

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

WRIT PETITION NO. 3867 OF 2012

(Nishikant Dattatraya Dhondse vs. The Vice-Chairman & Managing Director, Central Office, State Transport Corporation & Ors.)

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

Court's or Judge's orders

**CORAM : B.P. DHARMADHIKARI &
S.B. SHUKRE, JJ.
APRIL 08, 2015.**

Heard Shri Dastane with Shri Dhondse, learned counsel for the petitioners, Shri Kedar, learned counsel for respondent Nos. 1, 3 & 4, Ms. T. Khan, learned AGP for respondent No. 2 and Shri Jamal, learned counsel for respondent Nos. 9, 12, 16, 19, 20 & 23.

2. The effort of Shri Dastane, learned counsel is to demonstrate that instead of going by its policy decision and Government Resolution, as reserved category candidates in excess of permissible ratio were permitted to compete in Departmental Examination for promotion, they have been accommodated against open category seats. A report prepared by Deputy General Manager Shri B.N. Ratnaparkhi, placed on record as Annexure IX is pressed into service by him.

3. Shri Kedar and Shri Jamal, learned counsel, oppose the petition. They invite our attention to the Government circulars and Government Resolution of State Government issued on 26.10.2004 to show that reserved category candidates can also compete as per law for berth against open category vacancies. They submit that no right of the petitioner has been violated

in the process.

4. The learned AGP also supports the arguments of Shri Kedar and Shri Jamal, learned counsel for the respective respondents.

5. After hearing respective counsel, we find the data on record, not sufficient to finally decide the controversy. However, prima facie, it appears that when candidates eligible should be in proportion of 1:4. Thus, for one vacancy, four candidates should have been allowed to participate in the examination but double the number of candidates from reserved category have been allowed to participate. Whether this has resulted in denial of any right of the petitioner or then denial of his consideration insofar as open category post is concerned, is a moot question. Insofar as open category posts are concerned, same ratio is applied. The candidates whose name figure in general seniority list despite their caste can aspire and compete in the examination, if they fall in zone of consideration. Thus, for 58 open category vacancies, 242 general category candidates were allowed to compete. But if in the list of 242 general category candidates, there are any reserved category candidates, those reserved category candidates will be competing against open category and not for reserved vacancy. As such, the contention that excess number of reserved category candidates were called for by itself does not mean that the seat meant for open category candidate has been lost.

6. However, the report at Annexure IX shows

that for filling in 10 reserved vacancies for Scheduled Caste, total 86 applications were entertained. Similarly for 7 Scheduled Tribe vacancies 43 applications were entertained. For 2 N.T. candidates 17 applications were entertained. The question is whether these candidates from reserved categories in excess of ratio of 1:4 were departmentally examined and as per their performance, they have been accommodated on merit against open category vacancies.

7. If excess candidates who could not otherwise have been fit in general seniority list amongst 242 general category candidates, have succeeded in getting accelerated consideration because of their caste status and have been considered against open category vacancies, some injustice may have been caused to the petitioner.

8. As we have already noted above, necessary data in this respect has not come on record. The matter is pending before this Court since last three years. In the light of reports on record, we grant liberty to the petitioner to move proper representation pointing out the necessary facts. If such a representation is moved within four weeks from today, the respondents shall consider it in accordance with law within next three months.

9. With these directions and keeping all rival contentions open, we dispose of the present writ petition. No order as to costs.

JUDGE

JUDGE