



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1507 OF 2021

Dr. Rajendra Ramchandra Chaudhari,
aged about 46 years,
occupation : Associate Professor,
Mechanical Engineering Department,
Government Engineering College,
Nagpur, r/o Mihan Punarvasan Colony,
Khapari, Nagpur – 441108.

... Petitioner

- Versus -

1) Maharashtra Public Service Commission,
through its Secretary, 3rd Floor,
Bank of India Building, M.G. Road,
Huttatama Chowk, Mumbai-400023.

2) The State of Maharashtra, through its
Principal Secretary, Higher and Technical
Education Department, 4th Floor,
Mantralaya, Mumbai – 400032.

... Respondents

Shri VA. Kothale, Advocate for petitioner.

Smt. S.S. Jachak, Assistant Government Pleader for respondents.

CORAM : A.S. CHANDURKAR AND MRS.VRUSHALI V. JOSHI, JJ.

DATED : AUGUST 18, 2023

ORAL JUDGMENT (PER A.S. CHANDURKAR, J.) :

Rule. Rule is made returnable forthwith. Heard finally with consent of the learned Counsel for the parties.

2) The challenge raised in the present petition is to the order dated 5/2/2021 passed by the Maharashtra Administrative Tribunal, Nagpur dismissing the application preferred by the petitioner seeking condonation of delay in filing the Original Application before it. In the Original Application, the petitioner sought to challenge the merit list and placement of candidates selected including the petitioner with regard to the posts of Professor in Mechanical Engineering.

3) Pursuant to the advertisement published on 4/1/2014 inviting applications for recruitment on the posts of Professor in the subject of Mechanical Engineering, the petitioner participated in the said selection process as a candidate belonging to “Other Backward Class” category. In the select list, the petitioner was shown to be placed at serial no.6. While the candidate placed at serial no.2 was from the “Other Backward Class” category, his appointment was not

shown as against candidates from open category. As a result, it is the case of the petitioner that he could not be selected for the post in question from the “Other Backward Class” category. It is urged by the petitioner that since the candidate at serial no.2 stood second in the merit, he ought to have been appointed on the post that was kept for open candidates. If the same would have been done, the petitioner would have been appointed on the second post that was reserved for candidates from “Other Backward Class” category. Along with the Original Application, the petitioner filed an application under Section 21 of the Administrative Tribunals Act, 1985 praying that the delay of 166 days in filing the Original Application be condoned. The learned Tribunal while deciding the said application held that the merit list was valid only for a period of one year. As the said merit list/select list was published in the year 2015 and the petitioner had filed the proceedings in the year 2019, the life of the merit list being only one year, no relief could be granted to the petitioner. On that count, the said application came to be rejected.

4) We have heard Shri Kothale, learned Counsel for the petitioner as well as Smt. Jachak, learned Assistant Government

Pleader for the respondents. It is to be seen that the challenge raised in the Original Application is to the preparation of the final select list. It is the case of the petitioner that by incorrectly showing the appointment of a candidate from the "Other Backward Class" category as having been appointed in that category despite the fact that the said candidate ought to have been appointed on a post reserved for candidates belonging to open category, the petitioner has lost the opportunity of selection. The challenge is not raised to the operation of the wait list/reserve list. Pursuant to the order dated 23/9/2022, the learned Assistant Government Pleader has placed on record the Rules of Procedure, 2005 framed by the Maharashtra Public Service Commission. As per Clause 10 thereof, the life of the reserve list/wait list was prescribed to be two years from the date of preparation of such reserve list. These Rules have been amended in the year 2011 and the period of two years has been reduced to one year. As a result, the reserve list would now lapse on the expiry of one year from declaration of result.

5) We find that the learned Member of the Tribunal proceeded to dismiss the application on the ground that the life of the merit list was for only one year. There is a distinction between

the merit list and the reserve list. The grievance of the petitioner is with regard to the placement of candidates in the merit list. The petitioner is not concerned with the reserve list maintained by the respondents in that regard. Since the petitioner is aggrieved by the manner in which the merit list has been prepared, it would not be correct to state that such grievance cannot be considered on the ground that life of the reserve list has lapsed. We, therefore, find that the petitioner's request for condoning the delay and entertaining the proceedings on merits has not been considered in the right perspective. The petitioner was not liable to be non-suited on the ground that the life of the merit list was only for one year.

6) For the aforesaid reasons, we are inclined to remit the proceedings to the Maharashtra Administrative Tribunal for a fresh consideration in accordance with law. Hence, the following order is passed :

The order dated 5/2/2021 passed by the Maharashtra Administrative Tribunal is set aside. The proceedings are remanded to the Maharashtra Administrative Tribunal to consider the application preferred by the petitioner under Section 21 of the Administrative Tribunals Act, 1985 seeking condonation of delay.

The Tribunal shall examine whether any sufficient cause for condoning the delay in filing the Original Application has been made out or not. If the delay is condoned, the proceedings shall be decided on their own merits in accordance with law.

7) Rule is made absolute in the aforesaid terms with no order as to costs.

JUDGE

JUDGE

khj