

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

PUBLIC INTEREST LITIGATION NO.63 OF 2013

Balasaheb Shankarrao Nargoje

Petitioner

Versus

The State of Maharashtra and another

Respondents

Mr.S.S. Thombre advocate for the petitioner

Mr.S.G. Karlekar, GP for Respondents

CORAM : R.M. BORDE &
P.R. BORA, JJ

Dated : 10th JUNE, 2015.

PER COURT :-

1 Petitioner is praying for issuance of writ of mandamus or any other directions to the respondents, for implementation of the provisions of The Persons With Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995, for the post of Civil Surgeon.

2 The petitioner is a Doctor by profession and is holding the post of Medical Superintendent. The petitioner had approached this Court, earlier, by presenting Writ Petition No.6676 of 2011, praying for identical reliefs for himself. Since the petitioner's claim was considered for the post of Medical Superintendent, the petitioner did not press the petition, in so far as the individual grievance raised by him for his appointment as Civil Surgeon.

The petition, as such was disposed of by virtue of order of the Division Bench of this Court on 13.1.2012. So far as the claim raised by the petitioner for issuing directions to the respondent, for implementation of the provisions of the Act is concerned, the Court directed respondent authorities to file an affidavit and to explain the steps taken, for implementation of the provisions of the said Act. The writ petition was taken up for consideration on 10.1.2013 and since the grievances raised by the petitioner were met, the writ petition came to be disposed of. This Court observed that, the academic issues raised in the matter, need not be considered.

3 The petitioner himself has presented the instant petition under the garb of PIL, seeking the same relief i.e. implementation of the provisions of the Act. As has been observed by the Supreme Court in the matter of ***Hari Bansh Lal v. Sahodar Prasad Mahto, (2010) 9 SCC 655***, PIL is not maintainable in service matters except by way of writ of quo warranto for which appointment must be shown to be contrary to statutory provisions. Apart from this, the respondent has presented an affidavit in reply wherein, it has been stated that, the State of Maharashtra has issued a Govt. resolution on 27.7.2004 under which 3% reservation is prescribed for physically disabled persons'

category for the posts of Group A and Group D in the public health department. In the said Govt. resolution, 3% reservation is provided for four posts i.e. Civil Surgeon, Medical Superintendent, Deputy Superintendent, Medical Hospital and Full Time Physician (Surgery). It is contended that, all these posts are included in a cadre of Civil Surgeon and as such 3% reservation is required to be computed from amongst all those four posts. It is contended that, the post of Civil Surgeon is filled in by two methods: by way of nomination and promotion. Considering the Govt. resolution dated 27.7.2004 prescribing 3% reservation, the post of Civil Surgeon is required to be filled-in, amongst four posts specified above which forms the cadre of Civil Surgeon.

4 The petitioner places reliance on the Judgment in the matter of ***Union of India & Anr V/s National Federation of the Blind and others in Civil Appeal No.9096 of 2013*** decided on October 8, 2013.

5 In view of the above, writ petition does not deserve consideration and stands dismissed.

(P.R. BORA, J)

(R.M.BORDE, J)