

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

BENCH AT AURANGABAD.

WRIT PETITION NO.4102 OF 2016

Mohd. Akif Abrar S/o Mohd.
Abdul Rauf. ... Petitioner.

Versus

The State of Maharashtra
and others. ... Respondents.

...
Mr.Avinash Deshmukh, advocate for the petitioner.
Mr.S.B.Pulkundwar, A.G.P. for the State.

...
WITH

WRIT PETITION NO.3029 OF 2016

Smt.Harshali D/o Harishchandra
Kavthekar ... Petitioner.

Versus

The State of Maharashtra
and others. ... Respondents.

...
Mr.S.S.Thombre, advocate for the petitioner.
Mr.S.B.Pulkundwar, A.G.P. for the State.

...
WITH

WRIT PETITION NO.3093 OF 2016

Shri Anil Daulatrao Solunke ... Petitioner.

Versus

The State of Maharashtra
and others. ... Respondents.

...
Mr.S.K.Chavan, advocate holding for
Mr.A.R.Vyawahare, advocate for the petitioner.
Mr.S.B.Pulkundwar, A.G.P. for the State.
...

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

Date : 11.09.2017.

ORAL JUDGMENT (Per S.V.Gangapurwala, J.)

1. Rule. Rule returnable forthwith. With the consent of the learned counsel for the parties, the petitions are taken up for final hearing.

2. The petitioner in Writ Petition No.4102/2016 had filed Original Application seeking declaration and direction that the petitioner is entitled to be appointed on the post of Geographical Information System Assistant from the open category pursuant to the final merit list. The Tribunal went on the premise that this petitioner in Writ Petition No.4102/2016 has challenged the selection of petitioners in Writ Petition No.3029/2016 and

Writ Petition No.3093/2016.

3. Mr.Deshmukh, learned counsel for the petitioner submits that pursuant to the advertisement dated 14.1.2013, the Original Applicant before the Tribunal had applied for the post of Geographical Information System Assistant from open category. The petitioner stood at serial No.1 of the merit list pursuant to the selection process. Five posts were meant for the Geographical Information System Assistant. From the said five posts, one post was reserved for Other Backward Class(female), one post was meant for Scheduled Tribe (Ex-servicemen), three posts were meant for open competition category and from said three posts, one post was meant for ex-serviceman, one for Sports person and one for part timer. According to the learned counsel, nobody could be selected for the post of ex-serviceman (open). The petitioner being from open category and having secured the highest marks should have been given the appointment letter. The Tribunal has failed to consider the said aspect.

4. Mr.Thombre, learned counsel for the petitioner in Writ Petition No.3029/2016 submits that the petitioner had applied from open Sports category and petitioner in Writ Petition No.3092/2016 had applied from open (part-timer) category. They were also in the select list. The appointment orders were also issued to these petitioners in Writ Petition No.3029/2016 and Writ Petition No.3093/2016. The Tribunal committed error in cancelling the appointment orders.

5. Learned A.G.P. submits that the petitioners in Writ Petition No.3029/2016 and Writ Petition No.3093/2016 were rightly issued with the appointment orders. As far as petitioner in Writ Petition No.4102/2016 is concerned, the said petitioner had applied from open category and no post was meant for open category.

6. We have considered the arguments canvassed by the learned counsel for respective parties. We have also perused the judgment

delivered by the Tribunal.

7. Reading the judgment of the Tribunal, it appears that the Tribunal has travelled beyond the scope of the petition. The appointment of petitioners in Writ Petition No.3029/2016 and Writ Petition No.3093/2016 was not challenged by the petitioner. No such prayer was made before the Tribunal. The Tribunal has gone a step further and has commented upon the allocation of reservation. In fact, the whole material was not before the Tribunal. It states that the reservation for the open category was not properly provided on the ground that no post was reserved for women.

8. The selection process was never the subject matter before the Tribunal. The advertisement was also not a subject matter before the Tribunal. The candidates pursuant to the said selection process and the reservation provided in the advertisement had participated in the selection process without any demur. It is trite that after participating in the selection

process, the reservation as provided in the selection process and the terms and conditions of the advertisement could not have been challenged.

9. We will have to go as per reservation provided in the advertisement. The State was also not called upon to contend or to justify the manner the reservation was provided. In view of the fact that entire material was not before the Tribunal with regard to the allocation of reservation or otherwise, the Tribunal could not have proceeded on the premise that the reservation for women was not provided in the open category.

10. We will have to take the reservation as it was provided in the advertisement as none of the parties at any material point of time challenged the same. It would also have to be considered that the entire selection process was concluded as per the advertisement and reservation provided in the advertisement. Even appointment orders were issued to the candidates. The petitioner in Writ Petition No.4102/2016, who

had filed the Original Application before the Tribunal had not made any prayer for setting aside the selection of the other candidates.

11. The gravamen of the original applicant's contention was that no candidate was available from open (ex-serviceman) category, the said post would be available for open category candidate. The said contention was on the premise that if a post meant for horizontal reservation is not filled in, the same would go to the person standing in the vertical reservation. It is also not disputed that the petitioner had secured the highest marks and was at serial No.1 of the merit list and he was from open category.

12. The State no doubt, would have clarified in the advertisement as to the manner of filling the post going vacant. The said clarification is lacking in the advertisement. However, it would be seen that in the merit list of 25 candidates, 11 candidates are from open category. The list is also produced which shows

large number of candidates had applied from open category and as no candidate was available from the open (ex-serviceman) category. The said post naturally, would go to the open category.

13. The Respondent State has also not disputed that original applicant stands at serial No.1 at merit list.

14. Considering above, we pass the following order :

a) The impugned judgment and order passed by the Tribunal is quashed and set aside.

b) The Respondent-State shall appoint the petitioner of Writ Petition No.4102/2016 from the open category for the post of Geographical Information System Assistant in case there is no other impediment. The Respondent-State shall consider the case of the petitioner in Writ Petition No.4102/2016 for appointment from open category within four (4) weeks. As judgment of the Tribunal is set aside, Writ Petition

No.3029/2016 and Writ Petition No.3093/2016 are also allowed.

c) Rule is accordingly made absolute in all these Writ Petitions. No costs.

(MANGESH S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

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