



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

WRIT PETITION NO. 12489 OF 2024

1. The State of Maharashtra
Through Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai
Name- Rajesh Kumar
Mob.No. 8108101597
2. The District Selection Committee
@ District Collector, Ahmednagar
Name- Sidharam Karbasayya Salimath,
Ph.No. 7350202617
E-Mail Id. *collector.ahmednagar@maharashtra.gov.in*

.. Petitioners

Versus

Sachin s/o. Dnyaneshwar Dahihande
Age 27 years, Occu. Nil,
R/o. Adgaon (Bk.), Taluka and District
Aurangabad

.. Respondent

Mr. A. S. Shinde, A.G.P. for the Petitioners;
Mr. Shailendra S. Gangakhedkar, Advocate for Respondent

**CORAM : S. G. MEHARE &
SHAILESH P. BRAHME, JJ.**

DATE : 10-03-2025

PER COURT :-

1. Heard finally with consent of the learned A.G.P. for the petitioners and the learned counsel for respondent at the admission stage.

2. The petitioners are challenging the judgment and order of the learned Maharashtra Administrative Tribunal, Bench at Aurangabad in Original Application No.526 of 2022, dated 01.11.2023.

3. The petitioners had initiated recruitment process for the posts of Talathi considering the availability of vacancies from 01.12.2018 to 31.12.2019. In all 84 posts were declared. After the selection process was completed, the first select list was published on 02.12.2020 and revised list was published on 20.12.2021. Admittedly, the respondent was in the wait list. When the postings were to be issued, three candidates who were in merit list were found indulged in the malpractices. Therefore, the crimes were registered against them. The petitioners kept those three posts vacant. Since the three posts were kept vacant, the respondent is claiming right to be appointed for one of the three vacant posts.

4. The respondent had been to the learned Maharashtra Administrative Tribunal ("M.A.T.") for the same relief. The learned M.A.T. by the impugned order 01.11.2023 directed the petitioners to consider the name of the original applicant for appointment on the post of Talathi from the Open General Class and having regard to the vacancy position and issue appointment order in his favour.

5. The petitioners/State have assailed this order mainly on the ground that the wait list does not create the right. It is employer

to take a decision. The wait list is prepared in certain contingencies. Merely keeping three posts vacant because the persons who were in the merit list facing a criminal trial would also not be a right in their favour. The petitioners have a specific case that the life of the select/wait list should be one year or till the date considering the date of proposed vacancies while preparing the select list, whichever is later. A specific contention of the petitioners is that the respondent had no enforceable right. The recruitments were specific. The Government Resolution dated 13.06.2018 placed on record has not been properly considered. It has also been pointed out that after select list for year 2019, another recruitment process was undergone for year 2023 and the new posts were advertised.

6. The learned counsel for the respondent has come with a case that since three posts were vacant, the candidates who were in the wait list should have been considered and posted. The petitioners have no reason to keep those posts vacant. He has referred to the order of the State Government dated 02.12.2020 wherein the State has informed the Collector, Ahmednagar to issue postings to the candidates selected for the recruitment of 2019, except the candidates who were under suspicion. Referring to this order, he would submit that three posts were clearly vacant, therefore, the respondent, who in the wait list is entitled to posting.

7. A small question is, "Can the respondent being in the wait list enforce right to get employment?"

8. The learned A.G.P. for the petitioners would submit that the wait list is not meant for the employment. The employer cannot be forced to select the candidates even from the merit list also. It is a sole discretion and prerogative of the employer. As far as an employment public domain is concerned, the consideration may be a little different, but the basic powers of the State to record or not, could not be enforced in the way the respondent is asking for. Three posts were kept vacant with some motive and contingency of getting success or creating the right in favour of those three candidates who were facing the criminal trial. He would submit that once the next recruitment is started, the earlier wait list is automatically lapsed. The candidates in wait list are not refrained from appearing to the new recruitment process. He would submit that the impugned order of the learned M.A.T. is without considering the law and any reasons. Therefore, it is not a judgment in the eye of law. *Prima facie*, neither there was discrimination nor perverse decision has been taken by the employer/petitioners. Since the respondent did not have enforceable right against the petitioners, the writ petition deserves to be allowed.

9. To bolster his arguments, he relied on the following cases :-

- (a) *Vijay Kumar Mishra and Anr. vs. High Court of Judicature at Patna and Ors., AIR 2016 Supreme Court 3698;*
- (b) *State of Karnataka and others vs. Bharathi S., 2023 SCC OnLine SC 665*

10. Per contra, the learned counsel for the respondent would submit that the selection of Talathi is in public domain. However, every citizen has a right to equality. The petitioners have no reason to keep those three posts vacant. Since these three posts were kept vacant, the candidates from wait list should have been appointed. Therefore, the conduct of keeping these three posts vacant raises suspicion. He would rely on the observations of the learned M.A.T. from paragraphs No.10 and 12 of the impugned judgment and order, particularly the observations, that the number of candidates whose names are figured is much less than 84. In that circumstances, to keep three posts vacant may not be in the interest of the State. From the record it appears that the names which are recommended are less than the number of vacancies notified. As such, the respondent/original applicant has certainly made out a case for recommendation of his name being at Sr. No. 1 in the waiting list of the Open General candidates. He would also submit that the recruitment rules are silent. Therefore, lapsing of wait list is not automatic. No prejudice would be caused to the State if the appointment is issued to the respondent.

11. We have considered the facts of the case. We have also

read Government Resolution dated 13.06.2018. It has been clearly intimated to the aspirants and the participants about the life of the select list. The whole purpose of selection process is that the candidates / aspirants should be made known the rules of selection and those rules are considered to be the game rules and those cannot be changed in the midst of the recruitment. Be that as it may, the case before us is, has respondent enforceable right. Reading clause (13) of Government Resolution dated 13.06.2018, the life of the select list was published which is already discussed above. As far as keeping those three candidates' posts vacant is concerned, those are kept vacant under certain circumstances. The candidates who were in merit list were found involved in malpractices and were facing criminal prosecution. The role of employer and the powers of the employment are crystal clear. The law is well settled that the employee cannot force the employer to appoint him or her. An employment is the process of requirement of the assistance of some third person against consideration.

12. Ratio laid down by the Hon'ble Supreme Court in ***State of Karnataka vs. Bharati S.*** (supra) would assist the petitioners in which, it has been considered that the Rules and the principles that govern the services and held that the enlistment of name in the additional list neither creates a right nor a co-relative obligation for appointment.

13. A similar was the view of the Hon'ble Supreme Court in the case of **Vijay Kumar Mishra** (supra). The Hon'ble Supreme Court reiterated that it is well settled in service law that there is a distinction between selection and appointment. Every person who is successful in the selection process undertaken by the State for the purpose of filling up of certain posts under the State does not acquire any right to be appointed automatically. Textually, Article 233(2) only prohibits the appointment of a person who is already in the service of the Union or the State, but not the selection of such a person. The right of such a person to participate in the selection process undertaken by the State for appointment to any post in public service (subject to other rational prescriptions regarding the eligibility for participating in the selection process such as age, educational qualification, etc.) and be considered is guaranteed under Article 14 and 16 of the Constitution.

14. Apart from above legal position, the learned A.G.P. has brought to notice the subsequent selection process of 2023. A large number of posts were found vacant. In such circumstances, we presume that the State has impliedly lapsed earlier selection list as well as wait list.

15. Considering the issue involved in this case, we are of the candid opinion that no enforceable right exists in favour of the respondent. Since no right exists in favour of the respondent,

there is no question of its executability. This aspect of the right of the person who was the candidate in select / wait list, has not been considered by the learned M.A.T.

16. At the cost of repetition, we observe that in absence of enforceable right, the relief granted to the respondent by order of the learned M.A.T. is against the law. Therefore, the impugned judgment and order warrants interference. We pass the following order:-

ORDER

- i) The writ petition is allowed.
- ii) The impugned judgment and order of the learned Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad dated 01.11.2023, passed in Original Application No.526 of 2022 stands quashed and set aside.
- iii) After the order is dictated and completed in the open Court, the learned counsel for the respondent seeks stay to the judgment for three weeks, as he wanted to impugn this judgment and order before the Hon'ble Supreme Court.
- iv) Considering the hope of employment, we stay this order for three weeks from today.

[SHAILESH P. BRAHME]
JUDGE

[S. G. MEHARE]
JUDGE