

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

WRIT PETITION NO.2241 OF 2014

[Dakeshwar Narayan Uptrade .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 H.A. Deshpande, counsel for the petitioner,
Shri D.P. Thakare, Additional Government Pleader for the respondent nos.1 and 4,
Shri A.Y. Kapgate, counsel for the respondent nos.2 and 3.

.....

CORAM : SMT. VASANTI A. NAIK AND
A.M. BADAR, JJ.

DATED : APRIL 16, 2015.

By this petition, the petitioner seeks a direction to the respondent-Zilla Parishad to appoint the petitioner on the post of Shikshan Sevak reserved for the project affected category, after declaring that the only other candidate in fray, i.e. the respondent no.5 cannot be considered from the category of project affected persons.

The petitioner applied along with few others in pursuance of the advertisement issued by the Zilla Parishad, Gondia on 7.1.2006 on the post of Shikshan Sevak reserved for the project affected persons. The petitioner was considered along with Khilesh Pardhi, Laxmishankar Markam and Gautam Pandhari Raut. Gautam Raut is the respondent no.5, in this petition. Since the Zilla Parishad appointed Laxmishankar Markam on the said post, though he was less meritorious than the petitioner, the petitioner challenged the appointment of Laxmishankar Markam before the grievance committee. The grievance committee dismissed the appeal filed by the petitioner. Being aggrieved by the said order, the petitioner filed Writ Petition No.6048/2010. This court, by the judgment dated 3.8.2011, was pleased to set aside the order of appointment of Laxmishankar Markam. The court directed the Zilla Parishad to consider the claim of the petitioner along with the other candidates before making the appointment on the post of Shikshan Sevak. The judgment dated 3.8.2011 attained finality, after the Letters

Patent Appeal filed by Laxmishankar Markam was dismissed. There was a finding recorded in the writ petition that the petitioner was more meritorious than Laxmishankar Markam. The District Selection Committee again considered the candidature of the petitioner and rejected the same on the ground that the post of Shikshan Sevak was reserved for the project affected persons from the Scheduled Tribes. According to the District Selection Committee, though the petitioner was a Project Affected Person, he was not entitled to be appointed on the said post as he did not belong to the Scheduled Tribes. The order of the District Selection Committee is impugned by the petitioner in the instant petition.

It is submitted on behalf of the petitioner that Laxmishankar Markam was less meritorious than the petitioner and, therefore, this court had set aside the appointment of Laxmishankar Markam on the post of Shikshan Sevak from the project affected persons. It is stated that after Laxmishankar Markam was out of picture, the petitioner was entitled to compete only with the respondent no.5, who had applied for the post reserved for the project affected category. It is stated that the respondent no.5 was, however, not eligible for appointment on the post reserved for the project affected persons, as before the candidates were interviewed, the respondent no.5 was appointed on a post reserved for the project affected persons in the police department. It is stated that as per the Government Resolution dated 21.1.1980, as soon as a person is appointed on the post reserved for the project affected persons, neither the said person nor any member of his family, would be entitled to compete on a post reserved for the project affected persons. It is stated that since the respondent no.5 was appointed as a Police Constable on a post reserved for the project affected persons, the respondent no.5 was not entitled to compete for the post in question and the petitioner was the only candidate, who could be considered in pursuance of the advertisement issued by the Zilla Parishad, Gondia in the year 2006. It is stated that the advertisement dated 7.1.2006 does not disclose that one post of Shikshan Sevak was reserved for project affected persons from the Scheduled Tribes. It is stated that the rejection of the

candidature of the petitioner on the ground that Laxmishankar Markam belonged to the Scheduled Tribe and after his appointment was set aside, the petitioner, who falls in Other Backward Classes, cannot be appointed on the post of Shikshan Sevak, is illegal. It is stated that, in this background, the District Selection Committee ought to have appointed the petitioner on the post of Shikshan Sevak.

Shri Thakare, the learned Additional Government Pleader appearing on behalf of the respondent nos.1 and 4 and Shri Kapgate, the learned counsel appearing on behalf of the respondent nos.2 and 3 supported the order of the District Selection Committee. It is stated that if the petitioner is appointed on the post of Shikshan Sevak, the Shikshan Sevaks from the OBC category, would be in excess, whereas there would be backlog in the category of Scheduled Tribes. It is stated that this aspect of the matter was considered by the District Selection Committee while refusing to appoint the petitioner on the post of Shikshan Sevak though the petitioner is meritorious. It is stated on behalf of the Zilla Parishad that the petitioner is holding the qualification in only one subject i.e. History and the petitioner does not hold the requisite qualification in the subject of English. It is, however, not disputed that the respondent no.5 was not entitled to seek the appointment on the post of Shikshan Sevak from the project affected persons category, as he was appointed on the post of Police Constable, that was reserved for the project affected persons. The learned counsel for the respondents sought for the dismissal of the writ petition.

On hearing the learned counsel for the parties and on a perusal of the advertisement, it appears that the relief sought by the petitioner needs to be granted. On a perusal of the advertisement dated 7.1.2006, it is clear that no post was specifically earmarked for the project affected persons. It was generally stated in the advertisement that posts were earmarked for physically disabled, ex-servicemen, project affected persons and women. The petitioner applied on the post of Shikshan Sevak from the project affected category. Though the petitioner was more meritorious in terms of the marks secured by him in the D.Ed examination, the respondents had illegally appointed Laxmishankar Markam on the post of Shikshan

Sevak. The petitioner challenged the appointment of Laxmishankar Markam, so also Khilesh Pardhi, who had also applied for the said post, had also filed an appeal before the Grievance Committee against the rejection of his candidature. The Grievance Committee dismissed the appeal filed by Khilesh Pardhi, after holding that he was not eligible for appointment on the post of Shikshan Sevak as per the advertisement. The Grievance Committee dismissed the appeal filed by the petitioner also. The petitioner then filed Writ Petition No.6048/2010 and this court, by the judgment dated 3.8.2011, allowed the writ petition filed by the petitioner and directed the respondents to reconsider the claim of the petitioner for appointment along with others. Since Khilesh Pardhi was held to be ineligible and since Laxmishankar Markam's appointment was set aside by this court in Writ Petition No.6048/2010, only two persons remained in the fray. The petitioner and the respondent no.5 were the only other candidates, who had applied for the post from the project affected persons category. It is rightly submitted on behalf of the petitioner that in pursuance of the Government Resolution dated 21.1.1980, the respondent no.5 was ineligible for appointment on the post of Shikshan Sevak, in pursuance of the advertisement dated 7.1.2006, as even before he was interviewed, he was appointed as a Police Constable on a post reserved for the project affected persons. In view of his appointment on the post of Police Constable on a seat reserved for the project affected persons, the respondent no.5 did not remain in the fray. The only person now eligible to compete, was the petitioner himself. In this set of facts, it was necessary for the District Selection Committee to have appointed the petitioner on the post of Shikshan Sevak from the project affected persons category. However, the District Selection Committee wrongly refused to appoint the petitioner on the said post on the ground that the post was reserved for the Scheduled Tribes. We do not find anything in the advertisement which could show that there was a horizontal as well as vertical reservation for one of the posts of Shikshan Sevak for which the petitioner had applied. Merely because Laxmishankar Markam belonged to the Scheduled Tribe, the respondent no.4-District Selection Committee could not have

refused to appoint the petitioner on the said post. It is also noteworthy that none of the respondents had raised an objection in the earlier round of litigation that the post was reserved for the Scheduled Tribes. If such an objection would have been raised, the same would have been surely considered by this court in the judgment dated 3.8.2011 in Writ Petition No.6048/2010. We find, in the circumstances of the case that the reason recorded by the District Selection Committee for rejection of the claim of the petitioner for appointment is invented by the Committee for again rejecting the candidature of the petitioner. We do not find anything in the advertisement or in the documents tendered by the respondents before the Grievance Committee and this Court, in the previous round of litigation, which show that post for which the petitioner applied, was not only reserved for the project affected persons, but was also reserved for the Scheduled Tribes. Also, we do not find anything in the advertisement which disentitles the petitioner to seek the appointment on the ground that the petitioner does not possess the requisite qualification in two subjects. The advertisement does not stipulate that a candidate applying for the post of Shikshan Sevak should have a post graduates degree in two subjects. There is nothing in the advertisement which requires the candidate to possess the masters degree in two subjects. Hence, we do not find any force in both the submissions made on behalf of the respondents for refusing to appoint the petitioner on the post of Shikshan Sevak from the category of project affected persons.

Hence, for the reasons aforesaid, the writ petition is allowed. The respondent-Zilla Parishad is directed to appoint the petitioner on the post of Shikshan Sevak, with effect from the date on which Laxmishankar Markam was appointed on the post of Shikshan Sevak, within a period of 15 days. The petitioner would, however, not be entitled to any monetary benefits flowing from the appointment from the said date, except continuity in service. Order accordingly. No costs.

JUDGE

JUDGE