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

WRIT PETITION NO. 15820 OF 2022

Suraj Madhukar Gaikwad & Anr. .. Petitioners

Vs.

The State of Maharashtra & Anr. .. Respondents

Mr. N. N. Gawankar a/w Mr. Manas N. Gawankar & Shreyas
Gawankar i/by Mr. V. H. Narvekar for petitioners.

Mr. M. M. Pabale, AGP for State.

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

DATE: FEBRUARY 1, 2023

P.C.:

1. The petitioner has filed Original Application before the Maharashtra Administrative Tribunal, Mumbai (hereafter "the Tribunal", for short) contending that the respondent advertised only 83 posts to be filled in through Limited Department Competitive Examination – 2021 (LDCE-2021). The vacancies considered were only upto 1st June, 2021. The vacancies as on 31st August, 2021 and anticipated vacancies are required to be considered. The learned counsel relies upon the Government Resolution dated 1st August, 2019. It is submitted that the Government has issued executive instructions to the effect that vacancies as on 31st August, 2019 of the said year are required to be considered so also the anticipated vacancies in future. According to the learned counsel, the executive instructions are binding upon the

respondent. The advertisement issued is against the executive instructions. The Tribunal has committed an error in suggesting that the petitioner kept quiet for a long time. The advertisement was issued on 31st December, 2021. The petitioner on 10th January, 2022 had represented to the respondent and brought the fact to the notice of the respondent that anticipated vacancies and also the vacancies as on 31st August, 2021 are required to be considered and 34 more posts are required to be advertised. The Tribunal did not consider the said aspect.

2. The learned AGP submits that the vacancies as on 31st August, 2021 were not considered. The remaining posts were not vacant and as such the same was not considered.

3. The dispute probably appears to be that the anticipated vacancies that are required to be considered were not considered and advertised. As per the affidavit filed by the State before the Tribunal, the vacancies available on the date of sending requisition were calculated and accordingly LDCE-2021 for 83 vacancies were advertised and conducted.

4. The Tribunal in the impugned order has observed that the petitioner did not immediately raise the objection. That may not be in consonance with the facts as the petitioner raised objection on 10th January, 2022 and had also represented that anticipated vacancies are also required to be considered.

5. Be that as it may, the vacancies as on date of requisition were considered. However, anticipated vacancies were not advertised at the relevant time. The additional vacancies

arose not on account of retirements, but on account of promotions effected to higher post. It cannot be stated that such vacancies could be termed as anticipated vacancies.

6. It is submitted that after LDCE-2021, the LDCE-2022 has also been conducted by adding the left-over vacancies which arose upto 31st August, 2021 and merit list is also published. It will be too late in the day now to set the clock back. The request of the petitioner, at this stage, cannot be considered.

7. In light of that, writ petition stands disposed of. No costs.

(SANDEEP V. MARNE, J.) (ACTING CHIEF JUSTICE)

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