

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 393 OF 2015

TUKARAM BHAGWAT GORE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for petitioner : Mr. N. J. Patil
AGP for respondent Nos. 1 and 2 : Mr. S. S. Tope
Advocate for respondent Nos. 3 to 5 : Mr. K. K. Kulkarni

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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 28th JULY, 2015

P.C. :-

1. Mr. Patil, the learned counsel submits that the petitioner is working as Peon with respondent No. 3. The post of Shikshan Sevak is vacant. The petitioner has acquired qualification of B.A., B.Ed. As per the Government Resolution dated 10th June, 2005, if a person from the non-teaching staff acquires the qualification required for the post of Shikshan Sevak, then the said person, who is working on a non-teaching post, can be appointed as Shikshan Sevak. According to the learned counsel, there is no impediment for the respondents to appoint the petitioner as Shikshan Sevak as the petitioner has acquired the necessary qualification and the post is also vacant with respondent No. 3. The learned counsel relies on Clause (8) of the Government Resolution dated 10th June, 2005.

2. Mr. Kulkarni, the learned counsel for the institution states that the petitioner is appointed from OBC category. There is no post vacant for Shikshan Sevak for OBC category.

3. Mr. Tope, the learned AGP submits that as per the Government Resolution dated 13.10.2000, the Shikshan Sevak can be appointed only after following due selection process and a person working as a peon cannot be promoted to the post of Shikshan Sevak even as per the Schedule "F" of the Maharashtra Employees of Private Schools (Condition of Service) Rules, 1981. The person working as a Peon can only be promoted as a Laboratory Assistant or Junior Clerk.

4. The institution has filed an affidavit along with roster approved by the B.C. Cell which shows that there is no post of Shikshan Sevak available from OBC category. The petitioner is appointed as Peon from OBC category. The Clause (8) of the Government Resolution dated 10th June, 2005 deals with appointing a person from non-teaching staff as Shikshan Sevak on acquiring necessary qualification.

5. We would have considered the submissions canvassed by the petitioner and the respondents, had the post being available as per

the affidavit filed by the respondent institution and the roster. There is no post of Shikshan Sevak available from OBC category. In view of that, we have not considered the submissions of the learned counsel for the respective parties with regard to the strict applicability of Government Resolution dated 10th June, 2005.

6. In case there is vacancy for the post of Shikshan Sevak for OBC category, then the petitioner may reagitate his claim, which at the relevant time would be considered in accordance with law.

7. The writ petition is accordingly disposed of. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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