

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

WRIT PETITION No. 2457/2013.

Sanjay Domasing Jadhao

-VERSUS-

Nagpur Municipal Corporation and another.

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

Court's or Judge's Orders

CORAM : B.P. DHARMADHIKARI &
KUM. INDIRA JAIN, JJ.

DATE : JUNE 10, 2016.

Heard Shri V.A. Kothale, learned Counsel
for the petitioner, Shri J.B. Kasat, learned Counsel for
respondent no.1 and Shri R. Vyas, learned Counsel for
respondent no.2.

2. Petition was disposed of finally on
18.02.2014. It has been restored back to file on
18.03.2016, by passing the following order.

“ Heard Advocate Shri V.A.
Kothale, for the petitioner and Advocate
Shri J.B. Kasat for the respondent no.1.
Nobody appears for respondent no.2
though she is served.

Advocate Shri V.A. Kothale

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submits that in advertisement pursuant to which recruitment has been carried out except for stipulation that if in horizontal reservation a woman category candidate does not become available, that post shall be filled in by a male applicant of same category, there is no whisper about horizontal reservation. He submits that the petitioner is concerned with the post of Junior Engineer (Civil), where there were 8 vacancies. In select list, the petitioner was placed at Sr.No.2 and had scored 124 marks. The respondent no.2 Smt. Vaijanti Vishnu Aade, who has scored only 100 marks has been allowed to supersede the claim of the petitioner. He also states that though there was never any mention of O.B.C. ladies category, a select list of five O.B.C. women candidates has been published. According to him, the horizontal reservation cannot carry with it the vertical reservation and candidate who has scored maximum marks needs to be selected and placed in category as per his claim. The woman reservation thereafter gets fastened on that category.

Advocate Shri J.B. Kasat invites attention to first note below advertisement to urge that the horizontal reservation has been stipulated to be as

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per various Government Resolutions and Resolution of Nagpur Municipal Corporation. He contends that accordingly the reservation has been given effect to. He has invited our attention to very same document where after declaring names of candidates a note has been added. Advocate Shri J.B. Kasat also submits that as petitioner belongs to V.J. Category, he cannot assail O.B.C. category reservation or selection.

The advertisement expressly nowhere points out how many vacancies are reserved for ladies. The note to which our attention has been invited by Advocate Shri J.B. Kasat appearing below advertisement also does not indicate said number. Note after list of candidates (upon Annexure P-III) declares that posts reserved for woman are to be filled in through V.J. (A) and N.T. (D) categories. It is also pointed out that in V.J. (A) Category there is only one woman. This note, therefore, does not refer to any reservation of ladies in O.B.C. category.

Prima facie it appears that the ladies selected in O.B.C. category have scored more marks than respondent no.2.

As such we recall the order dated 18th February, 2014 and restored Writ Petition No.2457/2013 for its due

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consideration.

Place said Writ Petition for admission as per roster assignment.

Advocate Shri J.B. Kasat waives notice for respondent no.1 Nagpur Municipal Corporation, Nagpur of this order.”

3. Today we have heard learned counsel for the parties. Submission of learned counsel appearing on behalf of the petitioner is that in the advertisement for recruitment, published on 24.10.2011, there was no specific mention of the Caste or Category in which horizontal reservation for woman shall be provided for. In this situation, when in select list prepared after interview, woman candidates who have secured more marks than respondent no.2 were available, grant of employment to respondent no.2 from V.J./N.T. Category is unsustainable. He points out that in V.J./N.T. Category Jatsingh Trambak Rathod has secured more marks than petitioner, and as he has got better employment, he did not join and as vacancy for woman would not have been filled in from V.J./N.T. Category, petitioner – a male candidate at Sr.No.2 could have been provided employment.

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4. Learned counsel for respondent no.1 points out that before holding interview, a list of candidates eligible for interview was published, and in that list it was specifically mentioned that reservation for woman would be followed in V.J.(A) and N.T.(D) category. Thus, the petitioner and all other candidates participated in the interview with this express understanding. Having participated, petitioner cannot now turn back and assail the selection.

5. Learned counsel for respondent no.2 submits that the petitioner is a male candidate and a woman candidate has been appointed, as horizontal reservation for woman was provided. No other woman candidate who has secured more marks than the respondent no.2 has approached this Court. It is further submitted that the interviews were held some time in the year 2011 and thereafter, the orders were issued. Petition filed more than after two years after recruitment, therefore is grossly delayed.

6. Learned counsel for petitioner in reply, invites attention to the communication dated 18.10.2012 sent to petitioner by respondent Corporation. He states that the petitioner was not

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given necessary information under Right to Information Act, and hence, there was some delay.

7. Though the respondents have filed their replies, date of interview has not been specifically pointed out and the date of appointment order issued to respondent no.2 is not on record. Select list at Annexure-P-IV shows that it has been prepared after interviews were conducted on 22.05.2012 and 23.05.2012. Thus, select list appears to have been prepared after last week of May, 2012.

8. In the light of the reply received by the petitioner on 18.10.2012, we find that the contention that petition is grossly belated is, erroneous. But, the horizontal reservation has been expressly provided for woman category, and before interview petitioner, a male candidate was aware that it was to be filled in through V.J. (A) and N.T.(D) category. Petitioner never objected to it. After preparation of select list, when he saw that there were women candidate in every category, who have secured more marks than the respondent no.2, he raised the objection. The women candidates who secured more marks, have not made any grievance. Petitioner now cannot upset the basis

on which interviews were conducted.

9. In this situation, we find the contention of the petitioner unsustainable. Writ Petition is therefore, dismissed. No costs.

JUDGE

JUDGE

Rgd.