

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO.4609 OF 2019

Shri. Balesh S/o Dashrath Bhendekar,
Age 31 years, Occ. Nil,
R/o Flat no.309, Madhav Nagar,
Gangakhed Road, Dist. Parbhani.

... PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai.
2. Maharashtra Public Service Commission,
Through its Secretary,
Bank of India Building,
3rd Floor, Fort, Mumbai.
3. The Additional Principal Chief
Conservator of Forests,
Maharashtra State, Nagpur.

... RESPONDENTS

...
Mr. S. S. Thombre, Advocate for Petitioner.

Mrs. M. A. Deshpande, AGP for Respondent Nos.1 & 3.

...

AND

WRIT PETITION NO.8488 OF 2019

1. Rakesh s/o Sopanrao Ilhe,
Age 36 years, Occ. Nil,
R/o Chincholi Gurao,
Tal. Sangamner, Dist. Ahmednagar.

2. Vishal S/o Amarsing Rathod,
Age 35 years, Occ. Primary Teacher,
R/o Nirmal Sadan, Jadhav Vasti,
Chincholi Gurao, Tal. Sangamner,
District Ahmednagar.

... PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai.
2. Maharashtra Public Service Commission,
Through its Secretary,
Bank of India Building,
3rd Floor, Fort, Mumbai.
3. The Additional Principal Chief
Conservator of Forests,
Maharashtra State, Nagpur.

... RESPONDENTS

...
Mr. S. S. Thombre, Advocate for Petitioners.

Mrs. M. A. Deshpande, AGP for Respondent Nos.1 & 3.

...

CORAM : S. V. GANGAPURWALA &
R. N. LADDHA, JJ.

DATE : 21st August, 2021.

PER COURT:

. The facts are taken from Writ Petition No.4609 of 2019.

2 Pursuant to the advertisement dated 12th February, 2014 the petitioners applied for the post of Range Forest Officer purportedly from NT-D category / SC category. The select list was published on or about 12th February, 2016. On or about November 2016, the appointment order was issued to three persons from NT-D category. One person did not join. The cut-off marks were 190. The petitioner secured 190 marks. The petitioner sought appointment on the post, which was vacant on account of the person not joining the post though the appointment order was issued to him. The respondents did not consider the claim of the petitioner. The petitioners filed original applications before the Maharashtra Administrative Tribunal seeking appointment orders. The Tribunal dismissed the original applications filed by the petitioners. Aggrieved thereby, the present writ petitions.

3 Mr. Thombre, learned counsel for petitioners submits that the advertisement was issued on 12th February, 2014. The Rules of 2014 came into force in August 2014. The Rules cannot have a retrospective operation. The learned counsel further submits that the 2005 Rules provided for the wait list to be in operation for two years. The petitioner was entitled for appointment on the vacant post. The post on which the appointment was sought by the petitioner was not

an additional post, but the post advertised and vacant as the candidate issued with the appointment order did not join. The petitioner will be the next candidate.

4 The learned counsel in alternate submits that even assuming that 2014 Rules apply, the advertisement was not issued for the multi cadre post. The post of Range Forest Officer and Assistant Conservator of Forest cannot be said to be multi cadre post and in case of advertisement for the post other than multi cadre post, the wait list is to be operated. According to the learned counsel, there was no impediment to give appointment to the petitioner. The learned counsel further submits that the amendment of 2011 was not referred to by the Tribunal in its judgment nor the same was relied upon. The 2011 amendment came into force on 8th August, 2013. However, the Tribunal has not at all considered the said Rules.

5 The learned Additional Government Pleader submits that 2011 Rules were pleaded in the affidavit in reply before the Tribunal. The 2011 amendment Rules did not provide for the maintenance of wait list either for single post or multi cadre post. The said Rules were in force and in effect. The learned Additional Government Pleader further submits that the 2014 Rules also provide that in case of

recruitment by competitive examination wherever multiple cadre posts are involved, the reserve list shall not be maintained. 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. The same has been adhered to. The learned Additional Government Pleader for substantiating the contentions that 2011 Rules also were in force, relied upon the judgment in Writ Petition No.5621 of 2015 and Writ Petition No.4555 of 2016 dated 3rd July, 2018.

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

7 It appears from the judgment delivered by the Tribunal that the Tribunal did not consider the amendment Rules 2011. Initially, the recruitment process, it appears, was governed by the Rules of 2005, namely the Maharashtra Public Service Commission Rules of Procedure, 2005. The same came to be amended in the year 2011 under the title the Maharashtra Public Service Commission Rules of Procedure (Amendment), 2011. All the earlier Rules were considered and subsequently all these amendments were consolidated and the Rules namely the Maharashtra Public Service

Commission Rules of Procedure, 2014 were enacted. The prelude to the Rules itself state that the Rules of procedure are revised in the year 2005 and after the revised Rules of procedure came into being on 20th October 2005, several amendments were made to the said Rules of Procedure over the period of time. In supersession of all the modifications earlier made and all the previous Rules, the Rules 2014 were enacted. Clause 8(a) and (b) of the Rules 2014 reads thus:

“(8) (a) In case of recruitment by Competitive Examination wherever multiple cadre posts are involved, the reserve list shall not be maintained. The posts fallen vacant due to non-acceptance of the offer of appointment by the candidates recommended, shall be filled in through subsequent Competitive Examination. 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 the result or up to the publication of subsequent advertisement for recruitment to the same post “whichever” is earlier.

(b) 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 Advertisement of the instant selection process was issued on 12th February, 2014 and these Rules came into effect from 16th day of May, 2014. As on the date the advertisement was issued, the amended Rules 2011 were in force. The amended Rules 2011 with regard to the methodology of the post becoming vacant, provide as under:

“Clause (7) of rule – 10 of the principal rule shall be substituted by the following clauses :-

a) In case of recruitment by Competitive Examination, the reserve list shall not be maintained. The posts fallen vacant due to non-acceptance of the offer of appointment by the candidates recommended, shall be filled in through subsequent Competitive Examination.

b) In case of direct recruitment, the reserve list shall apse 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.”

9 Under 2011 Amendment Rules, clause (7) of Rule 10 came to be substituted by the aforesaid clause. Prior to the amendment of clause (7) of Rule 10 by Amendment Rules 2011, clause (7) of Rule 10 of the 2005 Rules reads thus:

“10. Appointment of Interview Committee and declaration of result. –

(1)

(7) *Wait list.*– Based on the merit of the Candidates in their respective category, the Commission may maintain a reserve list up to the 10% of the vacancies in each category. Provided further that the candidates from the reserve list may be recommended to the Government only if the candidates recommended earlier are unable to accept the offer of appointment for any reason. This waiting list shall not be operative for any additional number of posts, other than those advertised. Further this reserve list and entire merit list shall be maintained confidentially with the Secretary of the Commission only. This reserve list shall lapse on the declaration of date of subsequent examination for the same category or after a period of two years from the date of preparation of this reserve list whichever is earlier.”

10 It would appear that in 2005 Rules, the provision was made for wait list. The said provision was substituted in 2011 Amendment Rules. As per the said amendment, in case of recruitment by competitive examination, the reserve list shall not be maintained. The posts fallen vacant due to non-acceptance of the offer of appointment by the candidates recommended, shall be filled in

through subsequent competitive examination and the reserve list was maintained in case of direct recruitment only.

11 In the present matter, the recruitment was through the competitive examination. The same does not appear to be a disputed fact. According to Mr. Thombre, learned counsel, these 2011 Amendment Rules came into effect from 8th August, 2013. Even if these Amendment Rules 2011 came into effect from 8th August, 2013, the same would apply to the advertisement of 12th February, 2014.

12 As per this amended Rules, there is no provision made for preparing wait/reserve list in case of recruitment by competitive examination. The distinction between the competitive examination and direct recruitment is also clarified in the Rules.

13 The Rules of 2011 were also subject matter of discussion before the Division Bench of this Court at Principal Seat in Writ Petition No.5621 of 2015 and Writ Petition No.4555 of 2016 decided on 3rd July, 2018.

14 It would appear that the advertisement was for the post of Assistant Conservator of Forest and also for the post of Range Forest

Officer and the recruitment was through the competitive examination. It is only if single cadre is involved for selection by competitive examination, reserve list is to be maintained for one year. The same is as per the Rules of 2014 (come into effect from May 2014) i.e. after issuance of the advertisement. As the advertisement was for multi cadre post, the provision of reserve list / wait list also would not arise. The Tribunal has considered the said aspect.

15 Considering the case either from the point of view of Amendment Rules 2011 or subsequently fresh Rules of 2014, the petitioners are not entitled for the relief.

16 In view of that, both the writ petitions stand disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

nga