

**Umesh Vs. The State of Maharashtra, Through its Secretary, Rural Development Department, Govt. of Maharashtra and Others**

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**Court :** Mumbai Aurangabad

**Decided On :** Feb-24-2016

**Judge :** S.S. Shinde & P.R. Bora

**Appeal No. :** Writ Petition No. 4507 of 2015

**Appellant :** Umesh

**Respondent :** The State of Maharashtra, Through its Secretary, Rural Development Department, Govt. of Maharashtra and Others

**Judgement :**

**S.S. Shinde, J.**

1. This Petition takes exception to the impugned communication / letter dated 17.03.2015 passed by respondent no. 6. There is further prayer, seeking directions to respondents to issue the appointment order to the petitioner on the post of Live Stock Supervisor in the office of respondent nos. 5 and 6 Zilla Parishad, Ahmednagar, under Nomadic Tribe reserved category forthwith, with all other consequential service benefits.

2. It is the case of the petitioner that, the petitioner passed H.S.C. Examination in February, 2004. The petitioner also passed Diploma of two years in Diary

Development Management and Animal Husbandry of the Maharashtra Husbandry and Fishery Science University, Nagapur in April / May 2006. The petitioner, thus, is possessing the requisite qualification of being appointed on the post of Live Stock Supervisor , as per the Maharashtra Zilla Parishad, District Services [Recruitment] Rules, 1967, as amended from time to time [for the sake of convenience, hereinafter referred to as the Recruitment Rules ].

3. It is the case of the petitioner that, the District Selection Committee published an advertisement in daily newspaper namely Dainik Lokyug , dated 05.04.2010, inviting the applications for selection and appointment of the candidates to the various posts of Group-C and D in Zilla Parishad, Ahmednagar, including eight posts of Live Stock Supervisor. Out of the total eight posts, four posts were reserved for the scheduled Castes candidates. Out of which, one post was for woman candidate, and another one post was kept reserved for Ex-Serviceman. Another four posts were reserved for the Special Backward Class, and one was reserved for Nomadic Tribes. It is further the case of the petitioner that, as per the advertisement published by the District Selection Committee, Ahmednagar, dated 05.04.2010, he has submitted an application for the post of Live Stock Supervisor from Nomadic Tribes in the prescribed proforma dated 15.04.2010.

4. It is the case of the petitioner that, he appeared in the said written examination held by the District Selection Committee, in which the petitioner has secured total marks 130.88, out of 180 marks. The another candidate namely Mahindra Babanrao Lad has secured total marks 132.13, out of 180 marks, in the said written examination. The Selection Committee has selected the name of Mahendra Babanrao Lad and issued appointment order to him. The Selection Committee has declared the petitioner as a selected candidate, and his name was kept in waiting list at serial no.1. The petitioner has placed on record copy of letter dated 26.04.2012, and mark sheet of interview of the candidates dated 08.05.2012, and selection list of the candidates, wherein the name of the petitioner and other candidates are shown.

5. It is further the case of the petitioner that, the Selection Committee has issued appointment order dated 26.04.2013 to the another candidate namely, Mahindra

Babanrao Lad, and he was given period of one month for joining the service from the date of his appointment. On receipt of the appointment order dated 26.04.2013 to the Mahindra Babanrao Lad, he did not join his service on the post of Live Stock Supervisor in the office of Animal Husbandry, Zilla Parishad, Ahmednagar, during the period of one month from the date of issuance of the appointment order dated 26.04.2013.

6. It is further the case of the petitioner that, on getting information that, selected candidate namely Mahindra Lad did not join on the said post, he has submitted the application on 03.06.2013 to the office of respondent no. 5 Zilla Parishad, Ahmednagar, requesting therein for appointing him on the post of Live Stock Supervisor, in the office of Animal Husbandry, Zilla Parishad, Ahmednagar. He has also filed an application to the office of the Collector, Ahmednagar, on 19.08.2013, and application dated 23.09.2013 to the office of Chief Executive Officer, Zilla Parishad, Ahmednagar. It is further the case of the petitioner that, the Chief Executive Officer, Zilla Parishad, Ahmednagar, has issued a letter to the Secretary, Rural Development and Water Resources [Jalsandaran] Division, Mantralaya, Mumbai, dated 19.09.2013, and obtained guidance and order from said Department, by giving details of the application filed by the petitioner, requesting the Selection Committee for his appointment to the post of Live Stock Supervisor. In response to the said letter, the Desk Officer, Government of Maharashtra, informed to the Divisional Commissioner, Nashik Division, Nashik, to take its own decision for appointment of the petitioner on the said post.

7. It is the case of the petitioner that, the Government Authorities and the Selection Committee has not taken decision about the appointment of the petitioner till 27.11.2013. Therefore, the petitioner has filed one more application dated 28.11.2013, to the Chief Executive Officer, Zilla Parishad, Ahmednagar, and application dated 23.12.2013 to the District Animal Husbandry Officer, Zilla Parishad, Ahmednagar, and the application dated 07.02.2014, and the application dated 19.06.2014 to the Commissioner, Division Nashik, Nashik, thereby requesting said authorities for the appointment of the petitioner on the post of Live Stock Supervisor in the office of respondent no.5. It is further the case of the petitioner that, the District Animal Husbandry Officer, Zilla Parishad, Ahmednagar,

has issued a letter dated 25.06.2014 to the petitioner and informed him that, proposal is forwarded to the Government of Maharashtra along with a letter No. PS / Adm.-1/605/ dated 12.09.2013, in which they requested to the Government of Maharashtra for getting extension of time to continue with said waiting list of the wait listed candidates. Accordingly, the Government of Maharashtra directed the Commissioner, Division Nashik, District Nashik, for taking proper decision.

8. It is the case of the petitioner that, the Commissioner, Division Nashik, Nashik forwarded a letter dated 26.06.2014 to Deputy Secretary, Government of Maharashtra, Rural Development and Water Resources [Jalsandharan] Division, P.W.D. 25, Mumbai, seeking opinion, so as to seek extension of time for continuation of the waiting list of wait listed candidates so as to appoint them on the post of Live Stock Supervisor, Class III [Secondary Animal Husbandry], by giving detail reasons in said letter, *firstly*, a Writ Petition was filed in the High Court, and therefore, the appointment was not given to the candidates. *Secondly*, the stay was not granted by the High Court. *Thirdly*, as per Legal Advisory Committee of the Zilla Parishad, three candidates were given appointment and out of them, two candidates joined and one candidate did not join, *and fourthly*, one year period of operation of the waiting list stood expired. Therefore, the appointment was not given to the other candidates named in waiting list. Said letter was written, keeping in view the proposal submitted by the Chief Executive Officer, Zilla Parishad, Ahmednagar, for extension of time for continuation of waiting list.

9. It is further the case of the petitioner that, thereafter, the petitioner has filed applications dated 03.07.2014, 10.07.2014, 07.08.2014, 30.10.2014, 03.02.2015 and 12.03.2015 to the respondent nos. 5 and 6, requesting them to give an appointment to the petitioner on the post of Live Stock Supervisor in the office of Zilla Parishad, Ahmednagar, as per the Government Resolution dated 19th March, 2014. It is further the case of the petitioner that, the office of respondent no. 6 has issued a letter dated 21.11.2014 to the petitioner, in which respondent no. 6 has informed that, a proposal regarding appointment on the post of Live Stock Supervisor is sent to the Government of Maharashtra, vide letter No.PS/Adm.-1/605/13 dated 12.09.2013. In para 2 of the Government Circular dated

19.03.2014, there is mention regarding the appointment / recruitment, and the same is pending for guidance from the Government of Maharashtra. After receipt of the said guidance from the Government of Maharashtra, the further action will be taken.

10. It is the case of the petitioner that, the District Animal Husbandry Officer, Zilla Parishad, Aurangabad, has informed him vide letter dated 17.03.2015 that, as per Government Resolution No. APT-2014/Pra.No.46/2007/13-A, dated 19th October, 2007, once the District Selection Committee is established, the responsibility of selection of the candidates is within the power of Selection Committee. As per the Resolution of the General Administration Department, dated 27th June, 2008, the period of continuation of selection list of the candidates, is one year. The final selection list for the post of Live Stock Supervisor for the year 2010 was prepared, and published on 08.05.2012. According to the respondents, the limitation of the said selection list stood expired on 08.05.2013. Said communication issued by the respondents was after about two years from the date of filing the application by the petitioner. As a result, as per Government Resolution dated 27th June, 2008, the District Animal Husbandry Officer, Zilla Parishad, Ahmednagar, had refused the appointment to the petitioner on the post of Live Stock Supervisor.

11. It is the case of the petitioner that, the Government Resolution dated 19th October, 2007, and 27<sup>th</sup> June, 2008, which are placed on record, in which the Government of Maharashtra has given procedure about the recruitment, and selection of the post of *Bhutpurva Duiyam Seva Niwad Mandalachya Kakshetil Namnirdeshan Quota Class-C*, felt for consideration before the Bombay High Court in Writ Petition No.4257/2013 [Udaysing Jalamsing Valvi Vs. The Secretary, District Selection Committee, Raigad and another], in which there is similar facts and prayer of the petitioner. Accordingly, the High Court of Judicature of Bombay has quashed and set aside the communication made by the respondent no. 2, and allowed the said Writ Petition and directed the respondents therein to appoint the petitioner therein on the post of Senior Assistant [Accountants], along with other consequential service benefits.

12. Respondent nos. 1 and 3 have filed affidavit-in-reply. It is stated in the said affidavit in reply that, the petitioner was selected for the post of Live Stock Supervisor in NT-B category, as per the selection list published on 8<sup>th</sup> May, 2012, in Zilla Parishad, Ahmednagar. In view of the Government Resolution dated 27<sup>th</sup> June, 2008, the wait list is valid for one year or till the date of vacancies. However, in the present case, the wait list was to operate for one year with effect from 8<sup>th</sup> May, 2012, till 8<sup>th</sup> May, 2013.

13. Respondent no. 6 has filed affidavit-in-reply. In para 1 of the said affidavit in reply, it is stated that, the petitioner was waitlisted for the post of Live Stock Supervisor in NT-B category. The petitioner made representation for operating wait list on the ground that, one Shri Mahendra Babanrao Lad has not joined the post. Thereafter, the Zilla Parishad sought the guidance from the Government. As per the instructions contained in Government Resolution dated 27<sup>th</sup> June, 2008, the waitlist is valid for one year or till the date of vacancies, which are taken into consideration for the purpose of the selection process, and thereafter, the wait list lapses. The select list and wait list of Live Stock Supervisor as per the selection process of 2010, was made final on 08.05.2012. This wait list lapsed on 08.05.2013. In view of this, the petitioner has been informed by communication dated 17<sup>th</sup> March, 2015 that, the petitioner cannot be appointed on the said post. It is stated that, such an issue had come up for consideration before this Court in Writ Petition No.9871/2014 [Shahaji s/o. Ratanrao Adsul Vs. The President, District Selection Committee and another], and it is held that, the wait list lapses as per the said Government Resolution dated 27.06.2008. In view of this, the petition lacks merit and needs no consideration.

14. The petitioner s main prayer is to direct the respondents to appoint the petitioner on the post of Live Stock Supervisor under Nomadic Tribe reserved category. By communication dated 17<sup>th</sup> March, 2015, the respondents rejected the representation and claim of the petitioner, though he is wait listed candidate no. 1, and also the post remained vacant, as appointed candidate did not join the said post. Admittedly, the post of Live Stock Supervisor, which was advertised, and in pursuant to the said advertisement, the petitioner along with other candidates did participate in the said selection process, and final selection list was

published on 8th May, 2012, in Zilla Parishad, Ahmednagar, and thereafter, selected candidate did not join the said post, the said post is still vacant. In the facts of the present case, it appears that, the selection list was made final on 8th May, 2012, and selected candidate namely Shri Mahendra Babanrao Lad was issued appointment letter dated 26th April, 2013. However, he did not join on the said post, and therefore, petitioner by filing application dated 3rd June, 2013, requested respondents to allow him to join on the post of Live Stock Supervisor in the office of Animal Husbandry, Zilla Parishad, Ahmednagar, being wait list candidate, at serial no. 1.

15. In the peculiar facts of this case, when the appointment order was issued to the selected candidate namely Shri Mahendra Babanrao Lad on 26th April, 2013, belatedly after more than 11 months from publication of selection list, the contention of the respondents that, the wait list prepared on 8th May, 2012, stood lapsed on expiry of one year i.e. on 8th May, 2013, cannot be countenanced, and deserves to be rejected. The petitioner herein immediately filed application on 3rd June, 2013, staking his claim, and requesting the respondents to appoint him on the post of Live Stock Supervisor, being wait list candidate no. 1. It appears that, though, the appointment order was issued in favour of selected candidate namely Shri Mahendra Babanrao Lad on 26th April, 2013, the respondents waited for more than one month period, and allowed to create a situation that, the select list prepared on 8th May, 2012, stands lapsed, in view of provision in the Government Circular, and then technically respondents refused appointment to the petitioner, though he had promptly filed application on 3rd June, 2013, requesting respondents to appoint him on the post of Live Stock Supervisor. It further appears that, petitioner filed various representations / applications to the respondents, however, respondents, in stead of appointing petitioner on the said post, kept the application of the petitioner pending and till 17th March, 2015, did not take any decision. On 17th March, 2015, the petitioner was informed that, petitioner cannot be given appointment in view of the fact that, the select list / wait list, which was prepared on 12th May, 2012, stood expired on 8th May, 2013, on completion of one year period.

16. As already observed, the said post is still vacant. In the peculiar facts of this case to hold that, the select list / wait list dated 12th May, 2012, on completion of one year period, stood expired on 12th May, 2013, would be hyper-technical view, and would defeat the legitimate expectation of the candidate, who is at serial No.1 in the waiting list. As already observed, the respondent issued appointment letter to the selected candidates first time on 26th April, 2013, and thereafter, the respondent waited for period of one month, and by that time, one year period stood completed, but selected candidate did not join. The respondents themselves are responsible for not issuing appointment letter to the selected candidates for more than 11 months from publication of the selected list, and therefore, in the peculiar facts of this case, the contention of the respondents that, the wait list stood expired on 12<sup>th</sup> May, 2013, on completion of one year period, cannot be accepted. In the case of *Udaysing Jalamsing Valvi Vs. The Secretary, District Selection Committee, Raigad and another* in Writ Petition No.4257/2013, decided on 22<sup>nd</sup> January, 2014, the Division Bench of the Bombay High Court at Principal seat, in similar facts situation has taken a view that, the Circular / decision dated 19th October, 2007 and clause 9 thereof, cannot be read to mean and / or permit the Respondents to deny the claim and / or deny the appointment, though post is vacant in that period of one year. The Respondents themselves failed to take action by not appointing the petitioner and they kept the post vacant for undisclosed reason and / or for the reason, which in our view is not sufficient to deny the crystallized rights of the petitioner for the post in question, as the appointed candidate failed to join the post within the prescribed period. Para 9 and 10 of the said Judgment reads thus:

*9. The Government Circular in question so referred and read, just cannot be read to mean and/or permit the Respondents to deny the claim and/or deny the appointment, though post is vacant in that period of one year. The Respondents themselves failed to take action by not appointing the Petitioner and they kept the post vacant for undisclosed reason and/or for the reason, which in our view is not sufficient to deny the crystallized rights of the Petitioner for the post in question, as the appointed candidate failed to join the post within the prescribed period.*

10. Clause-9, in our view, cannot be read to mean that the person though appointed as per the list so prepared, if failed to appear, no other person can be appointed on the post within that year. In our view, the appointed candidate if failed to appear within reasonable time and in the present case, never appeared for want of caste certificate and as the Petitioner being the next eligible candidate having validity certificate, ought to have been appointed in that year itself. The communication therefore, so given and thereby rejected the claim of the Petitioner shows non-application of mind to the facts, as well as, to the Government Circular itself. The Respondents cannot be permitted to deny the rights of the Petitioner, as in our view crystalized as referred above, merely because the Respondents failed to take action within the prescribed period of one year. We are inclined to observe, in the present facts and circumstances, that the Respondents ought to have appointed the Petitioner on the post of Senior Assistant (Accounts) once Mr. Surekar's caste certificate itself was invalidated. They themselves never rejected the case of the Petitioner within one year, on the contrary asked to wait for some more time. Their inability to take decision, as they were awaiting for Mr. Surekar to join and submit the caste certificate, but once the caste certificate itself was invalidated of Mr. Surekar, there was no question to keep the post vacant, as done by the Respondents. Therefore, the Respondents failure to appoint the Petitioner, within one year though post was vacant, in our view, is unacceptable situation. The Respondents cannot act arbitrarily, by not appointing the candidate by not following their own Circular within the prescribed period of one year. The submission of expiry of one year or lapse of waiting list is also unacceptable. Once the Petitioner falls within the ambit of zone of consideration and eligible even otherwise, the inaction cannot be read against the Petitioner to deny his right to be appointed on the vacant post.

17. Keeping in view discussion in the foregoing paragraphs, in our opinion, respondents were responsible for not issuing appointment letter in favour of selected candidates namely Shri Mahendra Babanrao Lad till 26<sup>th</sup> April, 2013, though selection list was published on 12th May, 2012. As already observed, the petitioner was diligent and promptly filed application on 3rd June, 2013, on coming to know that, selected candidate has not joined the post, requesting the respondents to allow him to join on the said post. Therefore, in the peculiar facts of

this case, and in view of the fact that, the said post is not yet filled in, we are inclined to allow this Writ Petition keeping in view the exposition of the Bombay High Court at Principal seat in the case of *Udaysing Jalamsing Valvi Vs. The Secretary, District Selection Committee, Raigad and another* [cited supra].

18. Accordingly, the following order:

i] The Petition is allowed in terms of prayer clauses-C and D, which read as under:

C) By issuing the writ of certiorari or any other Writ, Order or Directions in the like nature, this Hon ble High Court may be pleased to quash and set-aside the impugned communication / letter dtd.17.3.2015 passed by respondent No. 6 and for that purpose suitable order may kindly be passed.

D) By issuing the writ of certiorari or any other Writ, Order or Directions in the like nature, this Hon ble High Court may pleased to direct the respondents to issue the appointment order to the petitioner on the post of Live Stock Supervisor in the office of respondent No. 5 and 6 Zilla Parishad, Ahmednagar, under Nomadic Tribe reserved category forthwith, with all other consequential service benefits and for that purpose this Hon ble High Court may kindly be passed suitable order.

ii] We direct the respondents to comply the order as expeditiously as possible, however, within 4 weeks from today.

iii] There shall be no order as to costs.

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