

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

WRIT PETITION NO. 2506 OF 2025

Hitesh Tukaram Ade
Age :- 31 years, Occ. :- Service,
R/o. :- Flat No.401, Pratham Apartment,
Opp. Sulabh Apartment, Baner Pashan
Link Road, Pashan, Pune – 411 021 ...Petitioner

Versus

1. City and Industrial Development Corporation of Maharashtra Limited,
Through its Chairman & Managing Director,
At CIDCO Bhavan, CBD Belapur,
Navi Mumbai – 400 614
2. City and Industrial Development Corporation of Maharashtra Limited,
Through its General Manager (Personnel),
At CIDCO Bhavan, CBD Belapur,
Navi Mumbai – 400 614 ...Respondents

Mr. Abhijeet Desai a/w Ms. Daksha Punghera, Mr. Digvijay Kachare, Ms. Mohini Rehpade, Mr. Vijay Singh, Mr. Karan Gajra, Ms. Sanchita Sontakke, Advocates for the Petitioner.

Mr. Ashutosh M. Kulkarni a/w Mr. Akshay Kulkarni, Advocates for the Respondents, CIDCO.

**CORAM : RAVINDRA V. GHUGE
&
ASHWIN D. BHOBE, JJ.**

**RESERVED ON : 7th MARCH, 2025
PRONOUNCED ON : 28th MARCH, 2025**

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JUDGMENT :- (PER : RAVINDRA V. GHUGE, J.)

1. Rule. Rule made returnable forth with and heard finally by the consent of the parties.

2. The Petitioner has put forth Prayer Clause (a), (b), (c) and (d), as under :-

“a. That, this Hon’ble Court may be pleased to issue Writ of Certiorari or Writ in the nature of certiorari or any other Writ, order or direction quashing and setting the communication by the Respondent dated 27.01.2025 at Exhibit A issued by the Respondents;

b. That this Hon’ble Court may be pleased to issue Writ of Mandamus or Writ in the nature of Mandamus or any other Writ, order or direction to the Respondents to appoint the Petitioner for the post of Assistant Executive Engineer (Civil) in VJ(A) category by revising the merit list dated 10.11.2023 by further holding that the wait list/merit list does not get expired as stipulated in the impugned order dated 27.01.2025;

c. Pending the hearing and final disposal of the present Writ Petition, the Respondents be directed to appoint Petitioner for the post of Assistant Executive Engineer (Civil) under the category VJ(A);

d. Pending the hearing the Writ Petition, one post of the Assistant Executive Engineer (Civil) under the VJ(A) category may be kept vacant and not be filled or readvertised;”

UNDISPUTED ASPECTS

3. The Petitioner is presently working as a Junior

Engineer in the Pune Municipal Corporation. An advertisement was published by City and Industrial Development Corporation of Maharashtra (hereinafter referred to as CIDCO) in the April, 2023. The advertisement invited Applications for various posts within the stipulated period of 12th April, 2023 to 11th May, 2023. The Applicants had to apply through the Online mode.

4. The Petitioner applied for the post of Assistant Executive Engineer (Civil), from the VJ(A) category. There were three posts available, out of which one was reserved for the VJ(A) category. The Petitioner participated in the online examination on 8th July, 2023 at ION Digital Zone, Powai, Mumbai, Maharashtra. Pursuant to the said examination, the qualified candidates were called upon to attend the documents verification sessions in between 21st August, 2023 to 24th August, 2023, as per the schedule declared by the CIDCO. The Petitioner verified his documents. He was thereafter invited for an interview on 11th October, 2023 at CIDCO Bhavan, CBD Belapur, Navi Mumbai. The interview date was postponed to 31st October, 2023 and he participated in the said interview. The Petitioner's name was at Sr. No.14 in the order of merit list amongst the candidates.

SUBMISSIONS OF THE PETITIONER

5. The Petitioner submits that he was at Sr. No.14 in the over all merit list. There is no dispute as regards his qualifications. The result of the online examination and personal interview, dated 10th November, 2023, published by the General Manager (Personnel), has been placed on record at Page Nos.51 to 53 in the Petition paper book. Akash Ramrao Rathod was in the select list for the post reserved for the VJ(A) category, having scored 134.60 marks. In the waiting list of the VJ(A) category, Vikram Vithalsing Murade was at Sr. No.1, having scored 133.60 marks and Prajay Kisan Rathod was at Sr. No.2, having scored 133.60 marks. Considering the rule applicable and which is not disputed by the Petitioner, for one post, one person was listed in the select list for appointment and two persons were listed in the waiting list. It is an admitted position that the Petitioner was not in the waiting list.

6. An appointment letter was issued to Akash Ramrao Rathod, who was supposed to join in between 28th November, 2023 to 27th December, 2023. He declined. Hence, Vikram Vithalsing Murade, who was at Sr. No.1 in the waiting list, was being considered by CIDCO. However, he was promoted on 29th

December, 2023. Hence, the second and the last candidate in the waiting list, namely, Prajay Kisan Rathod was offered the position on 5th July, 2024. He sought extension upto 19th September, 2024. Eventually, he did not join and the post was not filled in.

7. The wait list dated 10th November, 2023 was prescribed a lifeline of one year until 10th November, 2024. After 10 days of its expiry, CIDCO received a representation dated 18th November, 2024 from the Petitioner, requesting that he be considered from the VJ(A) category. Though he was out of the waiting list, having scored 125.40 marks, he should be considered for appointment. CIDCO replied vide communication dated 27th January, 2025 and the Petitioner was informed that all the three candidates for the said post had declined to join. The wait list had a lifespan of only one year, as per the rules, and no exception could be carved out to accommodate the Petitioner after the wait list has expired on 10th November, 2024. Moreover, he was not in the wait list. Hence, his request for being considered for appointment was turned down.

SUBMISSIONS OF CIDCO

8. The learned Advocate representing CIDCO has

contended that the request of the Petitioner cannot be legally considered in the light of the terms and conditions set out in the advertisement. Clause No.24 permits the CIDCO to fill the post from one of the wait listed candidates, if the selected candidates do not join. CIDCO published the name of the selected candidate and also the wait list comprising of two candidates, by following the proportion of 1:3.

9. The selected candidate declined to take up the appointment. Since the first wait listed candidate was granted promotion, the next candidate was considered. He sought time. He was informed vide communication dated 4th September, 2024, that he should join the post, on or before 19th September, 2024, failing which, his candidature would be cancelled. Yet, he did not join. Thereafter, the waiting list expired on 10th November, 2024. Even the Government Resolution dated 4th May, 2022, published by the General Administration Department of the State of Maharashtra, prescribed a lifespan of one year for the wait list. Hence, since the Petitioner was not in the wait list at all, CIDCO cannot continuously supplant names in the wait list. In short, CIDCO cannot continuously keep on entering names in the wait list from amongst

those candidates who are outside the wait list, only on account of fortuitous circumstances that the selected candidate did not join and the two wait listed candidates also did not join.

ANALYSIS AND CONCLUSIONS

10. We find peculiar facts and circumstances in this case. On the one hand, CIDCO has strictly abided by the rules and by following the proportion of 1:3, the select list as well as the waitlist was declared on 10th November, 2023. The Petitioner's name does not figure in the wait list, naturally for the reason that he was not within the proportion of 1:3. The contention of the Petitioner is that when the selected candidate Akash Ramrao Rathod did not join, CIDCO should have amended its results by inserting Vikram Vithalsing Murade (first in the wait list), in place of Akash Ramrao Rathod and should have shown him as the selected candidate. Prajay Kisan Rathod who was Sr. No.2 in the wait list, should have been promoted to Sr. No.1 in the wait list and the Petitioner's name should have then been entered at Sr. No.2 in the wait list. When Vikram Vithalsing Murade got promoted, Prajay Kisan Rathod should have been entered in the select list and the Petitioner should have been promoted to Sr. No.1 in the wait list.

11. We find such submissions to be fallacious for the reason that this would result in a chaotic situation. CIDCO had advertised several positions. A long list of candidates had applied for various posts. The principle of 1:3 was uniformly followed and all the candidates in the select list and the wait list were published vide the result dated 10th November, 2023. If the Petitioner's submissions are to be accepted, it would be a continuous exercise for CIDCO to continuously upgrade its wait list and to maintain transparency, such upgraded list will have to be published as and when the list was modified. This is not the prescribed manner in which the select list and the wait list, are to be operated. Once the result is declared, the list is final. If the candidate from the select list does not join, the rules prescribe that CIDCO has to opt for the first wait listed candidate and if he does not join, it would opt for the second wait listed candidate. A new wait list cannot be created after the results are declared.

12. The Judgment of the Hon'ble Supreme Court in *Shankarsan Dash V/s. Union of India, 1991 (2) SCR 567*, lays down the law that the State has no license to act in an arbitrary manner

and the decision not to fill up vacancies is to be taken *bonafide* for appropriate reasons, though the successful candidates do not acquire any indefeasible right to be appointed. Once a post has not been consumed and a meritorious candidate in the merit list is available, then the vacancy could be filled in by inviting the next person in the list. Before us, is a case wherein the Petitioner was not even in the wait list.

13. In *Tej Prakash Pathak And Others V/s. Rajasthan High Court And Others, (2025) 2 SCC 1*, the Hon'ble Supreme Court concluded that a candidate placed in the select list gets no indefeasible right to be appointed even if vacancies are available. Similar view was taken in *State of Haryana V/s. Subash Chander Marwaha (1974) 3 SCC 220*. Against 15 vacancies, only top seven from the select list were appointed. It was held that the State or its instrumentality cannot arbitrarily deny appointment to a selected candidates. The burden is on the State to justify its decision for not making an appointment from the select list.

14. In *State of Jammu And Kashmir And Others V/s. Sat Pal, (2013) 11 SCC 737*, it was held that a waiting list would start to

operate only after the posts for which the recruitment is conducted, have been filled in. A waiting list would commence to operate when offers of appointment have been issued to those emerging on the top of the merit list. The existence of a merit list allows room to the appointing authority to fill up vacancies which arise during the subsistence of the waiting list. A waiting list commences to operate after the vacancies for which the recruitment process has been conducted and have been filled in.

15. In *Manoj Manu And Anr. V/s. Union of India And Anr., (2013) 12 SCC 171*, the Hon'ble Supreme Court held that, it is manifest that a person whose name is included in the select list, does not acquire any right to be appointed. The Government may decide not to fill up the vacancies for valid reasons. Such a decision of not to fill up the required/advertised vacancies, on the part of the Government, should not be arbitrary or unreasonable, but must be based on sound, rational and conscious application of mind. In *Sandeep Singh V/s. State of Haryana, (2002) 10 SCC 549*, it was observed that the vacancy available should be filled up unless there is any statutory embargo for the same.

16. Considering the above, we are of the view that if the claim of the Petitioner is to be entertained on the ground that one post has gone vacant, we cannot ignore the fact that the Petitioner was never in the wait list, much less in the merit list. If his claim is to be considered, he will have to be drawn from the residual candidates in order to be inserted in the wait list because Sr. No.1 in the wait list got promoted and Sr. No.2 in the wait list did not consent to be appointed. In order to assert a right to appointment, notwithstanding that selection would not create an indefeasible right to be appointed, the claim of the Petitioner cannot be sustained considering that he was not even in the waiting list so as to be eligible to be considered for appointment.

17. In view of the above, this **Writ Petition is devoid of merit and stands dismissed. Rule is discharged.**

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)