

(1)

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

WRIT PETITION NO. 6806 OF 2008

Rahul s/o Sahebrao Thorat,
Age: 20 years,
Occu: Educated Unemployed,
R/o Deeplakshmi Colony, Plot No.47,
Opp. Govt. Dairy, Dhule,
District : Dhule

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through : The Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.
2. The Chief Conservator of Forest
(Regional), Deputy Director of
Education, Nashik Region,
Nashik
3. The Deputy Conservator of Forest,
Yawal Forest Department,
Yawal, Dist. Jalgaon
4. The President,
Medical Board Sarvopchar Hospital,
Dhule

..RESPONDENTS

Mr Sujeet D. Joshi, Advocate for petitioner;
Mrs M. A. Deshpande, A.G.P. for respondent/State

**CORAM : P.B. VARALE &
SUNIL K. KOTWAL, JJ.**

DATE : 8th DECEMBER, 2017

(2)

ORAL JUDGMENT :

Heard Mr Joshi, learned Counsel appearing for the petitioner.

2. The petitioner is before this Court challenging the judgment and order dated 25th July, 2008, passed by learned Maharashtra Administrative Tribunal Mumbai, Bench at Aurangabad, in two original applications, namely, Original Application No.12 of 2007 preferred by present petitioner and other Original Application No.13 of 2007, preferred by one Sunil Naval Mali and another Original Application No.7 of 2007, preferred by one Shivaji Piraji Rawate.

3. Mr Joshi, learned Counsel appearing for the petitioner, by inviting our attention to the material placed on record, submitted that the State Government initiated special drive for appointment of the physically challenged candidates, an advertisement was issued in the newspaper dated 8th September, 2006, for filling up the posts of

(3)

'Forest Guard' i.e. group 'C', from the candidates facing physical disabilities. The requisite criteria for selecting candidates was referred to in the advertisement like their academic qualification, physical measurement and prescription of age limit. Perusal of advertisement which is placed on record at annexure 'B' show that there is relaxation in the age criteria for such candidates facing physical disabilities and there is requirement of certificate issued by the competent authority certifying that minimum percentage of disability should be 40%.

4. Mr Joshi, learned Counsel appearing for the petitioner submitted that in response to the advertisement, the petitioner submitted his application and competed with the other candidates. He then submitted that as per requirement, the petitioner had undergone medical examination and was possessing certificate issued by the competent medical board. He further submitted that by an order dated 25th September, 2006, the petitioner

(4)

was appointed along with other 10 persons. The petitioner was facing physical disability i.e. hearing impairment and reference is made in the appointment order.

5. Mr Joshi, learned Counsel appearing for the petitioner then submitted that news item was published in local newspaper on 6th November, 2006. It was alleged that the President of Medical Board played mischief and was subjected to certain extraneous considerations, issued medical certificate, certifying those candidates, who were not falling in the category of physically disabled persons. He then submitted that without there being any other material, only on the basis of news item, the respondent-authority referred certain candidates for further medical examination. The petitioner was one of such candidates, who was referred to "Ali Yawar Jung National Institute for hearing handicapped", Mumbai. The certificate was issued by the said Institute and the Institute on the medical examination of the petitioner,

(5)

certified that the petitioner was having 'Bilateral moderately severe sensorineural hearing loss'.

6. Mr Joshi, learned Counsel then submitted that, by order dated 14th November, 2006, selection of the petitioner was cancelled. He then submitted that being aggrieved by the said order/communication, the petitioner approached Administrative Tribunal along with other applicants. He then submitted that the Tribunal erred in dismissing the application. He then submitted that petitioner though was referred to institute, namely, "Ali Yawar Jung National Institute for hearing handicapped", Mumbai, the communication dated 14th November, 2006, nowhere states that the petitioner's selection is cancelled in view of certificate issued by "Ali Yawar Jung National Institute for hearing handicapped", Mumbai. He submits that on the contrary, the communication states that the petitioner is disqualified on account of medical certificate dated 27th October, 2006. Other submission of Mr

(6)

Joshi, learned Counsel was, respondent-authorities while referring the petitioner to "Ali Yawar Jung National Institute for hearing handicapped", Mumbai, ought to have informed the institute the nature of duties, supposed to be conducted by 'Forest Guard'. Without there being such material, certificate issued by the said institute may be inconsequential. Mr Joshi, learned Counsel on these submissions, prays for quashing and setting aside the order passed by the Tribunal and allowing the petition.

7. Mrs. Deshpande, learned A.G.P. appearing for the respondent Nos.1 to 3 vehemently opposed the petition. Learned A.G.P. submits that no error is committed by the Tribunal. Learned A.G.P. then submitted that all necessary precautions were taken by the respondent-authorities while referring the petitioner to the Institute, which is a reputed institute known nationwide and an independent institution. She then submitted that as per record, even the material in so far as the duties

(7)

of Forest Guard is concerned, was forwarded to the medical board. She submits that considering the relevant material, Tribunal found no favour with the applicants and accordingly applications were dismissed.

8. On the backdrop of submissions of learned Counsel for the petitioner as well as learned A.G.P., we have gone through the material placed before us. In so far as facts of issuance of advertisement and selection of the petitioner are not in dispute, as well, the fact that there was news item published is also not disputed. The petitioner was unable to submit before us that there is any prohibition for the Government to seek a report from an independent institute for assessing physical ability or disability of a person. The Government in its wisdom, can undertake such exercise until it is not prohibited. In so far as the certificate issued by the institute, which is nationally reputed is concerned, the aspect is clearly dealt with by the

(8)

Tribunal. The Tribunal also dealt with submission that along with reference of the candidates to the Board, no material form or duties of Forest Guard was provided. On the contrary, the Tribunal found that when the medical board was informed to carry out examination, it was supported with the material of duties and responsibilities of the Forest Guard, the Tribunal, in clear and unambiguous words, states that there appears no room to raise any doubt over the certificate.

9. Though Mr Joshi, learned Counsel for petitioner made attempt to urge before us that there is no reference to the certificate issued by the Ali Yawar Jung Institute, in communication dated 14th November, 2006, as such, the said communication is unsustainable. We are unable to accept the submission for the reason that communication may not be very happily worded but clearly spells out intention and it is stated that the petitioner was medically found unfit in medical examination, as stated by us that it is not in

(9)

dispute that the petitioner was subjected to medical examination through the independent institute like Ali Yawar Jung Institute. The Tribunal then observed that if the Apex expert body, on medical examination of a candidate finds candidate unfit and declares candidate unfit, the Tribunal cannot sit over the conclusion arrived at by the expert body. The Tribunal was certainly justified in observing that, it is expert body in the field of medical fitness and certify about fitness of a candidate, neither Tribunal nor this Court possess expertise in that field so as to sit over as appellate forum on the certificate issued by the competent medical authority.

10. Considering all these aspects, we are of the opinion, that the Tribunal committed no error. The conclusions arrived at by the Tribunal are on just and proper appreciation of material. We are of the opinion that, no interference is called for in the judgment and order passed by the Tribunal. Writ Petition, thus, being merit less, deserves to

(10)

be dismissed and same is accordingly dismissed.

Rule discharged.

(SUNIL K. KOTWAL, J.)

(P.B. VARALE, J.)

Tupe