

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

WRIT PETITION NO.6149 OF 2014

[Santosh Patiram Gaiakwad .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 S.A. Deo, counsel for the petitioner,
Shri S.M. Ghodeshwar, AGP for respondent no.1,
Shri V.G. Wankhede, counsel for respondent nos.2 and 3,
Shri A.L. Deshpande, counsel for respondent no.4.

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

DATED : MARCH 31, 2015.

By this petition, the petitioner seeks a declaration that the action on the part of the Maharashtra State Road Transport Corporation in refusing to grant appointment to the petitioner on the ground that the petitioner does not possess the validity certificate is contrary to Condition No.14 of the advertisement and the Government Resolution dated 12.12.2011. The petitioner further seeks a direction to the respondent-Corporation to provisionally appoint the petitioner on the post of Junior Assistant (Mechanic), subject to his submitting the validity certificate.

The petitioner claims to belong to Mana Scheduled Tribe on the basis of the caste certificate issued by the Sub-Divisional Officer. The petitioner applied for the post of Junior Assistant (Mechanic) in pursuance of the advertisement issued by the respondent-Corporation. As per Condition No.14 in the advertisement, a candidate appointed on a post earmarked for the reserved category, was required to submit the caste validity certificate within a period of six months from the date of appointment. The petitioner participated in the selection process and was selected for appointment on the post of Junior Assistant (Mechanic). The petitioner was waiting for the appointment order,

but on inquiry, the petitioner was informed that the petitioner cannot be appointed on the post of Junior Assistant (Mechanic), as he does not possess the caste validity certificate. Being aggrieved by the communication issued by the respondent-Corporation, the petitioner has filed this writ petition seeking the aforesaid declaration and provisional appointment on the post of Junior Assistant (Mechanic).

Shri Wankhede, the learned counsel for the respondent-Corporation, does not dispute that the petitioner was selected for appointment on the post of Junior Assistant (Mechanic) on a seat earmarked for the scheduled tribes. It is stated on behalf of the respondent-Corporation that it was necessary for the petitioner to produce the caste validity certificate before seeking an appointment order. The learned counsel has relied on the Government Resolution dated 16.8.2000 in this regard. It is stated that if the petitioner produces the caste validity certificate, the petitioner could be appointed on the post of Junior Assistant (Mechanic), as one post is kept vacant, in view of the interim direction issued by this court.

On hearing the learned counsel for the parties, we find that the action on the part of the respondent-Corporation in declining to issue the appointment order in favour of the petitioner is clearly illegal and arbitrary. The petitioner had applied for the post of Junior Assistant earmarked for the scheduled tribes category. On a perusal of the Advertisement issued by the respondent-Corporation, specially Clause No.14 thereof, it is clear that a candidate from the reserved category could have been appointed, subject to the submission of the caste validity certificate, within a period of six months from the date of appointment. Clause 14 of the Advertisement clearly makes a mention to the Government Resolution dated 12.12.2011 which provides for granting an appointment to the selected reserved category candidate, subject to the candidate submitting the caste validity certificate, within a period of six months. When the Corporation was aware of the Government Resolution dated 12.12.2011, the

reliance placed by the learned counsel for the respondent-Corporation on a previous Government Resolution dated 16.8.2000, which stands superseded by the Government Resolution dated 12.12.2011, is unacceptable. The respondent-Corporation could not have taken recourse to the Government Resolution dated 16.8.2000, when Clause 14 of the advertisement clearly made a reference to the subsequent Government Resolution dated 12.12.2011. We find that the action on the part of the respondent-Corporation in refusing to appoint the petitioner on the post earmarked for the scheduled tribes is not only arbitrary but is also high handed. The petitioner is entitled to a declaration that the action on the part of the respondent-Corporation in refusing to grant appointment to the petitioner on his failure to produce the caste validity certificate is contrary to Condition No.14 of the advertisement and the Government Resolution dated 12.12.2011. Since the respondent-Corporation does not dispute that the petitioner is selected on the post of Junior Assistant (Mechanic) from the scheduled tribes category and is entitled to be appointed on the said post, it is necessary to direct the respondent-Corporation to provisionally appoint the petitioner on the post of Junior Assistant (Mechanic), subject to the petitioner submitting the caste validity certificate within a time frame.

Hence, for the reasons aforesaid, the writ petition is allowed. It is hereby declared that the action on the part of the respondent-Corporation in refusing to grant appointment to the petitioner on the post of Junior Assistant (Mechanic) is illegal and is contrary to Condition No.14 of the advertisement and the Government Resolution dated 12.12.2011. The respondent-Corporation is directed to provisionally appoint the petitioner on the post of Junior Assistant (Mechanic) within a period of one week. The respondent no.4-Scrutiny Committee is directed to decide the caste claim of the petitioner, as early as possible and positively within a period of one year from the date of appearance of the petitioner before the scrutiny committee. The petitioner undertakes to appear before the Scrutiny Committee on 13.4.2015.

The services of the petitioner are protected till his caste claim is decided. Order accordingly. No costs.

JUDGE

JUDGE

Gulande