

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10396 OF 2016

Anil s/o Pandurang Shep,
Age : 28 years, Occu. Nil,
R/o Moha, Tq. Parali-Vaijnath,
District Beed

PETITIONER

VERSUS

1. The State of Maharashtra,
through Principal Secretary,
Energy Department,
Mantralaya, Mumbai – 32
2. The MAHAGENCO,
through Managing Director,
Estrella Batteries Expansion Compound,
Ground Floor, Labour Camp,
Dharavi Road, Matunga,
Mumbai – 400 019
3. The Executive Director,
The MAHAGENCO,
Estrella Batteries Expansion Compound,
Ground Floor, Labour Camp,
Dharavi Road, Matunga,
Mumbai – 400 019

RESPONDENTS

Mr. Sandeep D. Munde, Advocate for the petitioner
Mr. S.J. Salgare, A.G.P. for the respondent/State
Mr. S.M. Godsay, Advocate for respondent Nos. 2 and 3

CORAM : R.M. BORDE AND
SANGITRAO S. PATIL, JJ.

DATE : 8th December, 2016

ORAL JUDGMENT (PER : R.M. BORDE, J.) :

Heard.

2. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, the petition is taken up for final hearing and disposal at the stage of admission.

3. The petitioner is praying for directions to the respondents to include his name in the list of eligible candidates for making appointments to the posts of Technician-III (General category). The respondents – Electricity Generation Company issued an advertisement in the year 2016, calling applications for filling in 947 vacancies of Technician-III. As per the policy of the Company, 50% posts are earmarked for the candidates belonging to Project Affected Persons i.e. the persons whose properties are acquired for development of the projects undertaken by the Company. It is informed that the Company imparts training to such candidates who possess requisite technical qualification. They are considered on the basis of the training imparted to them by the Company. According to the petitioner, though he belongs to NT-D category, he had tendered application as a candidate belonging to Open category. The petitioner

is not desirous of gaining benefits prescribed for reserved category. He also does not possess creamy layer certificate which probably may be the cause for not claiming the posts prescribed for reserved category candidates. The petitioner claims benefit of 5% reservation prescribed for sports person category. According to the petitioner, out of total 947 vacancies, 24 are prescribed for the candidates belonging to sports persons category, out of which 12 are available for open sports persons category. The petitioner does possess the requisite qualification for consideration of his candidature amongst the aforesaid reserved category i.e. sports persons category. The petitioner contends that he appeared for the written examination conducted by the Employer and has been declared successful, having scored 44 marks out of 75 marks. Though the petitioner possesses higher percentage of marks, his name did not appear in the final select list. However, the candidates who are less meritorious, have been included in the select list of sports person category published by the respondents.

4. On issuance of notice, Shri S.M. Godsay, the

learned counsel has caused appearance for respondent Nos.2 and 3. It is submitted on behalf of respondent nos. 2 and 3 that since the petitioner belongs to NT-D category, his candidature is considered from amongst said category. It is stated that the decision has been taken strictly in accordance with the Government policy declared in the Circular dated 13th August, 2014. According to Mr.Godsay, there is no discrimination made as alleged by the petitioner.

5. The submission made on behalf of respondents relying upon Circular dated 13.08.2014 cannot be accepted since it is violative of the principles of reservation interpreted in several judgments by the High Court and the Supreme Court. A candidate is entitled to compete for the open category seat although he may belong to any particular reserved category, on the basis of individual merit. Even otherwise, a candidate from reserved category can claim seat available to open category on the basis of his/her merit and his candidature ought to be considered if he is likely to secure such seat on the basis of merit. It is noticed that there are eight candidates who are less meritorious

than the petitioner, who have been included in the select list. In the circumstances, the decision arrived at by respondent No. 2 Company does not appear to be sound and as such, the directions as sought by the petitioner deserve to be issued.

6. For the reasons recorded hereinabove, the Writ Petition deserves to be allowed and the same is allowed. The respondents are directed to include the name of the petitioner in the merit list/select list prepared by the respondent No. 2 – Company for making appointments to the posts of Technician-III from amongst the general sports persons category. The claim of the petitioner shall be considered on the basis of individual merit and as a candidate belonging to the aforesaid sports persons category.

7. Rule is made absolute in the above terms. There shall be no order as to costs.

[SANGITRAO S. PATIL]
JUDGE

[R.M. BORDE]
JUDGE