

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO.213 OF 2014
IN
WRIT PETITION NO.7786 OF 2011**

THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
KAILAS RAMESHRAO SHRIRAMWAR AND OTHERS

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G.P. for Applicants : Mr. D.R.Kale
Advocate for Respondents : Mr. R.B. Narwade for orig petitioner
Mr. P.R.Tandale advocate for Respondents 2, and 5.
Mr. A.B.Dhongade advocate for Respondent No.3.

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CORAM : R. M. BORDE & V.K. JADHAV, JJ.
Dated: April 24, 2015

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PER COURT :-

1. The State Government has presented instant application seeking review of the order passed by this Court on January, 15.1.2013. The petitioner presented petition claiming entitlement to a post of Kalawa Chaukidar from OBC category on the ground that he is selected candidate. He is a candidate selected in observance of due procedure. Apart from this, the post had fallen vacant, since the candidate who had joined the post tendered his resignation and since writ petitioner is a candidate placed at Serial No.1 in Wait list is entitled to be absorbed.

2. During course of hearing, on recording the statement made by Executive Engineer of Poorna Irrigation Sub-Division to the effect that, since there are two posts of Kalwa Chaukidar vacant, the petitioner would be accommodated against the vacancy, writ petition came to be disposed of.

3. The State Government is now adopting a stand that the vacancy declared under the Advertisement were liable to be varied and such a declaration finds place in the Advertisement itself. It is contended that there was only one post for OBC category and same was filled in by making appointment of Mr. Rajkumar Indhole. Said candidate tendered resignation on 20.3.2009 and as such the post had fallen vacant. It is further contended that a candidate by name Pandurang Govind Chavan, who was on the waiting list of compassionate appointees category, is offered employment and is occupying the post. It is contended that the statement made by the Executive Engineer before this Court was erroneous and as such the order be reviewed.

4. Even on consideration of the contentions raised in the review application by the State Government, the entitlement of the petitioner cannot be denied. It is not a matter of dispute that name of the writ petitioner finds place at serial no.1 in the wait list prepared on 30.7.2009. According to the State Government it has life of one year. It is also not a matter of dispute that candidate belonging OBC category appointed as against vacant the post tendered his resignation on 23.12.2009 which was accepted and thereupon post had fallen vacant. There cannot be any denial that post had fallen vacant within one year from the date of publication/preparation of the wait list, and, as such, entitlement of the petitioner accrued on the date the post had fallen vacant. Respondent cannot deny the entitlement of the petitioner for

accommodation as against the post which had fallen vacant within a period of one year from date of preparation of wait list. There is no justification by the review applicant/State Government in offering the post to a candidate from amongst the compassionate appointees category when the post advertised was earmarked for OBC category. The Executive Engineer of Poorna Irrigation Sub-Division, who made a statement before the Court, has not filed any affidavit, however, affidavit has been presented by the Sub Divisional Officer, who is subordinate in rank.

5. For the reasons recorded above, review application tendered by the State Government does not deserve any consideration and same stands rejected.

6. Pending civil application, if any, does not survive and stands disposed of.

(V.K. JADHAV, J.)

(R. M. BORDE, J.)

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aaa/-