

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.4849/2016

(Shri Prashant s/o Shyamkumar Nagnaware vs. The Union of India ad another)

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Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders
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Court's or Judge's order

Mr. P.D. Meghe, Advocate for the petitioner
Mr.S.A.Chaudhari, Advocate Respondent no. 1 & 2

**CORAM : SMT. VASANTI A. NAIK &
MRS. SWAPNA JOSHI, JJ.
DATED : 1st December, 2016.**

Heard.

By this Writ Petition, the petitioner challenges the order of the Central Administrative Tribunal, dated 11th September 2015, dismissing the Original Application, filed by the petitioner.

In pursuance of an advertisement published by the respondent no.2 in the year 2011, the petitioner had applied for the post of Electrician, that was reserved for the Scheduled Castes. The name of the petitioner was included in the waiting list. Out of three posts that were advertised for the Scheduled Castes, it is the case of the petitioner that only one was filled and, therefore the petitioner, who was placed in the waiting list, should have been appointed on one of the two posts that remained vacant as the candidates that were selected for the said posts had not joined. The respondent No.2 issued another advertisement in the year 2012 inviting applications for

appointment on several posts including the posts of Electrician. Some of the posts for Electricians were meant for the Scheduled Castes. The select list of the candidate that had applied in pursuance of the second advertisement, was published on 9.12.2012. According to the petitioner, though a couple of candidates belonging to the Other Backward Classes and the Open category in the list of the year 2011 were appointed on the posts that remained vacant, due to the refusal on the part of the some selected candidates to join the posts, the petitioner was denied appointment. It is stated that the petitioner was discriminated and the respondent no.2 wrongfully denied appointment to the petitioner though he was placed at Sr. No.1 in the waiting list meant for the candidates belonging to Scheduled Castes. The Tribunal, on an appreciation of the material on record, dismissed the Original Application, filed by the petitioner. The petitioner has impugned the order of the Tribunal in the instant petition.

On a perusal of the impugned order, it appears that there is no scope for interference with the impugned order, in exercise of the writ jurisdiction. The action of the respondents appears to have been based on the Circular that provides that the candidates placed in the waiting list in pursuance of an advertisement, cannot be appointed on the remaining vacant seats after the select list prepared in pursuance of the selection process initiated by a subsequent advertisement, is published. The petitioner had applied in pursuance of the advertisement issued in the year 2011 and the petitioner was placed in the waiting list. The petitioner was not appointed on the post that became vacant because of the refusal on the part of some

selected candidates to join the post as the select list was published, in pursuance of the process initiated by the advertisement issued in the year 2012, by then. Realising that the petitioner could not have been appointed on the post that was advertised in the year 2011 after the select list was published in pursuance of another advertisement issued in the year 2012, the respondent no.2 did not appoint the petitioner on the post that remained vacant, due to the refusal on the part of the selected candidates to join the post. The Tribunal rightly considered that the action on the part of the respondents No.2 was in consonance with the Circular issued by the respondent no.2. We find that there is some logic in not appointing the petitioner in view of the Circular. By the said Circular, a candidate who is placed in the waiting list as per the first advertisement, cannot be considered for appointment after a select list is prepared in furtherance of a process initiated by a second advertisement that is issued subsequently. If a candidate who is placed in the waiting list as per the process initiated by the first advertisement is appointed, it would deprive the candidate who is selected or placed in the waiting list in pursuance of the process initiated by the second advertisement that is issued subsequently for filling the vacant posts. Since the action on the part of the respondent no.2 was in consonance with the Circular, the Tribunal was justified in rejecting the claim of the petitioner. Merely because a couple of candidates are said to have been wrongly appointed by the respondent no.2 in the vacancies that remained to be filled, due to the refusal on the part of some of the candidates to join, the petitioner cannot claim a right to seek his appointment, specially when the vacancies were filled after the second advertisement was issued.

The judgment reported in 2014 (2) Mh.L.J. 815 (Udaysingh Valvi vs. Secretary, District Selection Committee, Alibagh and another) and relied on by the counsel for the petitioner cannot be made applicable to the facts of this case.

Since the order of the Tribunal is just and proper, we dismiss the Writ Petition, with no order as to costs.

JUDGE

JUDGE

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