

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2011 OF 2016

Rupesh s/o. Pandurangji Surjuse,
Age 35 years, Occ. Service,
R/o. 18-B, Swayamprabha Colony,
Behind Balaji Nagar, Kathora Road,
V.M.V. Post, Amravati,
Tq. and Dist. Amravati

..Petitioner

Vs.

1. The State of Maharashtra,
Through its Secretary,
Finance and Accounting
Department, Mantralaya,
Mumbai – 32
2. The Chief Executive officer,
Zilla Parishad, Osmanabad,
(Selection Committee),
Osmanabad, Dist. Osmanabad
3. The District Collector,
Osmanabad (District Selection
Committee, Osmanabad),
Dist. Osmanabad
4. Ravikumar s/o. Manik Tengre,
Age 27 years, Occ. Service,
R/o. Behind Nutan Prashala,
Tambri Vibhag, Osmanabad,
Tq. and Dist. Osmanabad

Respondents

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Mr.S.P.Urgunde, Advocate for petitioner

Mrs.R.P.Gour, AGP for respondent no.1 and 3

Mr.K.U.More, Advocate for respondent no.2

Mr.V.V.Ingale, Advocate for respondent no.4

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**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**

DATE : MARCH 01, 2017

JUDGMENT (*Per Sangitrao S. Patil, J.*) :

Rule, returnable forthwith. Heard finally with the consent of the learned Counsel for the contesting parties.

2. The petitioner has challenged selection of respondent no.4 to the post of Junior Accounts Officer on the establishment of respondent no.2 – Zilla Parishad, Osmanabad. He further claimed that he should be declared as selected for the said post and direction should be given to the respondents to appoint him to the said post.

3. In response to the advertisement bearing no.1 of 2014 issued by the District Selection Committee headed by respondent no.3 - District Collector, Osmanabad, the petitioner applied for the post of Junior Accounts Officer reserved for N.T.(B) category. Since the petitioner was fulfilling the necessary eligibility criteria, he was called for the requisite test, which he passed with 118 marks out of 200 and stood first in merit list of the successful candidates belonging to N.T.(B) category. The petitioner was sure about his being selected for the post of Junior Accounts Officer. However, when the select list was published on 18.02.2015, he found that respondent no.4 who had obtained 116 marks only, was selected for the said post. The petitioner obtained the minutes of meeting of the Selection Committee under the Right to Information Act and noticed that his candidature was rejected on the ground that he was holding a technical post of Laboratory

Assistant and was not having administrative experience, while respondent no.4 was having experience of Government service and therefore, respondent no.4 was selected for the post of Junior Accounts Officer.

4. According to the learned Counsel for the petitioner, as per the eligibility criteria as mentioned in the advertisement, a candidate should have obtained degree from any recognised University and should have five years experience of serving in any Government office, commercial partnership firm or local authority. He submits that preference was to be given to a candidate possessing degree in Commerce with first or second class in Accounts and Auditing or holding Post-Graduate degree in Mathematics or Statistics or Accounts and having experience in doing Accounts work in any Government office, commercial partnership firm or local authority. He submits that the preference could have been given only if

other things being equal in the sense the candidates obtained equal marks in the test conducted by the Selection Committee. He submits that in the present case, respondent no.4 produced a Certificate of having worked as Junior Assistant in the office of the Block Development Officer, Panchayat Samiti, Osmanabad having worked in the Pension Section and as such, having experience of Accounts work. He submits that had the petitioner and respondent no.4 got equal marks, then only the alleged experience of respondent no.4 of doing Accounts work in the Pension Section could have been considered. When respondent no.4 got less marks than the petitioner in the test conducted by the Selection Committee, respondent no.4 could not have been given preference ignoring the merit of the petitioner. He, therefore, submits that the selection of respondent no.4 being totally illegal, it is liable to be set aside and the petitioner is entitled to get selected and

appointed for the post of Junior Accounts Officer. In support of this contention, he relied on the judgment of this Court in the case of **Nilkanth s/o. Ashok Patil Vs. The State of Maharashtra and others** passed in **Writ Petition No.2181 of 2015** decided by this Court on 01.10.2015, wherein the similar issue was involved.

5. On the other hand, the learned Counsel for respondent no.4 submits that since the petitioner was not having experience of doing Accounts work and since respondent no.4 was doing that work, respondent no.4 has been rightly selected by the Committee. The learned Counsel for respondent no.2 – Zilla Parishad also supports the contention of the learned Counsel for respondent no.4.

6. As seen from the eligibility criteria in respect of the experience, the only requirement was that a candidate should have worked continuously for the period of five years in any

Government office, commercial partnership firm or local authority. The petitioner produced the experience certificate issued by the Principal, Brajlal Biyani Science College, Amrawati, showing that he was working in the said College from 04.08.2005 onwards as Laboratory Assistant. It was further mentioned that the petitioner was having experience of clerical level administrative work. The eligibility criteria given in the advertisement mentions that the candidate having experience in Accounts/Auditing would be given preference.

7. It is well settled that such preference can be considered if the candidates secure equal marks in the tests conducted for selection of the candidates. In the present case, the merit list shows that the petitioner obtained 118 marks, while respondent no.4 obtained 116 marks. If that be so, respondent no.4 could not have been given preference on the say that he had dealt with

accounts work in Pension Section in the office of Panchayat Samiti. The petitioner and respondent no.4 could not have been treated equally for the purpose of giving preference to respondent no.4 on the basis of his alleged experience of doing accounts work.

8. The case of **Nilkanth s/o. Ashok Patil (supra)** arising out of the same advertisement which is the subject matter of the present Writ Petition, shows that respondent no.4 therein who had secured 132 marks was given preference to the petitioner therein, who had obtained 136 marks out of 200 marks, on the basis of the fact that respondent no.4 therein had served for more than five years in Zilla Parishad, Osmanabad. This Court considered the rival contentions of the parties and set aside the appointment of respondent no.4 therein and directed respondent no.2 to appoint the petitioner therein to the post of Junior Accounts Officer from Open Category. The

same mistake has been committed by the Selection Committee while considering the candidature of the present petitioner, which was committed while considering the candidature of the petitioner namely, Nilkanth s/o. Ashok Patil in Writ Petition No.2181 of 2015.

9. In the above circumstances, we hold that the Selection Committee has wrongly selected respondent no.4 and has wrongly rejected the candidature of the petitioner.

10. We, therefore, set aside the appointment of respondent no.4 to the post of Junior Accounts Officer and direct the respondents to select and appoint the petitioner to the said post by giving deemed date of seniority in the cadre of the Junior Accounts Officers from the date on which the petitioner was liable to be appointed.

11. It is made clear that the petitioner would not be entitled to claim salary from the

deemed date of his appointment till the date of his resuming the charge of the said post. The respondents shall issue appointment order to the petitioner within a period of two weeks from today.

12. Rule is made absolute in the above terms. The Writ Petition is accordingly disposed of. No costs.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]

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