

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 1093 OF 2016

Madhuri d/o Vinayak Zirpe

.. PETITIONER

VERSUS

The State of Maharashtra
& others

.. RESPONDENTS

Mr. N.V. Gaware, advocate for petitioner.
Mr. K.N. Lokhande, AGP for the State.
Mr. S.T. Shelke, advocate for respondents 2 and 3.
Mr. N.B. Narwade, advocate for respondent no. 5.

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**CORAM : R.M. BORDE &
K.K. SONAWANE, JJ.
DATE : 29th SEPTEMBER, 2016.**

PER COURT :

1. Heard.
2. Petitioner is objecting to the appointment of respondents 4 and 5 contending that after modifying essential terms recorded in advertisement in the midst of the selection process, respondents have been considered for appointment.
3. Petitioner as well as respondents 3 and 4 tendered online application seeking appointment to the post of Gramsevak in Zilla Parishad, Ahmednagar. Petitioner and the contesting respondents are the candidates belonging to open category. Inviting our attention to clause no. 9 of the advertisement, petitioner submits that in order to claim benefits of reservation in favour of women candidates belonging to open category, it

was essential for such candidate to submit non-creamy layer certificate as on 31.03.2016. In merit list published earlier, name of petitioner finds place at sr. no. 7 whereas name of selected candidates do not appear in the said list. It is stated that on 15.01.2016, a corrigendum to advertisement has been issued facilitating women candidates belonging to open category to tender non-creamy layer certificate drawn as on or before 17.11.2015. It is stated in proforma of online application prescribed by respondents, no column was provided requiring women candidates belonging to open category to submit non-creamy certificate. As a result of such failure, meritorious candidates were left out of consideration. It appears that after publication of corrigendum, contesting respondents tendered non-creamy layer certificate within stipulated period and as such were considered for selection and appointment. Admittedly, petitioner has secured 162 marks in the written test whereas the selected candidates i.e. respondents 4 and 5 have secured 168 and 166 marks respectively. It is thus clear that the selected candidates are more meritorious than petitioner.

4. Petitioner places reliance on the judgment in the matter of Hemani Malhotra vs. High Court of Delhi reported in **2008 AIR SC 2103** to contend that the rules or norms prescribed in the advertisement cannot be changed after the process of selection is set in motion. The facts giving rise to the decision of the Supreme Court are totally different and as such, the ratio laid down is not applicable in the instant matter. Apart from this, in the instant matter rules or norms of selection have not undergone any change. In the instant matter, more meritorious candidates than petitioner have

been selected. Meritorious candidates cannot be kept out of the process of selection merely on account of technical deficiencies which are curable. In exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India, no interference is called for in the instant petition. Writ petition is devoid of substance hence stands rejected.

5. Learned counsel for petitioner prays for continuation of interim relief for a further period of two weeks. For the reasons recorded above, the request stands rejected.

6. Pending civil application, if any, does not survive and stands disposed of.

(K. K. SONAWANE)
JUDGE

(R. M. BORDE)
JUDGE

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