

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.2599 OF 2015**Satish S/o Uddhavrao Bagale Vs. The State of Maharashtra and others.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.S.V.Kurundkar, advocate for the petitioner.

Ms.S.S.Raut, A.G.P. for the State.

Mr.A.D.Aghav, advocate for Respondent No.3.

Mr.R.I.Wakade, advocate for Respondent No.4.

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

Date : 16.12.2016.

PER COURT :

1. Heard.

2. Mr.Kurundkar, learned counsel for the petitioner states that pursuant to the advertisement dated 19.8.2014, the petitioner had applied for the post of Civil Engineer Assistant from SC category. The Respondent No.4 also had applied for the same post from SC category. The petitioner and Respondent No.4 both secured equal marks in the written examination i.e. 90 marks each. The appointment order is issued in favour of present Respondent No.4. The learned counsel submits that in fact, the G.R. Dated 27.6.2008 has been relied by the Respondents while making appointment of

Respondent No.4. The learned counsel submits that the said G.R. has not been properly applied. The petitioner is senior in age to Respondent No.4. As such when both the candidates were having equal marks, the petitioner ought to have been preferred. The learned counsel submits that the additional qualification which the Respondent No.4 was possessing can not be said to be higher qualification as the other qualification possessed by Respondent No.4 was in other stream and not Engineering. The learned counsel relies on the judgment of the Apex Court in a case of **“Secy. (Health) Deptt. Of Health and F.W. And another Vs. Dr.Anita Puri and others”** reported in **(1996) 6 Supreme Court Cases 282**, so also in a case of **“Jyoti K.K.and others Vs. Kerala Public Service Commission and others”** reported in **(2010) 15 Supreme Court Cases 596**. The learned counsel submits that even advertisement did not lay down the condition that a candidate possessing higher qualification would be preferred. The petitioner would be covered by clause 6.6 of the G.R. dated 27.6.2008. The learned counsel also relies on the judgment of the Apex Court in a case of **“Bibhudatta Mohanty Vs. Union of India and others”** reported in **(2002) 4 Supreme Court Cases 16**. The learned counsel further submits that as both the candidates were from SC category, no question would arise of giving preference on the basis of caste. The learned counsel relies on the judgment of the

Division Bench of this Court in **W.P.No.4723/2013 dt.5.5.2015**, delivered at Nagpur.

3. The learned counsel submits that the Government by its Resolution dated 5.10.2015 has also now changed the criteria and it is laid down in the said Government Resolution that if two candidates have the same marks then the one who is elder in age has to be preferred. The petitioner is elder in age.

4. Mr.Aghav, learned counsel for Respondent No.3 submits that the petitioner and Respondent No.4 were possessing the minimum qualification required for the said post as per the advertisement. Both had secured same marks and both were from SC category. The Respondent No.4 was possessing additional qualification i.e. degree in Commerce. As such he was preferred.

5. Mr.Wakade, learned counsel for Respondent No.4 also submits that the applicability of the G.R. dated 27.6.2008 was also mentioned in the advertisement and the petitioner had additional qualification.

6. The G.R. dated 5.10.2015 could have come to the aid of the petitioner, had the selection process been conducted after the said date. However, in the present case pursuant to the selection process, the Respondent No.4 was appointed on 28.1.2015 and since then is officiating on the said post. It is almost two years, the Respondent No.4 is working on the said post. The G.R. dated

5.10.2015 would not be applicable to the present selection process as the selection process has been concluded and appointment order is issued in favour of Respondent No.4 prior to operation of the G.R. dated 5.10.2015.

7. The G.R. dated 27.6.2008 prescribes six criterias to be followed in case the candidates have the same marks. It only says that the candidate who possess higher educational qualification is required to be preferred in case two or more candidates secure same marks. The petitioner has a degree in Commerce, apart from the qualification prescribed in the advertisement, whereas the petitioner only has a diploma.

8. As it is the Respondent No.4 is appointed and working for almost two years, the authorities have exercised discretion in a plausible manner. In view of that even on equity, we are not inclined to intervene in the matter.

9. The Writ Petition as such is disposed of. No costs.

(K . L . WADANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.16.12.2016.

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