

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 4802 OF 2015**

ACHYUT KALYAN NARWADE
VERSUS
STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Jadhavar Santosh S.
AGP for Respondent/State : Mr. S.K. Kadam
Advocate for Respondent nos.2 & 3 : Mr. Shelke Shivaji T.

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CORAM : S.S. SHINDE & A.M. BADAR, JJ.

Dated: September 09, 2015

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PER COURT :-

This Petition is filed with the following prayers :-

"B) By issuing writ of certiorari or any other appropriate writ, order or direction, select list prepared by the respondent No.2 for the post of pharmacist in view of the advertisement dated 09.09.2014 bearing advertisement No. 339/20-14, may kindly be quashed and set aside;

C) By issuing writ of mandamus or any other appropriate writ, order or direction, respondent no.2 may kindly be directed to prepare select list for the open post of the pharmacist in view of the advertisement dated 09.09.2014 bearing advertisement No. 339/20-14 and to select petitioner against the said post, being topper in

the merit list;"

2. The learned counsel appearing for petitioner submits that, five posts were advertised and out of five posts, three posts are filled in by the candidates from Handicapped category. It is submitted that, the respondents have filled in three posts from the backlog of Handicapped category and other two posts are reserved for two other categories i.e. one from S.C. category (Ex-serviceman) and another from O.B.C. category meant for Ex-serviceman. It is submitted that, the petitioner stands at Sr. No.1 in merit list. It is submitted that, even though there is backlog from Handicapped category, in one selection process all three posts from the Handicapped category should not have been filled in. Out of three posts, one post was for open category. The learned counsel appearing for the petitioner invited our attention to the pleadings in the Petition, also annexures thereto and the judgment of the Supreme Court in the case of **Dr. Puneet Gulati and ors. etc V/s State of Kerala and ors etc.**¹ and submits that, 100% reservation at one stroke is not permissible.

1 AIR 2011 SC 3571

3. On the other hand, the learned counsel appearing for Respondent Nos.2 and 3 submits that, in view of the directions issued by the Supreme Court, Respondent Nos. 2 and 3 have given effect to the policy of 3% reservation meant for the candidates from Handicapped category. Three posts of Handicapped category were filled in and one post is filled in from O.B.C. (Ex-serviceman). It is submitted that, there was backlog of handicapped category, on the date of issuance of advertisement, and therefore, three candidates from the Handicapped category were selected. It is submitted that, the advertisement No. 339 of 2014 dated 09.09.2014 was published inviting applications for the post of Pharmacists and other posts by the Selection Committee. It is specifically mentioned in the advertisement that out of the 5 posts of Pharmacists, 3 posts are reserved for handicapped category, namely, OL (one leg), BL (both legs). The written examination for the post of Pharmacists was held on 8.11.2014. It is submitted that, as per the instructions contained in Government Circular dated 19.10.2007, the post reserved for handicapped category to be filled in by nomination should not be shown in social reservation but should be shown separately. The said

circular further mentions that if the selected candidate is available in particular category, then, his selection should be shown in Horizontal reservation. It is submitted that, as per the instruction of this circular, 3 candidates came to be selected. The claim of the petitioner cannot be considered as per the circular dated 19.10.2007. The petitioner belongs to OBC (General) and there is no vacancy of this category, nor was notified in the advertisement. It is therefore, submitted that, in view of this, the petitioner was not selected. Similarly, there is no vacancy of the post of Pharmacist in the category of Project Affected Persons and, therefore, the advertisement was not given of this category. In view of this also, the claim of the petitioner from PAP category cannot be considered.

4. It is submitted that, so far other two posts are concerned namely one post from S.C. (Ex-serviceman), and another post from O.B.C. (Ex-serviceman) category, one post is filled in, and another post could not be filled in due to non-availability of the candidate from said category. It is submitted that, for dereservation of the said post, certain procedure is prescribed with the approval of the State

Government.

The learned A.G.P. submits that, whenever, the candidate from particular reserved category is not available, normal procedure to be followed is, the said post can be advertised for five times, and even then the candidate from said category is not available, then in that eventuality with the approval of the State Government, the said post can be dereserved.

5. We have heard the learned counsel appearing for the petitioner, the learned counsel appearing for Respondent Nos. 2 and 3 and the learned A.G.P. appearing for the Respondent/State. With their able assistance, we have perused the pleadings in the Petition, annexures thereto and the reply filed by Respondent No.3.

6. It is undisputed position that, three posts are filled in from Handicapped category and 4th post is filled in from the Ex-serviceman candidate. It is the contention of the learned counsel appearing for the petitioner that, the petitioner stands at Sr. No.1 in the selection list, and

therefore, 5th post may be offered to him. The said contention of the learned counsel appearing for the petitioner needs to be appreciated in the light of submissions made by the learned A.G.P. across the bar that, in case candidate from particular category is not available, in that case, advertisements are required to be given as per procedure. Even thereafter, if candidate is not available from the said category, then after completion of process of dereservation, said post can be offered to other categories including candidate from the open category. Accordingly, if the respondents take initiative to dereserve the said post and fill in the said post, at that time the petitioner's case can be considered. The contention of the learned counsel appearing for the petitioner that, due to appointment of three candidates from handicapped category and other two posts are for S.C. Ex-serviceman category, and second for O.B.C. Ex-Serviceman category, would amount to 100% reservation is concerned, we are not inclined to accept the said contention. The petitioner in pursuant to the advertisement did participate in the selection process and he was aware about the reservations meant for the said categories in the advertisement, and the

fact that, the respondents were under obligation to fill in the candidates from Handicapped category, to fill the backlog of the Handicapped category. Therefore, the contention of the learned counsel appearing for the petitioner that, there was 100% reservation cannot be accepted. In fact, 3% reservation to the candidates from Handicapped category is provided by the Legislature long back. However, same provision was not being given effect for long time, and therefore, the Supreme Court has issued directions to all concerned to give effect to 3% reservation for the candidates from Handicapped category. Therefore, the action of the respondents to fill in the three posts from Handicapped category so as to fill in the backlog cannot be faulted, and therefore, needs no interference.

7. So far 4th post is concerned, as submitted by the counsel appearing for Respondent Nos. 2 and 3, they have already filled in said post from the candidate from S.C. category (Ex.Serviceman). So far 5th post is concerned, we leave it to the respondents to consider the prayer of the petitioner, in the light of relevant provisions/policy and after following relevant procedure, take appropriate decision.

8. In the light of above, the Petition stands rejected.

(**A.M. BADAR, J.**)

(**S.S. SHINDE, J.**)

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