

19 January, 2023.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 475 OF 2023**

**WITH**

**WRIT PETITION NO. 476 OF 2023**

Maharashtra Public Service Commission     )     PETITIONER

V/s.

1. Smt. Ashvini Tushar Sakore                     )

2, State of Maharashtra, through its

Secretary, Industries Energy and

Labour Department

3. State of Maharashtra, through its

Principal Secretary, Women and Child

Development Department                     )     RESPONDENT

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Mr. Shrikrishna Ganbavale, Advocate for the petitioner in both the petitions.

Mr. Balasaheb Deshmukh, Advocate for respondent no.1 in both the petitions.

Mr. M.M. Pabale, AGP for State-respondents no.2 and 3 in WP-475- 2023 and Mr. R.P. Kadam, AGP for State-respondents no.2 and 3 in WP-476-2023.

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**CORAM : S.V. GANGAPURWALA, ACTING C.J. &****SANDEEP V. MARNE, J.****DATED : 19 JANUARY, 2023.****PC :**

1. By these petitions, petitioner-Maharashtra Public Service Commission (MPSC) assails common judgment and order dated 7 April, 2022 passed by the Maharashtra Administrative Tribunal (Tribunal) in Original Application No. 119 of 2019 and 705 of 2020. Respondent no.1 herein had instituted Original Application No.119 of 2019 challenging appointment order dated 17 December, 2018 issued in favour of Ms. Smita Pandurang Sable (**Ms. Smita**). In Original Application No.705 of 2020, respondent no.1 challenged order/letter dated 15<sup>th</sup> October, 2020 of MPSC rejecting her request for appointment to the post of Assistant Commissioner of Labour for the reason of expiry of tenure of waiting list. It must be added here that by the impugned judgment and order, the Tribunal has decided one more Original Application bearing No. 576 of 2020 filed by Ms.

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Smita, challenging cancellation of her appointment vide order dated 15 September, 2020 and the same has been dismissed.

2. Both respondent no.1 and Ms. Smita participated in selection process convened by MPSC for filling up 11 posts of Assistant Commissioner of Labour vide advertisement dated 18 May, 2017. Both were selected in the selection process. While name of Ms. Smita figured at serial no.12 in the select list, name of respondent no.1 figured at serial no.1 of the waiting list. Ms. Smita came to be appointed on the post of Assistant Commissioner of Labour. A complaint came to be filed alleging suppression on the part of Ms. Smita about the factum of her marriage. After conduct of enquiry, Ms. Smita was accused of furnishing false information and her appointment came to be cancelled by order dated 15 September, 2020.

3. Cancellation of appointment of Ms. Smita resulted in one advertised post of Assistant Commissioner of Labour

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remaining vacant. Since respondent no.1 was the first candidate on waiting list, she pressed her claim for appointment on post vacated by Ms. Smita. It appears that the Government was in favour of appointment of respondent no.1 and sent a proposal to MPSC for recommending her name for appointment. MPSC, however turned down the request of the State Government by letter dated 15 October, 2020 on the ground of expiry of tenure of waiting list on 24 May, 2019. The above actions of MPSC triggered filing of three Original Applications as under:

(i)Original Application No. 119 of 2019 was filed by respondent no.1, seeking cancellation of appointment of Ms. Smita and her own appointment in place of Ms. Smita.

(ii) Original Application No. 705 of 2020 was filed by respondent no.1 challenging MPSC's letter dated 15<sup>th</sup>

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October, 2020 and seeking direction against MPSC for recommending her name for appointment to the post of Assistant Labour Commissioner by the State Government.

(iii) Original Application No. 576 of 2020 was filed by Ms. Smita challenging the order dated 15<sup>th</sup> September, 2020 by which her appointment was cancelled.

On account of cancellation of appointment of Ms. Smita by MPSC by letter dated 15 September, 2020, Original Application No. 119 of 2019 was rendered partly infructuous. The same remained alive only to the extent of prayer of respondent no.1 for appointment to the post of Assistant Labour Commissioner against the post vacated by Ms. Smita.

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4. By the common judgment and order dated 7<sup>th</sup> April, 2022 impugned in the present petition, the Tribunal has proceeded to dismiss Original Application No. 576 of 2020 filed by Ms. Smita. The Tribunal has allowed Original Application No. 705 of 2020 directing appointment of respondent no.1 in place of Ms. Smita. Original Application No. 119 of 2020 is also partly allowed.

5. MPSC is aggrieved by the common judgment and order dated 7 April, 2020 to the extent of allowing Original Application No. 705 of 2020 and partly allowing Original Application No. 119 of 2020.

6. Appearing for petitioner-MPSC, Mr. Ganbavale the learned Counsel would place reliance on the Maharashtra Public Service Commission Rules of Procedure, 2014 (**MPSC Rules**) in support of his contention that the Tribunal could not have directed operation of waiting list after expiry of its term. Relying

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on Rule 10(8)(b)(i), he would contend that the reserved list (waiting list) can be operative for a period of one year from the date of declaration of result. He invites our attention to newly inserted Clause (c) in sub-rule (8) of Rule 10 to contend that the only eventuality where the life of waiting list can be extended is where operation of result is stayed or appointments are restrained by an order of Court. He would contend that in the present case no stay was granted by the Tribunal to the appointment of Ms. Smita and that therefore by operation of Rule 10, the life of the waiting list expired on 24 May, 2019. He would submit that the Tribunal has not considered the effect of MPSC Rules, while allowing Original Applications filed by respondent no.1. In support of his contentions, Mr. Ganbavale relies on judgments of Division Bench of this Court in (i)

**Maharashtra Public Service Commission Versus. Pankajkumar C. Dabhire & Ors.** 2018 SCC Online Bom 1413 and (ii) **The Maharashtra Public Service Commission V/s. Prafulla s/o.**

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**Vinayrao Washimkar and Anr.** Writ Petition No. 4649/2022decided on 6<sup>th</sup> October, 2022.

7. Mr. Deshmukh, learned Counsel appearing for respondent no.1, opposes the petition and supports the order passed by the Tribunal. He would submit that the MPSC Rules cannot have the effect of limiting the powers of the Tribunal in granting relief to respondent no.1, who has succeeded in Original Application No. 119 of 2020. That the appointment and selection of Ms. Smita being rendered void, respondent no.1 has acquired a right of being appointed against the post vacated by Ms. Smita.

8. We have also heard the AGP appearing for the State Government.

9. After having heard the learned counsels for the parties, the short question that falls for consideration in the

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present petitions is whether MPSC Rules would circumscribe powers of the Tribunal to direct appointment of a candidate on waiting list after expiry of its tenure. In the present case, select list and waiting list were declared on 25 May, 2018 and they were valid till 24 May, 2019. Ms. Smita came to be appointed on 17 December, 2018. During currency of life of select list and waiting list, respondent no.1 filed Original Application No.119 of 2019 on 1<sup>st</sup> February, 2019. The appointment of Ms. Smita came to be cancelled on 15 November, 2020 i.e. after expiry of life of the waiting list. It is on account of this reason that MPSC takes exception to the direction of the Tribunal to appoint respondent no.1 against the post vacated by Ms. Smita.

10. MPSC Rules came to be amended in the year 2016 by Notification dated 28 December, 2016 and Clause (b) of sub-rule (8) of Rule (10) was substituted as under :

“(b)(i) In case of Direct Recruitment, the reserve list (waiting list) shall be operative for the period of one year from the date of declaration of the result or till the declaration of result of the

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subsequent recruitment process for the same post, whichever is earlier :

Provided that, the reserve list (waiting list), for the teaching posts such as Assistant Professor, Associate Professor and Professor under the Medical Education and Drugs Department of the Government shall be operative for the period of two years from the date of declaration of result or till declaration of result of the subsequent recruitment process for that post, whichever is earlier.

(ii) In case of Limited Departmental Competitive Examination, the reserve list (waiting list) shall be operative for the period of one year from the date of declaration of the result or till declaration of the result of the subsequent Examination for the same post whichever is earlier".

11. Thus, waiting list is operative for a period of one year from the date of declaration of result. In the present case, the result being declared on 25 May, 2018, the waiting list was operative upto 24 May, 2019.

12. Clause (c) inserted in sub-rule (8) by amendment of Rule (10) reads thus:

(3) after clause (b) of sub-rule (8) so substituted, the following shall be added, namely:-

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“(c) While calculating the period of operation or period of validity of the reserve list (waiting list) under clause (a) or sub-clauses (i) and (ii) of clause (b) of this sub-rule, the period for which any order of court or tribunal staying the operation of the result or restraining the appointment, shall be excluded”.

13. Thus, a special provision is made to extend life of waiting list by exclusion of period during which a Court/Tribunal stays operation of the result or restrains appointment. It is MPSC's contention that, since there was no stay on operation of waiting list or for issuance of appointment orders, the present situation is not covered by MPSC Rules, where life of the waiting list can be extended.

14. We are unable to agree with MPSC's contention. In the present case, respondent no.1 had challenged appointment of Ms. Smita by filing Original Application No.119 of 2019 on 1 February, 2019 i.e. within currency of life of waiting list. If her Original Application was to be decided and allowed immediately after 1 February, 2019, she would have secured

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appointment during currency of the waiting list upto 24 May, 2019. She cannot be blamed or denied relief, merely because the Tribunal took time in deciding Original Application No. 119 of 2019. Even otherwise, it cannot be stated that MPSC Rules would circumscribe power of the Tribunal to direct appointment against advertised vacant post even after expiry of term of waiting list, especially when the proceedings are instituted during currency of life thereof. Also of relevance is the fact that the MPSC and the State Government on their own cancelled appointment of Ms. Smita on 15 September, 2020 during pendency of Original Application No. 119 of 2019. Respondent no.1 had raised her objection about eligibility of Ms. Smita well before 24 May, 2019 and merely because MPSC and State Government took time in deciding that objection and cancelling the appointment of Ms. Smita, the same would not defeat the right of respondent no.1 in securing appointment against the post vacated by Ms. Smita. We therefore do not

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find any error being committed by the Tribunal in the impugned common judgment.

15. The facts in ***Pankajkumar C. Dabhire*** (supra) relied upon by Mr. Ganbavle are entirely different. In para-23 this Court, has held as under :

“23. In *Rajkishore Nanda* (Supra), the relevant rules had provided that the list prepared under sub-rule (1) of Rule 11 — wait list shall remain valid for a period of one year from the date of publication of the same or till drawal of the next year’s list, whichever is earlier. In this context, the Hon’ble Supreme Court has held that the appearance name of the candidate in the select list does not give him a right of appointment. Mere inclusion of the candidate’s name in the select list does not confer any right to be selected, even if some of the vacancies remain unfilled. The selected list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required. It is the settled **legal proposition that no relief can be granted to the candidate if he approaches the court after the expiry of the select list.** In the present case, the so-called wait list lapsed on 24th November, 2011 and the Original Applications were instituted by the respondents in the year 2013. The grant of relief by MAT, in such circumstances, is contrary to the ruling in *Rajkishore Nanda* (Supra).”

(emphasis supplied)

16. Again, in ***Prafulla Vinayakrao Washimkar*** (supra) the facts were entirely different. In that case, the selected candidate against SC vacancy did not join, which led to appointment being offered to the next candidate in line, who also failed to join. During the process, the tenure of the select list stood lapsed. In the light of those facts, this Court reversed the order of the Tribunal and declined to grant any relief to the respondent therein. In the present case, respondent no.1 set up a challenge to the appointment of Ms. Smita during currency of life of waiting list. Therefore, the judgment in ***Prafulla Vinayakrao Washimkar*** (supra) has no application to the facts of the present case.

17. Resultantly, we do not find any error in the impugned common judgment and order. However, it is clarified that we have examined merits of the impugned judgment and order only to the extent of Original Applications No. 119 of 2019 and

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705 of 2020. We are informed that Ms. Smita has instituted a separate Writ Petition challenging the very same judgment delivered in Original Application No. 576 of 2020. It is clarified that this order will not come in the way of decision of that petition filed by Ms. Smita on its own merits. With the above observations, Writ Petitions are dismissed without any order as to costs.

**(SANDEEP V. MARNE, J.)****(ACTING C.J.)****NEETA  
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