

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 6977/2016
(SUNIL SUKHDEORAO GAJGHATE VERSUS STATE OF MAHARASHTRA & OTHERS)

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

Court's or Judge's orders

Shri C.V. Jagdale, counsel for the petitioner.
Shri A.S. Fulzele, Additional Government Pleader for the R-1.

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : DECEMBER 16, 2016.

By this writ petition, the petitioner has sought a declaration that the action on the part of the respondent no.1- State of Maharashtra to appoint the respondent no.3 on the post of Civil Engineering Assistant is bad in law and the same is liable to be set aside.

According to the petitioner, in pursuance of an advertisement, issued by the respondent nos.1 and 2 on 31.10.2015, the petitioner applied for the post of Civil Engineering Assistant. It is the case of the petitioner that as per the advertisement, a candidate applying for the said post was required to possess the minimum qualification of S.S.C. and a certificate of an Architect, Draftsman, Construction Supervisor, etc. and the petitioner possessed the necessary qualification. According to the petitioner, the respondent no.3 did not possess the requisite qualification but, was appointed on the said post as he possessed a Bachelor of Engineering degree, which was a higher qualification. According to the petitioner, since a degree in engineering was

not the required qualification, the respondent nos.1 and 2 were not justified in considering the candidature of the respondent no.3. It is stated that in somewhat similar set of facts, this Court has, by the judgment dated 25.10.2016, partly allowed Writ Petition No.1483 of 2015 and has quashed and set aside the select list and has directed for the inclusion of the names of only those candidates possessing the required minimum qualification as per the advertisement. It is stated that since the facts involved in Writ Petition 1483 of 2015 are somewhat similar to the facts involved in this case, this Court may take a similar view in the matter.

We are not inclined to entertain the writ petition in the circumstances of the case. The selection and appointment of the respondent no.3 was made in January-2016. The petitioner did not challenge the selection process or the appointment of the respondent no.3 by filing a writ petition either in January-February or immediately thereafter. The present writ petition is filed on 30.11.2016 solely on the basis of the judgment, dated 25.10.2016 in Writ Petition No.1483 of 2015. A right is created in the respondent no.3 in view of the delay in filing this writ petition. It is held by the Hon'ble Supreme Court that there cannot be a parity between vigilant and non-vigilant in invoking protection of rights. It would be worthwhile to refer to the judgments of the Hon'ble Supreme Court, reported in **(1997) 11 SCC 13** (*Jaidev Gupta Versus State of H.P. & Another*), **(2007) 9 SCC 274** (*Shiv Dass Versus Union of India & Others*), **(1995) 5 SCC 628** (*M.R. Gupta Versus Union of India & Others*), in this regard. The petitioner had done nothing in the matter for long and only after Writ Petition No.1483 of 2015 filed by a diligent

person from some other zilla parishad was decided by this Court on 25.10.2016, the petitioner has filed the instant petition claiming parity. In the circumstances of the case, we are not inclined to entertain the writ petition and grant the relief claimed.

Hence, for the reasons aforesaid, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

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