

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.277 OF 2023

Vikrant Vinayak Khadpe & Ors.
V/S

....Petitioners

The State of Maharashtra & Ors.

....Respondents

...

Mr. Anmol B. Chalak a/w Mr. Ratan L. Adhe for the Petitioner.

Mr. R.P. Kadam, AGP for Respondent No.1-State.

Mr. P.P. Chavan a/w Mr. Kiran Gandhi i/b M/s. Little & Co. for Respondent Nos.2 and 3.

...

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

DATE : 27th APRIL 2023.

JUDGMENT (Per – SANDEEP V. MARNE, J.):

1 Rule. Rule is made returnable forthwith. Heard finally with the consent of learned Counsel for Petitioners, learned AGP for Respondent-State and learned Counsel for Respondent Nos.2 and 3-MSEDCL.

2 The present Petition is filed by 87 Petitioners - aspirants for appointment as 'Vidhyut Sahayyak' - challenging the revised select list and revised wait list dated 27th October 2022 from which their names are excluded. Petitioners seek inclusion of their names in the revised wait list

dated 27th October 2022 and consequential appointment to the post of Vidhyut Sahayyak in pursuance of the earlier wait list published on 8th February 2022.

3 The Maharashtra State Electricity Distribution Company Limited (**MSEDCL**) published advertisement in the year 2019 for filing of 5,000 posts of Vidhyut Sahayyak. Out of 5,000 advertised posts, 1378 posts were allotted to Open Category whereas rest of the posts were reserved for various social reservations such as SC, ST, VJ-A, NT-B, NT-C, NT-D, SBC, OBC, SEBC and EWS. In addition to vertical social reservations, horizontal reservations were also provided to various categories such as women, sportspersons, ex-servicemen, project affected persons, etc.

4 Petitioners belong to Special Backward Classes (**SBC**) and are entitled to reservations and were vying for vertically reserved posts. Since they were possessing the requisite eligibility criteria, they applied in pursuance of the advertisement. They were subjected to written test conducted by Respondent-MSEDCL.

5 In the meantime, certain developments occurred having impact on the reservations for Socially and Educationally Backward Class (**SEBC**) and Economically Weaker Section (**EWS**). On 30th November 2018 the Government of Maharashtra enacted the Maharashtra State Reservation (of Seats for Admission in Educational Institutions in the State and for Appointments in Public Services and Posts under the State) for Socially and Educationally Backward Classes Act, 2018 (**SEBC Act**). The Act provided reservation for Maratha community identified as SEBC. The State Government also issued a Government Resolution providing for reservation to Economically Weaker Sections (**EWS**). The Constitutional Validity of the SEBC Act, 2018 was upheld by this Court by its judgment dated 29th June 2019. In Civil Appeal No.3123 of 2020 filed before the Apex Court, an order was passed on 9th September 2020 directing that appointments to public services and posts under Government shall be made without implementing reservations provided under the SEBC Act, 2018.

6 The State Government intended to provide relief to SEBC candidates and directed consideration of their cases under EWS category.

The Government of Maharashtra issued Government Resolution dated 23rd December 2020 directing that SEBC candidates be given EWS Certificates for the year 2020-21 and that SEBC candidates can opt for EWS/Open category for direct recruitment. In view of the said decision, Respondent-MSEDCL issued public notice dated 11th February 2021 calling for options in terms of Government Resolution dated 23rd December 2020. This Court, vide its order dated 15th March 2021 restrained Respondent-MSEDCL from giving effect to the public notice dated 11th February 2021. On 5th May 2021, the Apex Court delivered judgment and order in Civil Appeal No. 3123 of 2020 and the SEBC Act, 2018 making provision for reservations to SEBC category was struck down.

7 The State Government issued Government Resolution dated 31st May 2021 directing that SEBC candidates could avail the benefit of EWS category. On 5th July 2021 Government of Maharashtra issued another Government Resolution allowing SEBC candidates to be considered as either Open candidates or EWS candidates. In accordance with the Government Resolution dated 5th July 2021, the Respondent-MSEDCL

clubbed the posts reserved for SEBC category with open posts. Accordingly result of 4534 candidates was published on 1st October 2022 and category-wise cut off marks were published on 8th October 2021. In respect of 466 posts reserved for EWS, results were not published. In pursuance of the result published by Respondent-Company, document verification of the selected candidates was carried out on 21st and 22nd October 2021 at zonal levels and appointment orders were issued to the eligible candidates. A wait list to the extent of 50% by the select list was also published by Respondent-MSEDCL on 2nd February 2022. The names of Petitioners were included in the wait list. They were subjected to document verification vide list published on 3rd/4th March 2022. Petitioners were looking forward for their appointments as all stages of selection *qua* them were completed.

8 In the light of the developments that occurred with regard to reserved quota for SEBC and EWS categories, the Respondent-MSEDCL took a decision to effect appointments only in categories excepting SEBC and EWS.

9 Some of the candidates from EWS category filed Writ Petition No.2663 of 2021 (*Vikas Balwant Alase & Ors. vs. Union of India & Ors. 2022 (6) ABR 383*) challenging switching over of candidates from SEBC category to EWS category. This Court delivered judgment on 29th July 2022 in Writ Petition No.2663 of 2021 holding that the switch over of SEBC candidates to EWS category was illegal.

10 In pursuance of the judgment and order delivered by this Court in *Vikas Balwant Alase, (supra)* Respondent-MSEDCL revised the select list and published a fresh list of 4605 candidates (5000 advertised vacancies minus (-) 395 EWS vacancies). It also published revised wait list of 2269 candidates. The revised wait list was prepared by taking into consideration horizontal reservations. From the revised wait list so prepared, names of Petitioners were excluded. Petitioners are aggrieved by deletion of their names from waiting list and have accordingly filed present Petition seeking appointment against vacant posts of Vidhyut Sahayyak.

11 Appearing for Petitioners, Mr. Chalak the learned Counsel would submit that the action of Respondent-MSEDCL in publishing a revised select and wait list deleting names of Petitioners therefrom is illegal. He would submit that Petitioners were already selected and all steps relating to their selection were already completed. The Respondent-MSEDCL was therefore under obligation to appoint Petitioners against vacant posts. He would submit that there are as many as 1559 vacancies of Vidhyut Sahayyak existing (other than EWS category) against which Petitioners deserve to be appointed in pursuance of their selections.

12 Mr. Chalak would further submit that by publishing a revised wait list, Respondent-MSEDCL has altered the rules of game during currency of selection, which is impermissible in view of the judgment of the Apex Court in *Maharashtra State Road Transport Corporation & Ors. vs. Rajendra Bhimrao Mandve & Ors*, (2001) 10 SCC 51 as well as the judgment in *K. Manjusree vs. State of Andhar Pradesh*, AIR 2008 SC 1470. He would further submit that once a person is declared successful according to merit list of selected candidates, the appointing authority has a responsibility to appoint him, even if vacancies undergo change. In

this regard he would place reliance on the judgment of the Apex Court in **Prem Prakash vs. Union of India & Ors.**, (1984 (Suppl) SCC 687). He would also rely upon judgment of Division Bench of this Court in **Pramod Vasant Dhavare & Ors. vs. State of Maharashtra & Ors.**, Writ Petition No.1663 of 2019 decided on 13th March 2020 in support of his contention Petitioners deserved to be appointed against existing vacant posts.

13 The Petition is opposed by Respondent-MSEDCL. Mr. Chavan, the learned Counsel appearing for Respondent-MSEDCL would submit that the revised select list and waiting list have been prepared in pursuance of the judgment of this Court in **Vikas Balwant Alase** (*supra*). He would submit that the earlier wait list was prepared without taking into consideration horizontal reservations. That the cut off marks *qua* each reserved category have been published and that all the Petitioners have secured less than the cut off marks in their respective categories. He would submit that the entire selection has been conducted in a transparent manner. He would pray for dismissal of the Petition.

14 The rival contentions of the parties now fall for our consideration.

15 The Respondent-MSEDCL had published advertisement No.04 of 2019 for filling of 5000 posts of Vidhyut Sahayyak. In the advertisement 5000 posts were sub-divided into various categories of vertical and horizontal reservations as under:

category	SC	ST	VJ (A)	NT (B)	NT (C)	NT (D)	SBC	OBC	SEBC	EWS	Open	Total posts
No. of Posts	375	236	109	80	118	44	1507	81	606	466	1378	5000
Statement category wise social / horizontal reservation of vacancies												
General	124	78	36	26	39	15	497	27	200	154	441	1637
Women	113	71	33	24	35	13	452	24	182	140	413	1500
Sportsperson	19	12	5	4	6	2	76	4	30	23	69	250
Ex Servicemen	56	35	16	12	18	7	226	12	91	70	207	750
PAP	19	12	6	4	6	2	75	4	30	23	69	250
Earthquake affected	7	5	2	2	2	1	30	2	12	9	27	99
Apprentices	37	23	11	8	12	4	151	8	61	47	138	500
Disabled	Disabled category - 100											
Orphan											14	14

16 After conducting the written test, Respondent-MSEDCL published a select list of 4534 posts (except in EWS posts). We have already narrated details of developments relating to SEBC and EWS reservations, which according to us, are not too relevant for the purpose of deciding the issue involved in the present Petition. After publishing the select list Respondent-MSEDCL also published wait list to the extent of 50% of the

select list. It is the case of Respondent-MSEDCL that while publishing the wait list on 1st February 2022 it did not apply horizontal reservations. In pursuance of the select list and the wait list, a zone-wise allocation list was published on 21st February 2022. It appears that since the requisite number of candidates included in the select list did not join the posts of Vidhyut Sahayyak, Respondent-MSEDCL decided to operate the wait list and accordingly candidates in the wait list, including Petitioners, were allotted zones on 21st February 2022 and were directed to proceed for document verification. The process of document verification was undergone by Petitioners. This created a hope in the minds of Petitioners that they are selected for appointments. They accordingly looked forward to issuance of appointment orders in their favour.

17 However, on account of the judgment of this Court in ***Vikas Balwant Alase*** (supra) delivered on 29th July 2022, Respondent-MSEDCL was required to revise the select list and wait list. While preparing the revised wait list Respondent-MSEDCL apparently noticed mistake in the earlier wait list of not applying horizontal reservations. It corrected the mistake by applying horizontal reservations prescribed in the advertisement.

This led to deletion of names of Petitioners from the revised wait list. The deletion of their names from wait list is the cause for heartburn amongst them.

18 Respondent-MSEDCL has placed on record a chart alongwith their additional affidavit dated 24th April 2023 to demonstrate that none of Petitioners have secured more than cut off marks in respect of each of the reserved categories. Petitioners have not disputed correctness of the said chart. In short, Petitioners do not dispute that they have not secured the cut off marks arrived at after application of horizontal reservations to the revised wait list. The only case that Petitioners have set up is alleged right created in them to be appointed in pursuance of inclusion of their names in the earlier wait list as well as completion of process of selection. The short issue that therefore arises for consideration is whether any enforceable right got created in favour of Petitioners by inclusion of their names in earlier wait list?

19 The law is well settled in catena of judgments that mere selection of a candidate does not create any vested right in his favour. The reference in this regard can be made to the judgments in *Commissioner*

of Police Vs. Umesh Kumar, Civil Appeal No. 3334 of 2020 decided on 7th

October 2020, in which it is held:

“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:

“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)”

“In the present case, after the name of respondents appeared in the results declared on 17 July 2015, the process of recruitment was put in abeyance since the results were challenged before the Tribunal. The process of revising the results during the course of the recruitment was necessitated to align it in accordance with law. An Expert Committee was specifically appointed following the institution of proceedings before the Tribunal. The report of the Expert Committee established errors in the answer key, and thereafter a conscious decision was taken, after evaluating the report, to revise the results on 1 February 2016. In the fresh list which was drawn up, both the respondents have admittedly failed to fulfill the cut-off for the OBC category to which they belong. As the learned ASG submitted before the Court, as many as 228 candidates are ranked above Umesh Kumar on merit while 265 candidates stand above Satyendra Singh. The submission of Mr Khurshid that these are the only two candidates before this Court would not entitle them to a direction contrary to law since they had no vested right to appointment.”

20 Therefore, merely because Petitioners’ names were erroneously included in the earlier wait list, prepared without applying horizontal reservations, would not create any vested right in their favour to be appointed in Respondent-MSEDCL. We accordingly hold that Petitioners have no right to be appointed only on account of erroneous inclusion of their names in the earlier wait list.

21 Mr. Chalak has strenuously urge before us that the Respondents have altered the rules of the game after it begun. We fail to comprehend as to how this preposition would apply to the present case. The advertisement clearly specified application of horizontal reservations. All

candidates were made known that horizontal reservations would be applied. However, while preparing the earlier wait list, Respondent-MSEDCL had erroneously not applied horizontal reservations. This act on the part of Respondent-MSEDCL was infact contrary to the published advertisement. The judgment in **Vikas Balwant Alase** (supra) provided an opportunity to Respondent-MSEDCL to correct its error. Accordingly, a revised wait list is prepared by applying horizontal reservations. Application of horizontal reservations to wait listed candidates is in accordance with the advertisement. Therefore, it cannot be stated, by any stretch of any imagination, that rules of the game were altered by Respondent-MSEDCL. Accordingly, reliance of Mr. Chalak on judgments of the Apex Court in **K. Manjusree** (supra) and **Rajendra Bhimrao Mandve** (supra) is completely misplaced.

22 Mr. Chalak has placed reliance on the judgment of the Apex Court in **Prem Prakash** (supra), in support of his contention that once a person is declared successful according to the merit list prepared as per the declared number of vacancies, the appointing authority has the responsibility to appoint him even if a number of vacancies undergo a

change. The judgment in **Prem Prakash** (supra) would have no application to the present case as Petitioners are not selected on account of securing less than cut off marks.

23 Mr. Chalak has placed reliance on the judgment of Division Bench of this Court in **Pramod Vasant Dhaware** (supra) in support of his contention that Petitioners need to be appointed against 1559 vacant posts of Vidhyut Sahayyak. The issue in **Pramod Vasant Dhaware** (supra) was however altogether different. In that case, the names of Petitioners therein were included in the wait list but the life of wait list had expired. In the light of those peculiar circumstances, this Court left it Maharashtra State Road Transport Corporation to consider cases of wait listed candidates for appointment against vacant posts. In the present case, the names of Petitioners do not figure in the wait list. Therefore, the judgment would have no application to the present case.

24 In the result, we do not find any infirmity in the action of Respondent-MSEDCL in preparing revised wait list by excluding names of

Petitioners therefrom. Petitioners do not have any right to seek appointment on account of securing less than the cut off marks. The Writ Petition is devoid of merits. It is dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

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signed by
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