
(2023) 01 BOM CK 0026

Bombay High Court

Case No: Writ Petition No. 10510 Of 2022

Priti Subhashrao
Sawake

APPELLANT

Vs

State Of Maharashtra
And Others

RESPONDENT

Date of Decision: Jan. 9, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 14, 16
- Bombay High Court Appellate Side Service Rules, 2000 - Rule 52, 53, 53(a), 53(b), 53(c)

Citation: (2023) 01 BOM CK 0026

Hon'ble Judges: Dhiraj Singh Thakur, J; Valmiki Sa Menezes, J

Bench: Division Bench

Advocate: S. B. Talekar, Madhavi Ayyapam, S. D. Vyas B, B. V. Samant, Dr. Milind Sathe,
Rahul Nerlekar

Final Decision: Dismissed

Judgement

Sr.,Rule,Original Rule 52, 53, 53(a), 53(b), 53(c) 2021,Rule Post 52, 53, 53(a), 53(b), 53(c) 2021 amendment,,,

1,52(a),"The Registrar shall issue a Notice inviting

applications from eligible candidates for

being included in the Select List.", "The Registrar shall issue a Notice inviting

applications from eligible candidates for being

included in the Select List.

* The Notice shall indicate the number of

existing vacancies sought to be filled up. It may also indicate the number of vacancies that are expected to arise in the next two years. In case the expected vacancies are indicated, the Selection Process shall be conducted for filling up both existing and expected vacancies." ,,,

2,53(b),"The Select List shall consist of twice, the number of expected vacancies in the next two years and candidates shall be included in the Select List in the order of merit." ,,* The Select List shall consist of names of candidates, equal to the number of vacancies notified as per Rule 52(a), arranged in order of merit.

If considered necessary, a Wait" ,,,
,,,"List of candidates arranged in order of merit may be prepared not exceeding 25% of the total number of vacancies notified." ,,,

3,53(c),"The Select List so prepared shall ordinarily be valid for a period of two years from the date of its Notification as above. Provided that the Chief Justice may in his

discretion direct the
appointment from that list
even after the expiry of
period of two years until a
new list is prepared in
accordance with the Rules.",* The aforesaid list(s) so
prepared shall ordinarily be
valid for a period of two years
from the date of its notification
as above. Provided that the
Chief Justice may, in his
discretion direct the
appointment from those list(s)
even after the expiry of the
period of two years until a new
list is prepared in accordance
with the Rules.",,,

1.,"Clear vacant posts on the
date of the Advt. i.e.

01.08.2019",45,,1.,No. of vacancies,75

2.,"Anticipated promotions to the
post of Assistant Registrars",4,,2.,"Reserved to fill up 10% posts from
class IV employees and Staff-
Car- Drivers, by promotion",(-) 8

3., "Anticipated promotions to the
post of Section Officers", 9,, 3., "Reserved 4% posts for persons
with disabilities in the light of
directions issued in WP(L)
No.1137/2018 with PIL No.72 of
2018.", (-) 3

4., "Anticipated promotions to the
post of Assistants", 8,, 4., "Posts for which the permission is
granted to commence Selection
Process, 2019.", (=) 64

,,,,,

5., Assistants who will be retiring, 9,,,
, TOTAL, 75,,,

or in an emergent situation and that too by taking a policy decision in that behalf. Even
when filling up of more posts than advertised is challenged the,,,,,

Court may not, while exercising its extraordinary jurisdiction, invalidate the excess
appointments and may mould the relief in such a manner as to strike",,,,,,

a just balance between the interest of the State and the interest of persons seeking public
employment. What relief should be granted in such cases,,,,,

would depend upon the facts and circumstances of each case.,,,,,,

26. In the present case, as against the 62 advertised posts the Board made appointments
on 138 posts. The selection process was started for 62 clear",,,,,,

vacancies and at that time anticipated vacancies were not taken into account. Therefore,
strictly speaking, the Board was not justified in making more",,,,,,

than 62 appointments pursuant to the advertisement published on 2-11-1991 and the
selection process which followed thereafter. But as the Board,,,,,

could have taken into account not only the actual vacancies but also vacancies which were likely to arise because of retirement etc. by the time the,,,,,,

selection process was completed it would not be just and equitable to invalidate all the appointments made on posts in excess of 62. However, the" ,,,,,,

appointments which were made against future vacancies - in this case on posts which were newly created - must be regarded as invalid. As stated,,,,,,

earlier, after the selection process had started 13 posts had become vacant because of retirement and 12 because of deaths. The vacancies which" ,,,,,,

were likely to arise as a result of retirement could have been reasonably anticipated by the Board. The Board through oversight had not taken them,,,,,,

into consideration while a requisition was made for filling up 62 posts. Even with respect to the appointments made against vacancies which arose,,,,,,

because of deaths, a lenient view can be taken and on consideration of expediency and equity they need not be quashed. Therefore, in view of the" ,,,,,,

special facts and circumstances of this case we do not think it proper to invalidate the appointments made on those 25 additional posts. But the,,,,,,

appointments made by the Board on posts beyond 87 are held invalid. Though the High Court was right in the view it has taken, we modify its order to" ,,,,,,

the aforesaid extent. These appeals are allowed accordingly. No order as to costs.Ã¢â¬â¸,,,,,,

11. In the case of Madan Lal & Ors. V/s. State of J & K and Ors. (1995) 3 SCC 486 held that once the advertised posts are filled by candidate from,,,,,,

the select list, the list exhausts itself having served its purpose. It was held:" ,,,,,,

Ã¢â¬â¸ 23. It is no doubt true that even if requisition is made by the Government for 11 posts the Public Service Commission may send merit list of,,,,,,

suitable candidates which may exceed 11. That by itself may not be bad but at the time of giving actual appointments the merit list has to be so,,,,,,

operated that only 11 vacancies are filled up, because the requisition being for 11 vacancies, the consequent advertisement and recruitment could also" ,,,,,,

be for 11 vacancies and no more. It easy to visualise that if requisition is for 11 vacancies and that results in the initiation of recruitment process by,,,,,,

way of advertisement, whether the advertisement mentions filling up of 11 vacancies or not, the prospective candidates can easily find out from the",,,,,,

Office of the Commission that the requisition for the proposed recruitment is for filling up 11 vacancies. In such a case a given candidate may not like,,,,,,

to compete for diverse reasons but if requisition is for larger number of vacancies for which recruitment is initiated he may like to compete.,,,,,,

Consequently the actual appointments to the posts have to be confined to the posts for recruitment to which requisition is sent by the Government. In,,,,,,

such an eventuality, candidates in excess of 11 who are lower in the merit list of candidates can only be treated as wait listed candidates in order of",,,,,,

merit to fill only the 11 vacancies for which recruitment has been made, in the event of any higher candidate not being available to fill the 11 vacancies," ,,,,,,

for any reason. Once the 11 Vacancies are filled by candidates taken in order of merit from the select list that list will get exhausted, having served its",,,,,,

purpose.Ã¢â¬â¸,,,,,

12. Considering the ratio of the judgments reflected hereinabove, it thus becomes clear that merely because the name of a candidate figures in the wait",,,,,,

list by itself creates no indefeasible right to seek appointment and that the candidateÃ¢â¬â¸s right is limited to consideration for appointment in a case,,,,,,

where any of the selected candidates does not join and further that no appointment can be made in excess of the posts advertised, inasmuch as if the",,,,,,

wait list were to be used as perennial source of recruitment, it would deprive others from consideration for such an appointment and create a vested",,,,,,

interest in favour of those, whose name figured in the wait list." ,,,,,,

From the material on record, we have no hesitation in holding firstly that the posts that were advertised by virtue of advertisement notice dated 01st",,,,,,

August, 2019 were limited to the extent of 64 candidates, which included the actual vacancies as also anticipated vacancies while the list of 64" ,,,,,,

candidates in the wait list would get a right of appointment only in the eventuality of any of the candidates had failed to join against the the post for,,,,,,

which such a candidate was selected.,,,,,,

13. Insofar as Rule 53(b) is concerned, it did envisage the select list to consist of twice the number of expected vacancies in the next two years and" ,,,,,,

the names of the candidates included in the select list to be reflected in the order of merit, yet the rule must be deemed to presuppose an equal number" ,,,,,,

of vacancies to be advertised. In the absence whereof, a situation would arise where the number of advertised posts would be far less than the" ,,,,,,

number of candidates whose name figure in the select list and assuming such a situation did arise in any case, No appointments in excess of the" ,,,,,,

advertised vacancies could be made. ,,,,,,

14. We have also noticed that in the present case although the wait list had been operated to make appointments beyond the 64 posts which were ,,,,,,

advertised but since the said appointments are not under challenge before us, we only hold that the wait list cannot be directed to be operated in the" ,,,,,,

case of the petitioners beyond the advertised 64 posts on the analogy that similarly situated other candidates were so appointed beyond the 64 posts so ,,,,,,

advertised. ,,,,,,

15. We also hold that once the advertised vacancies were filled up, the select list as also the wait list would exhaust itself as was held by the Apex" ,,,,,,

Court in the case of Madan Lal & Ors. V/s. State of J & K and Ors. and, therefore, no right would survive in favour of the Petitioners. Having held" ,,,,,,

so all other issues raised regarding challenge to the discretion vested in the Chief Justice in terms of Rule 53(c) is rendered academic and may be ,,,,,,

decided in an appropriate case. ,,,,,,

16. For the reasons mentioned above, the petition is found to be without merit and is, accordingly, dismissed." ,,,,,,