

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15140 OF 2017

Kiran S/o Vasant Shinde

Age : 26 years, occ : service

R/o Thergaon, Tal. Karjat,

District Ahmednagar.

Petitioner

Versus

1. The State of Maharashtra
Through it's Secretary,
Urban Development Dept.
Mantralaya, Mumbai - 32

2. The Commissioner,
Pimpri Chinchwad Municipal
Corporation, Pimpri.

Respondents

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Mr. A.B. Chalak, Advocate for the petitioner.

Mr. K.N. Lokhande, A.G.P. for respondent No.1 – State.

Mr. V.P. Latange, Advocate for respondent No.2.

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CORAM : C.V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.

DATE : 06 JULY 2022

JUDGMENT (PER SANDIPKUMAR C. MORE, J.) :

Rule made returnable forthwith. Learned Counsel for the parties waive service for respective respondents. Heard finally by consent of the parties.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner is challenging the decision-cum-notification dated 17 October 2017 issued by respondent No.2 – Commissioner, Pimpri Chinchwad Municipal Corporation, whereby there was denial of preparation and publication of select list and wait list for the post of Civil Engineering Assistant, pursuant to an advertisement No. 473 of 2015 dated 31 January 2015. The petitioner has also sought direction to respondent No. 2 – Corporation to prepare and publish the select list and wait list in accordance with the aforesaid advertisement.

3. The petitioner claims that respondent No. 2 – Corporation had issued the aforesaid advertisement inviting applications for the various posts including the post of Assistant Civil Engineer from the persons belonging to different categories, including the category of the present petitioner i.e. 'Other Backward Class' category (project affected). The petitioner applied for the aforesaid post of Assistant Civil Engineer from the project affected (other backward class) category. After conducting

written examination for the said post, respondent No. 2 – Corporation declared result on 20 April 2015 and called successful candidates for document verification as per the marks secured by them in the said written examination. After verification of the documents, respondent No. 2 – Corporation published first merit list as well as waiting list on 29 June 2015. However, since the required vacancies could not be filled in, the respondent No. 2 then decided to call further candidates from the list as per their marks, for document verification. Accordingly, the petitioner was called for document verification on 9 July 2015 and he then submitted all his documents required for the selection.

4. However, in the meanwhile, respondent No. 2 published one notification-cum-circular dated 30 September 2015 informing that some of the candidates had filed Writ Petition No.6762 of 2015 before this Court at the Principal Seat at Bombay, and therefore, further process for filling up the posts was stayed by way of ad-interim relief in the said writ petition. Thereafter this Court was pleased to dismiss the said writ petition under it's judgment and order dated 9 February 2017. Then

surprisingly respondent No. – 2 Corporation took a decision vide notification dated 17 October 2017 not to prepare select list and wait list for the post of Civil Engineering Assistant due to lapse of period of two years from the first select list. Hence, the petitioner has preferred this writ petition for the reliefs mentioned herein-above.

5. The petition is strongly opposed by respondent No. 2 – Corporation by filing affidavit-in-reply dated 8 October 2018. Respondent No. 2 supported the impugned notification dated 17 October 2017 and contended that the Selection Committee has rightly taken the decision in the meeting dated 1 September 2017 not to prepare the select list and wait list for the post of Civil Engineering Assistant due to lapse of two years period from the date of publication of first list and accordingly the impugned notification was issued.

6. To the reply of respondent No. 2 – Corporation, the petitioner filed affidavit in rejoinder by reiterating the earlier facts. In addition to that, the petitioner contended that he possessed all the required documents which were in fact verified by respondent

No. 2 – Corporation and still respondent No. 2 without any fault on his part, took erroneous decision not to prepare the select list and wait list. He also resorted to the judgment and order dated 20 November 2017 passed in Writ Petition No. 4773 of 2017 in the case of ***Rohini Laxmanrao Waghmare vs The State of Maharashtra*** and others whereby this Court at the Principal Seat at Bombay, directed the present respondent No. 2 - Corporation to consider the claim of the petitioner therein who was similarly placed as like the present petitioner. As such, the petitioner claimed that like the petitioner Rohini Waghmare in the aforesaid petition, his claim also be considered by respondent No.2.

7. We have carefully gone through the entire material on record in the light of the rival submissions made on behalf of the petitioner as well as respondent No. 2 – Corporation.

8. The learned Counsel for the petitioner, besides the judgment and order in Writ Petition 4773 of 2017, also placed reliance on the following judgments :

(i) ***Prem Prakash vs Union of India and others, 1984 (Supp) SCC 687.***

(ii) ***N.T. Devin Katti and others vs Karnataka PSC & others***

1990 (3) SCC 157

- (iii) *R.S. Mittal vs Union of India, 1995 (Supp) 2 SCC 230.*
- (iv) *Praveen Singh vs State of Punjab and others, 2000 (8) SCC 633.*
- (v) *Rajabhau Shamrao Chavan vs The State of Maharashtra WP No. 6902 of 2010.*
- (vi) *State of J & K and others vs Sat Pal 2013 (11) SCC 737.*
- (vii) *Ashok Arjunrao Khillare vs State of Maharashtra and anr. W.P. No. 10330 of 2017.*

9. On the contrary, the learned Counsel for respondent No. 2 placed reliance on the judgment of Hon'ble Supreme Court in the case of *The State of Haryana vs subhash Chander Marwaha and others, AIR 1973 SC 2216.*

10. It is not in dispute that under the impugned notification dated 17 October 2017, the respondent No. 2 has mentioned that the decision for preparation of select list and wait list was cancelled since more than two years' period had lapsed from the date of the preparation of select list and wait list. The record shows that the respondent No. 2 had prepared first select list and wait list from the candidates who appeared for written examination for the advertised posts on the basis of marks secured

by them in the written examination in different castes / categories. However, it is extremely important to note that the name of the present petitioner was not there in the first select list or wait list, as he could not secure the marks required for cut-off to be selected in those lists. However, a communication dated 30 September 2015 issued by respondent No. 2 further indicates that though 85 candidates were selected in the merit list and wait list firstly, but since there was need to select some more candidates as no candidate was available for certain categories, some further candidates as per their merit were asked for document verification on 9 July 2015. Accordingly, the petitioner was asked for such document verification on 9 July 2015.

11. It is not in dispute that though the documents of the present petitioner alongwith other candidates were verified on 9 July 2015, further select list and wait list for those candidates could not be prepared in view of the pendency of Writ Petition No. 6762 of 2015 and other writ petitions, filed by some of the candidates challenging the selection process. Though initially this Court at Principal Seat, Bombay had granted interim stay for preparation of further select list and wait list in those petitions, but

ultimately under the order dated 9 February 2017, dismissed those petitions being devoid of merit. This Court, under that judgment, had in clear terms refused to continue the interim order as mentioned above. After the said decision, the respondent No. 2 has decided not to prepare the select list and wait list under the impugned notification dated 17 October 2017.

12. The learned Counsel for the petitioner thus submitted that the impugned notification dated 17 October 2017 is totally erroneous on the part of respondent No. 2, as there was no reason for taking such decision merely on the ground that two years' period had lapsed after the first select list and wait list are prepared.

13. The learned Counsel for the petitioner heavily relied on the judgments as mentioned above. However, after going through those judgments, it appears that in the case of *Prem Prakash vs Union of India and N.T. Devin Katti vs Karnataka PSC* (supra), the Hon'ble Supreme Court has observed that once a person is declared successful according to the merit list of the selected candidates, then the appointing authority has the

responsibility to appoint him and that vested right got created for such successful candidate for being considered for selection. In ***R.S. Mittal vs Union of India*** (supra), the Hon'ble Supreme Court has observed that right of successful candidate needs to be considered when the post for which he applied, remains vacant. In ***Praveen Singh vs State of Punjab and others*** (supra), the Hon'ble Supreme Court has discussed the aspects of arbitrariness, fair play, good conscience and equity. In ***Rajabhau Shamrao Chavan vs The State of Maharashtra*** (supra), it has been observed that when the post remains unoccupied and similarly situated candidates were offered appointments, then the successful candidate, who is denied the appointment, can also be treated equally. In the cases of ***State of J & K vs Sat Pal*** and ***Ashok Arjunrao Khillare vs State of Maharashtra*** (supra), the Hon'ble Apex Court has discussed the validity of select list and wait list.

14. Though the learned Counsel for the petitioner relied upon the aforesaid decisions, but it is extremely important to note that all these judgments are in support of the candidates who were already selected under select list and wait list. In the instant case, though it is the claim of the petitioner that in the second round,

select list and wait list were prepared after verifying his documents and that of others and his name appeared in that select list, but in fact no such second select list or wait list appears to be prepared in the second round. The learned Counsel for respondent No. 2 – Corporation in all fairness submitted that no select list or wait list in the second round, wherein the petitioner was called for documents verification, had in fact been prepared. Therefore, a specific query was made to the learned Counsel for the petitioner as to whether such select list or wait list is produced on record. However, the learned counsel for the petitioner answered in the negative. On making repeated query, he then accepted that no such select list or wait list was in fact prepared in the second round. Thus, there is nothing on record to show that the petitioner had in fact was included in the select list or wait list prepared in the second round. In absence of preparation of select and wait list in the second round, the petitioner cannot get benefit of the observations of the Hon'ble Supreme Court in the judgments relied upon by him.

15. The learned Counsel for the petitioner submits that this Court at Principal Seat, Bombay had granted relief to one of

the candidate i.e. Rohini Laxmanrao Waghmare in Writ Petition No. 4773 of 2017 vide judgment and order dated 20 November 2017 and prayed that the petitioner is also entitled for the similar relief on the ground of parity, by considering that the said petitioner Rohini was similarly placed as that of him. However, we are not inclined to grant such relief to the petitioner in the light of the judgment and order dated 20 November 2017 in the aforesaid writ petition, mainly because the petitioner Rohini Waghmare in that petition was there in the first select list and this Court only directed to consider her claim since she was just next to the candidate in her category, who became ineligible to be appointed and also that the post of her category remained vacant. It cannot be said by any stretch of imagination that the present petitioner is similarly situated as that of the said petitioner Rohini Waghmare since the name of the present petitioner was not there in the first select list or wait list. Moreover, there is nothing on record to show that the name of the petitioner was in the select list or wait list which was claimed to be prepared in the second round. In fact, it has come on record that no such select list or wait list was prepared in second round after verification of documents of

the petitioner and others. Thus, the petitioner cannot claim as of right any direction to respondent No.2 – Corporation to declare him successful candidate to be appointed for the post of Civil Engineering Assistant in his category.

16. The learned Counsel for respondent No. 2 also placed reliance on the judgment of the Hon'ble Supreme Court in the case of *The State of Haryana vs Subhash Chander Marwaha* (supra) wherein it has been observed that, the competitive examination is for the purpose of showing that a particular candidate is eligible for consideration. Selection for appointment comes later. It is open to the Government to decide how many appointments shall be made. The mere fact that the candidate's name appears in the list does not entitle him to be appointed. Thus, the Hon'ble Supreme Court has made it clear that existence of vacancies does not give legal right to a candidate in select list to be appointed to the post.

17. Here in this case, the name of the petitioner is not even appearing in any select list or wait list. Even if it is assumed for the sake of argument that select list and wait list were prepared

in the second round including the name of the petitioner, then also the petitioner cannot claim his selection for the advertised post as of right, in view of the aforesaid observation of the Hon'ble Supreme Court.

18. Thus, we are of the opinion that the petitioner is not at all entitled for the reliefs claimed in this petition. We find no merit in the petition, which accordingly stands dismissed.

Rule stands discharged with no order as to costs.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.