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

**WRIT PETITION NO. 8824 OF 2014
WITH CP/395/2014 IN WP/4863/2012**

**KESHAV MANIKRAO DAHALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Advocate for Petitioner : Dambe Santosh S.
AGP for Respondents: Mrs.A.V.Gondhalekar**

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

DATE : 31/08/2017

PER COURT :-

The petitioner assails the judgment and order passed by Maharashtra Administrative Tribunal.

2] We have heard Mr.Dambe, learned counsel for the petitioner and Mrs.A.V.Gondhalekar, learned AGP for respondent State.

3] The facts necessary for consideration are culled out as under :

In response to the advertisement issued by respondent no.3 inviting applications for 136 posts of Instructors in newly established Industrial Training Institute [ITI] dated 28/9/2008, the petitioner applied for the post of instructor for trade Motor Mechanic from

Scheduled Caste [SC] category. As per the advertisement, one post of S.T. Category was available. The petitioner secured 139 marks and second position in the merit list. From the candidates belonging to S.C. Category, petitioner was most meritorious and was at Sr.No.1 from S.C. Category. The petitioner was considered by respondent from open category and a less meritorious candidate was considered for the S.C. post. The candidate who was selected for S.C. Post was given appointment order (though subsequently he did not join) and the petitioner was being considered from the open category for the said post. However, appointment order was not issued to the petitioner on the ground that the post is not affiliated. Initially petitioner filed Writ Petition, some orders were passed in the Writ Petition, thereafter, the same probably did not fructified in favour of the petitioner.

4] Mr.Dambe, the learned counsel submits that during the same period, even persons from S.T. Category were given appointment orders. Petitioner being most meritorious candidate from S.C. Category should have been given appointment from S.C. category if the post from open category was not affiliated.

5] Mrs.A.V.Gondhalekar, learned Additional Government Pleader

submits that as per Rules, petitioner was considered from open category because he had more marks than the last person eligible to be considered from open category though he had applied from S.C. Category. It was found that the said post from the open category was not affiliated, as such appointment order could not be issued to the petitioner. The post from S.C. Category was available, as such, the person who was next to the petitioner was given appointment order from S.C. Category.

6] The learned Additional Government Pleader submits that the list is valid only for one year and fresh selection process has been conducted, petitioner did not participate in the fresh selection process, as such cannot be considered.

7] We had asked learned AGP to take instructions whether any post from S.C. Category is still vacant. The learned AGP states that affidavit is filed of a Inspector in the office of Joint Director of Vocational Education to the effect that one post of Instructor from Motor Mechanic of S.C. Category is vacant.

8] We are inclined to consider the case of the petitioner for the reason the petitioner was the most meritorious candidate from S.C. Category and the post of S.C. Category at the relevant time was

affiliated post. Merit cannot be disadvantage for a particular candidate. Petitioner though being most meritorious from S.C. Category was not given appointment from S.C. Category because he was more meritorious and he could have been accommodated from open category. However, the respondent lost sight of the fact that posts from open category were not affiliated and petitioner could not have been given appointment order because of the action of the respondents. The petitioner though being the most meritorious, is not being given appointment, whereas the person less meritorious than the petitioner from S.C. Category is issued with the appointment order.

9] The petitioner could not have been considered from open category because the post from open category was never affiliated. In that case, the petitioner could only have been considered from S.C. Category, as the said post for S.C. Category was affiliated and available for appointing the person on the post and the petitioner was the most meritorious candidate to be appointed having secured highest marks from S.C. Category.

10] Considering the anomalous and extraordinary situation that has arisen and also the fact that one post of S.C. Category is still vacant, we pass following order :

I] We direct the respondent to appoint the petitioner on the said post of Instructor, Motor Mechanic, if otherwise there is no other legal impediment. The appointment shall be considered for all purposes from the date the petitioner is appointed and the said order shall be issued expeditiously, preferably within one month.

II] The Writ Petition accordingly stands disposed of. In light of disposal of Writ Petition and the directions which we have issued, the Contempt Petition stands disposed of. No costs.

(MANGESH S. PATIL,J.)

(S.V.GANGAPURWALA,J.)

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