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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10144 OF 2023**

Rohini Ashok Bhosale
and Others

... Petitioners.

V/s

Registrar General (Inspection-1)
High Court (Appellate Side)
Bombay High Court.

...Respondent

Mr. Mihir Desai, Senior Advocate a/w Ms. Sanskruti Yagnik for
the Petitioners.
Mr. Rahul Nerlekar for Respondent-High Court.

**CORAM: A.S. CHANDURKAR &
FIRDOSH P. POONIWALLA, JJ**

DATE: 30th November, 2023

P.C.:-

1] The Petitioners who find themselves placed in the Select/Wait List for the post of Marriage Counsellor 2016 dated 26/10/2016 seek issuance of writ in the nature of mandamus to be issued to the Respondent to appoint them on the said post in the Family Courts in the State of Maharashtra.

2] Shri Mihir Desai, the learned Senior Advocate for the Petitioners submitted that on 16/03/2016, an advertisement

was issued calling for applications for preparing Select/Wait List of 41 candidates for the post of Marriage Counsellor to be appointed in various Family Courts in the State of Maharashtra. The Petitioners participated in the said process along with various other candidates after which the Select/Wait List comprising of 41 candidates came to be published. According to him, the candidates from Serial No.1 to 36 were issued orders of appointment after publication of the Select/Wait List till 2022. It was only the Petitioners who were placed at Serial Nos. 37 to 41 who were not being issued the orders of appointment. It was submitted that the earlier Select List/Wait List that was published in the year 2007 was in operation till the year 2016 and after it was exhausted, advertisement dated 16/03/2016 came to be issued. Thus, it was urged that the practice being followed was to exhaust the Select/Wait List and thereafter issue a fresh advertisement. In absence of any justifiable reason for not following this practice and proceeding to issue a fresh advertisement, the Petitioners had been deprived of their legal rights. While it was accepted that placement in the Wait

List by itself did not confer any legal right to such candidates, it was submitted by relying on the following judgments in the cases of (1) *Shankarsan Dash v. Union of India* **(1991) 3 SCC 47**, (2) *R.S. Mittal v. Union of India* **1995 Supp (2) SCC 230**, (3) *M.P. Electricity Board through the Chief Engineer, M.P. EB and Another vs. Virendra Kumar Sharma* **(2002) 9 SCC 650**, (4) *State of Jammu and Kashmir and Others vs. Sat Pal* **(2013) 11 SCC 737**, (5) *Dinesh Kumar Kashyap & Others vs. South East Central Railway & Others* **(2019) 12 SCC 798**, (6) *Sudesh Kumar Goyal vs. State of Haryana and Others* **(2023) 10 SCC 54** and (7) *Manoj Manu & Another vs. Union of India and Others* **(2013) 12 SCC 171** that in absence of any valid reason being furnished for not exhausting the Select/Wait List a case for interference would be made out. Since vacancies were available, the Petitioners could be accommodated on the same after which fresh process for recruitment could be carried out. It was thus submitted that on the aforesaid premise, this Court ought to grant relief prayed for by the Petitioners in the Writ Petition.

3] On the other hand, Shri Rahul Nerlekar, the learned Counsel appearing for the Respondent opposed the aforesaid submissions. At the outset, he submitted that no writ of mandamus could be issued at the instance of a candidate placed in the Waiting List. Since no right accrued in a candidate placed in the Waiting List, such relief could not be granted. According to him, the reason indicated while not continuing with the said Select/Wait List was a justifiable reason inasmuch as it has been observed that Wait List could not be permitted to be continued for an indefinite period. There was no arbitrariness in this decision and since a period of more than six years had elapsed, fresh process of recruitment was contemplated. In the advertisement, applications were invited only for preparation of the Select/Wait List without indicating actual vacancies available. After operating the Select List/Wait List for a considerable period, it had been decided to initiate fresh process of recruitment. To substantiate his contentions, learned Counsel placed reliance on the decisions in the cases of (1) *Shankarasan Dash vs. Union of India* **(1991) 3 SCC 47**,

(2) *Gujarat State Dy. Executive Engineers' Association vs. State of Gujarat and Others* **1994 Supp (2) SCC 591** and
(3) *Commissioner of Police and Another vs. Umesh Kumar* **(2020) 10 SCC 448**. It was submitted that there was no reason to interfere in writ jurisdiction.

4] We have heard the learned Counsel for the parties and we have perused the documents on record. At the outset, we may observe that the prayer for issuance of writ of mandamus at the instance of a candidate placed in the Select/Wait List cannot be issued on the ground that there is no such vested right of appointment. This position stands settled in view of the decision of the Hon'ble Supreme Court in *Commissioner of Police and Another* (supra) relied upon by the learned Counsel for the Respondent. The only aspect that requires consideration is as to whether there is any justifiable and non-arbitrary reason for not operating the Select/Wait List as held in *Dinesh Kumar Kashyap and Others* (supra) relied upon by the learned Senior Advocate for the Petitioners. It has been held therein that candidates placed

in the Wait List do not have a vested right of appointment. However, when the employer is the State, it ought to act in accordance with Article 14 of the Constitution of India. It cannot without any rhyme or reason decide not to fill-up the post. It must give some plausible reason for not filling-up the post. The Courts would normally not question the justification but the justification must be reasonable and should not be arbitrary, capricious or whimsical exercise of discretion.

5] In the present case, no doubt the Select/Wait List comprised of 41 candidates including the Petitioners. That Select/Wait List was published on 26/10/2016. After about 36 candidates were issued orders of appointment and a period of more than 6 years had elapsed, it was decided to initiate a fresh process of recruitment for the forthcoming vacancies on the premise that a Wait List could not continue for an indefinite period. This is the reason for not operating the Select/Wait List from Serial No.36. We find that this reason assigned by the Respondent cannot be termed to be arbitrary or irrational. The same can also not be said to be a whimsical

exercise of discretion. A period of six years from publication of the Select/Wait List having elapsed, the Respondent was within its right in considering whether to operate the Select List/Wait List further or to initiate a fresh process of recruitment. Having chosen the latter option, we find that there is justification on record which is neither arbitrary nor capricious. Once when it is held that there is no vested right in the candidate placed in the Select/Wait List, decision to initiate fresh process of recruitment after a period of six years does not appear to be unreasonable. Though it is true that life of Select/Wait List has not been prescribed, at the same time, it also cannot continue for an indefinite period.

6] For the aforesaid reasons, we do not find any case made out to exercise discretion under Article 226 of the Constitution of India. The challenge therefore fails. Writ Petition stands dismissed with no order as to costs.

[FIRDOSH P. POONIWALLA, J.] [A.S. CHANDURKAR, J.]