

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

75 WRIT PETITION NO. 276 OF 2011

NARAYAN DINKAR KULANGE

VERSUS

THE PRESIDING OFFICER MAH ADMINISTRATIVE TRIBUNAL MUMBAI
AND OTHERS

Advocate for Petitioner : Mr.Deshmukh Sandeep S.

AGP for Respondents State: Mr.R.B.Bagul.

Advocate for Respondent No.3 :Mr.P.R.Tandle.

Advocate for Respondent No.7,9,10,14 to 24 :Mr.R.K.Temkar

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

DATE : 13th February, 2017

ORDER:

1. Pursuant to the advertisement issued by respondent no.4, for filling in the the post of peon, the petitioner applied from OBC category. The petitioner was not issued any appointment order. The petitioner filed original application before the Maharashtra Administrative Tribunal. The Tribunal dismissed the original application. Aggrieved thereby the present petition.

2. The learned counsel for the petitioner strenuously contends that 11 posts of peon were advertised. The petitioner stood at serial no.9. However, the petitioner is not issued any appointment order. The learned counsel submits that the

advertisement was issued on 21.04.2008. The respondents have come with the case that the post has been reduced as the persons from Project Affected Persons category were to be appointed. The learned counsel submits that the respondents relied on the Government Resolution dated 18/07/2008 and dated 23/04/2008. According to the learned counsel the said Government Resolutions / Circulars were issued after the issuance of the advertisement and in the midst of selection process. The said Government Resolution would not come to the benefit of the respondents. The same would not be applicable. The learned counsel further submits that even the said Government Resolutions permitting direct appointment of persons from Project Affected Persons category has been set aside by the Full Bench of this court in the case of **Rajendra Pandurang Pagare vs. State of Maharashtra reported in 2009(4) Bom.C.R.928**. The learned counsel further submits that one Mr. Phulare was considered from open category, however, he again has been taken from OBC category. If a person from the reserve category secures more marks than the last candidate from the open category, then the said candidate has to be considered from open category. The said aspect

has also not been considered by the tribunal in its correct perspective.

3. Mr.Tandale, Mr.Temkar and the learned AGP for the respondents support the judgment of the Tribunal and submit that the persons who are selected for the post of peon from Project Affected Persons category are not made party in the original application. The learned counsel further submit that the posts were reduced considering the appointment made from the P.A.P. category and the petitioner did not find place because only 4 posts of peon remained to be filled from OBC category.

4. We have considered submissions canvassed by the respective parties. We have also gone through the judgment of the Tribunal.

5. The marks obtained by the petitioner i.e. 87 are not disputed. It is also not disputed that after the advertisement was issued on 21/04/2008, subsequent Government Resolutions came to be issued on 18/07/2008 and 23/04/2008 permitting appointments of candidates from Project Affected Persons category to be made directly. Pursuant to the said Government Resolutions

50% of the posts are to be filled from Project Affected Persons category because of which, the posts to be filled in from OBC were reduced to 4. The persons who were selected from Project Affected Persons category were not parties before the Tribunal nor are the parties before this Court. It is trite that when an order adverse to the interest of a party is to be passed, the same cannot be done in absence of the party. It was incumbent upon the petitioner to add the persons who are selected from the project affected persons category as parties before the Tribunal. The same having not been done, the grievance of the petitioner of the Government Resolutions dated 23/04/2008 and 18/07/2008, as the same being subsequently set aside, cannot be considered in the present Writ Petition.

6. Even if the contention of the petitioner that Mr. Phulare ought to have been considered from open category is accepted, still the petitioner would not have chance as one Mr. Aswale Mahesh Chandrakant had secured 89 marks i.e more marks than the petitioner. The petitioner certainly would not have been considered in view of Mr. Aswale having more marks

from OBC category.

7. Considering above aspects of the matter, grievance of the petitioner cannot be considered. Writ Petition as such is disposed of. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC