

(2023) 06 BOM CK 0016
In the Bombay High Court
Case No : Writ Petition No. 5179 Of 2021

Sharad

APPELLANT

Vs

Maharashtra State Power Generation Company Limited And
Others

RESPONDENT

Date of Decision : 09-06-2023

Acts Referred:

Classification And Recruitment Regulations, 1961 — Regulation 29(a)

Citation : (2023) 06 BOM CK 0016

Hon'ble Judges : A.S.Chandurkar, J;M. W. Chandwani, J

Bench : Division Bench

Advocate : A.S. Reddy, V.S. Wankhade, N.G. Moharir

Final Decision : Allowed

Judgement

A.S. Chandurkar, J

1. Rule. Rule made returnable forthwith and heard the learned Counsel for the parties.
2. The petitioner who belongs to Vimukta Jati – A seeks a direction to be issued to the respondents to issue him an order of appointment on the post of Assistant Welfare Officer at the Maharashtra State Power Generation Company Limited that is reserved for VJ-A candidates. On 16/1/2017, an advertisement came to be issued by the Company inviting applications for various posts which included five posts of Assistant Welfare Officer of which one post was reserved for the candidates from VJ-A. Pursuant to the said advertisement, the petitioner applied for the same on 6/2/2017. He appeared for the written examination and passed the same. He secured 46 marks out of 90 in the said examination. The petitioner was accordingly called for personal interview on 2/6/2017. The petitioner appeared at the said personal interview. Thereafter, on 27/7/2017, a provisional list of candidates came to be published calling upon the candidates to submit relevant documents for verification. The date and time for submission of such

documents was communicated and it was stated that failure to submit the said documents at the relevant date and time would result in the candidate not being considered. The name of one Jyoti Ramdas Doundkar was shown select list while the petitioner's name was shown at Sr. No. 1 in the wait list. It appears that the said candidate who was placed in the select list remained absent as a result of which her documents could not be verified. On getting knowledge of the same, the petitioner moved a representation on 3/8/2017 stating therein that he be considered for appointment since the candidate in the select list had remained absent during verification of documents. Thereafter, on 22/9/2017, a final select list of candidates appointed on the post of Assistant Welfare Officer came to be published. The name of the petitioner, however, did not figure in the select list though his name was shown in the list of eligible candidates. The petitioner therefore submitted representations to the Executive Director (Human Resources) as well as the Managing Director stating therein that he be issued an appointment order. According to the petitioner, these representations remained pending and the same were not considered. Thereafter, the petitioner submitted various other representations to other authorities and though he was assured that appropriate action would be taken, nothing further happened in the matter. It is in this backdrop that the present Writ Petition came to be filed seeking redressal of the petitioner's grievance of his non-appointment on the post of Assistant Welfare Officer.

3. Shri A.S. Reddy, learned Counsel for the petitioner submitted that the petitioner has been deprived of appointment on the post of Assistant Welfare Officer for no justifiable reason. He submitted that the petitioner was placed at Sr. No. 1 in the wait list. On the selected candidate having failed to submit relevant documents for verification, she was held to be not eligible to participate further in the recruitment process. Consequentially, the petitioner ought to have been shifted from the wait list to the select list especially when his documents had been verified and there was no impediment in issuing him the appointment order. Despite immediately making representations on 30/11/2017, the Company through its Officers did not consider the same. The Company had thus sought to deprive the petitioner of his appointment. According to him, failure to consider the representations could not result in depriving the petitioner of such appointment. In that regard, the learned Counsel placed reliance on the decision in *Malaya Nanda Sethy Vs. State of Orissa and Others* [2022 SCC OnLine SC 684] as well as the judgment of the Division Bench at the Principal Seat in *Deepak Pandurang More Vs. The State of Maharashtra & Ors.* [Writ Petition No. 1137/2021 decided on 29/3/2023]. It was further submitted that though the petitioner would not have an absolute right of appointment, he was entitled to fair consideration of his case for appointment. Being placed at Sr. No. 1 in the wait list and the selected candidate having remained absent, there was no legal basis for denying the petitioner such appointment. The action of the Company was arbitrary since no reason was indicated for not appointing the petitioner. In that regard, reliance was placed on the decisions in i) *Shankarsan Dash Vs.*

Union of India [(1991) 3 SCC 47]; ii) R.S. Mittal Vs. Union of India [1995 Supp (2) SCC 230]; and iii) N.T. Devin Katti And Others Vs. Karnataka Public Service Commission And Others [(1990) 3 SCC 157]. It was then submitted that though the stand taken by the Company was that the life of the wait list was for a period of one year, there were various instances on record to indicate that on the basis of the same advertisement, the Company had made various appointments even after expiry of period of one year of the said wait list. In that context, a reference was made to the appointment order issued to one Tushar Velis on the post of Deputy Manager (Security) on 9/7/2019 and one Prakash Kantela on the post of Deputy Senior Manager (Security) vide order of appointment dated 23/10/2019. The stand taken by the Company that no candidate whose name was appearing in the wait list had been issued appointment order was incorrect and false for the reason that by communication dated 3/7/2018, the testing agency (ATTEST) which conducted the recruitment process had issued a communication stating therein that a candidate namely Satish Birkhede was moved from the select list to the wait list. The said candidate was thereafter issued an appointment order on 10/9/2018. During pendency of the Writ Petition, another appointment order was issued making appointment on the post of Junior Security Officer from the same advertisement which fact was not denied by the Company. In these facts, it was submitted that the petitioner ought to be issued an appointment order especially when one post of Assistant Welfare Officer had been kept vacant pursuant to the statement made on behalf of the Company as recorded by the order dated 19/8/2022. It was thus submitted that the relief as sought be granted.

4. Shri N.G. Moharir, learned Counsel for the respondents – Company opposed the aforesaid contentions and submitted that the petitioner had no right whatsoever to seek appointment on the post of Assistant Welfare Officer merely on the ground that his name was shown in the wait list. He submitted that as per the Classification and Recruitment Regulations, 1961 (for short "Regulations of 1961"), the select list dated 22/9/2017 was valid only till 22/9/2018 as per Regulation 29(a) thereof. He further submitted that the petitioner had approached this Court after a considerable period of the wait list having ceased to operate after a period of one year. A reference was made to the order passed in Shivkumar Bakaram Khobragade Vs. State of Maharashtra and anr. [Writ Petition No. 677/2019 decided on 9/10/2019] in that regard. It was thus submitted that there was no case made out to grant any relief whatsoever to the petitioner and the Writ Petition was liable to be dismissed.

5. In rejoinder, the learned Counsel for the petitioner referred to the judgments of this Court in Deepak s/o Marotirao Narwad Vs. The Maharashtra State Power Generation Company Limited, Through its Chairman and Managing Director and another [Writ Petition No. 6779/2019 decided on 15/2/2021] that arose from the same advertisement wherein after considering the stand of the Company that the select list had a life of one year, it was held that in absence of any plausible reason for not filling-in the post in question, a legitimate claim of a candidate

cannot be defeated. Similarly, reliance was placed on the decision in Dnyaneshwar s/o Abhimanyu Wakade and others Vs. The State of Maharashtra and others [Writ Petition No. 6368/2019 decided on 30/4/2020] wherein Regulation 29(a) was considered and it was held that a candidate otherwise eligible is entitled to be fairly treated during the selection process.

6. We have heard the learned Counsel for the parties at length and with their assistance, we have perused the documents on record. Before proceeding to consider the entitlement of the petitioner to the reliefs sought in the Writ Petition, it would be necessary to first refer to the various principles laid down by the Hon'ble Supreme Court as regards the right of a candidate to seek appointment on the basis of his name figuring in the select list. In East Coast Railway And Another Vs. Mahadev Appa Rao And Others [(2010) 7 SCC 678], it has been observed in paragraph 14 as under :

"14. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter."

In N.T. Devin Katti And Others (supra), the Hon'ble Supreme Court in paragraph 11 has indicated the nature of right of a candidate seeking selection on being otherwise qualified. In paragraph 11, it has been held as under :

"11. XXXX Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature."

In the same context, it has been held in R.S. Mittal (supra) in paragraph 10 as under :

"10. XXXX It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a

justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. XXXX”

In a recent decision in *The State of Karnataka & Ors. Vs. Smt. Bharathi S.* [Civil Appeal No. 3062/2023 decided on 19/5/2023] it has been reiterated by the Hon’ble Supreme Court that the duty to fill up vacancies from the waiting list can arise only on the basis of a mandatory rule. In the absence of such mandate, the decision to fill all vacancies is left to the wisdom of the State. However, the State cannot act arbitrarily and its action will be subject to judicial review.

As regards the period of validity of a select list, it has been held in *Sheo Shyam And Others Vs. State of U.P. And Others* [(2005) 10 SCC 314] in paragraph 10 as under :

“10. In the aforesaid background, in a case of this nature and in view of the peculiar nature of the fact situation noted above, it would be inequitable and unjust to compute the one-year period from the date when the first recommendation was made by the Commission. Undisputedly, appointments were made till the end of 2001. Therefore, it would be proper to reckon the period from the last date when the recommendation was made. XXXX”

7. In the light of the aforesaid legal position, it would be first necessary to refer to certain undisputed facts that are available on record. The advertisement in question is dated 16/1/2017 and the petitioner claims entitlement to the post of Assistant Welfare Officer reserved for candidates from VJ-A category. Pursuant to completion of the written examination and thereafter the interview, the Company published a provisional list of candidates calling upon them to appear for verification of their documents. For the post in question, Ms. Jyoti Ramdas Doundkar was shown in the select list at Sr. No. 1 while the petitioner’s name was shown at Sr. No. 1 in the wait list. It is an admitted position that the candidate shown at Sr. No. 1 in the select list remained absent as a result of which her candidature came to an end in terms of the notice published by the Company on 27/7/2017. The petitioner made representations on 30/11/2017 receipt of which has not been denied by the Company. The assertion of the petitioner that the said representations were not decided has also not been denied by the Company. According to the Company, the life of the select list was for a period of one year in terms of Regulation 29(a) of the Regulations of 1961. It is further not in dispute that after lapse of one year, the Company proceeded to issue letters of appointments to one Tushar Bharat Velis for the post of Deputy Manager (Security), Satish Sevakram Birkhede for the post of Deputy Manager (Security) as well as Rajkumar Bajirao Dhenge on the post of Watchman by order dated 4/5/2022. These appointments have been made pursuant to the Advertisement No.1 (January)/2017 under which the petitioner claims entitlement.

8. At this stage, it would be necessary to refer to two decisions of this Court arising from the same advertisement. In *Dnyaneshwar s/o Abhimanyu Wakade and others (supra)*, the petitioners were selected for the post of Surveyor – Grade-2. Despite vacancies on the said posts, the petitioners were not being issued appointment orders though their names figured in the select list. That action was challenged in the aforesaid Writ Petition. A specific stand was taken by the Company that the validity of the select list/ wait list was for a period of one year which was 17/9/2018. It was found that during the course of verification, some selected candidates did not possess necessary work experience as a result of which their candidature came to be cancelled. The documents of the petitioners were verified. In the said backdrop, it was held that under Regulation 29(a) of the Regulations of 1961, the validity of the wait list of the selected candidates, even if partly operated, could be extended for one further year. Despite this position, the Company merely stated that the validity of the select list/ wait list was for only one year. After recognizing the legal position that a candidate did not have any vested right of selection but had a right of being considered in accordance with the Rules, it was found that there was no justifiable reason with the Company to decline appointments to the petitioners. Mere refusal on the part of the Company in issuing appointment orders was found to be bad in law. The Company was thus directed to consider the candidature of the petitioners if they were otherwise found eligible for the posts in question.

Similarly, in *Deepak s/o Marotirao Narwad (supra)*, the petitioner had applied for the post of Deputy Manager (Security) pursuant to the very same advertisement. Despite the petitioner being the only eligible candidate, he had not been issued the appointment order. A similar defence as regards life of the select list was taken and the Division Bench considered the fact that the Company had issued appointment orders even after expiry of period of one year of operation of the select list. Relying upon the earlier decision in *Dnyaneshwar s/o Abhimanyu Wakade and others (supra)*, it was held that the Company could not come-up with any plausible reason for not filling-in the post. It was held that justification for not filling-in the post ought to be reasonable and not arbitrary. In absence of any such material on record, it was held that the petitioner was entitled to be issued the order of appointment for the post in question.

9. It can thus be seen from the aforesaid two decisions of this Court which arise out of the very same advertisement under which the present petitioner is seeking appointment that a similar defence as regards expiry of validity of select list/ wait list was raised by the Company and it was found that there was no material on record to justify non-issuance of appointment order to the candidates found eligible in the selection process.

10. Coming to the facts of the present case, we find that though the Company has filed its affidavit-in-reply, the same is totally silent with regard to the reason for not issuing an appointment order to the petitioner. Undisputedly, the

petitioner was placed at Sr. No. 1 in the wait list and on the selected candidate not participating further in the recruitment process by remaining absent for verification of documents, it becomes clear that the candidature of the petitioner was liable to be considered since he was placed at Sr. No. 1 in the wait list. There is no material whatsoever placed on record by the Company to at least indicate or justify the reason for not proceeding to operate the wait list when the selected candidate did not seek appointment. We also find that the specific stand taken by the petitioner of other appointments being made after expiry of the select list/ wait list by the Company has not been specifically denied. These averments can be found in paragraphs 28 to 30 of the Writ Petition. Except for the statement that no candidate whose name was appearing in the wait list was given appointment order, the specific assertion in that regard has not been denied.

11. In the affidavit-in-rejoinder filed by the petitioner, the relevant documents with regard to the candidate, Tushar Bharat Velis have been referred to and it has been specifically stated that the said candidate was issued the order of appointment after lapse of more than two years. It is thus clear from the record that there is absence of any justification for not issuing any appointment order to the petitioner and further the Company itself has issued three appointment orders to the concerned candidates even after expiry of one year of the select list/ wait list. The fact that the life of the waiting list can be extended beyond the period of one year is stipulated in Regulation 29(a) itself.

12. Yet another relevant aspect that cannot be ignored is that the petitioner immediately on 30/11/2017 made representations to the Executive Director (Human Resources) as well as the Managing Director bringing it to their notice that the petitioner was being deprived of appointment despite having been placed in the eligible list of candidates. Non-consideration of those representations is thus material in the facts of the present case. There does not appear to be any justification whatsoever for not considering the petitioner's representations. It is also to be noted that on 8/1/2018, the Chief General Manager (Human Resources) issued a communication to the Deputy Collector, Employment Guarantee Scheme, Yavatmal to verify the issuance of caste certificate dated 27/9/2016 to the petitioner. The Deputy Collector, Employment Guarantee Scheme by its communication dated 15/1/2018 informed the Chief General Manager (Human Resources) that the said office had in fact issued the said caste certificate to the petitioner. It is also to be noted that the Executive Director of the Company informed the Officer on Special Duty, Ministry of Energy and Tourism that the candidature of the petitioner would be duly considered in accordance with the Rules of the Company. The aforesaid thus indicates that right from making representations from 30/11/2017 and thereafter following-up the matter, the petitioner has been pursuing the Company in seeking issuance of the appointment order. Having failed to decide the petitioner's representations and not having responded in the matter, it would not be now open for the Company to urge that the petitioner had belatedly approached this Court by filing the present Writ Petition. The Company itself having not acted with diligence

thereby requiring the petitioner to approach various authorities in the matter, it would not be justifiable to uphold the stand taken by the Company in this regard. Accepting the same would result in paying premium to the Company for its total inaction. In any event, we find that there is absence of any reason whatsoever for not operating the wait list insofar as the petitioner is concerned while it was operated for other candidates. We may note that in a recent decision in *Malaya Nanda Sethy (supra)*, it has been held by the Hon'ble Supreme Court that if there is no fault or delay on part of a candidate and all throughout there has been a delay and inaction on part of the authority in question, the candidate cannot be blamed and by not appointing the candidate, the inaction on part of the authority cannot be condoned.

13. Hence for the aforesaid reasons, we are satisfied that the petitioner has been unnecessarily deprived of appointment on the post of Assistant Welfare Officer for no fault on his part. One post in that regard has been kept vacant by the Company pursuant to the statement made on its behalf in the present proceedings on 19/8/2022. Since such post for a candidate from VJ-A category has been kept vacant, the petitioner would be entitled to appropriate relief. It is accordingly directed that the candidature of the petitioner shall be considered for appointment on the post of Assistant Welfare Officer in VJ-A category if he is otherwise found eligible. The right of the petitioner shall not be denied by relying upon Regulation 29(a) of the Regulations of 1961 in the facts of the present case. Though the petitioner has also prayed for grant of all consequential benefits, we find that such relief cannot be granted in the facts of the present case.

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