

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1586 OF 2022

1. Chetan Suryakant Katkar
Age : Adult, Occ : Service
Residing at 1427, D Ward
Uttareshwar Peth
Kolhapur-416 002
 2. Sarjerao Balu Killedar
Age : Adult, Occ : Service
Residing at Khadakewada
Tal Kagal, Kolhapur-416 235
 3. Bhagvan Vilas Patil
Age : Adult, Occ : Service
Residing at Nadhavade
Tal Bhudargad, Kolhapur-416 209
 4. Pravin Tukaram More
Age : Adult, Occ : Service
Residing at PO Bhatiwade
Tal Bhudargad, Kolhapur-416 223
 5. Rohini Ananda Divate
Age : Adult, Occ : Service
Residing at H/No. 1172
Nadgonda Galli, Senapati Kapshi
Tal Kagal, Kolhapur-416 218
- ... Petitioners

6. Vinod Bhaskar Samudre
Age : Adult, Occ : Service
Residing at Borpadle
Tal Panhala, Borapadle
Kolhapur-416 213
7. Nagesh Sidhapa Nalawade
Age : Adult, Occ: Service
Residing at 1382, E Ward
Wada wadi, Rajarampuri
14th Lane, Kolhapur-416 008
8. Sagar Pratap Gaikwad
Age : Adult, Occ: Service
Residing at Plot No. 12
Rajarampuri, ST Colony,
Kolhapur-416 008
9. Kunal Shrikant Bavadekar
Age : Adult, Occ: Service
Residing at Plot No. 731, E-Ward,
Sant Gora Kumbhar,
Vasahat Bapat Camp,
Kolhapur-416 005
10. Mandar Dinkar Jatrata
Age : Adult, Occ: Service
Residing at Post Balinge
Taluka Karveer
Kolhapur-416 010

... Petitioners

11. Swapnil Balu Nagre
Age : Adult, Occ: Service
Residing at A/p. Kameri
Tal. Walwa, Dist Sangli 415 403
12. Rahul Mohan Vade
Age : Adult, Occ: Service
Residing at Burud Galli
Yallama Chowk, Uran
Islampur, Tal : Walwa
Sangli - 415 409
13. Ranjit Prakash Divse
Age : Adult, Occ: Service
Residing at Nagdevade, A/p.
Balinga, Tal. Karvir
Dist. Kolhapur
14. Vinay Goutam Gungikar
Age : Adult, Occ: Service
Residing at 2805/1, C Ward
Siddharth Nagar, Shaniwar Peth
Kolhapur-416 002
15. Aditya Dattatray Patil
Age : Adult, Occ: Service
Residing at Datta Rupa, R. S. 461,
Plot No. E-29, Padalkar Colony,
Kasaba Bavada
Kolhapur-416 006

... Petitioners

16. Sachin Rajaram Kamble
Age : Adult, Occ: Service
Residing at 576, Ambedkar Galli,
Kalamba Trf Thane, Tal. Karveer
Kolhapur-416 007
17. Manoj Mohanrao Wade
Age : Adult, Occ: Services
Residing at Islampur, Tal. Walva
Dist. Sangli
18. Pradip Prakash Ghorpade
Age : Adult, Occ: Service
Residing at Tal : Kagal
Dist: Kolhapur
19. Vikas Baburao Kamble
Age : Adult, Occ: Service
Residing at Siddharth Nagar
At – Kadagaon, Tal : Bhudargad
Dist: Kolhapur
20. Rajaram Vilas Shinde
Age : Adult, Occ: Service
Residing at AP Ghunaki
Tal : Hatkanangale
Kolhapur-416 112
21. Uttam Rajaram Samudre
Age : Adult, Occ: Service
Residing at PO Bodpadale
Tal : Panhala Dist. Kolhapur

... Petitioners

22. Laxman Gangaram Chavan
Age : Adult, Occ: Service
Residing at PO Tisangi, Tal
Gaganbawada
Kolhapur-416 206

23. Dattatray Sutar
Age : Adult, Occ: Service
Residing at PO Sangrol
Tal. Karveer
Dist: Kolhapur

24. Abhimanyu Gawade
Age : Adult, Occ: Service
Residing at PO Ujjaliwadi
Tal : Karveer
Dist :Kolhapur

25. Laxman Sukumar Parit
Age : Adult, Occ: Service
Residing at PO Sagav, Tal :
Halkanlange
Dist : Kolhapur

26. Mahesh Deepak Chavan
Age : Adult, Occ: Service
Residing at 563, 3, Malakapur
Harijan Vada, Village Malakapur
Tal. Shahuvadi,
Dist. Kolhapur-415 101

... Petitioners

Versus

1. Union of India through its
Principal Secretary, Ministry of
Finance, Department of Revenue
Having address as 136 A/North
Block, New Delhi, Delhi
2. Reserve Bank of India
New Central Office Building,
Shahid Bhagat Singh Road,
Fort, Mumbai-400 001
3. Bank of Maharashtra
Through its Managing Director
and CEO Having address Head
Office, Lakmangal, Pune
4. Bank of Maharashtra
Through its General Manager,
Human Resource, Having address
Head Office, Lakmangal, Pune.
- 5 Union of India
Through Ministry of Labour and
Employment, Having address as
Govt. of India, Shram Shakti
Bhawan Rafi Marg,
New Delhi-110 001

... Respondents

Dr. Abhinav Chandrachud a/w. Mr. Makarand Kale i/b. Mr. Yogesh Sankpal and Mr. Akash Reddy for the Petitioner.

Mr. Dhananjay Bhanage for Respondent nos. 3 and 4.

**CORAM : S.V. GANGAPURWALA, ACJ. &
SANDEEP V. MARNE, J.**

RESERVED ON : 1 FEBRUARY 2023

PRONOUNCED ON : 10 FEBRUARY 2023

JUDGMENT (Per Sandeep V. Marne, J) :-

1. Petitioners assail action of the respondent-bank in outsourcing housekeeping activities thereby marring their hopes of securing employment as Part time Sub-Staff. They seek appointment as Part time Sub-Staff consequent to their selection for that post.

2. Facts of the case, shorn of unnecessary details, are that Petitioners' names were requisitioned from employment exchange by Respondent-Bank of Maharashtra for appointment as Part Time Substaff (**PTS**). After undergoing a process of selection, they were engaged by as temporary PTS to perform duties of cleaning, sweeping and house-keeping as well as to assist other bank employees in smooth functioning of

branches/offices. Their initial engagements were made in various years from 2007 onwards. A Memorandum of Settlement dated 5 April 2017 was reached between the Bank and Union, under which the bank agreed to recruit 450 PTS on 1/3rd Scale wages at its branches/offices by undertaking “Part Time Substaff Recruitment Process 2017”. In pursuance of the said Memorandum of Settlement, letter dated 24 January 2017 was issued to all the offices/branches of the bank for carrying out “Part Time Substaff Recruitment Process 2017”. Petitioners applied in pursuance of the said process and were subjected to psychometric test held on 9 September 2018. The results were declared on 1 January 2019 in which they were declared successful. Verification letter dated 7 February 2019 was issued calling upon them to submit documents for verification for issuance of appointment orders. However, despite submitting requisite documents, no further progress was made by the respondent-bank. Instead, respondent-bank suddenly issued letter dated 6 April 2021 conveying the decision to outsource the house-keeping services. By further letter dated 4 December 2021, the decision to outsource house-keeping services was reiterated. Accordingly, a Request for Proposal is floated to appoint an agency for outsourcing.

Petitioners are aggrieved by the Bank's decision to abort the recruitment process and instead opt for outsourcing.

3. Appearing for Petitioners, Dr Chandrachud the learned counsel would contend that having undertaken recruitment process in pursuance of the Memorandum of Settlement, the respondent-bank cannot abandon the same and outsource work to contractors thereby marring the rights created in favour of the selectees. He would submit that 450 vacancies/posts of PTS were sanctioned in view of settlement. That though the principle of the employer having right to keep a post vacant cannot be disputed, at the same time sanctioned vacancies cannot be kept vacant without cogent reasons. Dr. Chandrachud would take us to the affidavit in reply filed by the respondent-bank in order to demonstrate that the reasons for not filling up posts are not cogent. He would dispute the theory of abolition of the posts set up by the Bank contending that it has not placed on record any document to show that the posts are indeed abolished.

4. *Per contra* Mr. Bhanage the learned counsel appearing for the respondent-bank would oppose the petition submitting that petitioners are already agitating their grievances before

the Central Government Industrial Tribunal, Mumbai in Ref. CGIT Case No/2/8 of 2021. He would submit that additionally Writ Petition no. 965 of 2021 has been filed by the Union of petitioners involving the same issue. That in the Memorandum of Settlement, no commitment was made for filling up the posts nor any promise was made that petitioners would be employed. He would submit that the Memorandum of Settlement was executed only with a view to give preference to the staff already employed on part time posts and for relaxing their qualifications and that the same cannot be pressed into service to create an obligation on the part of the bank to employ petitioners. He would submit that the respondent-bank has rightly taken decision to outsource house-keeping services in view of various government directives. Lastly Mr. Bhanage would contend that mere selection of the petitioners does not create any right in their favour to seek appointment with the respondent-bank.

5. Competing claims of Petitioners seeking appointments in pursuance of their selection and of the Bank in enforcing its right to outsource house-keeping services now fall for our consideration.

6. Petitioners essentially premise their claim for appointment as PTS on their selection in the recruitment process, which is sought to be abandoned by Respondent Bank. The recruitment process is undeniably held in pursuance of Memorandum of Settlement dated 5 April 2017 where the respondent-bank decided to undertake "Part Time Substaff Recruitment Process 2017" to fill up 450 posts of PTS. We therefore proceed to examine whether Memorandum of Settlement would create any obligation on the part of the Bank to recruit 450 PTS.

7. Careful perusal of the Memorandum of Settlement would indicate that the bank had accepted the recommendation of the Khandelwal Committee prescribing minimum educational qualification of 10th Standard pass for Substaff /Part Time Substaff. However, it appears that the temporary PTS already working with the bank (like Petitioners) were neither possessing the said minimum educational qualifications nor were fitting within the maximum age limit of 28 years. Therefore by way of settlement, it was agreed that as a onetime measure, temporary PTS already working in the bank would be held eligible to participate in recruitment process irrespective

of their age, educational qualification etc. It therefore appears that the main objective of entering into the Memorandum of Settlement was to provide relaxation to PTS to participate in recruitment process. It cannot be stated that the Memorandum of Settlement created any obligation on the part of the respondent-bank to fill up 450 posts of Part Time Substaff. The only possible right created in favour of temporary PTS already working with the bank was to seek relaxation in terms of educational qualification and age limit.

8. True it is that the respondent-bank did undertake “Part Time Substaff Recruitment Process 2017” and subjected petitioners to the selection process in which they are selected. However, it is settled law that mere selection in the recruitment process does not create any right in favour of selected candidates. Reference in this regard can be made to the judgment of the Apex Court in *Commissioner of Police Vs. Umesh Kumar*¹, in which it is held thus:

14 The real issue, however, is **whether the respondents were entitled to a writ of mandamus. This would depend on whether they have a vested right of appointment. Clearly the answer to this must be in the negative.** In Punjab SEB vs. Malkiat Singh, this Court held that the mere inclusion of candidate in a selection list does not confer upon them a vested right to appointment. The Court held:

¹ (2020) 10 SCC 448

“4. ...the High Court committed an error in proceeding on the basis that the respondent had got a vested right for appointment and that could not have been taken away by the subsequent change in the policy. It is settled law that mere inclusion of name of a candidate in the select list does not confer on such candidate any vested right to get an order of appointment. This position is made clear in para 7 of the Constitution Bench judgment of this Court in **Shankarsan Dash v. Union of India** [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95] which reads: (SCC pp. 50-51)

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165] , *Neelima Shangla v. State of Haryana* [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] or *Jatinder Kumar v. State of Punjab* [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899].”

(emphasis supplied)

9. An exception is sought to be made by Dr. Chandrachud to the above settled position of law by relying upon judgment of the Apex Court in ***Manoj Manu and Anr. Vs Union of India and Ors.***² in which it is held that the selection process cannot be arbitrarily canceled or restricted without a valid reason. It is contended that there is no cogent reason for cancellation or abandonment of process of selection.

² (2013) 12 SCC 171

10. We therefore proceed to examine the reasons put forth by Respondent-Bank for dropping the recruitment process. In its affidavit in reply, the Bank had taken the following stand :

“11. I say that although the Bank had proposed to recruit 450 part-time sub-staff on 1/3rd scale wages, it was not obliged in law to make the actual recruit. The candidates have no rights in law individually or through Union to force the employer to make the recruitment since it is always dependent on the best judgment of the Management about the requirement, financial consequences or changes in policy. I say that the Settlement dated 05/04/2017 also made it clear in para VI that the said Settlement would be subject to applicable laws, Bipartite Settlement and Government guidelines. I say that the Bank subsequently found that it was not possible or necessary to make such huge recruitment at the relevant time. Subsequently, the Board of Directors of the Bank in its meeting dated 20/03/2021 decided to adopt the Outsourcing Model for house keeping activities in pursuance of the Govt's policy of 'Enhanced Access and Service Excellence' (EASE) reform agenda. The Bank therefore decided to outsource house keeping services and gave the necessary instructions to its zonal heads by circular dated 06/02/2021 laying down certain norms.

12. I say that introduction of the outsourcing method made redundant the requirement of part-time sub-staff for house keeping work. The Bank therefore before implementation of outsourcing converted all part-time sub-staff as full time sub-staff on certain terms and conditions and declared the same by circular dated 25/11/2021. **I say that the posts of part-time sub-staff have been abolished by the Bank.** The Bank thereafter invited tenders region wise from competent 3rd party agencies to undertake the Contracts for cleaning and house-keeping work. It is pertinent to note that an agency called WWSO Security and Facility Ltd. has been allotted the said contract for the Kolhapur and Sangli region in which the Petitioners claim to have worked as temporary part-time sub-staff. I say that the Petitioners have been given an option to join the said Company as sub-staff although the said Company is not bound to do

so. I therefore say that the Bank has taken care of the Petitioners by giving them the said option of employment. The allegation that the Bank is forcing them to join the said Company is wrong.”

(emphasis & underlining supplied)

11. Petitioners dispute the defence of abolition of posts by contending that nothing is placed on record to show such abolition. Letter dated 25 November 2021 is on record. By that letter, respondent-bank decided to discontinue the “Part Time Substaff Recruitment Process 2017” and instead converted all PTS to full time cadre as a onetime measure. It was also directed that after conversion of PTS as Full Time Substaff, zones shall continue the house-keeping activities as per bank’s outsourcing policy. Thus, by letter dated 25 November 2021, the bank apparently discontinued the policy of engaging or retaining PTS altogether by converting the existing PTS on full time basis. Thus on the basis of letter dated 25 November 2021, an inference of abolition of 450 posts of PTS can be drawn.

12. Outsourcing of house-keeping activities and abolition of posts of PTS is a policy decision taken by the bank, in which this court would be loath interfering. Merely because petitioners participated in the selection process for

engagement as PTS and were selected, would not create any right in their favour to question the policy decision of the bank to opt for outsourcing of house-keeping services. Petitioners are not in employment of respondent-bank, it is not their case that their conditions of service are affected by the decision of outsourcing. We have no hesitation in holding that petitioners cannot question the policy decision of the respondent-bank to abolish posts, not to proceed ahead with recruitment process and instead opt for outsourcing of house-keeping services. The challenge set up by Petitioners to letters dated 6 April 2021 and 4 December 2021 must therefore fail.

13. Resultantly we do not find any merit in the petition. Petition is dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

14. At this stage learned Advocate for the petitioner seeks continuation of the interim order passed earlier.

15. Considering the request made, the interim order passed earlier is continued for a period of two weeks. On lapse of two weeks, the interim protection shall come to an end.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)