

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

**WRIT PETITION NO. 8547 OF 2021
WITH
INTERIM APPLICATION NO. 52 OF 2024
(FOR AMENDMENT)**

Vinod Fakira Marathe & Ors. .. Petitioners
Versus
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 391 OF 2023**

Sandhya Gaikwad & Ors. .. Petitioners
Versus
High Court of Judicature at Bombay
& Ors. .. Respondents

**WITH
INTERIM APPLICATION NO. 50 OF 2024
IN
WRIT PETITION NO. 391 OF 2023
(FOR ADDING APPLICANT AS A PETITIONER)**

Pallavi Gajanan Itware .. Applicant

In the matter between:

Sandhya Gaikwad & Ors. .. Petitioners
Versus
High Court of Judicature at Bombay
& Ors. .. Respondents

**WITH
WRIT PETITION NO. 1219 OF 2023**

Narendra Madhukar Mali .. Petitioner
Versus
High Court of Judicature at Bombay & Anr. .. Respondents

**WITH
WRIT PETITION NO. 1699 OF 2024**

Dinesh Suryabhan Patil & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 1853 OF 2022**

Adinath Kisan Waghmare & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 10512 OF 2022**

Rahul Vaman Mate	.. Petitioner
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 10514 OF 2022**

Pooja Munjeba Sakhare & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Anr.	.. Respondents

**WITH
WRIT PETITION NO. 1700 OF 2024**

Renuka Madhukar Kadam	.. Petitioner
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 14912 OF 2023**

Rohidas Bhausahab Naikwadi	.. Petitioner
Versus	
High Court of Judicature at Bombay & Anr...	Respondents

**WITH
WRIT PETITION NO. 8495 OF 2021**

Rajshri Milkiram Tembhare & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 8517 OF 2021**

Ganpat Uttam Gurav & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 8519 OF 2021**

Jagruti Sudhir Patil & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 8513 OF 2021**

Anantrao Ghanshyam Chandrashekhar & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 8503 OF 2021**

Swapnil Udaram Hadau & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 8507 OF 2021**

Praful Namdeo Kamdi & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 8510 OF 2021**

Trisharam Popat Kamble & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 8546 OF 2021**

Nitin Balkrishna Chinchore & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 8500 OF 2021**

Mohan Chandrakant Karande & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 8501 OF 2021**

Hemant Tanaji Jadhav & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 8903 OF 2021**

Chhatragun Anurath Kale & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 8515 OF 2021**

Omkar Dattatray Ukirde & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 8509 OF 2021**

Lakhan Dayaram Rathod & Ors. .. Petitioners
Versus
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 8514 OF 2021**

Sopan Vitthalrao Harkal & Ors. .. Petitioners
Versus
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 8518 OF 2021**

Shivaji Baban Dalvi & Ors. .. Petitioners
Versus
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 8505 OF 2021**

Vivek Sunil Jadhav & Ors. .. Petitioners
Versus
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 8516 OF 2021**

Gopal Vasanta Chavhan & Ors. .. Petitioners
Versus
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 8511 OF 2021**

Mahesh Apparao Choudhari & Ors. .. Petitioners
Versus
The State of Maharashtra & Ors. .. Respondents

**WITH
WRIT PETITION NO. 8502 OF 2021**

Reshma Arun Malshe & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 8910 OF 2021**

Jitendra Pramod Panaskar & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 8908 OF 2021
WITH
INTERIM APPLICATION NO. 53 OF 2024
(I.A. FOR AMENDMENT)**

Milind Manohar Vhatkar & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 8911 OF 2021**

Sourabh Vitthal Kaskar & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

**WITH
WRIT PETITION NO. 8912 OF 2021**

Satish Harsing Kakarwal & Ors.	.. Petitioners
Versus	
The State of Maharashtra & Ors.	.. Respondents

Mr. J. P. Cama, Senior Advocate i/b. Ms. Sanskruti Yagnik with Dr. Uday Warunjikar i/b. Mr. Siddhesh Pilankar for the petitioners in Writ Petition Nos. 391/2023, 1219/2023 & 14912/2023 and 8518/2021.

Dr. Uday P. Warunjikar i/b. Mr. Sumit Kate for the petitioner in WP/8503/2021 and IA/50/2024.

Mr. Mihir Desai, Senior Advocate with Ms. Sanskruti Yagnik and Mr. S. B. Talekar with Mr. Shubham Gurav with Mr. Vaibhav Ugle and Ms. Madhavi Ayyappan i/b. Talekar & Associates for the petitioners in Writ Petition No.8547/2021 with IA/52/2024, and Writ Petition Nos. 1699/2024, 1853/2022, 10512/2022, 10514/2022, 1700/2024, 8495/2021, 8517/2021, 8519/2021, 8513/2021, 8507/2021, 8510/2021, 8546/2021, 8500/2021, 8501/2021, 8903/2021, 8515/2021, 8509/2021, 8514/2021, 8505/2021, 8516/2021, 8511/2021, 8502/2021, 8910/2021, 8908/2021 a/w IA/53/2024, 8911/2021 and 8912/2021.

Dr. Milind Sathe, Senior Advocate with Mr. Rahul Nerlekar for Respondent / High Court, Bombay in all Petitions.

Mr. P. P. Kakade Government Pleader and Mr. N. C. Walimbe, Addl. Govt. Pleader with Mr. O. A. Chandurkar Addl. Government Pleader with Ms. N. M. Mehra, AGP with Mr. V. M. Mali, AGP for Respondent/State in all Petitions.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

RESERVED ON : 15th FEBRUARY, 2024
PRONOUNCED ON : 14th MARCH, 2024

JUDGMENT (PER : CHIEF JUSTICE)

1. Heard learned Counsel for the parties and perused the records available before us on these Writ Petitions.

2. Since the common questions of law and facts arise in these Petitions, this batch of Writ Petitions is being decided by the common judgment and order which follows:

ISSUES

3. Life of wait list prepared by a selection body is the question which has been raised in this batch of Writ Petitions for our consideration. The Petitioners assert that the select/wait list in this case shall be operative indefinitely and will breath its last only once it is exhausted, that is to say, every single candidate borne on such a list is to be offered appointment.

4. The issue raised is no more *res-integra* and stands settled by Hon'ble Supreme Court way back in the year 1994 vide judgment in the case of ***Gujarat State Dy. Executive Engineers Association Vs. State of Gujarat & Ors.***¹. In paragraph 9 of the said report, the Hon'ble Supreme Court has observed thus:

"9. *A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list*

¹ 1994 Supp (2) SCC 591

may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service."

5. Accordingly, we find ourselves unable to agree with the submissions made and contentions raised on behalf of the Petitioners for the reasons to follow:

FACTS NARRATED AND SUBMISSIONS MADE BY THE RESPECTIVE PARTIES:

6. For filling up various Group-C and Group-D posts on the establishment of District Judiciary in State of Maharashtra, an advertisement was issued on 28th March 2018 inviting on-line Applications from eligible candidates. The posts for which the

recruitment was to be made pursuant to the advertisement dated 28th March 2018 included the posts of Junior Clerk and Peon/Hamal. According to the advertisement, the total number of vacancies advertised was 8921. The said advertisement contains "Instructions to the Candidates" and according to clause 46 of the said Instructions, the select/wait list was to be valid for such period as may be prescribed by the High Court. The advertisement and the instructions attached thereto, thus, do not provide for any life for the select/wait list for its operation; it was rather provided that select/wait list shall be valid for a period to be prescribed by the High Court. Pursuant to the aforesaid advertisement, the Petitioners submitted their Applications and accordingly, selection was held and a select/wait list was also published. It is to be noticed that the select/wait list was published by each District.

7. These Petitions concern themselves with the selection held for the posts in question to be filled-in at establishments of various Districts Courts, however, for the sake of convenience we will narrate the facts pertaining to District Thane. On the basis of selection held in pursuance of the advertisement dated 28th March 2018, the Registrar, District Thane published select/wait

list on 3rd November 2018 which comprised of 244 candidates as against 254 vacancies advertised for the post of Clerk. Another list was published on 21st November 2024 which comprised of 141 candidates as against 147 vacancies advertised against the post of Peon. The select/wait lists published on 3rd November 2018 and 21st November 2018 clearly stipulated that the life of such lists shall be of two years and accordingly, as per this prescription, these select/wait lists lasted on 18th November 2020 and 21st November 2020, respectively. Thereafter the Chief Justice of this Court had granted an extension of further period of one year to the select/wait list for the post of Stenographer (Lower Grade), Junior Clerk and Peon/Hamal prepared on the basis of recruitment process -2018 which was communicated to all the Principal District and Sessions Judges and all other Heads of Departments of the Districts by the Registrar (Inspection-I) of this Court vide its communication dated 10th September 2020. The Registrar General also by means of a letter dated 17th September 2020 addressed to all the Principal District Judges in the State of Maharashtra directed to fill up the vacancies as per the select list prepared on the basis of the recruitment process-2018.

8. Vide a letter dated 15th September 2021, the District and Sessions Judge, Thane wrote to the Registrar General of this Court requesting therein that extension be granted to the select/wait list prepared pursuant to the recruitment process-2018. Such requests were also received by the Registrar General from the other Districts as well. The Petitioners also made various representations including the representations dated 20th March 2021 and 11th November 2021 requesting therein to grant appointment to them pursuant to their order of merit in the select/wait list prepared on the basis of recruitment process-2018. The said request made by the Principal District Judges and the Petitioners was considered by the Hon'ble Administrative Judges Committee and the same was rejected with a further decision that fresh process of recruitment be started to fill-up vacant posts forthwith. This decision of the Hon'ble Administrative Judges Committee was communicated to all concerned by the Registrar (Inspection-I) by means of his letter dated 25th November 2021. It is this decision of the Hon'ble Administrative Judges Committee as communicated by the Registrar (Inspection-I) by means of letter dated 25th November 2021, that is under challenge in these Writ Petitions.

9. A fresh selection process was started by issuing a notice dated 29th November 2023 issued by the Registrar General of this Court informing that the central online recruitment process be conducted for filling up the vacancies against the posts of Stenographer-III, Junior Clerk and Peon/Hamal in various District Judiciary in the State of Maharashtra. This notice dated 29th November 2023 has also been challenged by the Petitioners on the ground that unless the select/wait list prepared on the basis of recruitment process-2018 is exhausted and all the candidates borne on the said list are appointed, no fresh recruitment process can be legally permitted to be undertaken by the High Court.

10. Impeaching the impugned decision rejecting the prayer for extension of time for operation of the select/wait list prepared on the basis of recruitment process-2018 and the decision to initiate fresh process of selection, it has been argued vehemently by the learned Counsel representing the Petitioners that as per Rule 7 of the Recruitment Rules, which is applicable for appointment against Group-C and Group-D posts in the establishment of Districts in the State of Maharashtra, the select/wait list shall

operate till it is exhausted and in this view, the impugned decisions are illegal. Our attention in this regard has been drawn to paragraph 577 falling under Chapter XXXI of the Civil Manual and has been thus argued that in terms of paragraph 577(iii), rules for the recruitment of candidates to Group-C and Group-D posts in District judiciary are contained in Appendix-A attached to Government Resolution of the Home Department bearing No.Misc.1055/62546-III, dated 26th December 1957, as amended by Government Resolution of Law and Judiciary Department, No.DCE 5265/3643-J dated the 22nd February 1971. These Recruitment Rules are included in Appendix-A attached to the said Government Resolution dated 26th December 1957. Appendix-A bears a heading "Recruitment Rules for recruitment of Group-C and Group-D Services in the Subordinate Judicial Service". The said Appendix-A contains Rules relating to the process to be adopted for selection to Group-C and Group-D posts in the District judiciary. According to Rule 7 a list of candidates as provided in Rule 1 is to be prepared of each selected candidate on the basis of merit and in case merit is equal, on the basis of age. Such select list is to be signed and dated by the members of the Recruitment Committee which shall

continue to remain in force till it is exhausted. Rule 7 (a) and (b) of the Rules available in Appendix-A appended to the Government Resolution dated 26th December 1957 as amended by Government Resolution dated 22nd February 1971 is extracted hereunder:

"(a) The Committee shall fix the seniority of each selected candidate on merit and merit being equal on age and prepare a list of candidates in separate parts as provided in Rule 1. Such list shall be signed and dated by the members of the Recruitment Committee and shall continue to remain in force till it is exhausted.

(b) The seniority once assigned to a candidate in the list shall be final and shall not be disturbed on any account. While making additions to the list, the seniority fixed on the previous occasion shall not be disturbed."

11. Learned Counsel for the Petitioners have also drawn our attention to Clause 46 of the 'Common Instructions to all candidates' attached to the advertisement dated 28th March 2018 which provides that select/wait list will be valid for such period as may be prescribed by the High Court. Clause 46 of the instructions issued to the candidates is quoted hereunder:

"46. The Select List / Wait List will be valid for such period as may be prescribed by the High Court."

12. Ordinarily, in service jurisprudence, the select list and wait list prepared on the basis of selection held by the selection body

connote two different lists conveying two different meanings and purpose. The select list bears the names of selected candidates which is normally prepared on the basis of merit attained by the candidates who participate in the selection and is sent to the appointing authority with recommendation to make appointments of the candidates borne on such select list. Simultaneously, sometimes, a wait list is also prepared by the selection body which is utilized by the appointing authority for making appointments against the vacancies which could not be filled-in on account of refusal of the candidates to accept appointment or in certain other exigencies such as a situation which may arise in case the appointing authority does not accept the recommendation in respect of any particular candidate. Thus, the purpose of preparation of wait list after conclusion of selection held by a selection body is to provide a list of candidates to be considered for appointment if appointment based on the select list for some reason is not made.

13. However, in the instant case, on the basis of recruitment process 2018, two separate lists termed as select list and wait list were not prepared. The lists published on 3rd November 2018 and 21st November 2018 in respect of District Thane are

described as select/wait list. The said lists also provide that the same shall be valid for a period of two years. Thus, we have to comprehend the facts of the case and the applicable law in the light of the list which has been described as select list/wait list which is a single list and not two separate lists, prepared on the basis of the recruitment process 2018.

14. Learned Counsel representing the Petitioners have emphasized that the provisions contained in Rule 7 are statutory in nature which provides that the list of candidates prepared on the basis of the recruitment process 2018 shall continue to remain in force till it is exhausted and as such, unless and until all the candidates borne on the said list are given/offered appointment, such list has to remain in operation by virtue of the provisions contained in Rule 7. It is further contended on behalf of the Petitioners that the prescription available in Clause 46 of the 'instructions to candidates' appended to the advertisement dated 28th March 2018 thus, runs contrary to the statutory prescription available in Rule 7 and hence, it cannot be given effect to. We may reiterate that clause 46 provides that the select/wait list will be valid for such period as may be prescribed by the High Court.

15. In the aforesaid view of the matter, learned Counsel appearing for the Petitioners have emphatically argued that Rule 7 does not give any discretion to the High Court or any of its authorities, including the Chief Justice to provide for anything contrary to the prescription available in Rule 7 and hence the decision of the Hon'ble Administrative Judges Committee refusing extension to the said select/wait list till it is exhausted, is completely unlawful being contrary to statutory provisions contained in Rule 7. Further argument in support of the case set-up by the Petitioners is that any decision to curtail the life of select/wait list in the instant case could be taken only by the Full-House of this Court and not by the Hon'ble Administrative Judges Committee. Thus, it has been argued that the decision not to extend the period of operation of the select/ wait list as communicated by the Registrar (Judicial-1) of this Court, vide its letter dated 25th November 2011, is without jurisdiction, hence, it is liable to be quashed. It is also the case of the Petitioners as set up in these Petitions that since the select/wait list prepared on conclusion of the recruitment process 2018 is yet not exhausted in the sense that every candidate borne on the said list has not been offered/given appointment, the impugned

decision by the Hon'ble Administrative Judges Committee to initiate fresh process of selection to fill up vacant posts is also erroneous being without jurisdiction.

16. On the strength of the aforesaid submissions, the learned Counsel representing the Petitioners have urged that the impugned decision be quashed and accordingly, a direction be issued to issue appointment orders in favour of the Petitioners for appointing them against the respective posts on the basis of recruitment process 2018.

17. As opposed to the submissions made on behalf of the Petitioners, Dr. Milind Sathe, learned Senior advocate representing the High Court has argued, *inter alia*, that the Writ Petitions are highly misconceived and the submissions made on their behalf are highly erroneous on various counts. Dr. Sathe has stated that clause 46 appended to the advertisement dated 28th March 2018 was all along known to the Petitioners, however, since they did not raise any objection to the same, the Petitioners are estopped from urging any such issue before this Court. It has also been argued by Dr. Sathe that merely because of inclusion of the Petitioners in the select/wait list does not

confer any legally enforceable or infeasible right in their favour. It is also submitted by Dr. Sathe that decision not to extend the validity of the list and to commence fresh recruitment process was taken on the basis of consideration of totality of circumstances and entire material on record and in public interest which is bona fide.

18. Dr. Sathe, learned Senior Advocate has also stated that any wait/select list cannot be permitted legally to operate indefinitely for the reason that such operation of a list for indefinite period will be hit by Article 16 of the Constitution of India, inasmuch as it will curtail fundamental rights of fresh candidates of participation in recruitment process and their consideration for selection in public services/posts.

19. It is also the case as set-up by Dr. Sathe that the number of posts advertised vide advertisement dated 28th March 2018 and the candidates included in the list captioned as "select list /wait list" was not based on any uniform basis in all the Districts but was based on the requisitions received from individual districts and some districts had requisitioned the numbers twice or four times the actual vacancy.

20. Drawing our attention to Rule 4 as available in Appendix-A of the Government Resolution dated 26th December 1957 as amended by subsequent Government Resolution dated 22nd February 1997, it has been argued by Dr. Sathe that the manner in which the said Rule provides for enlistment of candidates is such that it does not reflect the actual vacancies available to be filled-in. For convenience Rule 4 of Appendix-A is extracted hereunder:

"4. The number of candidates to be enlisted annually in such category specified in rule (1) shall be such as to make the total number in each category equal to (a) the average temporary vacancies which occurred during the previous two years plus (b) the expected permanent vacancies during the year for which the enlistment is proposed to be made and (c) an addition of 20 per cent of (a) and (b) to meet unexpected contingencies and wastage."

21. According to Dr. Sathe, Rule 4, thus, prescribes that the number of candidates to be enlisted shall be such as to make the total number of vacancies in each category equal to (a) the average temporary vacancies which occurred during the previous two years, plus (b) the expected permanent vacancies during the year in which enlistment is proposed and (c) an addition of 20% of the average temporary vacancies and the vacancies expected, to meet unexpected contingencies and wastage. Thus, his

submission is that the list prepared in accordance with the provisions of Rule 4 will never reflect the actual vacancies and hence in case any appointment is permitted to be made from such select/wait list, which is prepared not keeping in mind the actual vacancies, the same would be clearly hit by Article 16 of the Constitution of India for the reason that such a course would result in making the appointments against the vacancies which were not available at the time of advertisement.

22. On behalf of the High Court, it is also the argument that the Civil Manual is a collection of administrative instructions and is not in the nature of statutory rules or delegated legislation. It is also the case set up by Dr. Sathe that admittedly, Appendix-A appended to the Government Resolution dated 26th December 1957 as amended vide subsequent Government Resolution dated 22nd February 1971 though contains certain prescriptions described as Recruitment Rules, however, the same have been issued by the State Government in exercise of its ordinary executive functions and not in exercise of its statutory functions under any enactment or for that matter under Article 309 of the Constitution of India. In light of this, Dr. Sathe has argued that since the Recruitment Rules available in Appendix-A to the above

referred Government Resolution are not statutory in nature; rather they, at the most, can be said to be executive instructions, they are to be treated to be guidelines which can always be superseded, amended or even annulled by High Court by means of its decision which will be referable to Article 227 read with Article 235 of the Constitution of India.

23. It has also been argued by Dr. Sathe that the High Court has every authority and power to deviate from the administrative/executive instructions which in the instant case are available in Appendix-A attached to the above referred Government resolutions, though described as Rules and accordingly, clause 46 was introduced in the advertisement. Our attention has also been drawn to the resolution passed by Full-House of this Court on 2nd May 1981 according to which the decision in the matters relating to (a) promotion of Assistant Judge as a District Judge if such promotion involves supersession of any senior judge or judges, (b) appointment of a Civil Judge as a Civil Judge, Senior Division, otherwise than in accordance with the order of seniority (c) appointment of a Civil Judge as a Metropolitan Magistrate or a Judge of the Court of Small Cause (d) promotion of a Metropolitan Magistrate as an Additional Chief

Metropolitan Magistrate or as the Chief Metropolitan Magistrate, and (e) promotion of a Judge of Small Cause Court in Bombay as an Additional Chief Judge or as the Chief Judge of that Court has to be taken by the Full-House of the High Court.

As per the said resolution dated 2nd May 1981, in respect of any other matter, the decision may be taken in accordance with law and practice followed and in accordance with the directions which the Chief Justice may issue from time to time. It has, thus, been argued by Dr. Sathe that the decision to prescribe clause 46 of the advertisement that the select/wait list shall be valid for a period as may be prescribed by the High Court, cannot be said to be without jurisdiction and similarly, the decision taken by the Hon'ble Administrative Judges Committee not to extend the life of the select/wait list is also not without jurisdiction, as such subject does not fall within the subjects to be taken up by the Full-House of this Court in terms of the resolution of the Full-House meeting of this Court dated 2nd May 1981.

24. Lastly, it has been urged by Dr. Sathe that all the decisions in the instant case have been taken by the High Court having regard to the facts and circumstances of the case and in public

interest keeping in view the legal principle that no appointment against the vacancy not advertised can be made, otherwise it will be clearly hit by Article 16 of the Constitution of India. He has also stated that in absence of any *mala fide* on the part of the authorities of this Court in taking the impugned decisions for not extending the life of the select/wait list and further directing to initiate a fresh process of recruitment, the Writ Petitions are liable to be dismissed.

DISCUSSION AND ANALYSIS:

25. It is well settled principle of service jurisprudence surrounding appointment in public services/posts that mere participation or even selection does not confer any enforceable or indefeasible right in a candidate to seek appointment. The employer is not under any legal duty to fill-up all or any of the vacancies, however, if any such decision not to fill-up vacancy is to be taken, the same can be taken for *bona fide* and appropriate reasons and if vacancies are filled-in, the employer is bound to respect the comparative merit of the candidates on the basis of the selection held for the purpose and no discrimination can be permitted. Hon'ble Supreme Court in the

case of ***Shankarsan Dash Vs. Union of India***² has held that on notification of vacancies for appointment if adequate number of candidates are found fit, they do not acquire any indefeasible right to be appointed. The reason given for such proposition is that an advertisement/notification for filling-up vacancies by way of selection is merely an invitation to the qualified candidates to apply for recruitment and on their selection they do not acquire any right to be offered appointment against such posts. ***Shankarsan Dash (supra)*** refers another judgment of Hon'ble Supreme Court in the case of ***State of Haryana Vs. Subhash Chander Marwaha***³, where Hon'ble Supreme Court has expressly ruled that existence of vacancies does not give legal right to a selected candidate.

26. It has been the consistent view of Hon'ble Supreme Court. In this regard reference may be had to another judgment of Hon'ble Supreme Court in the case of ***Kulwinder Pal Singh and Anr. Vs. State of Punjab and Ors.***⁴ Paragraphs 10, 11 and 12 of this report are extracted hereinbelow:

10. It is fairly well settled that merely because the name of a candidate finds place in the select list, it would not give

² (1991) 3 SCC 47

³ (1974) 3 SCC 220

⁴ (2016) 6 SCC 532

him indefeasible right to get an appointment as well. The name of a candidate may appear in the merit list but he has no indefeasible right to an appointment (vide *Food Corporation of India v. Bhanu Lodh* [Food Corporation of India v. Bhanu Lodh, (2005) 3 SCC 618 : 2005 SCC (L&S) 433] , *All India SC & ST Employees' Assn. v. A. Arthur Jeen* [All India SC & ST Employees' Assn. v. A. Arthur Jeen, (2001) 6 SCC 380 : (2007) 2 SCC (L&S) 362] and *UPSC v. Gaurav Dwivedi* [UPSC v. Gaurav Dwivedi, (1999) 5 SCC 180 : 1999 SCC (L&S) 982] .

11. *This Court again in State of Orissa v. Rajkishore Nanda* [State of Orissa v. Rajkishore Nanda, (2010) 6 SCC 777 : (2010) 2 SCC (L&S) 313] , held as under : (SCC p. 783, paras 14 & 16)

"14. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.

16. A select 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."

12. *In Manoj Manu v. Union of India* [Manoj Manu v. Union of India, (2013) 12 SCC 171 : (2014) 2 SCC (L&S) 706] , it was held that (SCC p. 176, para 10) merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment as well. It is always open to the Government not to fill up the vacancies, however such decision should not be arbitrary or unreasonable. Once the decision is found to be based on some valid reason, the Court would not issue any mandamus to the Government to fill up the vacancies. As noticed earlier, because twenty-two other candidates were declared successful by the Supreme Court pertaining to the selection of the years 1998, 1999, 2000 and 2001 as Civil Judges (Junior Division), they were to be accommodated, as rightly resolved by the Administrative Committee in the meeting dated 6-7-2011. The three

resultant vacancies of the year 2007-2008 stood consumed with the joining of the said seventeen candidates and the same could not be filled up from the select list of that year. The decision of the Administrative Committee observing that the three resultant vacancies stood consumed is based on factual situation arising there and cannot be said to be arbitrary.

27. Thus, having regard to the aforesaid legal principles, we are of the opinion that no candidate borne on select/wait list has got any absolute right to be offered appointment and the authority, whether to appoint or not a selected candidate, lies with the appointing authority, though, for denying offer of appointment in such a situation, action of an employer has to conform to the principles of non-arbitrariness. Accordingly, in the instant matter, unless the Court finds that reason for not making appointment from select/wait list prepared on the basis of recruitment process 2018 is found to suffer from an element of arbitrariness, the prayer made in the Petitions cannot be granted.

28. The central argument in support of the Writ Petitions as advanced by learned Counsel representing the Petitioners revolves around the provision of Rule 7 of the Rules available in Appendix-A appended to Government Resolution dated 26th December 1957 as amended by subsequent Government

Resolution dated 26th February 1971 which forms part of the Civil Manual. The case set-up by the Petitioners that such rules are statutory in nature, in our opinion is not tenable. As is apparent from a perusal of paragraph 577 of the Civil Manual, the Recruitment Rules are part of the Government Resolution dated 26th December 1957 as amended vide subsequent Government Resolution dated 26th February 1971. The administrative or executive functions of the State Government are exercised in terms of the provisions contained in Article 166 of the Constitution of India. Any Government Resolution or Government order, thus, owes its existence to the general executive/administrative powers exercised by the State and not to any statute or legislation. In the hierarchy of laws the provisions of the Constitution occupy the highest pedestal and thereafter is placed the subordinate or delegated legislation framed or notified by the authority concerned which is empowered to frame such subordinate legislation under an enactment of the Legislature concerned. The executive instructions or circulars or orders or resolutions of the Government occupy a place below such subordinate/delegated legislation in the hierarchy of laws. It is needless to observe that

any instruction or circular or order is always subject to permissible variation and the repository of an executive power is always empowered to vary or even annul such executive instructions or circulars. The executive circulars or orders or resolutions are generally understood as guidelines.

29. Our view that the provisions of Rule 7 of the Recruitment Rules which are found in Appendix-A appended to the Government Resolution dated 26th December 1957 as amended vide Government Resolution dated 22nd February 1971 are merely executive instructions and do not have any statutory force, finds support from a Division Bench judgment of this Court in the case of ***Kisanlal Bachharaj Vyas Vs. Mohanlal Lala Chandmal⁵***. Paragraph No.7 of the said judgment is extracted hereinbelow:

"7. It must further be remembered that the Civil Manual merely embodies the rules and instructions for the guidance of the Civil Courts and officers subordinate to it and the same were issued in order to ensure uniformity in the rules and practice in all parts of the State. The argument of Mr. Shankar Anand that all the instructions contained in the Civil Manual must be deemed to be rules framed by the High Court under s. 122 of the Code of Civil Procedure is not, in our view, valid. Under s. 122, High Court not being the Court of a Judicial Commissioner, may, from time to time after previous

publication, make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule. But every instruction contained in the Civil Manual cannot obviously be regarded as rules framed under this provision. There is a separate printed booklet of rules made by the High Court of Judicature at Bombay under s. 122 of the Code of Civil Procedure. Those rules came into effect on November 1, 1966, and one of those rules contains an amendment to the provisions of O. IV, r. 1 of the Code of Civil Procedure, with which we are not concerned in this appeal. We have only referred to those rules to point out that they are clearly distinct and separate from the instructions contained in the Civil Manual and the instructions contained in para. 7 in Chapter II of the Civil Manual cannot, in our view, be regarded as a rule having the force of law."

30. Accordingly, we conclude that the so called recruitment rules which are part of the Government Resolutions, are only guidelines and do not have any statutory force which can be taken aid of only for guidance and can be varied or altered or even annulled by appropriate decision which may be taken by the High Court for exercising control and superintendence over the Group-C and Group-D staff attached to the establishment of District Courts.

31. Some discussion on the issue as to the authority or power of the High Court vis-a-vis authority and power of the State Government in respect of the recruitment and other related

matters concerning the staff attached to establishment of District judiciary is also relevant at this juncture.

32. In this regard we may refer to two Articles of the Constitution of India viz. Article 227 and 235. Article 227 vests in every High Court, superintendence of every courts or tribunals throughout the territory in which the High Court exercises its jurisdiction. Sub Article (2) and (3) of Article 227 vests certain authority in the High Court, however, without prejudice to the generality of the provisions contained in sub Article (1) of Article 227. In other words, the power of superintendence over all Courts and Tribunals by the High Court throughout its territories are not confined to only those available under sub Article (2) and (3) of Article 227. The occurrence of the words "without prejudice to the generality of the foregoing provisions" in sub Article (2) of Article 227 makes it abundantly clear that so far as the affairs of the Courts and Tribunals in respect of which the High Court exercises jurisdiction, the High Court has all the powers of superintendence.

33. Article 235 provides that the control over District Courts including the posting and promotion of, and grant of leave to the

persons belonging to judicial services shall be vested in the High Court. Article 235 is worded in such a manner that control of High Court over District Courts is not confined to certain service related matters of a member of judicial service. The phrase, "the posting and promotion of, and the grant of leave to persons belonging to the judicial service" is preceded by the word "including". That clearly means that such control of the High Court exists beyond the service related matters concerning persons belonging to judicial services. The subject "posting and promotion of, and the grant of leave to persons belonging to judicial services" is not exhaustive, it is rather inclusive. As to the extent of powers of High Court under Article 235 we may refer to a full bench judgment of the Gujarat High Court in the case of ***Y.P. Kumpavat & Ors. Vs. State of Gujarat & Ors.***⁶, wherein it has been held that the terminology used in Article 235 makes it clear that the said provision shall include within its folds not only the presiding Judges of the District judiciary but other functionaries and staff attached to such presiding Judges. Paragraph 21 of the said judgment is relevant in this regard which is extracted hereunder:

"21. According to Article 235, the control over the district

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and subordinate Courts is vested in the High Court, including the posting and promotion of, and the grant of leave to, persons belonging to the State judicial service, and holding a post inferior to that of a District Judge. However, the High Court is not authorized to deal with any such person otherwise than in accordance with the conditions of service prescribed under the law. Article 235 is not to be construed as taking away from any such person, any right of appeal, which he may have under the law regulating his conditions of service. Article 235 is the pivotal provision. The control vested in the High Court by Article 235 over the subordinate judiciary is for the purpose of preserving its independence and its protection from the executive interference. The control vested in the High Court by Article 235 of the Constitution of India over the judiciary below it comprehends a wide variety of matters and is "exclusive in nature, comprehensive in extent and effective in operation". The High Court is the sole custodian of the control over the subordinate judiciary. The word "control" in Article 235 is used in a comprehensive sense. It includes general superintendence over the working of the subordinate courts. The expression "control" in Article 235 also includes the disciplinary control. The terminology used is "District Courts and the Courts subordinate thereto", and their control has been squarely vested in the High Court. To our mind, this terminology has been used compendious to include within it the Presiding Judge and the functionaries and staff attached to him. If the intention of the framers of the Constitution was to confine and restrict the control of the High Court to the Presiding Officers of the District Courts and the other subordinate Courts, then such a wide ranging terminology would not have been used. It is a settled law that no part of a statute is to be interpreted as merely surplusage or to render substantial portion thereof as otiose except for very compelling reasons."

34. The subject matter in ***Y.P. Kumpavat (supra)*** which was considered by full bench of Gujarat High Court related to policy framed by the High Court to have a centralized recruitment

process for recruiting the staff attached to the Courts in the District judiciary. After detail consideration of all the relevant aspects the full bench expressed its conclusion in paragraph 57 of the judgment in the case of ***Y.P. Kumpavat (supra)*** which is extracted hereunder:

"57. In view of the aforesaid discussion, our final conclusions in these appeals are as under:-

- 1. The High Court in exercise of its power under Article 235 of the Constitution of India, can control the method, manner and the mode of recruitment of candidates to Class III and Class IV services in the District Courts and the Courts subordinate thereto, despite the fact that the power to make Rules as to the recruitment and conditions of service of the employees of the subordinate courts vests in the State Government;*
- 2. The control vested in the High Court under Article 235 of the Constitution is exercisable not only over the members of the judicial services of the State as defined in Article 236(b) of the Constitution of India, but also over the ministerial officers and servants on the establishment of the subordinate courts in the matters of appointment, over and above the disciplinary control;*
- 3. The policy decision of the High Court to have a Centralized Recruitment Cell for the purpose of undertaking the centralized selection process for recruitment of candidates to Class III and IV services in the respective District Courts could not be said to be in any manner illegal or in violation of the executive instructions as contained in the Government of Bombay, Home Department Resolution dated 26th December, 1957;*
- 4. The High Court was not obliged in law, before*

formulating a policy to have a centralized recruitment process, to recommend the Government for making necessary amendments in the administrative instructions as contained in the Resolution of 1957, as the High Court should not be asked to run to the Government in all such matters as the Rules, if any, framed with regard to the members of such establishments, either administratively or under Article 309 of the Constitution, must be so read as to make them consistent with the administrative superintendence or control jurisdiction of the High Court under the Constitution;

5. The appellants, except the appellants of Letters Patent Appeal No. 809 of 2013, have no indefeasible right of remaining on the post, taking into consideration the fact that their initial appointments were ad hoc and on temporary basis."

35. Regarding the scope of powers under Article 235, reference may also be had to the judgment of the Hon'ble Supreme Court in the case of ***Renu & Ors. Vs. District & Sessions Judge, Tis Hazari Courts, Delhi & Anr.***⁷ wherein the above view expressed by the Hon'ble Gujarat High Court that Article 235 provides for power to High Court to exercise complete administrative control over the District Courts to and all functionaries attached to District Courts including the ministerial staff and servants in the establishment of District judiciary, has been affirmed. Paragraph 23 of the judgment ***Renu & Ors. (supra)*** is extracted hereinbelow:

⁷ (2014) 14 SCC 50

"23. *Article 235 of the Constitution provides for power of the High Court to exercise complete administrative control over the subordinate courts. This control, undoubtedly, extends to all functionaries attached to the subordinate courts including the ministerial staff and servants in the establishment of the subordinate courts. If the administrative control cannot be exercised over the administrative and ministerial staff i.e. if the High Court would be denuded of its powers of control over the other administrative functionaries and ministerial staff of the District Court and subordinate courts other than judicial officers, then the purpose of superintendence provided therein would stand frustrated and such an interpretation would be wholly destructive to the harmonious, efficient and effective working of the subordinate courts. The courts are institutions or an organism where all the limbs complete the whole system of courts and when the constitutional provision is of such wide amplitude to cover both the courts and persons belonging to the judicial office, there would be no reason to exclude the other limbs of the courts, namely, administrative functionaries and ministerial staff of its establishment from the scope of control. Such control is exclusive in nature, comprehensive in extent and effective in operation. (Vide State of W.B. v. Nripendra Nath Bagchi [AIR 1966 SC 447] , Baradakanta Mishra v. High Court of Orissa [(1974) 1 SCC 374 : 1974 SCC (Cri) 128] , Yoginath D. Bagde v. State of Maharashtra [(1999) 7 SCC 739 : 1999 SCC (L&S) 1385] , Subedar Singh v. District Judge, Mirzapur [(2001) 1 SCC 37 : 2001 SCC (L&S) 141] , High Court of Judicature of Rajasthan v. P.P. Singh [(2003) 4 SCC 239 : 2003 SCC (L&S) 424] and High Court of Judicature of Madras v. R. Perachi [(2011) 12 SCC 137 : (2011) 2 SCC (L&S) 643] .)"*

36. Having regard to the relevant factors as discussed above, we are in complete agreement with the view taken by the Gujarat High Court in ***Y.P. Kumpavat (supra)***, where it has clearly been held that High Court, in exercise of its powers under Article 235, can control the method, manner and mode of

recruitment of candidates to Group-C and Group-D posts of the District Courts.

37. The next submission made by the learned Counsel for the Petitioners that the prescription contained in Clause 46 of the advertisement cannot be given effect to for the reason that it is contrary to Rule 7 of the Recruitment Rules, in our opinion, is not tenable. The prescription available in Clause 46 of the advertisement owes its existence to the general power of control and superintendence vested in the High Court over the District judiciary which, as discussed above, includes control and superintendence over the ministerial staff and servants attached to the establishment of the District judiciary. Rule 7 not being statutory as it was part of only a Government Resolution, is always subject to any further prescription which may be made by the High Court in respect of the process of recruitment and any conditions of service of the employees working in the District Courts. We, thus, hold that prescription in clause 46 of the advertisement which provided that the select/wait list will be valid for such period as may be prescribed by the High Court, cannot be faulted with as it was well within the powers of the High Court available under Article 235 to make such prescription

even in deviation of Rule 7 of the Recruitment Rules, which as observed above are not the rules in the traditional sense of the word; rather part of Government Resolution dated 26th December 1957 as amended by subsequent Government Resolution dated 22nd February 1971.

38. The ground urged on behalf of the Petitioners that decision not to extend life of the select/wait list, as communicated by the Registrar General of this Court vide his letter dated 25th November 2021, is without jurisdiction having been taken by the Hon'ble Judges of the Administrative Committee though such decision could be taken only by the Full House of the High Court, is also absolutely erroneous. A reference in this regard may be made to the decision taken in a Full-House meeting of this Court held on 2nd May 1981, according to which except for certain matters as already discussed in paragraph 23 above, decision on any other matter can be taken by the High Court in accordance with the practice followed or in accordance with the directions which the Chief Justice may issue from time to time. It is, thus, clear that in case any subject other than the exceptions as already detailed above, is placed before a Committee of Hon'ble Judges on the directions of the Chief Justice for taking decision

in a matter, such Committee of Judges is legally competent to take decision and any such decision will be termed to be the decision of the High Court in view of the resolution of the Full House of this Court dated 2nd May 1981. In this view of the matter, the submission that the decision not to extend the term of select/wait list is without jurisdiction, merits rejection.

39. There is yet another reason why we are unable to agree with the submissions made on behalf of the Petitioners seeking their appointment on the basis of select/wait list. It is also the case put-forth by Dr. Sathe, learned Senior Advocate appearing for the High Court that while requisitioning the vacancies on the basis of which the advertisement dated 28th March 2018 was issued the vacancies actually available immediately before issuance of advertisement was not calculated correctly and that the list to be prepared in terms of Rule 4 does not reflect the actual vacancies for which selection ought to be held. In this respect, what we find in Rule 4 of the Recruitment Rules provide that the list of candidates shall be prepared which shall comprise of total number of vacancies in each category equal to (a) average temporary vacancies which occurred during the previous two years, plus (b) expected permanent vacancies during the

year for which enlistment is proposed to be made, and (c) addition of 20% of (a) and (b), to meet the unexpected contingencies and wastage. Thus, if the list of candidates is prepared after selection in terms of Rule 4, in our considered view, the same cannot be said to be actual reflection of the number of vacancies available immediately before the advertisement. In such circumstances, if appointments are permitted to be offered on the basis of such list which does not reflect the actual vacancies, the same may be violative of Article 16 of the Constitution of India for the reason that it may result in the fresh candidates not getting an opportunity to participate in the selection for appointment to public posts or service.

CONCLUSION:

40. In view of the aforesaid discussion, we conclude that the decision rejecting the prayer for extension of life of the select/wait list prepared on the basis of recruitment process 2018 does not suffer from any illegality so as to call for any interference by this Court in these Writ Petitions. The decision to commence fresh process of recruitment, thus, is also not liable to be interfered with.

We also conclude, for the aforesaid reasons, that the Notification dated 29th November 2023 issued for commencing fresh recruitment process for appointment to various posts in the establishment of District Courts in the State of Maharashtra, also does not suffer from any illegality.

41. The Writ Petitions, thus, do not carry any force which are liable to be dismissed.

42. Resultantly, the Petitions are hereby dismissed.

43. There will, however, be no order as to costs.

44. Interim Applications, if any, stand disposed of.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)