

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

9 WRIT PETITION NO. 5144 OF 2013

VIJAY DNAYNBA RAUT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Wakade Ramesh I
AGP for Respondents: B.A. Shinde
Advocate for Respondents : V.D. Sapkal for R3.
Advocate for Respondents : V.B. Jagtap for R. 10 to 12.
Advocate for Respondents : K.B. Jadhav h/f. A.D. Shinde for R.7
Advocate for Respondents : Yuvraj S. Choudhari h/f. Yuvrak Kakade for
R/4 A2, R6, 12, 11

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**CORAM : S.V.GANGAPURWALA &
P.R. BORA, JJ.
DATED : 10.10.2016.**

P.C. :-

1. Mr. Wakade, the learned counsel for the petitioner submits that, the petitioner pursuant to the advertisement applied for the post of Shiksan Sevak in the subject of History / Geography from Marathi medium. The petitioner secured 38 marks out of 60, the merit list was published, petitioner was at serial no. 19. The candidates who were at serial nos. 23 and 41 in the said list have been appointed. Though, they have secured less marks than the petitioner. These two persons were also shown from the open category. According to the learned counsel, a person who is less meritorious than the petitioner could not have been

appointed.

2. Mr. Sapkal, the learned counsel for the respondent submits that, the candidates at serial nos. 23 and 41 against whom the petitioner is making a grievance have been given appointment from reserved category. Subsequently, they satisfied the authorities that they belong to the reserved category and so they have been considered from the reserved category and have been given appointment from the reserved category. No candidates having less marks than the petitioner is appointed.

3. Mr. Wakade, the learned counsel submits that, once the candidate has filled in the form from open category then those candidates could not have been considered from the reserved category. The terms of advertisement are required to be adhered to. The learned counsel relies on the judgment of the Division Bench of this court in the case of **Tushar Babanrao Deshmukh v/s State of Maharashtra and Ors.** reported in **2013 (3) MLJ 673.**

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

5. The petitioner had applied for the post of Shiksan Sevak from

open category for Satara circle from Marathi medium in History and Geography subjects. The merit list is published, the petitioner secured 38 marks out of 60 and stands at serial no.19. The candidates at serial nos. 23 and 41 certainly have secured less marks than the petitioner and they were also shown from the open category in the said list published.

6. It is clarified by the respondents that these two candidates at serial nos. 23 and 41 have been selected and appointed from Satara circle in reserved category. These two candidates certainly have less marks than the petitioner, they cannot be appointed in open category de hors the claim of the petitioner. The proposition put forth by Mr. Wakade, the learned counsel for the petitioner that the terms of advertisement are required to be adhered need not be dilated. The same is a settled proposition of law.

7. The said two candidates are considered from the reserved category, though, in the merit list they are shown in the open category. A grievance to that effect can be made by a person from the reserved category, however, it will not be open for the petitioner to make that grievance, because the open post is not affected. From the open category the two candidates that are appointed, admittedly, have secured more marks than the petitioner. The right of the petitioner in no

way is affected by appointment of those two candidates from the reserved category.

8. In light of the above grievance of the petitioner cannot be considered. Writ petitioner is dismissed. No costs.

[P.R.BORA, J.]

[S.V. GANGAPURWALA, J.]