

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 6137 OF 2016

Shashikant Kamlaji Mhaske,
Age 46 years, Occu. Service,
R/o. Grampanchayat, Visapur,
Taluka Shrigonda,
Dist. Ahmednagar.

....Petitioner.

Versus

1. The State of Maharashtra
Through Secretary,
Department of General Administration,
Mantralaya, Mumbai-32.

2. The State of Maharashtra
Through Secretary,
Rural Development and Water
Supply Department,
Mantralaya, Mumbai.

3. The Chief Executive Officer,
Zilla Parishad, Ahmednagar,
Dist. Ahmednagar.

....Respondents.

Mr. A.K. Gawali, Advocate for petitioner.

Mr. A.R. Kale, Advocate for respondent Nos. 1 & 2.

Mrs.Manjushri V. Narwade, Advocate for respondent
No. 3.

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

DATED : February 20, 2017.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. By

consent, heard both the sides for final disposal.

2) The petitioner is working in Village Panchayat Visapur and he was initially appointed to look after the work of water supply. It is the case of petitioner that he is handicapped person and as per the Government policy, reservation needs to be maintained and implemented when any staff is absorbed by Zilla Parishad as per the policy. It is the case of petitioner that as per the decision, which was communicated by the letter dated 6.4.2005, when recruiting the staff the Zilla Parishad is expected to absorb 10% posts from the employees of Village Panchayat. The learned counsel submitted that in spite of these circumstances and when the proposal was made in respect of the present petitioner to the Government for his absorption by the communication dated 8.12.2015, it is informed that the reservation of 3% meant for physically handicapped persons cannot be used when there is such

absorption of the employees, who are there with Village Panchayat. It is informed that such reservation is available only when there is direct recruitment.

3) The submissions made and the policy decision show that to the physically handicapped person, there is a horizontal reservation of 3% in all categories. If as per the aforesaid policy decision, Zilla Parishad is allowed to recruit 90% posts by direct recruitment, it can be said that while recruiting the persons by way of direct recruitment, they will follow 3% reservation for those 90% posts. If the same is not applied to the employees, who are required to be absorbed from the Village Panchayat, the reservation of 3% cannot become complete. Similarly, when employees are appointed on any establishment, the reservation policy needs to be implemented. Due to such policy, on every establishment even of Village Panchayat, there are bound to be some

persons, who are recruited due to such reservation policy. In view of these circumstances, it cannot be said that 3% reservation will be available only to persons who come by way of direct recruitment. This Court holds that this policy will be applicable to 10% staff, who are to be absorbed from Village Panchayat.

4) In view of these circumstances, the communication of the Government dated 8.12.2015 is hereby set aside by allowing the petition.

5) The learned counsel for the petitioner drew the attention of this Court to the order made by this Court in **Writ Petition No. 554/2015 dated 29.9.2015 [Shashikant Kamlaji Mhaske Vs. The State of Maharashtra and Ors.]**. In that order, this Court had made it clear that the petitioner needs to be considered for his absorption and the relevant date will be the date of recommendation i.e. 23.4.2013 and it will not be open to the

respondents to raise the technicality of crossing the age of 45 years by the petitioner. This order is also required to be kept in mind by the respondents.

6) The respondents are expected to take decision within four months from the date of this order.

Rule is made absolute in aforesaid terms.

[SANGITRAO S. PATIL, J.] [T.V. NALAWADE, J.]

ssc/