

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9915 OF 2014

SATISH RAMHARI DAWANE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Party In Person
AGP for Respondent No.1 : Mrs. M.A. Deshpande.
Advocate for Respondent No.2 : Mr. S.S. Thombre.
Advocate for Respondent No.5 : Mr. K.M. Suryawanshi.
Advocate for Respondent No.7 : Mr. S.B. Talekar

...

CORAM : S. V. GANGAPURWALA &
A.M. BADAR, JJ.

DATE : 13TH JANUARY, 2016.

PER COURT:

1] The petitioner assails the selection process held and conducted by respondent No.2 pursuant to the advertisement for the post of Section Officer, on the ground that the same is not in consonance with the relevant Government Resolutions regarding filling up the posts of reserved category candidates.

2] The petitioner - party in person submits that he had applied pursuant to the advertisement dated 7.3.2012 for the post of Section Officer from SC category. Various posts of Section Officer were advertised. From reserved category, one post was meant for candidate belonging to SC category, whereas, 5 posts were meant for candidates from Open Category.

3] In the said selection process, respondent No.8, who belongs to SC category secured 82.60 marks, whereas, respondent No.7 has secured

72.66 marks. Respondent No.7 is selected from Open Category and respondent No.8 is shown to have been selected and appointed from SC category.

4] The party in person submits that same is not in consonance with the Government Resolutions dated 18th October, 1997 and 16th March, 1999. According to the party in person, respondent No.8 who is having more marks than respondent No.7 should have been considered and appointed on the post meant for Open Category and the present petitioner, who is kept at Sr. No.1 on the Wait List of SC category should have been appointed from SC category. If respondent No.8 could have been appointed in Open category, the petitioner would have been selected for the post of Section Officer from SC category being at Sr. No.1 in the Wait List, as he has secured 70.33 marks.

5] Mr. Thombre, learned counsel for the University submits that the selection was done strictly pursuant to the advertisement. Terms and conditions of the advertisement were scrupulously followed. Those candidates, who had filled in the applications from SC category were considered from SC category and those applying from open category are considered from Open category. Even the amount of Process Fees which was to be paid by way of Demand Draft was different for the Open and SC categories. As such, persons who had applied from SC category and paid the process fees as applicable to SC category are naturally considered and appointed in SC category. According to him, no illegality is committed by the respondent No.2 in the selection process. The same is transparent.

6] Mr. Talekar, learned counsel appearing for respondent No.7 submits that the respondent No.7 had filled in the application from Open Category, whereas, respondent No.8 had filed in the application from reserved category. Respondent No.7 is rightly selected and he is working on the said post for more than 2 years.

7] We have considered the averments canvassed by the learned counsel for the respective parties and the party in person. The Apex Court in the case of “*R.K. Sabharwal Vs. State of Punjab*” reported in **1995(2) SCC 745**, has observed as under :-

“4..... The fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the backward classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition. We, therefore, see no force in the first contention raised by the learned counsel and reject the same.”

8] Mr. Talekar, learned counsel for the respondent No.7 also does not dispute the legal proposition that the candidate from the reserved category, if he gets more marks than a candidate of open category, will have to be considered for appointment on the post from Open Category. It would appear that the selection process had been undertaken more than 2 years

back. Respondent Nos. 7 and 8 are already appointed and they are working since two years. It would also cause hardship to those candidates who are already appointed and are working for about 2 years if they are asked to vacate their post.

9] Keeping the aforesaid aspects in mind, we had asked Mr. Thombre, learned counsel for the respondent No.2, as to whether any vacancy is available of the post of Section Officer from SC category. For the said purpose, we had adjourned the matter. Today, Mr. Thombre, learned counsel states that one post of Section Officer from SC category is vacant. Said post is already advertised. However, it was not filled in. Considering the fact that there is a vacancy for the post of Section Officer in SC category, and the petitioner was kept at Sr. No.1 in the Wait List for the said post, we direct the respondent No.2 to appoint the petitioner on the post of Section Officer from SC category. Same shall be done within two months from today.

10] Writ petition is accordingly allowed in aforesaid terms. No costs.

[A.M. BADAR]
JUDGE

[S.V. GANGAPURWALA]
JUDGE.

grt/-