

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

WRIT PETITION NO. 1663 OF 2019

Pramod Vasant Dhaware and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri Datta A. Madke, Advocate for Petitioners.

Shri P. G. Borade, A.G.P. for Respondent Nos. 1 and 2.

Shri D. S. Bagul, Advocate for the Respondent No. 3.

WITH

WRIT PETITION NO. 754 OF 2019

Shaikh Nisar Nashir and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri Nitin R. Bhavar, Advocate for Petitioners.

Shri P. G. Borade, A.G.P. for the Respondent No. 1.

The Respondent No. 2 is served.

Shri D. S. Bagul, Advocate for the Respondent No. 3.

WITH

WRIT PETITION NO. 1670 OF 2019

Yogesh Janardhan Borse and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri C. V. Dharurkar, Advocate for Petitioners.

Shri P. G. Borade, A.G.P. for Respondent Nos. 1 and 2.

Shri D. S. Bagul, Advocate for the Respondent No. 3.

**WITH
WRIT PETITION NO. 1748 OF 2019**

Amol Rambhau Barvkar and another .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri Sharad S. Shinde, Advocate for Petitioners.
Shri P. G. Borade, A.G.P. for the Respondent No. 1.
The Respondent No. 2 is served.
Shri D. S. Bagul, Advocate for the Respondent No. 3.

**WITH
WRIT PETITION NO. 2036 OF 2019**

Pravin Ashok Patil and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri C. V. Dharurkar, Advocate for Petitioners.
Shri P. G. Borade, A.G.P. for the Respondent No. 1.
Shri D. S. Bagul, Advocate for Respondent Nos. 2 and 3.

**WITH
WRIT PETITION NO. 2153 OF 2019**

Shaikh Rafiq Mainoddin and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri Pradeep L. Shahane and Shri P. P. Shahane, Advocates for
Petitioners.
Shri P. G. Borade, A.G.P. for the Respondent No. 1.
Shri D. S. Bagul, Advocate for Respondent Nos. 2 and 3.

**WITH
WRIT PETITION NO. 3245 OF 2019**

Mahadeo Mukund Kambale and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri Pradeep L. Shahane and Shri P. P. Shahane, Advocates for
Petitioners.

Shri P. G. Borade, A.G.P. for the Respondent No. 1.

Shri D. S. Bagul, Advocate for Respondent Nos. 2 to 5.

**WITH
WRIT PETITION NO. 4904 OF 2019**

Narendra Yuvraj Pawar and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri Lalitkumar S. Mahajan, Advocates for Petitioners.

Shri P. G. Borade, A.G.P. for the Respondent No. 1.

Shri D. S. Bagul, Advocate for Respondent Nos. 2 to 6.

**CORAM : S. V. GANGAPURWALA AND
AVINASH G. GHAROTE, JJ.**

Closed for Orders on : 13.12.2019

Order pronounced on : 13.03.2020

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

. The petitioners in these writ petitions seek
directions against the respondent/Maharashtra State Road

Transport Corporation (for short “MSRTC”) to issue appointment orders in their favour.

2. The respondent/MSRTC issued advertisement for filling in the posts of driver at various districts viz Osmanabad, Ahmednagar, Aurangabad, Dhule, Latur and Nandurbar. The petitioners in Writ Petition No. 1663 of 2019 and Writ Petition No. 1748 of 2019 had participated in the selection process conducted at Osmanabad district. The names of these petitioners were in the wait list/additional select list. The petitioners in Writ Petition No. 754 of 2019 were in the wait list of the selection process for Ahmednagar district. The petitioners in Writ Petition No. 1670 of 2019 had participated and were placed in the wait list of the selection process for Aurangabad district. The petitioners in Writ Petition No. 2036 of 2019 were in the wait list of selection process for Dhule district. The petitioners in Writ Petition No. 2153 of 2019 and Writ Petition No. 3245 of 2019 were in the wait list for Nandurbar district.

3. The MSRTC did not issue appointment orders to these persons in the wait list, as such present writ petitions are filed by them seeking appointment orders on the ground that, their names appear in the wait list/additional select list.

4. The learned counsel for respective petitioners canvassed that, the respondent/MSRTC did not fill in all the

posts advertised. The respondent/MSRTC is bound to fill in all the posts advertised. The petitioners have undergone the selection process. Once the select list and the wait list is prepared and the appointments are made, same should be for all the advertised posts. The respondent/MSRTC cannot act arbitrarily. The respondent/MSRTC is an instrumentality of the State. It has to act fairly. The learned counsel for petitioners submit that, once a person is declared successful according to merit list of the selected candidates, the appointing authority has responsibility to appoint him. The reliance is placed on the judgment of the Apex Court in a case of Prem Prakash Vs. Union of India and others reported in *1984 (Suppl.) SCC 687*. The learned counsel further submit that, once the names of the petitioners appear in the select/wait list, it is the right of the said candidate to be considered for appointments, more particularly as the posts are vacant. The learned counsel rely on the judgment of the Apex Court in a case of N. T. Devlin Katti and others Vs. Karnataka P.S.C. and others reported in *(1990) 3 SCC 157* and in a case of R. S. Mittal Vs. Union of India reported in *1995 (Suppl.) 2 SCC 230*. The learned counsel further submit that, unfettered power of selection and appointment does not mean that same would be made available to an employer at the cost of fair play, good conscience and equity. The petitioners rely on the judgment of the Apex Court in a case of Praveen Singh Vs. State of Punjab reported in *(2000) 8 SCC 633*. The wait list allows room to the appointing authority to fill up vacancy, which arose during its subsistence. Reliance is

placed on the judgment of the Apex Court in a case of State of J. & K. and others Vs. Sat Pal reported in *2013 (11) SCC 737* and in a case of **Rajabhau Shamrao Chavan and others Vs. State of Maharashtra** in **Writ Petition No. 6902 of 2010** delivered by the Bombay High Court at Aurangabad under judgment and order *dated 04.10.2010*. The learned counsel rely on the judgment of the Division Bench of this Court in Writ Petition No. 10330 of 2017 to contend that the select list and wait list ought to be operated when vacancy exists.

5. The learned counsel further submit that, some of the candidates were directed to undergo medical examination. This shows that, they were in the process of being considered for issuance of appointment orders and abruptly the process is stalled. On 09.07.2018 decision was also taken by the MSRTC that those who are selected in the 2013 selection process and the names are placed in the additional select list/wait list shall be considered for appointment as and when need arises. The respondent/MSRTC is not following its own circular/decision. The same was pursuant to the resolution passed by the Board on 02nd July, 2018. Once the petitioners have participated in the selection process, they have legitimate expectation to be selected. Some of the petitioners were called for document verification also and in some districts subsequently advertisements were issued in the year 2019 for filling in the posts. The learned counsel for petitioners also rely on the judgment of the Apex Court in a case of Union of India Vs. Pradeep Kumar Kedia and others

reported in **2012(1) SCC 432** and another judgment of the Apex Court in a case of Director SCTI for Medical Science and Technology and another Vs. M. Pushkar reported in **2008(1) SCC 448**.

6. Mr. Bagul, the learned advocate for the respondent/MSRTC submits that, mere name in the select list does not create right in favour of a candidate to seek appointment. Reliance is placed by the learned advocate on the judgment of the Apex Court in a case of Shankarsan Das Vs. Union of India reported in **1991(3) SCC 47**. The learned counsel further submits that, the life of the wait list is only one year as per the Maharashtra State Road Transport Corporation (Appointment, Seniority and Promotion) Rules, so also circular dated 01.12.2009.

7. Mr. Bagul the learned counsel further submits that, each division of MSRTC operates as distinct unit and divisional controller is head of the unit. Though advertisement is issued from the Central level, the appointment of the candidate is made at divisional level and the vacancies of divisional level are filled in at the divisional level. A candidate applying at a particular division cannot lay claim on the vacancy of another division. The letter relied by the petitioners dated 09.07.2018 may not be of much help. Under the said letter, the Corporation had decided to call upon these candidates for document verification, however, the said decision was against the policy and contrary to the period of

wait list. The corporation realized its mistake, the same was immediately rectified by passing a resolution. The learned counsel further relies on the judgment of the Division Bench of this Court in a case of Apurba Kumar and others Vs. Institute of Banking Personnel Selection and others reported in *2018 DGLS (Bom) 759* to contend that, the claim cannot be considered after the lapse of select list/wait list beyond one year. The learned counsel further submits that, in Ahmednagar division, advertisement was issued for 262 posts. Initially 112 successful candidates were placed in the select list, out of that 99 candidates were appointed. There was short fall of 153 candidates. The seats were filled in of SC, N.T.C. and open competition category candidates. The vacancy remained of S.T. category 30 seats, S.B.C. 15 seats and O.B.C. 108 seats as per the advertisement. The petitioner Nos. 1 and 2 in Writ Petition No 754 of 2019 were in the additional list for open category candidates at Sr. Nos. 10 and 7 respectively. The petitioner Nos. 3, 4 and 5 were in the additional list of S.C. candidates at Sr. No. 6, 7 and 8 respectively. The petitioner No. 6 was in additional list of N.T.-C category at Sr. No. 2. As there was no vacancy as per the advertised posts in S.C., N.T.-C and open category, they were not selected and wait list lapsed after one year.

8. In Osmanabad division, 128 posts were advertised. A list of 41 successful candidates was published. There was short fall of 87 candidates. Forty one candidates were

appointed. The names of petitioner Nos. 1 and 2 in Writ Petition No. 1748 of 2019 were rejected on technical ground and their names were not included in the additional list. They were not selected. The petitioner Nos. 1 and 2 in Writ Petition No. 1663 of 2019 (Osmanabad Division) were at Sr. No. 3 and 4 in additional list of S.C. category and petitioner Nos. 3 and 4 were at Sr. No. 4 and 7 in the additional list of open category. There was no vacancy for S.C. and open category candidates as per the advertised posts, because fourteen candidates were appointed from S.C. category and twelve candidates were appointed from open category. The names of petitioner Nos. 5 to 22 were rejected and their names were not in additional list. The wait list is valid only for one year as per the subsequent rules.

9. The learned counsel further submits that, only because some of the petitioners were called for document verification or for medical examination, that would not create any vested right in them.

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

11. There cannot be any debate with the proposition that mere name in the wait list/additional list would not give the petitioners indefeasible right to seek appointment. As per the recruitment rules of MSRTC, the life of wait list is for one

year. Directions cannot be given to the MSRTC to fill in the post, which may subsequently become vacant. The matters will have to be considered about the claim of the petitioners to be appointed as against the vacant posts qua the advertisement of the year 2015 and no further. The MSRTC cannot be compelled to fill more posts than advertised. So also the MSRTC has to consider that the post earmarked for reserved category is filled in according to the reservation provided vis-a-vis the advertisement.

12. The MSRTC is an instrumentality of the State. It is expected of MSRTC to act fairly. So also has to adhere to the recruitment rules.

13. It appears that, appointment orders are not issued to the petitioners during the period the additional select list/wait list was valid, no doubt in cases of some of the petitioners document verification was done and medical examination was also held. However, subsequently appointment orders are not issued to them as the period of wait list stood lapsed. It appears from the affidavit filed that, initially MSRTC was under belief that validity of wait list was for two years. Subsequently it has been tried to be contended that, the validity period of the wait list/additional list is only one year. Though a letter was issued by the board that the candidates who are in the additional select list or the wait list should be considered and be called for document verification,

but, immediately the corporation passed a resolution purportedly on 02nd July, 2018 cancelling the earlier resolution.

14. The person in the select list/wait list does not have right for appointment, but certainly has right to be considered for appointment. The instrumentality of the State is also required to act fairly and the action of the instrumentality of the State should not smack of arbitrariness.

15. The only reason, it appears for not considering the petitioners for appointments is either the post of a particular category in the said division was not available as per the advertisement and/or the wait list had lapsed. It appears that, after one year the MSRTC had called for document verification to some of the candidates and also directed them for medical examination i. e. further process was initiated. Some of the petitioners were called for document verification and medical examination. The MSRTC could have considered appointing the persons who were eligible in case they had taken a policy decision to operate the wait list even after lapse of period of two years. Of course, it is sole discretion of the MSRTC.

16. Strictly speaking the wait list has lapsed, however, as decision was taken to consider some of the candidates for appointment even after lapse of wait list, we would only observe that, MSRTC could have considered the candidates

whose medical examination and document verification was conducted for giving appointments, if eligible in their respective divisions and in the category they had applied.

17. In the light of the above, we pass following order.

O R D E R

- I. The candidates whose candidature was rejected by the Maharashtra State Road Transport Corporation (MSRTC) as contended in the affidavit in reply need not be considered for appointments.
- II. If the post of a particular category as per the advertisement are filled in and there are no vacancies of posts as per the advertisement, then the petitioners in the wait list or additional select list would not get a right of appointment.
- III. Though we are not issuing any directions to the respondent/MSRTC to consider the petitioners whose document verification and medical examination was conducted to be appointed, we leave it to the M.S.R.T.C. to consider their request and if the vacant posts as per the advertisement of the year 2015 are available from the category from which they had applied, the M.S.R.T.C. may take a policy decision to appoint those

petitioners who had undergone medical examination and document verification, as the respondent/MSRTC may deem fit and as advised.

IV. The writ petitions accordingly are disposed of. No costs.

[AVINASH G. GHAROTE, J.]

[S. V. GANGAPURWALA, J.]

bsb/March 20