

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

WRIT PETITION NO.6368 OF 2019

1. Dnyaneshwar s/o Abhimanyu Wakade,
Age 27 years, Occu. Nil
R/o At post Mudgal, Taluka Pathari,
District Parbhani
 2. Dattatraya s/o Shivajirao Gore,
Age 30 years, Occu. Nil
R/o Mahadev Nagar,
Shirur Anantpal,
Taluka Shirur Anantpal,
District Latur
 3. Kiran s/o Ashok Patil,
Age 27 years, Occu. Nil
R/o At Post Shingave,
Taluka Chandwad,
District Nashik
- .. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
Industries, Energy and Labour
Department, Mantralaya,
Mumbai
 2. The General Manager,
(HR-MPP) Corporate Office,
Maharashtra State,
Electricity Transmission Co.Ltd.,
"PRAKASHGANGA", C-19,
E-Block, Bandra (E),
Mumbai 51
 3. The Chief Engineer,
EHV Project cum O & M Zone,
Aurangabad, Block No.201 & 205,
2nd Floor, MSETCL Administrative
Building, Near Harsool T-Point
Jalgaon road, Aurangabad
- .. Respondents

- WITH -

WRIT PETITION NO.6471 OF 2019

1. Kailas s/o Manohar Gaikwad,
Age 32 years, Occu. Nil,
R/o Gaikwad Niwas,
Opp. MSEB Office, Beed,
District Beed
- .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Industries, Energy and Labour
Department, Mantralaya,
Mumbai
2. The General Manager,
(HR-MPP) Corporate Office,
Maharashtra State,
Electricity Transmission Co.Ltd.,
"PRAKASHGANGA", C-19,
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3. The Chief Engineer,
EHV Project cum O & M Zone,
Aurangabad, Block No.201 & 205,
2nd Floor, MSETCL Administrative
Building, Near Harsool T-Point
Jalgaon road, Aurangabad .. Respondents

Mr Amol B. Chalak, Advocate for petitioners
Mr S.G. Karlekar, A.G.P. for respondent no.1
Mr S.V. Adwant, Advocate for respondents no.2 and 3

**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

ORDER RESERVED ON : 13th February 2020

FINAL ORDER PRONOUNCED ON: 30th April 2020

FINAL ORDER (Per Shrikant D. Kulkarni, J.)

1. The petitioners are invoking provisions of Article 226 of the Constitution of India and seeking directions against respondents no.2 and 3 to conclude the recruitment process initiated for the posts of Surveyor – Grade-2 pursuant to the advertisement No.01/2017 dated 16.6.2017.
2. In Writ Petition No.6368 of 2019, petitioner no.1 belongs to open category, whereas petitioner nos.2 and 3 belong to Other Backward Class

category. The petitioner in Writ Petition No.6471 of 2019 belongs to NT (B) category i.e. NT (B). According to the petitioners, the National Council for Training in Vocational Trade (NCTVT), the Government Industrial Training Institute has issued them certificate in Surveyor trade. They have also work experience of more than two years as Surveyor. Respondents no.2 and 3 in all zones of the Maharashtra, more particularly Nagpur, Amravati, Pune, Karad, Nashik and Aurangabad had decided to fill up the vacancies of Surveyor Grade-2. Accordingly, the Aurangabad zone had issued advertisement No.07/2017 dated 16.6.2017 and invited applications for the posts of Surveyor Grade-2 from the persons belonging to different category including Other Backward Class category. The Aurangabad zone had advertised total six posts of Surveyor Grade-2. It was specifically mentioned in the advertisement that no oral interviews would be conducted and the selection process would be exclusively by online examination basis.

3. The petitioners had applied for the posts of Surveyor Grade-2 from their respective categories. They had appeared for online examination test held on 20.8.2017. Respondent no.3 had published merit list as well as provisional select list and called upon the petitioners for verification of documents. The petitioners had appeared for documents verification and furnished entire documents on 9.7.2018 and 20.8.2018. The names of the petitioners out of Writ Petition No.6368 of 2019 appeared in the select list. Petitioner no.1 was selected from open category. Petitioner no.2 was selected against open category on the basis of merit and petitioner no.3 was selected from Other Backward Class category.

4. One Mr Sarang Narayanappa Allamkhane came to be selected from NT(B) category. He did not satisfy qualifying experience of two years, which is mandatory for the post of Surveyor Grade-2. As such, respondent no.3

cancelled the selection of Mr Sarang Allamkhane vide letter dated 3.9.2018. Respondent no.3 called upon the petitioner in Writ Petition No.6471 of 2019, for verification of documents vide letter dated 10.9.2018 from NT (B) category since he was found next eligible. Respondent no.3 completed process of verification of documents on 12.9.2018.

5. It is contended by the petitioners that Nagpur, Amravati, Pune, Karad and Nashik zones have issued appointment orders in favour of the selected candidates and now they are working on their posts. So far as Aurangabad zone is concerned, respondent no.3 has issued appointment orders in favour of two selected candidates namely Mr Saket Raghunath Gaikwad and Smt. Pushpabai Gangadhar Janrao. The petitioners time and again requested the respondents to conclude the selection process and issue their appointment orders pursuant to their selection for the posts of Surveyor Grade-2.

6. According to the petitioners, they have been selected for the post of Surveyor Grade-2 by following proper procedure. The petitioners came to know that the respondents are about to scrap the wait list/select list. According to the petitioners, there are vacancies of the post of Surveyor Grade-2 in Aurangabad Zone, but respondents no.2 and 3 are not issuing their appointment orders. According to the petitioners, the respondents cannot act arbitrarily. The respondents cannot refuse to issue appointment orders without unjustifiable reason. According to the petitioners, the act of respondents is unfair and unjust. Therefore, petitioners are seeking directions against respondents no.2 and 3 to conclude the recruitment process initiated for the posts of Surveyor Grade-2 and consider to appoint the petitioners on the posts of Surveyor Grade-2, since their names appeared in the select list.

7. By way of reply affidavit respondents no.2 and 3 have admitted that they had issued advertisement No.01/2017 on 16.6.2017 to fill up the posts of Surveyor Grade-2 (six posts) out of various categories and they have completed online examination and issued select list. They have also admitted that they have completed document verification process.

8. It is the main contention of respondents no.2 and 3 that as per the MSETCL Employees Service Regulations, 2012, the validity of merit list/select list/wait list is for a period of one year from the date of declaration of results and as such, the provisional select list was valid upto 17.9.2018. According to respondents no.2 and 3, the provisional select list declared on 18.9.2017 specifically mentions that in the event the provisionally selected candidate does not satisfy the terms and conditions, as per the advertisement, his candidature will be cancelled and it was imperative for the provisionally selected candidate to qualify under each and every condition mentioned in the advertisement dated 16.6.2017.

9. It is contended that out of six selected candidates, Mr Harishchandra Santoba Salunke (NT-B) did not appear for documents verification. Three candidates namely Mr Shivraj Chandrakant Chavan (Open Category), Mr Saket Raghunath Gaikwad (ST Category), Smt.Pushpabai Gangadhar Janrao (Open-WR category) were found eligible and respondent no.3 has issued their appointment orders. Out of them, two candidates namely Mr Saket Raghunath Gaikwad (ST category) and Smt.Pushpabai Gangadhar Janrao (Open-WR category) have joined the services with the Company. Mr Shivraj Chandrakant Chavan from open category did not join his services with the Company even after giving three months' joining time. As per Clause 6 of the notification dated 18.9.2017, the Company had to fill up the

remaining vacancies to the extent of number of posts, continued the documents verification process of the candidates from the reservoir of next meritorious candidates. Accordingly, second merit list came to be published by respondent no.3 on 29.8.2017 subject to verification of experience certificates of the provisionally selected candidates, wherein the petitioners' names appeared in the provisional select list for the first time.

10. The experience certificates were verified from the previous employers of the candidates and during that exercise, Mr Sarang Allamkhane (NT-B), Mr Pravin Mesre (NT-B), Mr Yogesh Suryawanshi (NT-B), Mr Bhaskar Gawane (NT-B) and Mr Sachin Amazare (NT-B) were not found suitable as they did not possess necessary work experience and as such, their candidature came to be cancelled. Thereafter, the petitioner in Writ Petition No. 6471 of 2019 was the next candidate from NT (B) category and he was called for documents verification vide letter dated 10.9.2018 and documents verification came to be completed on 12.9.2018. However, experience certificate of petitioner Mr Kailas Manohar Gaikwad (W.P.No.6471 of 2019) was not beyond doubt and respondent no.3 had taken decision to verify his experience certificate from his previous employer. His previous employer sent necessary information on 27.9.2018. In the meanwhile, validity to the selection list came to be over and as such, the claim of the petitioner does not survive. It is further contended that the process took a long time and as such, respondent no.3 could not place the names of the petitioner before the competent selection Committee as prescribed under Schedule 2 appended to the MSETCL Employees' Service Regulations, 2012 within the validity period of one year, for approval as per procedure laid down in MSETCL Administrative Circular No.410 dated 7.7.2014 before issuing appointment orders.

11. According to the respondents, the petitioners have no vested right to be appointed on the posts, for which their names appeared in the provisional select list. According to the respondents, the appointments of following three candidates on the posts of Surveyor Grade-2 came to be issued as per the recommendation of the competent selection Committee:

1. Mr Saket Raghunath Gaikwad (ST)
2. Smt.Pushpabai Gangadhar Janrao (Open-WR)
3. Mr Shivraj Chandrakant Chavan (Open)

According to the respondents, the claim of the petitioners is untenable in the eyes of law.

12. We have heard Mr Amol Chalak, learned Advocate for the petitioners, Mr Karlekar, learned A.G.P. for respondent no.1 and Mr Adwant, learned Advocate for respondents no.2 and 3 at length.

13. Mr Chalak, learned Advocate for the petitioners vehemently argued that the petitioners are successful candidates and their names appeared in the select list. The exercise of documents verification has been conducted and they possess requisite work experience. There was no reason for respondents no. 2 and 3 to withhold the appointment orders of the petitioners. Respondent no.3 had issued appointment orders of three selected candidates and deliberately withheld the orders of petitioners in spite of repeated requests. According to Mr Chalak, learned Advocate for the petitioners, the act of the respondents is arbitrary, unjust and unfair. It has caused injustice to the petitioners. The petitioners may not get any employment in future in view of age bar. Mr Chalak has placed reliance on the following stock of citations :

- 1) **Bishnu Biswas and ors. Vs. Union of India and ors.,
reported in (2014) 5 SCC 774;**
- 2) **Prem Prakash Vs. Union of India and ors.,
reported in 1984 (Supp) SCC 687;**
- 3) **R.S. Mittal Vs. Union of India
reported in 1995 Supp (2) SCC 230**

14. Mr Adwant, learned Advocate for respondents no.2 and 3 strenuously argued that as per Maharashtra State Electricity Board Classification and Recruitment Regulations, 1961 (hereinafter referred as "Recruitment Regulations, 1961" for brevity) the validity of merit list/select list/wait list is for a period of one year from the date of declaration of results. In the present case, the result was declared on 18.9.2017 and thus, the provisional select list was valid upto 17.9.2018. Mr Adwant further submitted that since the candidates had not filled correct information in the online application forms, especially about experience, the respondents had to verify the authenticity of their experience from their previous employers, which took a long time and in the meanwhile, the validity period of the provisional list got over. There was no arbitrariness on the part of respondents no.2 and 3 while issuing appointment orders to three selected candidates. The respondents have followed proper procedure while giving appointments to three candidates.

15. Mr Adwant, learned Advocate for respondents no.2 and 3 submitted that as per service jurisprudence, even though the petitioners' names appeared in the provisional select list, they have no indefeasible right on the said posts when validity period of provisional select is over.

16. Before touching to the merits of the matter, it is necessary to place on record that there is no dispute that respondents no.2 and 3 had issued the

advertisement for the posts of Surveyor Grade-2 out of six zones referred above and it was online examination. The process of online examination came to be completed. Names of the petitioners appeared in the provisional select list. Respondents no.2 and 3 issued appointment letters to three selected candidates viz. Mr Shivraj Chandrakant Chavan (Open), Mr Saket Raghunath Gaikwad (ST) and Smt.Pushpabai Gangadhar Janrao (Open-WR). It appears that as per MSETCL Circular and Rule 29 (a) of the Recruitment Regulations 1961, the validity of merit list/select list/wait list is for a period of one year. In the present case, the result was declared on 18.9.2017 and after having necessary calculations, the validity period of the provisional select list was upto 17.9.2018.

17. The reply affidavit submitted by respondents no.2 and 3 nowhere speaks that the petitioners were not having a requisite work experience for the post of Surveyor – Grade-II. It is further undisputed position that the petitioners out of Writ Petition No.6368 of 2019 were called for document verification and accordingly, petitioners have appeared on 9.7.2018 and 20.8.2018 for document verification and accordingly, respondent no.3 has completed the process of verification of documents. After the exercise of verification of documents, respondent no.3 has published a list of selected candidates on 29.8.2017 and the names of petitioners out of Writ Petition No.6368 of 2019 appeared in the select list at Serial Nos.1 to 3. The petitioner no.1 selected from open category, petitioner no.2 though from Other Backward Class category, selected against open category on the basis of merit and petitioner no.3 selected from Other Backward Class category. Real problem cropped up when respondents no.2 and 3 referred the work experience certificates of the respective petitioners to their previous employers for confirmation thereof. In meantime, the validity period of the select list seems to have over.

18. The reply affidavit filed on behalf of respondents no.2 and 3 indicates that respondent no.3 doubted work experience certificates submitted by the petitioners. To get confirmation about the same, the Chief Engineer, EHV Project cum O & M Zone, Aurangabad has made correspondence with previous employer of petitioner (Writ Petition No.6471 of 2019) vide letter dated 27.9.2018 thereby called upon clarification/confirmation about work experience certificate. There is no record relating to petitioners in Writ Petition No.6368 of 2019 as to when respondent no.3 has made communication with their previous employer. The reply affidavit of respondents no.2 and 3 is silent on that point. As such, the delay seems to have been caused for getting confirmation of work experience certificate of the concerned petitioners. It was not fault of the petitioners. The communication seems to have been made by respondent no.3 with the previous employer of the petitioner (W.P.No.6471 of 2019) in order to get confirmation about his work experience and received that information on 27.9.2018 and validity of select list was upto 17.09.2018 and as a result, delay seems to have been occurred for which petitioners cannot be made to suffer.

19. Rule 29 (a) of the Recruitment Regulations, 1961 relates to advertisement, recruitment and wait list of selected candidates. According to Rule 29 (a) of the Recruitment Regulations, 1961 the selection committee concerned may recommend names of suitable candidates selected after due advertisement which are to be kept on the wait list for consideration against posts reserved for direct recruitment and such list shall be deemed to be valid for twelve months. It further provides that Technical Member, Accounts Member, Member (Administration) and Technical Director concerned are authorised to extend the validity of the wait list of the candidates selected by

the various Selection Committees for the posts of their respective wings, even if they are partly operated for a further period of one year, whenever consider necessary. It further provides that such persons who are likely to be absorbed in appropriate vacancies within a reasonable period may be informed of their names having been kept on the wait list for being absorbed in future vacancies.

20. Respondents no.2 and 3 even though clothed with such powers, went on stating that validity period of wait list/select list of one year is over and appointment orders cannot be issued. There was no hurdle before respondents no.2 and 3 to exercise their powers vested with them as per Rule 29 (a) of the Recruitment Regulations, 1961. Petitioners cannot be blamed for expiring of validity period of wait list/select list, for inaction on the part of respondents no.2 and 3 in view of Rule 29 (a) of the Recruitment Regulations, 1961.

21. In case of **S.S. Balu and anr., Vs. State of Kerala and ors.** reported in **(2009) 2 SCC 479**, it is held by Honourable Supreme Court that there is no indefeasible right to a candidate included in rank list unless arbitrariness or discrimination is established. Mr Adwant, learned Counsel for respondents no.2 and 3 has placed his reliance on the judgment of Honourable Supreme Court in case of **Uttar Pradesh Public Service Commission Vs. Surendra Kumar and ors.**, reported in **(2019) 2 SCC 195**, wherein it is held by the Honourable Supreme Court that when period of wait list is expired, it would not be proper to direct names of requisite number of candidates to be recommended. However, the facts of the case in hand are very peculiar and unique. Respondents no.2 and 3 had called the petitioners for document verification and petitioners of Writ Petition No.6368 of 2019 were successful and their names appeared in the select list published on 29.8.2017.

Whereas, petitioner in Writ Petition No.6471 of 2019 was also informed about his selection vide letter dated 10.9.2018 issued by respondents no.2 and 3. He was called for document verification on 12.9.2018 and that exercise was completed. The validity period of select list published by respondents no.2 and 3 seems to be over because respondents wanted to check the veracity of the documents submitted by the petitioners from their erstwhile employer. Respondents no.2 and 3 seem to have called upon information from the previous employers of the petitioners by way of correspondence in order to get confirmation about their work experience and resultantly, validity period of the select list got over. Certainly, the petitioners cannot be blamed for that.

22. Respondents no.2 and 3 are the public limited companies under the control of the State Government. They are instrumentalities of the State. They are required to be model litigants. They should follow their procedure and regulations for recruitment. Their recruitment process should be transparent. Respondents no.2 and 3 cannot raise their hands in the air by stating that the validity period of the select list/wait list for one year is over and they are unable to complete the process when the same is reached at fag end. It is true that a candidate making an application for the post pursuant to 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 exist on the date of advertisement and for that we place reliance on the judgment of Honourable Supreme Court in case of **N.T. Devin Katti and ors., Vs. Karnataka Public Service Commission and ors.**, reported in **(1990) 3 SCC 157.**

23. In case of **Prem Prakash Vs. Union of India and ors.**, reported in **1984 (Supp) SCC 687**; it is held that once a person is declared successful according to merit list of selected candidates, the appointing authority has the responsibility to appoint him, even if the number of vacancies undergoes a change after his name is included in the list of selected candidates.

24. In case of **R.S. Mittal Vs. Union of India** reported in **1995 Supp (2) SCC 230**, it is held by Honourable Supreme Court that although a person whose name appears in the select list has no vested right for appointment to that post for which he has been selected, the appointing authority cannot ignore the select-panel or on its whims to decline the appointment. 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.

25. In present case, there has been a mere inaction on the part of respondents no.2 and 3 to get extension to the select list/wait list. It is not the case of respondents no.2 and 3 that there are no vacancies of Surveyor Grade-II. The reply affidavit filed by respondents no.2 and 3 nowhere indicates that there are no vacancies of Surveyor Grade-II. Obviously, there is no reason for respondents no.2 and 3 to refuse to consider appointments of the petitioners. Respondents no.2 and 3 cannot simply refuse to issue appointment orders to the petitioners merely on the ground that validity period of the select list is over. Respondents no.2 and 3 are empowered in view of Rule 29 (a) of the Recruitment Regulations, 1961 and get extension to the select list of the petitioners and consider to issue appointment orders to the petitioners when there are vacancies of the post of Surveyor Grade-II.

26. The correspondence made by the petitioners with the respondents no.1 to 3 clearly demonstrate their *bona fides* in order to get their appointment orders. They have approached the Honourable Minister for Energy and concerned top authorities of respondents no.2 and 3 from time to time and requested to issue their appointment orders, but no response. The respondents cannot take undue advantage of their long process, resultantly invaliding the wait list.

27. For the reasons aforestated, we are of the view that the petitioners need to be considered for appointment to the post of Surveyor Grade-II when their names appeared in the select list. Consequently, we pass the following order :

ORDER

(I) Respondents No.2 and 3 shall consider the candidature of the petitioners for appointment on the post of Surveyor Grade-II in view of Rule 29 (a) of the Maharashtra State Electricity Board Classification and Recruitment Regulations, 1961, if they are otherwise found eligible for the said post.

(II) With the above directions, Writ Petitions are disposed of. No order as to costs.

(**SHRIKANT D. KULKARNI, J.**)

(**S.V. GANGAPURWALA, J.**)

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