

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO.1411 OF 2013**

S.M. Kachare and others

...Petitioners.

versus

B.E.S.T. Undertaking and others

..Respondents.

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Mr. Vishal Kanade i/b Mr. Satish Raut for the Petitioners.

Mr. S.K. Talsania, Senior Advocate with Ms. Kavita Anchan i/b M.V. Kini & Co. for Respondent No.1.

Mr. V.S. Tiwari, AGP for Respondent No.3.

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**CORAM : B.R. GAVAI &
A.S. GADKARI, JJ.****27th March, 2015.****P.C. :**

The Petitioners challenge the seniority list which was finalized by the Respondents in the year 2003. A preliminary objection is raised by Mr. Talsania, learned senior counsel appearing for Respondent No.1 that the Petition is hopelessly delayed and as such, the Petition is liable to be dismissed on the ground of delay and latches itself.

2. To meet the preliminary objection Mr. Kanade, learned counsel appearing for the Petitioners submits that the Petitioners were representing to the authorities time and again and they have sought examination papers under the Right to Information Act. It is submitted that the delay has occurred on account of the said fact.

3. We find that there is almost ten years delay in filing the Petition. The Petition very well deserves to be dismissed on the ground of delay and laches.

4. However, since the co-ordinate Bench of this Court has already issued notice, it would not be appropriate for us to non-suit the Petitioners on the ground of delay alone. We have, therefore, examined the matter on merits.

5. Undisputedly, the Petitioners so also Respondent Nos.4 to 18 who have been promoted are belonging to backward class i.e. N.T.C. and S.B.C. In 2003, a special drive was undertaken by the Respondent B.E.S.T. for clearing the backlog of these categories. Accordingly a list of eligible candidates was directed to be prepared by all the heads of the concerned department. The eligible candidates were required to appear in written examination. After written examination, they are required to appear for the interview and after finding that they are eligible in interview, they were to be promoted. Perusal of the record and particularly the office noting at page 119 would reveal that the Petitioners as well as the aforesaid Respondents had appeared for the examination together, 16 candidates were found to have passed in the written examination as they had obtained more than 40 marks. Those 16 candidates were called for the oral interview. Out of that 14

who were the Respondents came to be selected and as such promoted. However, it appears that since even after promotion of the aforesaid Respondents still a backlog existed. Under the directions of the Government the B.E.S.T. decided to relax the qualifying marks by five marks. After the qualifying marks were brought down by five marks, the Petitioners were found to have secured more than 35 marks and as such, 12 candidates including the Petitioners who obtained more than 35 marks were called for the interview. In the said interview, 8 candidates i.e. the Petitioners were found to be eligible for interview and as such they came to be appointed.

6. Though it is strenuously contended by Mr. Kanade, learned counsel appearing for the Petitioners that the Petitioners and Respondent Nos.4 to 18 fall in the same category since all of them have appeared for the written examination together, we do not find merit in the said submission. Respondent Nos.4 to 18 have cleared in the examination since they had cleared the examination by obtaining 40 or more marks which was a qualifying criteria. The Petitioners have got promotion only because the qualifying criteria has been brought down to 35 from 40, only in order to fill in the backlog of reserved category. As such the Petitioners and the aforesaid Respondents cannot be said to be falling in the same class. Respondent Nos.4 to 18 would fall in the class of persons who have qualified the bench mark,

whereas the Petitioners fall in the class of persons who have got promotion only because of relaxation of the bench mark. In that view of the matter, it cannot be said that the Respondents have indulged in any sort of discrimination. The Petition is without any merit and as such, dismissed.

(A.S. Gadkari, J.)

(B.R. Gavai, J.)