

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

10 SECOND APPEAL NO. 736 OF 2015
WITH CA/16249/2015 IN SA/736/2015

MANISHA GULABRAO WANKHEDE
VERSUS
COLLECTOR AND PRESIDENT DISTRICT SELECTION
COMITTEE NANDURBAR AND ORS

Shri. Sanket S. Kulkarni, Advocate, for appellant.

Shri. S.P. Sonpawale, Assistant Government Pleader, for
respondent No.1.

Shri. R.N. Jain, Advocate, for respondent Nos.2 and 3.

Shri. N.B. Jadhav, Advocate, for respondent No.4.

CORAM: T.V. NALAWADE, J.

DATE : 19th JULY 2016

ORDER:

1) The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.14/2008 which was pending in the Court of the Civil Judge, Senior Division, Nandurbar and also the judgment and decree of Regular Civil Appeal Nos.17/2010 and 1/2011 which were pending in the Court of District Judge-1, Nandurbar.

2) The suit was filed by respondent No.4 Manisha Soneri for relief of declaration that the appointment of defendant No.4 Manisha Wankhede on the post of Extension Officer (Education) in Zilla Parishad Nandurbar is illegal. The trial Court has held that the appointment is illegal and direction is given to fill the post on which defendant No.4 is appointed by following due selection process. This decision was challenged by both, Manisha Wankhede and the Collector and Zilla Parishad by filing aforesaid two appeals. But both the appeals are dismissed. Heard both the sides.

3) It is the case of the plaintiff that she and defendant No.4 had participated in the process of recruitment of Extension Officer (Education) in response to advertisement No.2/2007-2008 published by the Zilla Parishad Nandurbar in local news paper dated 5-5-2007. It is her case that there were three posts reserved for Scheduled Tribe and out of three posts there was one post for female of Scheduled Tribe. It is her case that there were seven posts in open category and out of them four posts were reserved for female candidates. The plaintiff

had applied under the category of Scheduled Tribe and defendant No.4 had applied from open category. It is her case that in the entire process defendant No.4 was not shown as candidate from Scheduled Tribe category but appointment of defendant No.4 came to be made from Scheduled Tribe category. The suit was filed after making of the appointment of defendant No.4 and aforesaid relief was claimed.

4) Defendant No.4 filed written statement. It is the case of defendant No.4 that plaintiff was selected for the post which was reserved for Scheduled Tribe female but she did not produce the record showing her eligibility in time and there was no record like caste validity certificate with the plaintiff. It is her case that she secured more marks, 62.56 as against the marks secured by plaintiff like 40.19 and so appointment is given to her on this post. It is her case that she also belongs to Scheduled Tribe and she was eligible for appointment on the said post. Defendant Nos.1 and 3, including Zilla Parishad, the appointing authority, contended that relevant record was not produced by plaintiff and contended that on the basis

of marks secured by defendant No.4, her appointment was made. Written Statement of the Zilla Parishad was almost similar to the written statement filed by defendant No.4. Both the sides gave evidence before the trial Court. The trial Court held that the defendant No.4 had not applied from scheduled tribe category and so it was not open to Zilla Parishad to give her appointment on the post which was advertised for scheduled tribe female. These findings are confirmed by the first appellate Court.

5) This Court has carefully gone through the record which includes the advertisement published by Zilla Parishad. The advertisement shows that appointment of only one candidate from scheduled tribe female was possible as only one post was reserved for said category. But appointment of four female candidates from open category was possible. There is copy of application given by defendant No.4 and it shows that marking was done to indicate that she was applying from open category and she had marked that she was female. It appears that after making some overwriting the category of scheduled tribe was also marked. However, there is evidence given by the

Zilla Parishad and the record shows that defendant No.4 was treated as candidate from open category as per the application during entire process. Defendant No.4 has admitted that she had applied from open category as there was more chance of her success in getting appointment as there were four posts reserved for female candidates in open category. Much was tried to make out by the learned counsel for respondent No.4 on the basis of fees deposited by defendant No.4 for participating in the selection process. That record cannot make much difference. Fees for Scheduled Tribe candidate was less but Scheduled Tribe candidate could have applied for open category post. In the entire selection process she was treated as candidate from open category and she also admits that she had participated in the process as candidate from open category. It appears that in Scheduled Tribe category there was one candidate like Pawar Jyoti Girdhar who was listed after plaintiff. If plaintiff did not satisfy eligibility test, in ordinary course, appointment could have been given to said Jyoti but defendant No.4 was picked up from other category and appointment was given to her. Thus the appointment was

given on the post for which application was not made by defendant No.4. In view of these circumstances this Court holds that the Courts below have not committed error in holding that the appointment is illegal.

6) Learned counsel for the appellant, defendant No.4, submitted that in view of provision of section 34 of the Specific Relief Act further relief of declaration that the plaintiff is entitled to get that post ought to have been claimed but as such relief was not claimed the suit itself was not tenable. This submission is not acceptable. Necessary observations are made by the trial Court in that regard and it is observed that as per the process appointment ought to have been given to the plaintiff first then she could have been asked to produce caste validity certificate. If there were any other objections regarding eligibility conditions then appointment could have been given to Jyoti Pawar but in any case appointment could not have been given to defendant No.4. Mischief is apparent on the face of the record. But surprisingly even after decision of the trial Court and when there was no stay of any kind, defendant No.4 was continued in service by Zilla

Parishad. This Court had made order to inform Court about action taken by the Zilla Parishad in view of the decision by making order on 4-7-2016. But the learned counsel for the Zilla Parishad submitted today that he has not yet received information. Nature of pleadings in the written statement filed by defendant No.4 and the Zilla Parishad speaks volume about the nature of cooperation between them. It can be said that the other candidate, Jyoti Pawar had no information about what was happening behind her back. That poor candidate could not even approach the Court. It is unfortunate that institution like Zilla Parishad used such method to appoint defendant No.4 to the post to which she was not entitled. Necessary action needs to be taken against the concerned in that regard. No substantial question of law as such is involved in the matter. In the result, the appeal stands dismissed. Civil Application is disposed of.

Sd/-
(T.V. NALAWADE, J.)

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