join. The petitioner on 01.07.2017 made the first representation to the State bringing it to their notice that the candidates did not join and as such the petitioner be issued with the appointment order. The second representation to the same effect was made on 16.08.2017. As the same was not considered, the present respondent no.1 filed Original Application before the Tribunal on 27.08.2017, much before the lapse of one year from the date of declaration of result. The learned counsel submits that the petitioner had already approached the Tribunal before the lapse of one year, as such the case of the petitioner was certainly required to be considered. The Tribunal has rightly considered the said aspect. The learned counsel relies on the following judgments:

(1) State of J&K Ors Vs. Sat Pal reported in 2013 CJ (SC) 74.

(2) State of Uttar Pradesh Vs. Ram Swarup Saroj reported in 2000 CJ (SC) 1679.

(3) Vinod S/o Vasant Sali Vs. The State of Maharashtra & Ors. in Writ Petition No.295 of 2009 with connected writ petition dated 23.06.2011.

(4) Suresh S.o Narayan Arklwad Vs. The State of Maharashtra & Ors. in Writ Petition No.3282 of 2015 dated 22.08.2016.

(5) Ved Prakash Tripathi Vs. State of U. P.

reported in LEX (ALL) 2000 1269.

(6) Mr. Udaysing Jalamsing Valvi Vs. The Secretary, District Selection Committee, Raigad Z.P. Alibagh, District Raigad and Anr. in Writ Petition No.4257 of 2013 dated 22.01.2014.

(7) Union of India and Ors. Vs. Hon'ble Central Administrative Tribunal, Lucknow and Anr. in Writ Petition No.3194 of 2016 dated 16.02.2017.

(8) Manoj Manu and Anr. Vs. Union of India & Ors. reported in 2013 CJ(SC) 602.

(9) Umesh S/o. Mohan Kumawat Vs. The State of Maharashtra and Ors. in Writ Petition No.4507 of 2015 dated 24.02.2016.

5. We have heard the submissions canvassed by the learned counsel for the parties.

6. The undisputed factual matrix as can be culled out from the record and the submission of the parties is as under:

(i) The Commission had published advertisement for filling in 175 posts of Assistant Public Prosecutors, Gr. A..

(ii) The results of the selection process were declared on 16.09.2016. M.P.S.C. recommended names of 174 candidates and on 28.09.2016 additional list was sent recommending the candidates.

(iii) The respondent no.1-original applicant

stood at serial no.1 in the wait list.

(iv) Five candidates issued with the appointment orders did not join.

(v) The respondent no.1 made representation to the State on 01.07.2017 and 16.08.2017 to issue him the appointment order as five persons did not join.

(vi) As his representation was not considered, respondent no.1 filed Original Application bearing No.614/2017 before the Maharashtra Administrative Tribunal, Aurangabad on 27.08.2017 and the matter was subjudice since then.

(vii) The State Government on 22.09.2017 made requisition of the candidates from the waiting list of the said post as five candidates did not join.

(viii) On 17.10.2017, the Commission informed the Government that the waiting list of the said post is not operative and as such the Commission cannot recommend any candidate from the waiting list.

7. Rule 10 (8)(a) of the Maharashtra Public Service Commission Rules of Procedure, 2014 provides that when only single cadre is involved for selection by competitive examination the reserve list shall be maintained for a period of one year from the date of declaration of result or up to the publication of subsequent advertisement

for recruitment to the same post "whichever" is earlier. Rule 10 (8)(b) provides that in case of direct recruitment, the reserve list shall be maintained to the extent of 50% of the posts advertised and shall lapse on the expiry of one year from the date of declaration of the result or on the publication of subsequent advertisement for recruitment to the concerned post, whichever is earlier.

8. It is thus clear that the life of the wait list is for a period of one year from the date of declaration of result or up to the publication of subsequent advertisement for recruitment to the same posts whichever is earlier. In the present case subsequent advertisement for the recruitment to the same post was not issued.

9. There cannot be any dispute with the proposition that even the candidate appearing in the select list does not get vested right to be appointed.

10. The present matter will have to be considered from the facts appearing in the present case. Before lapse of one year, the petitioner had made representation thereby bringing it to the notice of the State that five of the selected candidates issued with the appointment order did not join, as such he be appointed. Even prior to the lapse of one year from the date of declaration

of result the petitioner had filed Original Application before the Tribunal on 27.08.2017 seeking directions against the State Authorities to recommend his name for the post of Assistant Public Prosecutor and to appoint him. The Apex Court in a case of **State of Orissa and Ors. Vs. Rajkishore Nanda and Ors.** in Writ Petition No.2808 of 2008 observed that no relief can be granted to the candidate, if he approaches the Court after expiry of the select list. If the selection process is over, the select list has expired and appointments has been made, no relief can be granted by the Court at the belated stage. In the present case, the petitioner had approached prior to the lapse of the wait list viz. prior to the lapse of one year from the date of declaration of result. It is in view of the same the discretion has been exercised in favour of the respondent no.1. He had approached the State, so also the Court prior to the lapse of the list and the list was subjudice before the Tribunal.

11. We may not agree with the reasoning of the Tribunal that the wait list remained operative even after the period of one year from the date of its publication because of the non-joining of the regularly selected candidates. The purport of the Rule 10(8) (a) and 10(8) (b) Maharashtra Public Service Commission Rules of Procedure, 2014 is that the list is operative for one year from the date of declaration of the result.

12. We have considered the case of the present respondent no.1, as the respondent no.1 before the lapse of one year from the date of declaration of result had already represented to the State that five persons issued with the appointment order did not join and his name be recommended and be issued with the appointment order. The respondent no.1 before lapse of one year had already approached the Tribunal on 27.08.2017 and during the pendency of the writ petition the requisition was made by the Government for the name of the petitioner. Considering the fact that the petitioner had already approached the Tribunal before lapse of one year and also that the requisition is made by the Government, we are not interfering with the judgment of the Tribunal. The respondent no.1 was at serial no.1 of the wait list. The Tribunal has directed that the name of respondent no.1 be sent as per the requisition made by the Government during the pendency of the Original Application under its letter dated 22.09.2017. To that extent only we are not interfering with the order of the Tribunal. Though we do not confirm Clause 2 of the operative order to the effect that waiting list remained operative even after the period of one year from the date of its publication because of non-joining of regularly selected candidates, we confirm the judgment only to the extent of respondent no.1 whereby directing the M.P.S.C. to act on the requisition dated 22.09.2017.

13. Writ petition accordingly stands disposed
of. No costs.

(A. M. DHAVALA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/January-19