

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.5458/2016

(Shri Sunil Sukhdeorao Gajghate vs. The State of Maharashtra and others)

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

Court's or Judge's order

Mr. N.M.Kolhe, Advocate for the petitioner
 Mr. Nikhil Joshi, Assistant Government Pleader for
 Respondent nos 1 to 3
 Mrs. Kadambini Meshram Adv.h/for Mr D.M. Kale, Advocate for
 Respondent No.4.

**CORAM : SMT. VASANTI A. NAIK &
 MRS. SWAPNA JOSHI, JJ.
DATED : 23rd November, 2016.**

Heard.

By this Writ Petition, the petitioner challenges the appointment of the respondent no.6 on the post of Assistant Civil Engineer (Construction Department) in Zilla Parishad, Yavatmal.

According to the petitioner, though the petitioner and the respondent no.6 belong to the Scheduled Castes and have secured equal marks i.e. 136 marks in the examination, the respondent-Zilla Parishad has wrongfully selected and appointed the respondent no.6 on the post of Assistant Civil Engineer, while depriving the appointment to the petitioner.

Shri N.M. Kolhe, the learned counsel for the petitioner states that since the petitioner's age is more than the the age of respondent no.6, in view of the Government Resolution dated 27th June 2008 and the Government Resolution dated 5th October 2015, the petitioner should have been appointed on the post of Assistant Civil Engineer. It is stated that as per the Government Resolution dated 27th June 2008, first preference is required to be given to the candidate who is older, if more than one candidate secure equal marks.

On a perusal of the Government Resolutions, it appears that the relief sought by the petitioner cannot be granted in the circumstances of the case. The advertisement was issued on 25.8.2014. Admittedly, the petitioner and the respondent no.6 have secured equal marks i.e. 136 marks. Both the petitioner and the respondent no.6 belong to the Scheduled Castes. As per the Government Resolution dated 27th June 2008, that was then applicable and especially Clause (6) thereof, a candidate possessing higher educational qualification was entitled to preference while making appointment if more than one candidates secure equal marks. As per clause (6) of the policy, as laid down by the Government Resolution dated 27th June 2008, if more than one candidate secure equal marks, the candidate possessing higher qualification should be preferred in the first point of time, a candidate belonging to the Schedule Castes and Other Backward Classes should be then considered if the candidates have equal qualification, preference is then liable to be given to the physically challenged candidate, then to the Ex-servicemen and lastly to the person who is older, from amongst the candidates securing equal marks. When the advertisement

was issued, the Government Resolution dated 27th June, 2008 was applicable. After the advertisement was issued, the policy of the Government was changed and the Government Resolution dated 5th October 2015 was issued. The Government Resolution of 2015 would not govern the advertisement that was issued in the year 2014. Clause (4) of the Government Resolution of 2015 provides that the said Government Resolution would not apply where selection process has commenced in pursuance of advertisements issued before the issuance of the Government Resolution dated 5th October, 2015. In the circumstances of the case the petitioner cannot effectively challenge the appointment of the respondent no.6 on the post of Assistant Civil Engineer.

In the result, the Writ Petition fails and is dismissed, with no order as to costs.

JUDGE

JUDGE

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