

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1037 OF 2015

[Ku. Swati Pradeepkumar Ghodeswar .vs. State of Maharashtra and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.S. Dhore, counsel for the petitioner,
Ms. N.P. Mehta, AGP for the respondent no.1 and 4,
Shri A.Y. Kapgate, counsel for the respondent nos.2 and 3.

CORAM : SMT. VASANTI A. NAIK AND
A.I.S. CHEEMA, JJ.

DATED : OCTOBER 14, 2015.

By this petition, the petitioner seeks a direction to the Chief Executive Officer, Zilla Parishad, Gondia to appoint the petitioner on the post of Auxiliary Nurse Midwife (Arogya Sevika) in respondent no.2 – Zilla Parishad, on a post earmarked for the scheduled castes.

The respondent no.2 had published an advertisement in the local newspaper inviting applications from eligible candidates for appointment on 26 posts of Auxiliary Nurse Midwife. Of the 26 posts, 6 posts were reserved for the scheduled castes. Of the 6 posts, that were earmarked for the scheduled castes, 4 were earmarked for the scheduled castes with special reservation for ex-Serviceman, project affected persons and persons from sports category. The petitioner had applied in pursuance of the advertisement on the post earmarked for the scheduled castes, without seeking any special reservation (horizontal). The name of the petitioner was placed at sr.no.6 in the list of candidates from the scheduled caste category. The respondent no.3 was not able to fill up the 4 posts, for which horizontal reservation for the scheduled castes category was provided. The 4 posts from the scheduled caste category, that were reserved for ex-Serviceman, project affected persons and the persons from sports category were not filled up by the respondents and no appointment

was made on the said post. Since the petitioner was placed at sr.no.6 in the general list of the scheduled caste candidates, the petitioner has sought her appointment on the post of Auxiliary Nurse Midwife on the ground that the horizontal reservation could not have been carried forward by the respondents and it would be necessary for the respondent to fill up the 4 posts, wherein horizontal reservation was provided for ex-serviceman, project affected persons and the persons from sports category.

Shri Kapgate, the learned counsel for the Zilla Parishad, submitted that it was clearly mentioned in the advertisement, specially in Condition No.25 therein, that the posts earmarked for the ex-serviceman and the physically challenged persons could not be filled up if candidates from ex-serviceman category and physically challenged candidates were not available. It is stated that except for the posts reserved for ex-servicemen and physically challenged, all other posts providing for horizontal reservation could be filled up if candidates from those reserved categories were not available. It is stated that since the petitioner was placed at sr.no.6 in the general select list of the scheduled caste candidates and since the post of ex-serviceman cannot be filled up by any other scheduled caste candidate on his merit, in view of Condition No.25 of the advertisement, the petitioner cannot seek his appointment on the post of Auxiliary Nurse Midwife, as the petitioner is not placed at sr.no.3 to 5 in the select list and is placed at sr.no.6.

On hearing the learned counsel for the parties and on a perusal of the advertisement, it appears that the petitioner cannot seek a direction to the respondent – Zilla Parishad to appoint the petitioner on the post of Auxiliary Nurse Midwife from the posts earmarked for the scheduled castes. Admittedly, 6 posts were earmarked for the scheduled castes and of the 6 posts, 4 were earmarked for the scheduled castes ex-serviceman, scheduled castes project affected persons and scheduled castes sports persons. Admittedly, the petitioner had not applied from the category for ex-serviceman, project affected persons and sports. The petitioner had applied from scheduled caste category, in general. As per Condition No. 25 of the

advertisement, the posts for which the horizontal reservation was provided, except the posts of ex-serviceman and physically challenged, could be filled, if no candidate was available from the special category. Admittedly, one post out of the six posts that were earmarked for the scheduled castes was earmarked for the ex-serviceman. Had the petitioner been placed at sr.no.3, 4 or 5 in the select list, the petitioner could have made the prayer for a direction to the respondent – Zilla Parishad to appoint the petitioner on the post of Auxiliary Nurse Midwife, on non availability of the candidate from the project affected persons category and sports persons category. The petitioner is, however, placed at sr.no.6 on the basis of her merit and since one post is earmarked for the ex-serviceman and the said post cannot be filled up from the candidates belonging to the scheduled castes on the basis of their merit in view of the non-availability of the ex-serviceman, in view of Condition No.25 of the advertisement, the petitioner cannot seek her appointment on the post of Auxiliary-Nurse-Midwife. The petitioner cannot effectively challenge Condition No.25 in the advertisement, as the petitioner has participated in the selection process with open eyes. It is well settled that a candidate participating in the selection process cannot question the process at a subsequent point of time. The Hon'ble Supreme Court has held that the advertisement should be challenged by the candidate before participating in the selection process and the challenge to the selection criteria after participating in the selection process is not permissible. It would be worthwhile to refer to the judgments of the Hon'ble Supreme Court reported in (1997) 4 SCC 426 [University of Cochin .vs. N.S. Kanjoonjamma and others, (2008) 4 SCC 171 [Dhananjay Malik and others .vs. State of Uttaranchal and others, (2009) 3 SCC 227 [Amlan Jyoti Borooah .vs. State of Assam and others, (2010) 12 SCC 576 [Manish Kumar Shahi .vs. State of Bihar and others] and (2011) 1 SCC 150 [Vijendra Kumar Verma .vs. Public Service Commission, Uttarakhand others] in this regard. In the circumstances of the case, we do not find any illegality in the inaction on the part of the respondents in appointing the petitioner on the post of Auxiliary Nurse Midwife (Arogya Sevika).

In the result, the writ petition is dismissed, with no order as to costs.

JUDGE

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