

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

WRIT PETITION NO. 8301 OF 2015

AMIT KASHINATH SAKHARE AND ANOTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. S.S.Choudhary,
advocate h/f Ms Bhingarde Dipali B. And Regul S.N.
AGP for Respondents : Smt. Vaishali Patil
Advocate for Resp. nos. 2, 5 and 6 : Mr.
S.V.Adwant
Advocate for Resp.no.3 : Mr. S.D.Karkare, advocate
h/f Mr. P.K.Joshi

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CORAM : S.V.GANGAPURWALA & K.L.WADANE, JJ.

DATED : 28th FEBRUARY, 2017

O R D E R :

The petitioners herein had applied for the post of Assistant Engineer (Transmission) pursuant to the advertisement issued by the respondent. Petitioner no.1 is held to be ineligible. Petitioner no.2 was held to be eligible, however, was not

called for interview on the ground that the cut of marks were 47 and petitioner no.2 secured 41 marks.

2. Mr. Choudhary, learned counsel for the petitioners submits that the selection process was followed. The terms of the advertisement specifically require a candidate to apply from a particular category and once candidate applied from particular category, that candidate is not allowed to change the said category. Learned counsel relies on clause 5(xii). Learned counsel submits that some of the candidates who had applied from OBC category are considered and selected in the open category. Same is not permissible. Learned counsel further submits that even the candidates who had secured less marks than

the petitioner were selected and are appointed. Learned counsel further submits that the petitioner has specifically stated the names of the candidates who have not at all submitted the required documents, still one Mayur Choudhari and Ranjeet Jadhav have been selected and appointed from the open category post. The said averments made by the petitioners are not refuted by the respondents in the affidavit. Learned counsel further submits that one Dipali Ravindra Mistri has passed graduation in Engineering in 2012. She has experience as a Store Supervisor. Falsely it is mentioned that her total experience is 6 years 2 months and 11 days. After completion of graduation in Engineering in 2012 she cannot have experience of six years. Said Dipali has been selected and appointed to the post

of Assistant Engineering (Transmission) from reserved woman category.

3. Learned counsel further submits that in the advertisement it was specifically stated that the scrutiny of documents will be at the time of personal hearing, however, by notification the said criteria was changed and the documents were directed to be submitted prior to calling the candidates for personal interview. Though this criteria was changed by notification, respondents authorities did not follow the same strictly and even allowed the candidates to submit the documents at the time of interview. Same is not permissible. The candidates who have submitted documents at the time of interview are selected. Learned counsel further submits that

petitioner no.1 is possessing the necessary experience and eligibility. Experience with his post by the petitioner has been clearly stated. The petitioner is possessing experience of having worked with L. and T. in power transmission as a Planning Engineer from 15.3.2010 to 31.3.2012 and as a Project Incharge in power transmission in Esskay Electricals Pvt. Ltd. from 1.4.2012 to 31.12.2013. The certificates to that effect are also placed on record, however, the same is not considered. Petitioners are erroneously not considered though were eligible and the candidates who were ineligible have been considered for the post.

4. Mr. Adwant, learned counsel for the respondents submits that information

submitted by petitioner no.1 in his application was incorrect. Petitioner no.1 had worked as a Planning Assistant with Apex Logistics, a contractor of L. and T. Petitioner in the application falsely represented that he has worked as a Planning Engineering. He had worked only as a Planning Assistant, that too not in a power transmission. Petitioner no.1, as such, does not possess the necessary experience. Petitioner no.2 was found to be eligible, but as the petitioner no.1 had secured only 41 marks and the cut off marks were 47, petitioner no.2 was not called for interview.

5. We have considered the submissions canvassed by learned counsel for respective parties.

6. The arguments of Mr. Choudhary, learned counsel for the petitioner that once the candidates have applied from the reserved category i.e. S.C., S.T., O.B.C. they cannot be considered in open category, cannot be comprehended. If the person who has applied for a post from particular reserved sections securing more marks than the last candidate in the open category, such a candidate from the reserved category has to be considered in open category. In fact, there is no category as open category. It is open competition category.

7. In view of that, two of the candidates from O.B.C. having secured more marks are considered from open competition category.

8. The petitioners herein had applied for the post from open category. The allegations made against one Deepali need not be considered as she was being considered from open female category. The selection of the said candidate would not prejudicially affect the petitioners.

9. Moreover, the averments made against the candidates who are selected and are appointed also cannot be gone into for the reasons that those are not parties before the court. If some orders are passed then against those candidates the same would prejudicially affect them and no orders which would adversely/prejudicially affect a candidate can be passed unless they are made parties.

10. Be that as it may, the petitioners have to either switch or sink on their own. The petitioner no.1 has demonstrated that he was eligible and was possessing three years experience in power transmission. As observed supra, the petitioner no.1 was not working as a Planning Engineer but was working as a Planning Assistant and the certificate to that effect has been issued by one Apex Logistics. The said certificate cannot be considered as an experience in power transmission. The petitioner no.1 in his application has misrepresented of having worked as Planning Engineer, on a responsible post, however, the certificate shows that he had worked as a Planning Assistant only.

11. To determine the ratio in calling the candidates for interview is a prerogative of the employer. The standard was set of 1 : 2. Petitioner no.2 though was eligible had secured only 47 marks. It is not shown that any candidate possessing 47 marks in open competition category has been called for interview and/or selected and appointed. Where a candidate possesses necessary eligibility qua experience has to be considered by the authority scrutinising the application and their experience in the said field. Having found that petitioner no.1 is not eligible, the candidature of the petitioner no.1 is rejected. Petitioner no.2 on merits could not make it to the stage of oral interview.

12. Considering the above, no case for interference is made out. Writ Petition as such is dismissed. No costs.

(K.L.WADANE, J.)

(S.V.GANGAPURWALA, J.)

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