

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

WRIT PETITION NO. 1335 OF 2015

Manohar s/o Trimbak Patil, .. **Petitioner**
Age Major, Occu: Service .
R/o Mata Bijasani Tribal Boys
& Girls Primary Boarding
School, Anturli-Ranjane,
Taluka Amalner, Dist. Jalgaon

VERSUS

1. The State of Maharashtra
Through Secretary, Tribal
Development Department,
Mantralaya, Mumbai 400 032
2. The Upper Commissioner, Tribal
Development Department,
Nashik
3. The Project Officer,
Ekatmik Tribal Development
Project, Yawal, Taluka Yawal,
District Jalgaon
4. The Shantabai Multipurpose
Educational, Cultural and
Sport Mandal, Sane Nagar,
Amalner, Taluka Amalner Dist.
Jalgaon, Through its
President.
5. The Headmaster,
Mata Bijasani Primary and
Secondary Aided Tribal
Boarding School, Anturni-
Ranjane, Tqluka Amalner,
Dist. Jalgaon.

WITH

WRIT PETITION NO. 7884 OF 2016

Vivek s/o Subhas Patil, .. **Petitioner**
Age 35 years, Occu: Service, .
R/o At Post Gondur, Tq. &
Disrict Dhule

VERSUS

1. The State of Maharashtra
Through Secretary, Tribal
Development Department,
Mantralaya, Mumbai 400 032
2. The Additional Commissioner,
Tribal Development Department,
Nashik
3. The Project Officer,
Integrated Tribal Development
Project, Yawal, Taluka Yawal,
District Jalgaon
4. The Shantabai Multipurpose
Purpose Educational, cultural
and Sport Mandal, Sane Nagar,
Amalner, Taluka Amalner Dist.
Jalgaon, Through its
President.
5. Mata Bijasani Primary and
Secondary Aided Tribal
Boarding School, Anturni-
Ranjane
Tqluka Amalner, Dist. Jalgaon.

Mr. Bhausahab S. Deshmukh, Advocate for the petitioner
in Writ Petition No. 1335/2015

Ms. Surekha P. Mahajan, Advocate for the petitioner in
Writ Petition No. 7884/2016

Mr. V. H. Dighe, AGP for the Respondents-State.

Mr. Parag V. Barde, Advocate for Respondent No.4 and 5

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 18th August, 2016

ORAL JUDGMENT (Per Gangapurwala J.):

1. Rule. Rule made returnable forthwith. With consent of parties, the petitions are taken up for final disposal.

2. Mr. Desmukh and Ms. Mahajan, learned counsel for the respective petitioners submit that the petitioners are appointed by following due procedure of law. The proposal seeking approval to their appointment is forwarded to Respondent No.2-Additional Commissioner. The Additional Commissioner, Tribal Department granted approval till April, 2014. Subsequently also the proposal has been submitted but the approval has not been granted on the ground that the backlog exists. According to the learned counsel, even as per the staffing pattern sanctioned by the respondent authority, two posts are meant for open category and the petitioner in Writ Petition No. 1335/2015 is appointed from the open category.

3. Mr. Barde, the learned counsel for the respondent Institution submits that the petitioners have been appointed in accordance with provisions of law, after following due procedure. Even as per the staffing pattern, two posts were meant for open

category. Even otherwise, the Institution has filed an undertaking to this Court stating that the petitioners herein are appointed on clear and vacant posts. The Institution undertakes that if any vacancy arises in future in the School, then the candidate of reserved category as per roster would be appointed.

4. Mr. Dighe, the learned AGP states that the Institution is duty bound to abide by the roster. The backlog in filling in the posts from reserved category candidate exists and the petitioners are from open category. Unless the backlog is filled in, the approval cannot be granted. Even the irregularities exist.

5. We have considered the submissions canvassed by the learned counsel for the respective parties.

6. It is stated that the petitioner in Writ Petition No. 7884/1016 has been appointed from OBC category and the petitioner in Writ Petition No.1335/2015 is appointed from open category. We are not entering into the said debate.

7. There is no order rejecting the proposal seeking approval to the appointment of petitioners.

The approval is granted only up to April, 2014. The reason mentioned is that the backlog as per the roster and the staffing pattern exists. The Institution has filed an undertaking to this Court, thereby unequivocally undertaking that in case any vacancy arises in future, the said vacancy will be filled in from the candidates belonging to reserved category as per roster. The said undertaking is accepted. Considering the above, we pass the following order:

O R D E R

- i. In case the proposal is sent by the Management seeking approval to the appointment of the petitioners and same is pending, then the respondent authority shall consider the said proposal on its own merits and shall not reject it on the ground that backlog of the candidates belonging to reserved category exists.
- ii. In case, no such proposal is pending with the authority, the Management shall forward fresh proposal along-with all the documents. The same shall be considered by the respondent authority on its own merits.

iii. We make it clear that even if fresh proposal for approval is submitted in respect of the petitioners, the same shall not be rejected on the ground that the backlog of reserved category candidates exists.

8. Rule is made absolute accordingly. There shall be no order as to costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC