

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5715 OF 2017

The State of Maharashtra, through
the Deputy Chief Secretary,
Revenue and Forest Department,
State of Maharashtra and another

Petitioners

V E R S U S

Dnyaneshwar S/o Rameshwar Kabir
and three others

Respondents

Mr. S.B. Yawalkar, A.G.P. for the petitioners/state

**CORAM : S.V.GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

DATE : 28th APRIL, 2017

PER COURT :

1. We have heard Mr. Yawalkar, the learned A.G.P. for the petitioners-State. The learned A.G.P. submits that the Maharashtra Administrative Tribunal, while disposing of the application, has not considered the aspect of reservation of posts to reserved category vis-a-vis Sportsman category in proper

manner. According to the A.G.P., for the reservation, there are candidates available in open category also.

2. We have considered the impugned judgment. The Tribunal has observed thus :-

"7. The principle applicable to Home Guards will apply to the Sportsperson also. If a post is horizontally reserved for Open - Sportsperson, the same has to be filled from Open category only and it cannot be filled by a Sportsperson from any other vertical reservation category. If no Sportsperson from Open category is found, such posts can be added to Open - General posts. There the selection of candidates will be without consideration of their caste. The Respondents no.3 to 5 belong to O.B.C., N.T.-D & S.C. Category. They are not selected to open vacancy on merit. They are claiming selection to Open posts reserved horizontally for Sportspersons. That claim is legally unsustainable. The selection of the Respondents no. 3 to 5 to the Open - Sportsperson category has to be held illegal and has to be struck down.

8. The Respondent no. 2 shall ensure that, suitable and eligible candidates from Open – Sportsperson category are available to fill all or a few of these three posts are appointed. If no suitable candidates from Open – Sportsperson category are available, the posts remaining unfilled shall be added to Open – General category and shall be filled on merit. If the Applicant is found eligible in such a contingency, he will be given appointment."

3. The Tribunal has considered the aspect of horizontal reservation in a proper manner.

4. Writ Petition is accordingly dismissed. No costs.

(SANGITRAO S. PATIL, J.)

(S.V. GANGAPURWALA, J.)

