

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

WRIT PETITION NO.11574 OF 2016

1. Vinod s/o. Kadubal Rathod,
Age : 27 years, Occ. Nil,
R/o. At Dongaon Tekadi Tanda,
Post Paregaon, Tq. Paithan,
Dist. Aurangabad
 2. Nivrutti s/o. Ramsing Rathod,
Age : 28 years, Occ. Nil,
r/o. At Dongaon Tekadi Tanda,
Post Paregaon, Tq. Paithan,
Dist. Aurangabad
- ..Petitioners

Vs.

Maharashtra State Electricity
Generation Co. Ltd.,
Estrela Batteries Extension
Building, Ground Floor,
Labour Camp, Dharavi Road,
Matunga, Mumbai – 400 019
Through its Managing Director

..Respondent

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Mr.M.C.Ghode, Advocate i/b. Mr.G.R.Jadhav,
Advocate for petitioners

Mr.V.C.Patil, Advocate i/b. Mr.S.M.Godsay,
Advocate for respondent no.1

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**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**

RESERVED ON : FEBRUARY 13, 2017

PRONOUNCED ON : FEBRUARY 17, 2017

JUDGMENT (*Per Sangitrao S. Patil, J.*) :

Rule. Rule made returnable forthwith.
With the consent of the parties, heard finally.

2. The respondent published an advertisement on 04.02.2016 for filling-up 947 posts of Technician-III. Out of them, 473 posts were to be filled-up from General Category candidates, while remaining 474 posts were to be filled-in from Advanced Skilled Trainees (Pragat Kushal Prashikshanarthi). Besides vertical reservation for various categories, there was horizontal reservation of 5% i.e. 24 posts for sport persons out of 473.

3. The petitioners belong to VJ (A) Category. However, they applied for the said post from General Category and as such, did not claim the benefits of reservation meant for VJ (A) Category. Further, they mentioned in their applications that they were meritorious sports persons and as such, they claimed benefit of the

reservation meant for the said category. The petitioners appeared for the written examination which was conducted on 08.05.2016. They secured 44 marks and 41 marks, respectively, out of 75 marks.

4. The respondent published the list of successful candidates. The petitioners did not find their names in the said merit list. They found that the candidates from General Category claiming benefit of reservation meant for sports persons were in the merit list though they had obtained less marks than the petitioners in the written examination. The petitioners inquired with the office of the respondent as to why they were excluded from consideration, whereon they were orally informed that they belong to VJ(A) Category and therefore, their names could not be considered for General Sports Persons' Category. Being aggrieved by the rejection of their candidature, the petitioners filed the present Writ Petition

seeking direction against the respondent to include their names in the merit list/select list for the post of Technician-III.

5. The learned Counsel for the petitioners submits that when the petitioners had given up their claim for reservation meant for VJ(A) Category and offered themselves for being considered as General Category Sport Persons candidates, they should have been considered from that category by the respondent. In respect of this contention, he relied on the judgment in **Writ Petition No.10396 of 2016 delivered by this Court on 08.02.2016 (Anil s/o. Pandurang Shep Vs. The State of Maharashtra and ors.)**, wherein under the same circumstances, a direction was given to include the name of the petitioner therein in the merit list/select list after finding that the candidates who had secured less marks than the petitioner, were included in the merit list/select list.

6. The respondent filed reply and opposed the petition. Based on the contentions raised in the reply, the learned Counsel for the respondent submits that since the petitioners belong to VJ(A) Category, they cannot claim themselves for being considered for the posts reserved for General Sport Persons' Category. He submits that 5 posts were reserved for VJ (A) Category and the candidates, who secured 45 marks and above were selected from that category. Therefore, according to him, the claim of the petitioners cannot be considered. In support of his contentions, he relied on the Circular dated 13.08.2014.

7. It is well settled that a candidate is entitled to compete for the General Category seat although he belongs to any particular reserved category. He may get selected on proving his merit. Even otherwise, a candidate from reserved category can claim seat from General category on the basis of his merit. Even in the Circular dated

13.08.2014, it has been specifically mentioned in clause (A) that while filling-up the posts from horizontal reservation from General Category, firstly the selection of candidate should be made on the basis of merit from amongst all the candidates including the backward category candidates.

8. In the circumstances, we are of the view that when the petitioners themselves had given up their claim for reservation meant for VJ(A) Category and offered themselves for being considered as General Sports Persons' Category, it was not at all expected on the part of the respondent to consider their candidature from VJ(A) Category. The petitioners have obtained 44 marks and 41 marks, respectively, in the written examination. The merit list shows that the candidates from General Sport Persons' Category, who have obtained less marks than the petitioners, have been selected. The decision of the respondent

to reject the candidature of the petitioners, in the circumstances, cannot be approved being not legal and proper.

9. As per the order dated 21.01.2017, the respondent was ordered to keep two posts of Technician-III from General Sport Persons' Category vacant until final decision of this Writ Petition.

10. For the reasons stated above, we direct the respondent to consider the names of the petitioners for being included in the merit list/select list for the post of Technician-III from General Sports Persons' Category on the basis of their individual merit.

11. Rule is made absolute in the above terms. The Writ Petition is accordingly allowed.

12. The parties shall bear their own costs.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]

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