

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7788 OF 2016

Dilip Virbhadra Konapure .. **Petitioner**

Versus

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

WITH
WRIT PETITION NO. 7789 OF 2016

Maruti Baliram Choulwad .. **Petitioner**

Versus

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

Shri V. J. Dixit, Senior Advocate i/b Shri Ankush N. Nagargoje,
Advocate for the Petitioners.

Shri S. W. Mundhe, A.G.P. for Respondent Nos. 1 and 2.

Shri Nitin S. Kadam, Advocate for the Respondent No. 3.

Shri Shivaji K. Naikwade, Advocate for Respondent Nos. 4 and 5.

CORAM : **S. V. GANGAPURWALA &**
S. M. GAVHANE, JJ.

DATE : **13th November, 2017**

PER COURT :

1. The approval to the appointment of petitioners stands rejected.

2. Mr. Dixit, the learned senior advocate for the petitioners submits that the petitioners were appointed after following due selection process. The advertisement was issued, pursuant to advertisement the petitioners had applied and after interviewed by the the Selection Committee the petitioners are selected. The petitioners belong to N.T.-C and N.T.-B category. In advertisement dated 10.4.2012, it was specifically stated that posts would be filled in as per roster and in advertisement dated 1.8.2011 the post was shown for VJNT / SBC. The learned Senior Advocate submits that petitioners belong to N.T.-C and N.T.-B category. According to the learned senior advocate the said posts are available for the said category even as per the verified roster. The learned senior advocate submits that the Education Officer without considering the said aspect has in cyclostyle manner rejected the proposal for approval.

3. Mr. Kadam, the learned advocate for the Zilla Parishad and the Education Officer submits that the Education Officer has considered all the relevant aspects of the matter i.e. roster, the advertisement and the contentions of the petitioners and thereafter had rejected it. The advertisement was vague. It did not provide that the post is meant for reserved category candidate. As such, many other candidates could not have applied for the said post. Even the procedure for appointment has not been followed. The roster is not verified. The reasons are given in detail by the Education Officer while rejecting the approval.

4. In Writ Petition No. 7788 of 2016 the advertisement issued states that the posts would be filled in as per the roster, whereas in Writ Petition No. 7789 of 2016 it is stated that the posts is meant for V.J.N.T / S.B.C. In Writ Petition No. 7788 of 2016 the candidate appointed is from N.T.-C category whereas in Writ Petition No. 7789 of 2016 the candidate appointed is from N.T.-B category. In roster it is shown that one post is meant for V.J. category and in Writ Petition No. 7788 of 2016 one post is meant for N.T. category. The candidates are appointed from N.T.-C and N.T.-B category. The Education Officer can also consider Rule 9(7) of the MEPS, Rules regarding interchangeability of the reservations.

5. As the appointments are from reserved category the ban on recruitment would not apply as has been held by this court in numerous orders. The Education Officer was required to consider the verified roster with regard to the individual case and if the roster was not verified the same is required to be verified. However, it appears that in Writ Petition No. 7788 of 2016 and 7789 of 2016, the roster is verified. The Education Officer will have to consider the verified roster and also the case of the petitioners with regard to the posts to be filled in of reserved category with reference to Rule 9(7) of the MEPS, Rules.

6. Considering the above, we pass the following order.

ORDER

I] The impugned order is quashed and set aside.

II] The Education Officer shall consider the roster verified, as would be shown by the petitioners and the Management.

III] The Education Officer shall not reject the proposal on the ground that there was ban on recruitment or that surplus candidates were required to be absorbed.

IV] After verifying that the posts have been filled in from the candidates who belong to the reserved category and the same were available as per the verified roster the Education Officer shall decide the said approval afresh. The same shall be decided within a period of two (2) months from appearance of the petitioners.

V] The petitioners may appear before the Education Officer on 27th November, 2017.

7. The writ petitions are accordingly disposed of. No costs.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]