

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

907 WRIT PETITION NO.5415 OF 2022

**ABHLJT BABURAO GAIKWAD
VERSUS
STATE OF MAHARASHTRA THROUGH PRINCIPAL SECRETARY AND
ANOTHER**

Miss Harshita M. Manglani, Advocate for the petitioner.
Mr.S.G. Sangle, AGP for the respondent/State.
Mr.S.V. Adwant, Advocate for respondent No.2.

**CORAM : RAVINDRA V. GHUGE &
 ANIL L. PANSARE, JJ.
DATED : 17.06.2022**

PC :-

01. By this petition, the petitioner has putforth prayer clauses (B) and (C) as under :-

“B. By a writ of mandamus, or by any other suitable writ, order or direction, the Respondent No.2 may kindly be directed to issue appointment for Assistant Engineer (Trans) from SC Category to the petitioner.

C. Pending hearing and final disposal of the present writ petition, the respondent No.2 may kindly be directed to keep 1 post of Assistant Engineer (Trans) from SC Category Vacant.”

02. We have considered the vehement submissions of the learned Advocate for the petitioner, who has strenuously canvassed the grounds (I) to

(VIII) formulated in the memo of the petition, which read as under :-

“I. That the Wait list is to be operated against any post which is vacant or falls vacant till the wait list is valid.

II. The respondents have committed an error in not appointing the petitioner to the vacant post which had become available to the respondent no.2 within the validity period of operation of wait list.

III. That, the very purpose of the waitlist is to made a candidate available to the respondent for the post which are advertised or have fallen vacant within the validity period.

IV. The respondent No.2 committed an error restricting the waitlist only the 2 points in SC Category as advertised.

V. That respondent No.2 committed an error in not appointing petitioner who was kept in wait list for the post which had fallen vacant before the selection process commenced.

VI. The respondent No.2 committed an error in not giving due consideration to the saving clause mentioned in the advertisement in respect of the number of vacancies and reservation for Backward classes, persons with disability, women and sports persons are provisional and may further change. Such change will not be notified either in the newspaper, or website or intimated to the candidate.

VII. The respondent No.2's action in not appointing petitioner whose name appeared in waitlist through the post was vacant is

arbitrary, ultra vires being violative of Article 14 of Constitution of India.

VIII. That there is no rational in the not appointing the petitioner though have been selected and included in the wait list.

03. The learned Advocate representing the respondent company Mr. Adwant strenuously submits that the wait list in which the name of the petitioner appears, has expired in January, 2019. Once a wait list is expired, the prospective employer cannot pick and chose one of the candidates from the wait list and consider him/her for appointment.

04. We are in agreement with the submissions made on behalf of respondent No.2 that a wait list cannot be revived by exercise of our writ jurisdiction. We cannot infuse life into a dead wait list.

05. In view of the above, this petition being devoid of merit is, therefore, dismissed.

[ANIL L. PANSARE,J.]

[RAVINDRA V. GHUGE,J.]