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Utilization of Reserve Lists in Public Employment and the Right to Appointment

The Italian Supreme Court of Cassation, Labour Division, clarifies the multi-stage legal nature of reserve list utilization and the prerequisites for an actionable right to appointment for eligible non-winning candidates (Order no. 11194/2026)

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Reading time 15 min

Current Legal Framework as of 13 November 2026: The case law of the Italian Supreme Court of Cassation consolidates the principle whereby the utilization of a public competition reserve list constitutes a multi-stage legal process of progressive formation, contingent upon the public administration's discretionary decision to fill actual, planned staffing vacancies, thereby ruling out automatic recruitment for eligible non-winning candidates.

ABSTRACT

This paper examines the legal scope of the **utilization of reserve lists in public employment** in light of Order no. 11194 of 26 April 2026 issued by the Italian Supreme Court of Cassation, Labour Division. The study explores the classification of an eligible non-winning candidate's legal standing as a **legitimate interest** (*interesse legittimo*) and the structure of this recruitment mechanism as a **multi-stage legal process of progressive formation**, conditional upon a formal resolution by the employing administration and planned staffing needs, coordinating these principles with concurrent 2026 Supreme Court rulings on **budgetary constraints**, collective bargaining agreements, and reserved competition quotas.

Key Takeaways

- **Nature of the candidate's legal standing:** An eligible non-winning candidate holds a legitimate interest (*interesse legittimo*) vis-à-vis the discretionary organizational power of the public administration, which cannot give rise to an actionable subjective right to automatic appointment.
- **Multi-stage legal process of progressive formation:** Drawing from a reserve list requires the concurrent existence of the list's temporal validity and an express administrative resolution to fill vacant and available posts in accordance with planned staffing requirements.
- **Equivalence to new recruitments:** Appointing candidates by drawing down a reserve list is substantively equivalent to a new recruitment, governed by the statutory requirements and collective bargaining agreements in force at the time of the hiring resolution.
- **Binding force of reserved quotas:** Reactivating the competitive selection sequence requires strict compliance with the post reservations established in the original competition notice even during subsequent reserve list appointments.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Labour & Employment Law & Public Employment

LEADING DECISION
Italian Supreme Court of Cassation, Labour Division, Order of 26 April 2026, no. 11194 — Classifies the utilization of a competit

Legal Principle / Editorial Headnote — Supreme Court of Cassation, Labour Division, Order no. 11194/2026

In contractualized public employment, the operation of drawing down a competitive reserve list and the resulting emergence of a subjective right to appointment in favour of an eligible non-winning candidate constitute a multi-stage legal process of progressive formation. Such a process presupposes not only the continuing legal validity of the reserve list itself, but also a formal and valid resolution by the employing public administration to fill vacant and available posts by drawing from that list, thereby exempting itself from the obligation to launch a new competitive examination pursuant to Article 97 of the Italian Constitution. Absent such an organizational determination—linked to staffing needs planning and certified budgetary coverage—the legal standing of a favourably ranked candidate retains the nature of a legitimate interest (interesse legittimo), incapable of founding any actionable claim before the ordinary courts either for the establishment of an employment relationship or for an award of damages.

01. INTRODUCTION: THE DIALECTIC BETWEEN COMPETITIVE ELIGIBILITY AND THE RIGHT TO RECRUITMENT

The evolution of **recruitment models** across public administrations reflects a constant tension between safeguarding **organizational efficiency** and protecting the **legitimate expectations** acquired by participants in competitive selection procedures. Within this systemic framework, the mechanism governing the **utilization of reserve lists in public employment** (*scorrimento della graduatoria*) has assumed a central role, standing at the crossroads between the **constitutional principle of open competition** enshrined in Article 97 of the Italian Constitution and the

stringent imperatives of **public expenditure containment** imposed by financial stability legislation. Administrative practice has frequently oscillated between making full use of **valid competitive reserve lists**, conceived as an instrument to reduce procedural costs, and reaffirming **managerial discretion** in identifying the optimal methods of staffing provision.

This dialectic has grown increasingly acute before the **ordinary labour courts**, repeatedly called upon to classify the **legal nature of the position** held by an **eligible non-winning candidate**. While, on the one hand, the legal system expresses a clear preference for utilizing existing eligibility lists so as to avoid the burdensome timeframes associated with calling new comparative selections, on the other hand the case law of the Supreme Court of Cassation has consistently ruled out that the mere existence of an **establishment vacancy** triggers an **automatic duty to recruit**. Striking the proper balance between the **public interest in good administration** and individual aspirations to **permanent appointment** presupposes a rigorous sequence of employer prerogatives governed by Legislative Decree no. 165 of 30 March 2001.

By Order no. 11194 of 26 April 2026, the Italian Supreme Court of Cassation, Labour Division[1] reaffirmed with notable clarity the doctrinal architecture of this mechanism, expressly classifying it as a **multi-stage legal process of progressive formation**. The Court clarified that the emergence of a **subjective right to appointment** requires the simultaneous presence of two indispensable prerequisites: the **continuing temporal validity** of the competitive reserve list and the adoption of a **formal resolution** whereby the administration decides to fill **vacant and available posts** by drawing from that specific list.

The ruling fits within an interpretive landscape of substantial theoretical and practical significance, in which the boundary between **legitimate interest** (*interesse legittimo*) and **subjective right** directly governs the **allocation of jurisdiction** between ordinary and administrative courts as well as the scope of **judicial remedies** available to the employee. A close examination of the decision provides an opportunity to redefine the operational boundaries of the public administration's **organizational autonomy**, mapping out the coordinates that govern **human resources management** in contractualized public employment.

02. THE ROME MUNICIPALITY LITIGATION AND THE BOUNDARIES OF VERTICAL CAREER PROGRESSION

2.1 — Procedural Background of the Eligible Candidate in Technical Executive Management

The dispute brought before the Supreme Court originated from proceedings instituted by an employee of the Municipality of Rome (*Roma Capitale*), who had been favourably ranked as an **eligible non-winning candidate** in a **reserved internal selection procedure** restricted to serving staff for the filling of four permanent posts as **technical executive**. The **competition notice** contained a specific clause envisaging the **continued validity of the reserve list** for the future staffing of positions that might subsequently become vacant and available within the local authority's establishment plan. Relying on that provision, the employee petitioned the labour court seeking a declaratory judgment establishing his **right to classification** in executive rank, with **retroactive effect** and a consequent award of **damages** for the administration's failure to draw down the list in a timely manner.

Both the Court of First Instance and the Court of Appeal of Rome dismissed the claim in its entirety, holding that **subsequent restrictive legislation** governing the statutory extension of competitive reserve lists had confined that option strictly to **open external public competitions**, precluding its extension to **reserved internal selections**. In his appeal to the Supreme Court of Cassation, the employee complained of the misapplication of the statutory extension

rules and the infringement of Article 97 of the Italian Constitution, arguing that **vertical career progressions** into executive rank bring about an **objective novation of the employment relationship** and must therefore benefit from the same regime of **extended validity of the reserve list** afforded to external competitions.

In dismissing the appeal, the Italian Supreme Court of Cassation, Labour Division[1] carried out a significant streamlining of the grounds of decision. The Supreme Court observed that the issue concerning the **expiry of the reserved list's validity** was absorbed by the prior absence of the substantive right asserted by the claimant. Because the candidate's claim did not rest upon a perfected subjective right, but rather upon a **legitimate interest** correlated with the exercise of **public organizational authority**, the failure to prove a formal municipal resolution aimed at activating the reserve list barred at the root any possibility of upholding the **claim for executive classification** or issuing a judicial order compelling appointment.

2.2 — Internal Promotions, Staffing Needs, and Limits of Decentralized Collective Bargaining

The Rome decision displays a marked conceptual affinity with the principles set forth in the concurrent Order no. 21658 of 25 June 2026 of the Italian Supreme Court of Cassation, Labour Division[2], delivered on internal selection procedures and **career advancement** within **public research institutions**. In that dispute, a researcher sought recognition of **advancement to a higher grade** or compensation for damages arising from **employer breach of contract**, alleging the infringement of a collective obligation either to launch selection procedures every two years or to draw down the reserve list of previously ranked eligible candidates pursuant to the **national sector collective bargaining agreement**.

On that occasion as well, the Supreme Court ruled out any **unconditional obligation to call selections** on the part of the administration, emphasizing that career progression in contractualized public employment cannot bypass the prior **determination of three-year staffing needs** and the actual availability of **certified financial resources**. The referral made by collective agreement clauses to **decentralized integrative bargaining** and to the approval of the annual budget deprives such clauses of self-executing binding force, subordinating the employee's expectation to a legal position dependent upon the exercise of the employing entity's **powers of self-organization**.

It follows that both in selections for access to executive rank and in economic and legal grade progressions within bargaining areas, any claim to the **utilization of reserve lists in public employment** presupposes a twofold verification: first, the **continuing temporal validity of the eligibility status**, and second, the **deliberate employer resolution** to allocate certified resources to fill vacant posts. Where **expenditure approval** or, where required, a collective agreement with trade union representatives is lacking, the public body cannot be held in breach of a recruitment obligation that the legal order does not allow to arise automatically.

03. THE MULTI-STAGE STRUCTURE OF RESERVE LIST UTILIZATION IN PUBLIC EMPLOYMENT

Characterizing the drawing down of a reserve list as a **multi-stage legal process of progressive formation** calls for a close examination of the procedural dynamics governing the birth of a **binding obligation to recruit**. Under the constitutional design laid down in **Article 97 of the Italian Constitution**, the ordinary rule for entry into the ranks of the civil service is the **open public competition**, an indispensable safeguard of **administrative impartiality** and **selective efficiency**. Utilizing a pre-existing reserve list does not represent a derogation from the competitive principle, but rather a specific mode of its implementation aimed at reconciling prompt human resource staffing with the principle of **procedural economy**.

Nevertheless, the doctrinal framework adopted by the Supreme Court of Cassation categorically rules out that mere eligibility confers upon a candidate a **unilateral potestative right to appointment**. Perfecting the constitutive legal sequence requires the coexistence of two distinct yet coordinated elements. The first element is chronological and objective in nature, consisting in the **continuing temporal validity** of the reserve list, whose effectiveness must be verified against **statutory validity limits** and any exceptional extensions enacted by the legislature. The second element is volitional and administrative in nature, consisting in the adoption of a formal and valid **employer management act** whereby the administration manifests its intention to recruit by drawing from the list of eligible candidates.

Particular analytical clarity stems from the strict conceptual distinction between a **merely vacant post** and an **available post**. An **establishment vacancy** expresses a static datum of the entity's organizational chart, namely the nominal absence of an incumbent in a given professional profile within the staffing ceiling set by internal regulations. By contrast, the **availability of a post** expresses a dynamic and functional datum, strictly contingent upon the prior adoption of the **three-year staffing needs plan** governed by Article 6 of Legislative Decree no. 165 of 30 March 2001. Only when the administration, exercising the **private-law management powers** guaranteed under Article 5 of that Consolidated Act, plans the filling of the position and verifies the existence of the required **budgetary expenditure coverage** can the post be deemed genuinely available for permanent appointment.

In the absence of such a volitional determination, the legal standing of the eligible candidate remains confined within the sphere of a **legitimate interest** (*interesse legittimo*) in the lawful exercise of **public discretionary power**. The administration retains intact its authority to assess whether it is appropriate to fill the post by drawing down the reserve list, or instead to opt for alternative instruments such as **voluntary inter-agency mobility** or, where organizational requirements so warrant, the launching of a new and different comparative selection procedure. This multi-layered sequence prevents a non-winning candidate from bringing an action before the ordinary courts to obtain a **constitutive judgment establishing the employment relationship** under Article 2932 of the Italian Civil Code, since the upstream volitional act that marks the birth of the **employer's contractual obligation to hire** is missing.

04. SUPREME COURT PRECEDENTS BETWEEN CONTRACTUAL NOVATION AND RESERVED QUOTAS

4.1 — Reserve List Utilization as a Decision to Make New Appointments and the Applicable Collective Regime

Inquiry into the legal nature of reserve list utilization reached a crucial turning point in Order no. 3189 of 12 February 2026 issued by the Italian Supreme Court of Cassation, Labour Division[3]. That case arose from the recruitment of **eligible administrative officers** ranked on the reserve list of a competition called by the Municipality of Naples in 2009 for a **professional profile** providing initial entry into **economic grade D3**. When, a decade later and following successive **statutory extensions**, the municipality resolved to appoint candidates by drawing down the list, the **National Collective Bargaining Agreement for the Local Government Sector** (*CCNL Comparto Funzioni Locali*) for the 2016–2018 term had intervened in the interim, redesigning the **professional classification system** so as to establish a single entry-level grade in **economic position D1**.

The claimants alleged a breach of the **contractual grandfathering clause** and of **legitimate expectations**, contending that their entry into service ought to relate back to the economic terms set out in the original competition notice. The Supreme Court dismissed the complaint, holding that the employer's decision to resort to the **utilization of the reserve list of eligible candidates** is equivalent, in every substantive respect, to a determination to carry out **new recruitments**. Because the **competitive selection phase** concludes definitively upon the approval of the list of winners, the subsequent

resolution to draw down the list stands outside the original procedure and is governed entirely by the **statutory provisions** and **collective bargaining agreements in force** at the time of the hiring resolution.

The **principle of legality** and compliance with **public finance balances** preclude the continuing application of salary scales abolished by national collective bargaining. Employees recruited by drawing down a reserve list cannot therefore assert a **vested right to classification** in economic grade D3, and are instead subject to the **basic salary treatment** established by the **applicable collective bargaining rules** in force when the employment bond is actually formed.

> Drawing down a reserve list does not prolong the original competition indefinitely; rather, it inaugurates an autonomous recruitment stage in which employer discretion must be coordinated with the original rules of the competition notice and supervening collective pay scales.

4.2 — Continuing Force of the Competition Notice and Compliance with Reserved Quotas

The autonomy of reserve list utilization vis-à-vis the concluded competitive phase does not, however, entail a complete severance of ties with the rules that governed the selection procedure. Order no. 214 of 4 January 2026 of the Italian Supreme Court of Cassation, Labour Division[4] highlighted that the decision to draw down a reserve list reactivates the procedural sequence initiated by the **competition's governing notice** (*lex specialis*). Consequently, the **quota of reserved posts** set aside for **internal staff** or **statutorily protected categories**, as established in the original notice within statutory limits, continues to exert its **binding legal effects** over positions subsequently filled through reserve list appointments.

Completing this interpretive mosaic is Order no. 98 of 2 January 2026 of the Italian Supreme Court of Cassation, Labour Division[5], delivered in a dispute in which candidates argued that the competitive procedure remained ongoing by virtue of a **mandatory training and probationary period** scheduled after the oral examinations. The Supreme Court ruled out that training activities or a **final suitability interview** extend the **competitive selection phase strictly speaking**, since such steps pertain instead to the **performance of the employment relationship** already entered into on a probationary basis. Accordingly, **transitional safeguarding clauses** laid down in collective bargaining renewals for pending selection procedures cannot be invoked in favour of eligible candidates who are hired only at a later stage by drawing down the reserve list.

LEGAL ISSUE / MECHANISM	EMPLOYEE'S CONTENTION	2026 SUPREME COURT RULING
Right to automatic appointment	Full subjective right arising whenever establishment posts fall vacant	REJECTED Mere legitimate interest (*interesse legittimo*) until a formal hiring resolution is adopted
Applicable collective pay grade	Retention of the economic grade specified in the original notice (e.g. grade D3)	PRINCIPLE Application of the collective bargaining agreement in force at the time of appointment (grade D1)
Binding force of reserved quotas	Operativeness restricted solely to the winners initially proclaimed	UPHELD The competition notice (*lex specialis*) and its quota reservations also bind subsequent reserve list appointments

05. CRITICAL ASSESSMENT, CASE DISTINGUISHING, AND LITIGATION REMEDIES FOR COUNSEL

5.1 — When Does a Subjective Right to Appointment by Reserve List Utilization Arise?

A subjective right to appointment by drawing down a competitive reserve list arises exclusively when the continuing temporal validity and effectiveness of the reserve list is coupled with an express resolution by the employing public administration to fill vacant and available posts by drawing from that list, in accordance with its planned staffing needs programme and corresponding budgetary coverage.

The unambiguous rigour of this formulation resolves a widespread practical misconception. Eligible candidates frequently assume mistakenly that the mere supervening emergence of a **staffing shortfall** or the retirement of permanent civil servants automatically generates an **actionable entitlement** enforceable in court. On the contrary, the case law of the Supreme Court of Cassation reiterates that the existence of vacant posts constitutes a mere **factual prerequisite**, devoid of generative force on the plane of civil obligations. Until the public body translates its organizational will into a **formal measure allocating resources** and **authorizing recruitment**, the relationship remains governed by **public discretionary authority**, reviewable before the competent administrative courts solely with respect to the **lawfulness of administrative action**.

Only upon completion of that managerial act does the **eligible candidate's legitimate interest** undergo a **qualitative transformation of legal standing**, crystallizing into a **perfected contractual claim** to permanent appointment. Downstream of that organizational choice, the worker holds a genuine **subjective right to the execution** of an individual employment contract, fully enforceable before the **ordinary labour courts** through actions for **specific contractual performance** or for **pecuniary damages by equivalent**.

5.2 — Practical Distinguishing, Allocation of the Burden of Proof, and Procedural Defences

From the standpoint of litigation strategy, the Supreme Court's doctrinal stance requires legal counsel to carry out careful **case distinguishing** vis-à-vis neighbouring scenarios in public employment. The rules examined here do not

apply to cases involving the **unlawful revocation of a competition notice** prior to approval of the ranking list, nor do they concern the **distinct legal position of a formally proclaimed winner** of the competition, whose subjective right is perfected directly upon ministerial or executive approval of the merit list. Likewise, unlike litigation over the abuse of fixed-term contracts in public employment or disputes concerning time-bars on salary claims examined by this journal in connection with the limitation period regime for wage claims in public employment, reserve list utilization entails no **automatic remedial conversion** capable of transforming an eligible candidate's expectation into permanent recruitment.

In judicial proceedings brought by an eligible candidate, the **allocation of the burden of proof** under Article 2697 of the Italian Civil Code operates with particular strictness upon the claimant. A petitioner suing to compel appointment from a reserve list bears the **burden of documentary proof** demonstrating both the continuing temporal validity of the list and the actual adoption of the **staffing coverage resolution** deciding to draw specifically from that selection. Conversely, the respondent administration may defeat the claim by raising targeted **preliminary procedural objections** grounded in a **lack of ordinary court jurisdiction** where no hiring resolution exists, or by providing documentary proof of the **absence of recruitment authorization**, the **exhaustion of staffing budget points**, or the non-allocation of funds in decentralized integrative bargaining.

Counsel for the **public authority** may further plead the **statutory forfeiture** (*decadenza*) or expiry of the reserve list resulting from the lapse of **statutory validity periods**, underscoring that extraordinary legislative extensions require **strict narrow construction** and do not automatically extend to selection procedures lacking the specific prerequisites defined by budget legislation. Such a **procedural defence strategy** makes it possible to delineate **employer liability** effectively, preventing awards of damages resting on a mere presumption that drawing down the reserve list would have been advantageous.

06. CONCLUSIONS: BALANCING ORGANIZATIONAL DISCRETION AND PROTECTION OF LEGITIMATE EXPECTATIONS

The interpretive framework shaped by the recent rulings of the Italian Supreme Court of Cassation, Labour Division consolidates an **advanced point of equilibrium** in construing the **utilization of reserve lists in public employment**. Anchoring the operation of this mechanism to a **multi-stage legal process of progressive formation** reconciles the necessary **managerial flexibility** of the employing administration with the **guarantees of transparency** and **equal treatment** governing access to public office. By rejecting any automatic link between a mere establishment vacancy and the emergence of an **actionable entitlement to appointment**, Supreme Court case law safeguards the **primacy of budgetary choices** and the centrality of **three-year staffing needs planning**.

At the same time, this judicial reconstruction does not leave eligible candidates exposed to unchecked administrative arbitrariness. Making the employee's actionable claim contingent upon a **formal coverage resolution** channels judicial protection into its proper institutional forum, placing the administration under a duty to **provide adequate reasons** for its organizational determinations whenever it decides to bypass a valid reserve list in order to call a new competitive selection procedure. **Administrative impartiality** thus finds its safeguard not in an uncontrolled proliferation of **subjective rights to appointment**, but rather in **judicial review of legality** over the proper exercise of **organizational discretion**.

Within this systemic perspective, the principle of **procedural continuity** between the **governing competition notice** (*lex specialis*) and subsequent appointments made by drawing down the reserve list reaffirms the **binding force of competition rules** and **mandatory reserved quotas**, preventing reserve list utilization from being turned into an

expedient to circumvent statutory protections for vulnerable categories or internal staff. The balance struck between **procedural legality**, **financial sustainability**, and the **reasonable expectations of candidates** delineates a recruitment model in which public administrative efficiency is achieved in strict compliance with **constitutional labour safeguards**.

References & Authorities Cited

Statutory Provisions

- Article 97 of the Constitution of the Italian Republic — Principles of good administration, impartiality, and access to public employment through open competitive examination.
- Articles 5, 6, and 35 of Legislative Decree no. 165 of 30 March 2001 — General rules governing employment in public administrations, three-year staffing needs planning, and personnel recruitment procedures.
- Articles 1218, 1362, 2697, and 2932 of the Italian Civil Code — Contractual liability, rules of contract interpretation, allocation of the burden of proof, and specific performance of the obligation to conclude a contract.

Case Law Cited

1. **Italian Supreme Court of Cassation, Labour Division, Order of 26 April 2026, no. 11194** — Classifies the utilization of a competitive reserve list as a multi-stage legal process of progressive formation, ruling out any subjective right to appointment for an eligible non-winning candidate absent a formal resolution by the public administration to fill available posts. Outcome: appeal dismissed. Para.: Reasons for the Decision.
2. **Italian Supreme Court of Cassation, Labour Division, Order of 25 June 2026, no. 21658** — Rules out any unconditional obligation to launch biennial internal selections or draw down existing reserve lists within public research institutions in the absence of financial resources allocated through decentralized collective bargaining. Outcome: appeal dismissed. Para.: Reasons for the Decision.
3. **Italian Supreme Court of Cassation, Labour Division, Order of 12 February 2026, no. 3189** — Holds that an administrative decision to recruit by drawing down a reserve list is substantively equivalent to new appointments governed by the collective bargaining agreement in force at the time of the hiring resolution. Outcome: proceedings declared discontinued in part and appeal dismissed as to the remainder. Para.: Reasons for the Decision.

4. **Italian Supreme Court of Cassation, Labour Division, Order of 4 January 2026, no. 214** — Affirms that a resolution to draw down a reserve list reactivates the competitive sequence governed by the competition notice (*lex specialis*), requiring compliance with the reserved post quotas established in the original notice. Outcome: main appeal upheld in part, cross-appeal declared inadmissible, and original claim dismissed on the merits. Para.: Reasons for the Decision.

5. **Italian Supreme Court of Cassation, Labour Division, Order of 2 January 2026, no. 98** — Clarifies that a competitive selection procedure concludes upon approval of the ranking list, so that mandatory probationary training does not prolong the competition or allow collective grandfathering clauses to apply to subsequent reserve list appointments. Outcome: appeal dismissed. Para.: Reasons for the Decision.

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