

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 874 OF 2005

Baliram s/o Kisan Morale ... **Petitioner**
Aged 28 years, Occu: Nil,
R/o Wadji, Tq. Washi,
District Osmanabad.

VERSUS

1. The State of Maharashtra
Through the Chief Secretary,
Mantralaya, Mumbai
2. The Principal Secretary,
Social Justice, Cultural
Affairs, Sports and Special
Assistance Department,
Mantralaya, Mumbai
3. The Chief Executive Officer,
Maharashtra State Khadi and
Village Industries Board,
19/21 Manohardas Road,
Fort, Mumbai 400 001

Mr. A. S. Bayas, Advocate for the petitioner
Mrs. Vaishali H. Patil, AGP for respondents 1 and 2.
Mrs. S. A. Dhumal, Advocate for respondent No.3
Mrs.S. G. Chincholkar, Advocate for respondents 4 to 12

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 17th January, 2017

ORAL JUDGMENT:

1. Mr. Bayas, the learned counsel for the petitioner states that pursuant to the special drive, initiated by respondent No.3, the petitioner filled an

application from V.J. Category. The petitioner was selected as Peon. Upon the petitioner being selected, the petitioner, under letter dated 20.09.2003, was directed to submit documents pertaining to his caste for referring it to the Scrutiny Committee. The petitioner submitted the documents. The respondents again issued letter dated 26.12.2003 suggesting that the petitioner has been selected by the Selection Committee. According to the learned counsel, even as per the various Government Resolutions and Circulars issued from time to time, a candidate selected from reserved category is entitled to be appointed, pending the validity proceeding before the Scrutiny Committee.

2. According to the learned counsel, it is only after the petitioner was selected, the proposal of the petitioner for validation of his caste claim was referred to the Scrutiny Committee. The learned counsel submits that the caste claim of the petitioner is also validated by the Scrutiny Committee. The Scrutiny Committee communicated this fact to respondents 2 and 3 as respondent Nos. 2 and 3 had referred that claim to the Scrutiny Committee for validation. All these factors unequivocally establish that the petitioner has been selected, however, has been denied appointment

erroneously.

3. The learned counsel further submits that special drive for filling in backlog of reserved posts was undertaken by respondents 2 and 3. The respondents have filed contrary affidavits on record. In one affidavit, it is stated that the petitioner was never selected, whereas, in another affidavit, it is stated that to fill in posts from Project Affected Persons Category and the compassionate appointment category, the said posts were filled in. The post meant for reserved category candidate cannot be filled in by accommodating another candidates. According to the learned counsel, the petitioner having been validly selected has a legitimate expectation to be appointed. The respondents be directed to appoint the petitioner.

4. Mrs. Dhumal, the learned counsel for respondent no.3 submits that the petitioner was never selected. The letter dated 26th December, 2003 only suggest that the case of the petitioner is under consideration with the Selection Committee so also the letter dated 20th September, 2003 only suggests that the name of the petitioner is recommended and is called upon for oral interview. There is no order appointing the petitioner

nor the petitioner was selected. The learned counsel submits that the State Government had issued direction vide circular dated 1st August, 2003 to the effect that there were large number of Mustering Assistants who were required to be accommodated in Class III and Class IV posts and they were required to be accommodated so also the candidates from Project Affected Persons category were required to be accommodated. The learned counsel submits that the petitioner has no vested right. The learned counsel relies on the judgment of the Apex Court in the case of Union of India Vs. Kali Dass Batish and another, reported in AIR 2006 Supreme Court, 789.

5. Mrs. Chincholkar, the learned counsel for respondents 4 to 12 adopts the argument of learned counsel for respondent no. 3. We have also heard learned AGP.

6. We have perused the record produced by respondent No.3. The record nowhere discloses that the petitioner was at any point of time selected. Though it may appear from the documents such as the letter dated 26th December, 2003 that his proposal was submitted to the Scrutiny Committee for validation of

his caste claim and the Scrutiny Committee has validated the caste claim of the petitioner and the said fact is intimated to respondent no.3 as same was referred by respondent no.3 - Selection Committee. The petitioner on the basis of the said communication, is presuming that he was selected. In fact, name of the petitioner does not appear in any select list.

7. Even assuming the claim of the petitioner that the petitioner was selected, still mere entering name in the select list would not give right to the selected candidate to be appointed. Useful reference can be made to the judgment of the Apex Court in the case of S. Renuka & others Vs. State, reported in 2002 (5) SCC 195.

8. Respondent Nos.4 to 12 it appears are selected for the post of peon from various categories. The petitioner cannot be said to be affected unless it is shown that they were appointed from VJ category. It nowhere transpires that any of these candidate were appointed from VJ category. These persons were either appointed on compassionate ground or from Project Affected Persons category in the year 2004. According to the petitioner there could not have been appointed

de hors the selection process undertaken by present petitioner as the post meant for candidate belonging to social reservation cannot be given to them. The said candidates were already appointed in the year 2004, prior to the claim of the petitioner being validated by the committee and they are working for more than 13 years.

9. As the petitioner was never issued with any appointment order and the petitioner's name also does not appear in the list of selected candidates, no case for interference is made out. Rule discharged. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC