

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Writ Petition No.4649 of 2022**

The Maharashtra Public Service Commission,
through its Secretary,
Office at 5½th Floor,
Cooperage Telephone Nigam Building,
Maharshi Karve Road,
Mumbai 400021,
(Original respondent no.2)

... Petitioner

Versus

1. Prafulla S/o Vinayakrao Washimkar,
Aged : Major,
Occu.- Unemployed,
R/o 462, Dr. Ambedkar Nagar,
Nagpur.
2. The State of Maharashtra,
through its Secretary,
Industry, Energy and Labour Department,
Mantralaya, Mumbai-32.

... Respondents

Shri S.S. Ghate, Advocate for Petitioner.

Respondent No.1 in person.

Ms N.P. Mehta, Assistant Government Pleader for Respondent No.2.

CORAM : SUNIL B. SHUKRE & G.A. SANAP, JJ.

DATE : 6th OCTOBER, 2022

ORAL JUDGMENT (PER SUNIL B. SHUKRE, J.) :

1. Rule. Rule is made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

2. The respondent No.1 having appeared at the written examination held on 2-5-2018 for making an appointment to the post of Assistant Commissioner of Labour was declared successful in the examination and was placed at Serial No.12 of the wait-list, which is called by the Maharashtra Public Service Commission Rules of Procedure, 2014 ("the Rules of 2014", for short) as reserved list. The petitioner was so selected from the category reserved for Scheduled Caste candidates.

3. There were other two persons belonging to Scheduled Caste category, who were placed above the respondent No.1 in terms of merit and there being one post reserved for the Scheduled Caste candidate, the candidature of the first person topping the list of Scheduled Caste candidates was considered and appointment was given to her. However, for some reason, she did not join the service and, therefore, the appointment was offered to the next candidate in line, who was one Shri Sandeep Mashilkar. Even said Shri Sandeep Mashilkar did not join the service and, therefore, the appointment should have naturally be given to the respondent No.1, but by the time the turn of the respondent No.1 came, the validity of the reserved list, as per the Rules of 2014 was already over and the list stood lapsed. The effect was that the respondent No.1 lost his right to secure the appointment as per the reserved list and as such no appointment to

the post of Assistant Commissioner of Labour was offered to the respondent No.1.

4. Sensing that the respondent No.1 would not be offered any appointment by the petitioner- Maharashtra Public Service Commission, even before the expiry of the reserved list on 25-5-2019, the respondent No.1 approached the Maharashtra Administrative Tribunal by filing an Original Application on 25-3-2019 seeking a direction for being appointed to the post of Assistant Commissioner of Labour.

5. This application was registered as Original Application No.239 of 2019 and it was decided by the order passed on 21-1-2020 by the Maharashtra Administrative Tribunal. The Tribunal did not consider the submission of the Presenting Officer made to it that by the time the order was to be passed by the Tribunal, the reserved list had stood lapsed and gave liberty to the respondent No.1 to make a representation, initially to the State Government and later on, by way of correction to the final order, to the Maharashtra Public Service Commission, i.e. the petitioner herein, for consideration of his claim regarding his appointment as Assistant Commissioner of Labour on the strength of the reserved list prepared by the Maharashtra Public Service Commission on 25-5-2018.

6. Meanwhile, the State Government sent a recommendation to the Maharashtra Public Service Commission to consider the claim of the respondent No.1 as a special case for the reason that there were several vacancies in the post of Assistant Commissioner of Labour and the procedure followed for filling up those vacancies was time-consuming. The recommendation, however, was not accepted by the petitioner-Maharashtra Public Service Commission and it rejected the representation of the respondent No.1. The petitioner found that the Rules of 2014 were very clear in this regard and as per Rule 10(8)(a) and (b) thereof, the claim of the respondent No.1 could not be accepted by it.

7. The respondent No.1 then approached the Maharashtra Administrative Tribunal by challenging the decision of the petitioner dated 30-7-2020. The application was registered as Original Application No.46 of 2021. This time, the Tribunal found that there was not just recommendation made by the State Government to the Maharashtra Public Service Commission for giving appointment to the respondent No.1 to the post of Assistant Commissioner of Labour against Rule 10(8) of the Rules of 2014 and as a special case, but found that there was a decision taken by the State Government for giving appointment to the respondent No.1 to the said post. The

Maharashtra Public Service Commission being aggrieved by the decision of the Tribunal dated 22-3-2022 has approached this Court.

8. We have heard Shri S.S. Ghate, learned counsel for the petitioner- Maharashtra Public Service Commission; the respondent No.1- Prafulla Vinayakrao Washimkar, the concerned candidate in person; and also Ms N.P. Mehta, learned Assistant Government Pleader for the respondent No.2- State.

9. According to the respondent No.1, his Original Application filed before the Maharashtra Administrative Tribunal being before the expiry of the reserved list on 25-5-2019, the Tribunal as well as the State Government and the Maharashtra Public Service Commission had power to consider the case of the respondent No.1 and grant him an appointment to the post of Assistant Commissioner of Labour. He relies upon the observations made in Para 32 of the judgment delivered by High Court of Madhya Pradesh in Writ Petition No.4792 of 2020 decided on 9-9-2021.

10. In our view, this judgment has no application to the facts of the present case for the reason that during the validity period of the reserved list here, no vacancy to the post of Assistant Commissioner of Labour reserved for Scheduled Caste category arose and this is clear

from the communication of the State Government dated 6-7-2020. On the contrary, this case would be governed by the view taken by the Supreme Court in the case of *Gujarat State Dy. Executive Vs. State of Gujarat and Ors.*, reported in *1994 Supp (2) SCC 591*, wherein in Para 8 of the judgment, the Supreme Court has held that the right to claim appointment on the basis of selection list or waiting list exists only during the period in which the selection list or waiting list remains operative. As stated earlier, the vacancy for the post of Assistant Commissioner of Labour, reserved for Scheduled Caste category candidates, did not arise before expiry of the reserved list on 25-5-2019, as indicated in the present case. Therefore, there was no right existing in favour of the respondent No.1 to claim any appointment to the post of Assistant Commissioner of Labour, as attempted by him. Besides, Rule 10(8)(b) of the Rules of 2014 is very clear and it does not leave any scope for making any exception to it. It clearly lays down that the reserved list prepared for making direct recruitment would lapse on the expiry of one year from the date of declaration of the result or on the publication of subsequent advertisement for the recruitment to the concerned post, whichever is earlier. This Rule was amended in the year 2016, but the position of validity of such reserved list for a period of only one year has remained unchanged even after the amendment. Therefore, no benefit could have been given to the respondent No.1 by the petitioner

nor by the Maharashtra Administrative Tribunal, as sought to be done by the Tribunal in its impugned order. In fact, the Tribunal has committed a serious error of fact and law by taking an erroneous view that there is a decision of the State Government to give an appointment to the respondent No.1 to the post of Assistant Commissioner of Labour (Scheduled Caste). As stated earlier, there is no such decision by the State Government, rather there is only a recommendation made in this regard, and that too as a special case, but, the Rules of 2014 do not make any provision for giving the benefit as sought for by the respondent No.1 as a special case, after the expiry of wait-list or reserved list.

11. We, therefore, find that the impugned order is contrary to the well-settled position of law and also to Rule 10(8) of the Rules of 2014 and, therefore, it cannot stand to the scrutiny of law. Thus, the petition deserves to be allowed.

12. The petition is allowed. The impugned order passed by the Maharashtra Administrative Tribunal dated 22-3-2022 in Original Application No.46 of 2021 is hereby quashed and set aside.

13. Rule is made absolute in the aforesaid terms. No costs.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)

Lanjewar