

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

WRIT PETITION NO. 12247 OF 2015

Sharad Raghunath Kadus and others .. Petitioners

Versus

The Union of India and others .. Respondents

Shri M. R. Wagh, Advocate for Petitioners.

Shri S. B. Deshpande, A.S.G. for Respondent Nos. 1 to 3.

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

DATE : 28TH SEPTEMBER, 2016.

PER COURT :

. Mr. Wagh, the learned counsel for petitioners submits that, pursuant to the advertisement issued by the respondent No. 2 for the post of Constable/driver the petitioners applied. As per the advertisement 71 posts were meant for open category candidates. The petitioners applied as open category candidates. The learned counsel submits that, the petitioners successfully completed each and every stage of examination. The petitioners have also passed the fitness test. After successfully going through all stages of selection, the respondents issued appointment orders to the petitioners on 20th November, 2015. Abruptly vide order dated 27.11.2015 the said letters of appointments were cancelled for the reason, “due to want of

vacancies". The learned counsel submits that, after having been issued the appointment letters, the respondents could not have cancelled the same. The said act is illegal. The reason given in the cancellation letter that, the vacancies does not exist is improper, as the numbers of seats were already advertised and the petitioners were selected as against said advertised posts. According to the learned counsel the affidavit filed by respondents that, 86 general category candidates though medically fit, could not be cleared for the issue of offer of appointment due to want of vacancies, as they were lower in merit is erroneous and not supported by any record.

2. Mr. Deshpande, the learned A. S. G. submits that, the Jats from nine states who were brought in O.B.C. category were required to be considered from general category in view of the judgment of the Apex Court setting aside the notification bringing Jat under O.B.C. in the case of Ramsing and others Vs. Union of India reported in (2015) 4 SCC 697. The petitioners were less meritorious than the candidates selected in the general category, as such have not been considered. Issuance of letter dated 20th November, 2015 was a clerical error and on the said lapse being detected immediately corrective steps are taken by issuing letter dated 27.11.2015.

3. We have considered the submissions canvassed by learned

counsel for respective parties. The petitioners would have got a case, in case, they would have been in a position to demonstrate that, they were more meritorious than the one selected from the general category.

4. The respondent Nos. 1 to 3 have filed affidavit in reply and have made following statement :

"The four petitioners in the instant W.P. are also amongst these 86 candidates who were lower in merit compared to the candidates who were cleared for issuance of offer of appointment. While the other CISF Zones did not issue offer of appointment to 64 candidates who were not cleared for issue of offer of appointment, office of Respondent No. 3 (i.e. CISF 3rd Reserve Battalion, Bhilai) issued the provisional offer of appointment to 22 General category candidates on 20.11.2015 which was purely a clerical error, but the said lapse was immediately detected on 27.11.2015 and the offers of appointment were cancelled well before the commencement of basic training i. e. 07.12.2015."

5. There is no reason for us to doubt the said affidavit. It has been clearly stated in the said affidavit that, these petitioners in the instant writ petition are amongst those 86 candidates who were lower in merit compared to the candidates who were cleared for issue of offer of appointment.

6. In the light of the above, the case of petitioners cannot be considered. The writ petition accordingly stands disposed of. No

costs.

7. Needless to state, in case petitioners, subsequently are in a position to demonstrate that, the last candidate appointed from the open category is less meritorious than the petitioners, then the petitioners may have right to agitate the same.

[K. L. WADANE, J.]

[S. V. GANGAPURWALA, J.]

bsb/Sept. 16