

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

906 WRIT PETITION NO.1397 OF 2015

BHARATI BARKU KHAIRNAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Wagh Vishwas B.
Mr. SK Tambe, AGP for Respondents: Nos. 1 & 2
Mr. Shaikh R R , Adv. For R/3.

**CORAM : S.S.SHINDE &
P.R.BORA, JJ.**

DATE : 17th February, 2016.

PER COURT :

1) Heard. This petition is filed with
following prayers, -

"(B) By allowing this writ petition, to hold and declare that the petitioner is entitled for the post of Aarogya Sevak Mahila (Health Assistant) pursuing to the advertisement issued in the month of September, 2014.

(C) By allowing this writ petition, the respondents may be directed to enlist the name of the petitioner in the final selection list from the category of "physically impairment".

2) Learned Counsel appearing for the petitioner submits that, though the post of Aarogya Sevak was reserved for physically handicapped person (handicapped by one leg), the candidates from the said category could not be selected and, therefore, the petitioner, who is physically handicapped (partially deaf), may be considered for appointment on the said post. The learned Counsel invited our attention to the provisions of Section 36 of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, the said Act) and submits that, where in any recruitment year any vacancy under section 33 cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may be first filled up by interchange among the three categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability.

Therefore, according to the learned Counsel appearing for the petitioner, by invoking the provisions of Section 36 of the said Act, the petitioner's prayer for appointment on the post of Aarogya Sevak deserves consideration. He further submits that, for this year also, another advertisement is issued by the respondents, however, the provisions of Section 36 of the said Act are not followed. The learned Counsel also invited our attention to the Circular issued by the Department of Social Justice, Cultural affairs, Sports and Special assistance of Government of Maharashtra dated 1st July, 2003.

3) We have heard the learned Counsel for the parties. Perused the pleadings and grounds in the petition, annexures thereto and in particular, the advertisement dated 23rd August, 2014 issued by the District Selection Committee, Aurangabad. In clause 7 of the said advertisement, post "Aarogya Sevak (Female) is mentioned and so far as physical handicapped category is concerned, it is written as "Apang" (handicapped by one leg/Eka Payane Apang). Admittedly, the petitioner does not belong to the said category, for which the post had been advertised

by the District Selection Committee, Aurangabad. The petitioner belongs to physically handicaped (partially deaf).

4) Provision of Section 36 of the said Act is relevant, which reads thus, -

"36. Vacancies not filled up to be carried forward, - Where in any recruitment year any vacancy under section 33 cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may be first filled up by interchange among the three categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability.

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the three categories with the prior approval of the

appropriate Government."

5) In that view of the matter, since the recruitment process which was undertaken has been already completed by the respondents, we are not inclined to entertain the petition. However, in case the District Selection Committee issues an advertisement for recruitment for the current year, and if the candidate from the aforesaid category, i.e. "Apang" (handicapped by one leg) is not available in earlier recruitment process, it is incumbent upon Respondent Nos.2 and 3 to invoke the provisions of Section 36 of the said Act, and advertise the said post and in case a suitable person with disability is not available, follow the process of interchange among the three categories, including the category from which petitioner has applied.

6) With the above observations, the petition stands disposed of.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

bdv/