

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

19 WRIT PETITION NO. 7552 OF 2015

VIDYA BHARAT KAWARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the petitioner : Mr. R. V.Gore
AGP for the State: Mr. B. A. Shinde
Advocate for respondent No.2: Mr.A.R. Nikam
Advocate for respondent Nos. 3 and 4: Mr. S.T.Shelke
Advocate for respondent No.5: Mrs. R.K. Ladda

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

DATE : 25th October, 2016

ORDER:

1. Mr. Gore, the learned counsel for the petitioner submits that pursuant to the CET exam conducted by the respondents, the petitioner had appeared for the said CET exam as an open category candidate. The petitioner does not belong to Ex-Army category. However, by mistake had ticked column No. 8 meant for Ex-serviceman category. The learned counsel submits that the petitioner, on 16.08.2010, had requested for correction of the said category and had further requested not to consider his case from Ex-serviceman category. The mark memo was also sought to be corrected.

2. The learned counsel submits that the petitioner filed applications on 13.04.2011 so also on 25.03.2011 for correcting the category and to be considered from 20% quota for B.P.Ed. English Medium. However, the same was not considered. No communication was made to the petitioner. The petitioner filed an appeal before the Grievance Committee. The Grievance Committee, thereafter disposed of the same as not maintainable and therefore the present petition is filed.

3. The learned counsel submits that the whole tenor of the application, if it is seen, it would be clear that the applicant had applied from open category. A human error was committed in marking Column No.8. No document was also annexed with regard to the Ex-serviceman category and immediately on noticing the said defect, the petitioner had sought correction in the mark memo and so also the application. The same ought to have been considered.

4. Mr. Nikam, the learned counsel for the respondents submits that the petitioner was considered from Ex-serviceman category as per his application form. No document was annexed of ex-serviceman. As

such, could not be considered. The application will have to be scrutinized scrupulously. In absence of any document pertaining to the ex-serviceman category, the petitioner's case is rightly rejected. The learned counsel relies on the judgment of Division Bench of this Court in case of **Savantkumar s/o Jagdishchandra Mandwal Vs. State of Maharashtra and another, reported in 2014 (7) Bom.C.R.887**. The learned counsel further, on instructions, submits that no post is vacant even from 20% B.P.Ed. English Medium category.

5. We have taken on record the communication issued by the Director of Education (Primary). The same is marked 'X' for identification. The said communication specifically states that for the academic year 2015-16, surplus candidates are to be filled in. There are 117 excess posts and only 20 posts are filled in. As per communication dated 29.09.2016 issued by the Commissioner, no posts for 20% English Medium B.P. Ed. category is vacant. There are surplus teachers who are required to be accommodated. The petitioner had committed an error in the application itself and as such, was not considered. It cannot be said that the respondent had acted illegally.

6. Considering the fact that even vacant posts does not exist and the surplus candidates would be absorbed, the case of the petitioner cannot be considered.

7. Writ petition is accordingly disposed of. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC