

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.813 OF 2016

Dr. Vilas S/o Pundlikrao Borse and anr

-vs-

The State of Mah., thr Principle Secretary, Ministry of Medical Education, Department of
Maharashtra, Mantralaya, Mumbai and ors

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.H.G. Panchal, counsel for the petitioners.
Mr.Abhijeet Deshpande, counsel for the R-3.
Mr.V.R. Thakur, counsel for R-4 & 5 caveators.
Mr.N.R. Patil, AGP for the R-1 & 2.

CORAM : SMT. VASANTI A. NAIK &
V. M. DESHPANDE, JJ.

DATE : MARCH 28, 2016.

By this writ petition, the petitioners impugn the advertisement issued by the respondent Nos.4 and 5-Management dated 7.1.2016 as illegal, being violative of the reservation policy.

By an advertisement published by the respondent Nos.4 and 5 dated 7.1.2016 certain posts of Professors, Associate Professors and Assistant Professors were advertised. In this writ petition, we are not concerned with the posts other than the posts of Assistant Professor in Kayachikitsa and Assistant Professor in Panchakarma as the petitioners had applied for the said posts only. In the advertisement, the post of the Assistant Professor in Kayachikitsa was earmarked for the Scheduled Tribes whereas the post of the Assistant Professor in Panchakarma was earmarked for the Open Category. It is the case of the petitioners that in pursuance of the said advertisement, the petitioners applied for the posts

of the Assistant Professor in Kayachikitsa and Panchakarma. It is the case of the petitioners that in view of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act, 1995, the post of Assistant Professor in Kayachikitsa and the post of Assistant Professor in Panchakarma should have been earmarked for the persons with disabilities. Also, it is the case of the petitioners that the respondent Nos.4 and 5 have not followed the reservation policy while publishing the advertisement dated 7.1.2016, inasmuch as the post of the Assistant Professor in Kayachikitsa ought to have been reserved for the Other Backward Classes to which one of the petitioner belongs.

The learned counsel for the respondents have raised a preliminary objection to the tenability of the writ petition. It is stated that the petitioners cannot be permitted to challenge the advertisement after the petitioners have participated in the selection process. It is submitted that an advertisement should be challenged before participating in the selection criteria and the challenge to the selection criteria after participating in the selection process is not permissible. The learned counsel for the respondents have relied on the judgments of the Honourable Supreme Court reported in **(2009)3 SCC 227 (Amlan Jyoti Borooah ..vs.. State of Assam and others)**, **(1997)4 SCC 426 (University of Cochin, represented by its Registrar, University of Cochin ..vs.. N.S. Kanjoonjamma and others)** and **(2008) 4 SCC 171 (Dhananjay Malik and others ..vs.. State of Uttaranchal and others)** to substantiate their submission. Apart from the preliminary objection, it is stated on behalf of

the respondent Nos.4 and 5 that the challenge of the petitioners is devoid of merit. It is submitted that after the advertisement was issued, the respondent Nos.4 and 5 realized the mistake of not earmarking any post of Associate Professor and Assistant Professor for the physically disabled. It is stated that after the advertisement was issued, the respondent Nos.4 and 5 have sought permission to earmark the post of Associate Professor in Swastharutta and the post of Assistant Professor in Prasutitantra and Streerog for the physically disabled. It is stated that there is only one sanctioned post of Assistant Professor in Panchakarma and the said being the solitary post, reservation is not permissible for the said post. It is stated that the other post, i.e. the post of Assistant Professor in Kayachikitsa, is earmarked for the Scheduled Tribes as per the reservation roster. It is stated that there are two sanctioned posts of Assistant Professor in the subject of Kayachikitsa and since one of the posts is liable to be reserved for the Scheduled Tribes, the post of Assistant Professor in Kayachikitsa is rightly advertised for the candidates belonging to the Scheduled Tribes. It is stated that the reservation roster has been approved by the Commissioner, Backward Class Cell and the petitioners cannot effectively challenge the advertisement, even on merits.

On hearing the learned counsel for the parties, it appears that the writ petition would not be maintainable in view of the settled position of law. A candidate participating in the selection process cannot question the process later on. The learned counsel for the respondents have rightly relied on the judgments of the Honourable Supreme Court reported

in (2009)3 SCC 227 (Amlan Jyoti Borooah ..vs.. State of Assam and others), (1997)4 SCC 426 (University of Cochin, represented by its Registrar, University of Cochin ..vs.. N.S. Kanjoonjamma and others) and (2008) 4 SCC 171 (Dhananjay Malik and others ..vs.. State of Uttaranchal and others) to substantiate their submission. It is held by the Honourable Supreme Court from time to time that a challenge to the selection criteria, after participating in the selection process, is not permissible. The preliminary objection raised on behalf of the respondents is upheld. Since the petitioners would not be entitled to challenge the advertisement after participating in the selection process, the writ petition is liable to be dismissed.

The writ petition is, therefore, dismissed as such with no order as to costs.

JUDGE

JUDGE

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