

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD.****WRIT PETITION NO. 7054 OF 2015**

VILAS SURESH WAGH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Patil Sudhir D.
AGP for Respondent/State : Mr. B.V. Virdhe
Advocate for Respondent nos.3 and 4 : Mr. Patil Bankar
Deelip N.

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CORAM : S.S. SHINDE & P.R. BORA, JJ.

Dated: December 10, 2015

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PER COURT:-

Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respective respondents.

2. The petitioner being aggrieved by the alleged action of Respondent Nos.2 to 4, depriving the petitioner from appointment on the post of Gram Sevak on contractual basis, has approached this Court by way of filing Writ Petition under Article 226 of the Constitution of India.

3. The learned counsel appearing for the petitioner invited our attention to the Advertisement No.1/2014 issued on 23rd August, 2014 published by the District Selection Committee, Aurangabad. He submits that, the petitioner did participate in the selection process from Scheduled Tribes

category and secured 138 marks, however, from the said category other candidates are selected. It is submission of the learned counsel appearing for the petitioner that, no suitable candidate was available in the said selection process for one post, which was reserved for ex-serviceman category (S.T.), and therefore, in view of clause (2) of Procedure, Conditions and Terms mentioned in the said advertisement, since the candidate from Ex-serviceman category (S.T.) was not available, the petitioner who belongs to S.T. category was entitled for the appointment on the post of Gram Sevak. Therefore, he submits that, the Petition deserves to be allowed.

4. On the other hand, the learned counsel appearing for Respondent Nos. 3 and 4 invited our attention to the averments in the affidavit in reply and submits that, in the said advertisement nowhere it is mentioned that, the category is interchangeable, in as much as, in case the candidate from the Ex-serviceman (S.T.) category is not available, the candidate from the S.T. from any other category can be appointed while implementing the horizontal reservation meant for the said category. The learned counsel appearing for the petitioner also invited our attention to the provisions of Article 16(4A) and 16(4B) and submits that, it was permissible for the Respondent Authorities to carry forward the unfilled vacancies for next selection process. He emphasized on Article 16(4B) of the Constitution of India. He submits that, the fresh selection process was conducted subsequently after filing this

Petition. He tendered across the Bar copy of the select list dated 2nd December, 2015 and submits that, the candidate from the ex-serviceman S.T. category has been selected, and therefore, this Court may not invoke extra ordinary writ jurisdiction and the Petition may be dismissed.

5. We have heard the learned counsel appearing for the petitioner, the learned A.G.P. appearing for the Respondent/State and the learned counsel appearing for the Respondent Nos.3 and 4. It is true that, the clause (2) of the Procedure, Terms and Conditions gives impression that, in case the candidate from the particular category while implementing horizontal reservation is not available, the said reserved post can be filled in by the candidate belonging to the said category. However, in the light of provisions of Article 16(4B) of the Constitution of India, it was permissible for the Respondent Authorities to carry forward the reservation meant for the Ex-serviceman (S.T.) category and in view of the subsequent event that, selection process has been undergone and as a matter of fact the candidate from the Ex-serviceman (S.T.) category has been selected, we decline to invoke extra ordinary writ jurisdiction to entertain the Petition. Hence the Petition is rejected.

(**P.R. BORA, J.**)

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

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