

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

**WRIT PETITION NO. 11843 OF 2017
WITH CIVIL APPLICATION NO. 5428 OF 2020**

1. Angad Dnyanoba Shitale
Age : 30 Years, Occ. Nil
R/o. At Post Ukhali (BK) Tq. Sonpeth
Dist. Parbhani
2. Vaishnavi Prasadrao Panchal
Age : 22 years, Occ. Nil
R/o. At Post Hatta Tq. Basmat
Dist. Hingoli
3. Kanhopatra Haribhau Dolare
Age : 27 Years, Occ. Nil
R/o Yashwant Nagar, TPS Road
Osmanabad Dist. Osmanabad
4. Ganesh Tulshiram Jadhav
Age : 31 Years, Occ. Nil
R/o. At Post Waregaon
Tq. Phulambri, Dist. Aurangabad
5. Dhonduram Bapurao Sagar
Age : 26 Years, Occ. Nil
R/o At Post Jalkot Tq. Tuljapur
Dist. Osmanabad
6. Farug Gafur Khatik
Age : 26 Years, Occ. Nil
R/o At Post Janve Tq. Amalner
Dist. Jalgaon
7. Manjula Tryambakrao Kalaskar
Age : 37 Years, Occ. Nil
R/o Shivraj Co-operative Housing Society
House No. 55, Maniknagar, Ambad link
Road, Nashik
8. Prakash Pandurang Saindane
Age : 30 Years, Occ. Nil
R/o 20, Om colony, Subhash Nagar

Warkhedi Road Old Dhule
District Dhule

9. Priyatama Vitthal Ingle
Age : 34 Years, Occ. Nil
R/o. At Post Belkhed Tq. Telhara
Dist. Akola
10. Maroti Baban Tonge
Age : 32 Years, Occ. Nil
R/o Kegaon Post Wegaon,
Tq. Maregaon, Dist. Yawatmal
11. Pranav Sukhadeo Koche
Age : 34 Years, Occ. Nil
R/o. Dr. Zakir Hussain Ward,
Near C.J. Patel college,
At Post Tirora, Dist. Gondia
12. Shubham Digambar Gawai
Age : 23 Years, Occ. Nil
R/o At Post Malkhed (Kd)
Tq. Ner Dist. Yawatmal
13. Amol Jagdeo Wankhade
Age : 25 Years, Occ. Nil
R/o At Sonarkheda, Post Markanda
Tq. Bhatkuli, Dist. Amravati.

.... PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Secretary,
Power Department,
Mantralaya Mumbai
2. The Managing Director,
Maharashtra State Power Generation Company Ltd.,
Plot No. G-9, 6th Floor,
Prof. Anant Kanekar Marg,
Bandra East, Mumbai – 400051
3. The Executive Director, (Human Resources)
Maharashtra State Power Generation Company Ltd.,

Plot No. G-9, 1st Floor,
Prof. Anant Kanekar Marg,
Bandra East, Mumbai – 400051.

... RESPONDENTS

Mr. Anandsing S. Bayas, Advocate for the petitioners
Mr. A. R. Kale, AGP for respondent No. 1/State
Mr. A. M. Gaikwad, Advocate for respondent Nos. 2 and 3.

**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

**RESERVED ON : 30/04/2021
PRONOUNCED ON : 04/05/2021**

JUDGMENT (Per – Shrikant D. Kulkarni, J.)

1. Rule. Rule made returnable forthwith. With consent of parties, petition is taken up for final disposal at admission stage.

. Factual matrix.

2. The Maharashtra State Power Generation Company Ltd., (for brevity 'MSPGC Ltd.,') / Respondent Nos. 2 and 3 by way of direct recruit had advertised 947 posts of Technician-III. Out of 947 posts, 473 posts were reserved for general (Non Pragat Kushal) and remaining 474 posts were reserved for special category meant for project affected candidates (Pragat Kushal). The petitioners are possessing the requisite qualification of diploma in Industrial Training Institute (ITI) and as such they are qualified for the said post of Technician-III. The petitioners had applied for the said post

of Technician-III in view of the advertisement published by MSPGC Ltd., In the advertisement, it was specifically stated that the selected candidates may be accommodated in any power station run by Power Generation Company.

3. On 07/05/2016 and on 08/05/2016 the respective petitioners had appeared for the examination. On 10/06/2016 the result of final examination was declared by MSPGC Ltd. They declared select list and waiting list and published notification dated 01/10/2016. It was specifically mentioned in clause 8 of the notification that if the candidates from select list are found disqualified during course of document verification process, the candidates from the waiting list would be considered. The names of petitioners find place in the waiting list. 947 candidates were on the select list. At the time of document verification process out of 947 selected candidates, 166 candidates were found ineligible and thus disqualified. Some of the candidates from select list had refused to join the post. As such there are 215 posts which fell short to complete the recruitment of 947 posts. The MSPGC Ltd has declared that the select list and wait list would remain in force for one year from the date of its publication meaning thereby the list would be in force till 01/10/2017.

4. According to the petitioners though 215 posts were not filled in from select list, the respondents are not responding to consider the candidates from the waiting list wherein the names of petitioners are appearing. The petitioners had submitted their representations on 20/07/2017 and 03/09/2017 to respondent Nos. 2 and 3 authorities and requested to issue appointment orders. The representations submitted by the petitioners are not considered by the respondent authorities. In the above background the petitioners are before us. They are seeking directions to respondent Nos. 2 and 3 to consider their claim for the appointment to the post of Technician-III since their names appear in the waiting list when there are more than 200 vacancies with MSPGC Ltd.

5. We have heard Mr. Anandsing Bayas, learned Advocate for petitioners, Mr. A. R. Kale, learned AGP for respondent No. 1/State and Mr. A. M. Gaikwad, learned Advocate for respondent Nos. 2 and 3 at length. We have also gone through the advertisement published by MSPGC Ltd. We have also perused select list and waiting list prepared by MSPGC Ltd., for the post of Technician-III for general (Non Pragat Kushal) and special category meant for project affected candidates (Pragat Kushal). Also perused the reply affidavit filed on behalf of respondent Nos. 2 and 3 and

rejoinder filed on behalf of petitioners and documents and papers relied by both the sides.

Submissions of learned Advocate for the petitioners.

6. Mr. Bayas, learned Advocate for the petitioners vehemently submitted that the names of petitioners appeared in the wait list. Some of the petitioners are from open category, some from scheduled caste category, some from OBC category and one from NTC. He submitted that in document verification process 166 candidates were found ineligible and they were disqualified. Some of the candidates from select list had refused to join the post of Technician-III. As such there are 215 posts still lying vacant. As per the clause of the advertisement respondent authorities are required to consider the names of candidates on the waiting list. The respondent authorities ought to be considered the claim of petitioners who are on wait list for the post of 215 which are still lying vacant as per the advertisement given for 947 posts. It is expected from the Generation Company to operate the waiting list when the waiting has force for a period of one year from its publication. The respondent authorities are not considering the representations given by the petitioners. The petitioners have

genuine claim on the post lying vacant in view of the clause published in the advertisement.

7. Mr. Bays submitted that the claim of petitioners cannot be denied even though they are from wait list particularly when all the posts advertised are not filled in by the respondent authorities. Mr. Bays has placed his reliance on following stock of citations in support of his argument.

1. Dinesh Kumar Kashyap and others V/s South East Central Railway and others (2019) 12 Supreme Court Cases 798.
2. Gujarat State Dy. Executive Engineers Association V/s State of Gujarat and Others 1994 Supp (2) Supreme Court cases 591.
3. State of J & K & Ors. V/s Sat Pal 2013 DGLS (SC) 96.
4. Surinder Singh and Other V/s State of Punjab and Another (1997) 8 Supreme Court cases 488.
5. A.P. Aggarwal V/s Government of National Capital Territory of Delhi and another AIR 2000 Supreme Court 205.
6. Jai Narain Ram V/s State of U.P. and others (1996) 1 Supreme Court cases 332.
7. R. S. Mittal V/s Union of India 1995 Supp (2) Supreme Court cases 230.
8. Virender S. Hooda and others V/s State of Haryana and another AIR 1999 Supreme Court 1701.

9. Madan Lal and others V/s State of J. & K. and others AIR 1995 Supreme Court 1088.
10. Decision of Division Bench at Aurangabad in Writ Petition No. 12845 of 2018 (Maharashtra Public Service Commission Vs. Jeevan Nivruttirao Wader etc.) decided on 15/02/2019.
11. Decision of Division Bench at Aurangabad in Writ Petition No. 6368 of 2019 (Dnyaneshwar s/o Abhimanyu Wakade and others Vs. The State of Maharashtra and others) decided on 30/04/2020.

8. By taking into consideration of above stock of citations Mr. Bayas submitted that though the names of petitioners are appearing in the wait list, they have right to be appointed when the Generation Company has not fulfilled all the posts which are advertised. The claim of the petitioners need to be considered.

9. Submissions of learned Advocate for the Maharashtra State Power Generation Company Ltd.,/respondent Nos. 2 and 3.

10. Mr. A. M. Gaikwad, learned Advocate for respondent Nos. 2 and 3 submitted that present petitioners are on waiting list prepared in the year 2017. They are not from select list. He submitted that even selected candidate has no indivisible right to get appointment order. He further submitted that even existence of vacancies does not give legal right to candidate in select list.

According to Mr. Gaikwad no mandamus can be issued when there is no legal right. To support the argument, Mr. Gaikwad has placed his reliance following citations.

1. The State of Haryana Vs. Subhash Chander Marwaha and others, AIR 1973 Supreme Court 2216.
2. Jatinder Kumar and others Vs. State of Punjab and others, AIR 1984 Supreme Court 1850.
3. Bihar State Electricity Board Vs. Suresh Prasad and others, AIR 2004 Supreme Court 1724.
4. Union of India and Ors. Vs. Kali Dass Batish and Anr. 2006 AIR SCW 227.

11. Mr. Gaikwad, learned Advocate for respondent Nos. 2 and 3 sonorously contended that it is not obligatory on the part of the MSPGC Ltd., to fill up all vacancies. The MSPGC Ltd., is under noble legal duty to fill up all vacancies. But decision to that effect not to fill up all posts must be bonafide for appropriate reason. To buttress the argument Mr. Gaikwad has placed his reliance on following citations.

1. Shankarsan Dash Vs. Union of India, AIR 1991 Supreme Court 1612.
2. Dinesh Kumar Kashyap and others Vs. South East Central Railway and others, (2019)12 Supreme Court Cases 798.

12. The following admitted scenario throws light regarding post advertised, reserved post, general post, number of candidates on select list and wait list.

1.	2.	3.	4.	5.
Number of post advertised	General posts	Reserved for special class	Number of candidate in the select list	Number of candidate in waiting list
947	473	474	923	474
6.	7.	8.	9.	10.
Number of candidate appeared for document verification	Number of candidates disqualified in document verification	Number of candidate refused to join inspite of their selection	Number of candidates joined on the post	Number of vacancies available according to the advertisement
923	166	49	708	215

13. During course of argument Mr. Gaikwad invited our attention to the additional affidavit sworn on behalf of respondent Nos. 2 and 3 and submitted that Unit-3 at Parli TPS is decommissioned. It is not enough Unit-5 at Koradi TPS and Unit -2 at Bhusawal TPS are also decommissioned in view of resolution passed by the board. The employees who were working in the above said units were required to be accommodated at other generation plants as such it was not possible for the MSPGC Ltd., to fill all the posts advertised. It was a bonafide decision taken by the

MSPGC Ltd. The petitioners have no legal right to seek appointment even though certain posts are vacant.

14. It is well settled position of law that selected candidate has no indefeasible right to be appointed. Existence of a vacancies does not give legal right to a candidate in select list to claim appointment and reliance can be placed to that effect in case of *The State of Haryana Vs. Subhash Chander Marwaha and others* (Supra). In case of *Jatinder Kumar and others Vs. State of Punjab and others* (Supra) it is held by the Apex Court that a person selected by the Subordinate Service Selection Board for direct appointment to the post of Assistant Sub-Inspector of Police has no legal right to be appointed on the basis of recommendation made by the said Board.

15. The process of selection for the purpose of recruitment against anticipatory vacancies does not create a right to be appointed to the post which can be in force by mandamus. In case of *Madan Lal and others V/s State of J. & K. and others* (Supra) it is observed by the Apex Court that the life of selection list get exhausted the moment all vacancies are filled up or after expiry of one year, whichever is earlier that was a case in which the rules

stipulated the list of panel for a period of one year. Therefore, the legal position is very much clear that the persons whose names appearing in the waiting list have no vested right to be appointed but have a limited right to claim appointment against the post which were advertised and in case of non joining of candidates or such advertised post for vacant because of other circumstances.

16. In case of *Surinder Singh and Other V/s State of Punjab and Another* (Supra) it is observed by the Apex Court that the candidates in waiting list have a limited vested right to the appointment to the extent that when the candidates selected against the existence vacancies do not join for some reasons, the wait listed candidates would be entitled for appointment.

17. Having regard to the well settled position of law made clear in above referred citations of the Apex Court, there is no need to refer remaining citations relied upon by both the sides.

18. It is not in dispute that 947 posts of Technician-III were advertised by the MSPGC Ltd. 923 candidates were selected by the MSPGC Ltd. Further it is not in dispute that 708 candidates from the select list have joined their respective posts. 166 candidates out of

947 selected candidates were found ineligible. Some of the selected candidates from the select list had refused to join their post. As such, there are 215 posts lying vacant in view of 947 posts advertised by the MSPGC Ltd.

19. In view of settled legal position even selected candidate has no indefeasible right to get appointment leave aside the candidates who are on wait list. Existence of vacancies does not have legal right to candidate in the select list and that legal position is also made clear by the Apex Court in above referred citation in case of *Jatinder Kumar and others Vs. State of Punjab and others*. Let us consider what is the difficulty of MSPGC Ltd., to consider the wait list when 215 posts out of advertised post are still lying vacant. The MSPGC Ltd., has putforth a reason that the MSPGC Ltd., has decommissioned its units viz. Unit-3 at Parali, Unit-5 at Koradi and Unit-2 at Bhusawal and they have accommodated the employees who were working on the above said units. In this context we have perused the additional affidavit sworn by Mr. Ajinkay s/o Pandurang Ingule, Manager, HR of respondent Nos. 2 and 3. More particularly his affidavit para 2 page 5 throws light on this issue. It is stated by the Manager, HR that during period from 01-04-2016 to 01-04-2017 decommissioning of the working units and/or due to nonavailability

of coal and water etc. as many as 217 posts of Technician-III have become surplus. The Company is taking every effort to accommodate the surplus employees by accommodating them at another unit but they have to abolish 88 posts. Meaning thereby MSPGC Ltd., is unable to consider the request made by the petitioners.

20. In the case at hand the advertisement was issued for the post of Technician-III on 08/02/2016 for 947 posts of Technician-III as per the regulations of MSPGC Ltd., and as per the advertisement the select list and wait list would remain in force for one year from the date of publication. As such the waiting list would be in force till 01-10-2017. The petitioners have filed this petition on 15-09-2017 and knocked the doors of this Court and sought directions to consider their prayer for appointment in view of vacancy though they are from wait list. Before expiry of one year of the list the petitioners have approached this Court and availed legal remedy. In this context clause-8 of Advertisement to consider the names from waiting list is important and supports the case of petitioners. It is stated in clause-8 of the advertisement issued by the MSPGC Ltd., that if the candidates from the select list were found disqualified during the document verification process, the

waiting list will be implemented. As per the information collected by the petitioners under RTI Act and placed on record 166 candidates from select list were found ineligible and therefore they were disqualified. Some of the candidates from select list had refused to join the post. There are 215 posts still lying vacant to complete the recruitment of 947 posts of Technician-III.

21. The following are the details of the petitioners on the waiting list and available vacancies from the respective category.

Sr. No.	Petitioner No.	Name of the candidate	Caste	Caste category waiting No.	The number of candidate who has declared disqualified, remain absent and refused to join.
01.	Petitioner No. 1	Angad Dnyoba Shitale	Open	03	112 Vacancies (Open)
02.	Petitioner No. 4	Ganesh Tulshiram Jadhav	Open	18	
03.	Petitioner No. 10	Maroti Baban Tonge	Open	27	
04.	Petitioner No. 13	Amol Jagdev Wankhede	SC	01	23 Vacancies (Scheduled Caste)
05.	Petitioner No. 11	Pranav Sukhdev Koche	SC	06	
06.	Petitioner No. 12	Shubham Digambar Gawai	SC	13	
07.	Petitioner No. 3	Kanopatra Haribhau Dolare	NT-C	WR-01	08 Vacancies (NTC-Category)
08.	Petitioner No. 2	Vaishnavi Prasadrao	OBC	WR-01	33 Vacancies

		Panchal			
09.	Petitioner No. 7	Majula Trimbakrao Kalaskar	OBC	WR-02	
10.	Petitioner No. 9	Priyatama Vitthalrao Ingle	OBC	WR-04	
11.	Petitioner No. 5	Dhonduram Bapurao Sagar	OBC	EA-01	
12.	Petitioner No. 6	Faruk Gaffur Ghatik	OBC	03	
13.	Petitioner No. 8	Prakash Pandurang Saidhane	OBC	18	(Other backward)

Open	-	Open Category
SC	-	Scheduled Caste
N.T.C.	-	Nomadic Tribe "C"
OBC	-	Other Backward Class
W.R.	-	Women Reservation
E.A.	-	Earthquake affected

22. On perusing the document produced by MSPGC Ltd., more particularly at page No. 119-B, it would be clear that in all 9 selected candidates issued with the appointment order from a category of Pragat Kushal have not joined their posts of Technician-III. Further it is evident that 24 selected candidates issued with the appointment order from general category have not joined their posts of Technician-III. As such $24 + 9 = 33$ selected candidates seem to have not joined their respective posts of Technician-III. Those 33 posts are not filled in by the MSPGC Ltd. There was no impediment for the MSPGC Ltd., to fill up those 33 posts from the

waiting list candidates obviously as per the seniority and merit and as per the reservation policy. There may not be any difficulty for the MSPGC Ltd., to make such exercise when 33 candidates duly appointed refused to join their posts as per their own document.

23. The respondents-authorities cannot take undue advantage of their long process and resultantly say that waiting list is now invalid. The petitioners have approached this Court before one year of expiry of the wait list and sought directions. As such there is no technical hurdle.

ORDER

1. The MSPGC Ltd/ respondent Nos. 2 and 3 shall consider the candidature of petitioners for the appointment on the post of 33 Technicians viz., the post for which appointment orders were issued to the selected candidates and they did not join from the waiting list subject to their seniority and as per reservation policy if they are otherwise found eligible for the said post.
2. With the above directions, writ petition is disposed of.
3. Civil application also stands disposed.
4. No order as to costs.

[SHRIKANT D. KULKARNI, J.]

[S. V. GANGAPURWALA, J.]