

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5857 OF 2015

Asif Sayyadliyakat Kazi	...Petitioner
vs.	
President, District Selection Committee, Solapur and Others	...Respondents

Mr. S.G. Kudle, for the Petitioner
Mr. P.G. Sawant, AGP for Respondent Nos. 1 and 2.

**CORAM : S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATE : FEBRUARY 16, 2017

P.C.:

1. By this Writ Petition filed under Article 226 of the Constitution of India, the Petitioner seeks a writ of mandamus or any other appropriate writ order or direction in the nature of mandamus directing the District Selection Committee, Solapur to select the Petitioner for the post of "Water Supply and Sanitary Engineer" on the establishment of the Municipal Council, Pandharpur, District Solapur.

2. The Petitioner also claims a declaration in terms of prayer clause (c) of the Writ Petition that the waiting list prepared for the post of open/general posts as in respect of Ex-servicemen does not lapse in view of the availability of the post in question on the

establishment of Municipal Council, Pandharpur.

3. The Petitioner an Indian citizen residing at Mangalwedha, District Solapur claims that he has passed the B.E. Mechanical examination in the month of July, 2012. An advertisement was issued as per the direction of the second Respondent. That advertisement referred to several vacancies on the establishment in the Municipalities at Pune, Kolhapur, Solapur and Satara districts.

4. As far as we are concerned, it is only the post of the above nature and on the establishment of Municipal Council, Pandharpur, District Solapur that is claimed by the Petitioner.

5. After inviting our attention to the name and designation of the post, it is stated that there are 5 posts which were kept aside for open/general category candidates. It is fairly urged by Mr. Kudle, learned Advocate appearing for the Petitioner that out of 5 posts, 2 posts are reserved for women and 1 was for Ex-servicemen. Thereafter, there is what is styled as "*partially reserved*" and that requires 1 post to be kept aside for the same. Mr. Kudle relied upon

the terms and conditions and submits that in the event of women/Ex-Servicemen/part time employee is not available, then, the post has to be filled in by appointing another meritorious candidate from the same category.

6. Mr. Kudle's argument proceeds on the footing that the Petitioner is a wait listed candidate. His name is appearing at Serial Number No. 1 on the waiting list. He would rely upon pages 73 and 74 of the paper book to submit that there is a policy initiated by the Government. That provides for horizontal reservation. The horizontal reservation procedure is listed in the Government Resolution dated 16th March, 1999. Relying upon condition No. 5(c), he would submit that in the event the posts are reserved and it is styled as "*Social Reservation*" as far as possible the appointment should be made by appointing candidates from that category. Then relying upon another Government Resolution dated 13th August, 2014, Mr. Kudle would submit that the posts under the State Government which are styled as "*open*" but even with regard thereto if there is a horizontal reservation permissible, then, this Resolution sets down the guidelines. Mr. Kudle relied upon on page 79 of the paper book to submit that Maharashtra

Public Services Commission conducted examination in 2014 for filling the post of "Tax Assistant". The revised list of recommended candidates at page 79 of the paper book would indicate that the candidate at Serial No. 219, 220 and 221 were the open category candidates. However, they were recommended for appointment against the reservation carved out for Ex-servicemen that is because Ex-serviceman was not available.

7. Thus, Mr. Kudle would submit that this is a clear case where the Petitioner is singled out for discriminatory and arbitrary treatment. Once the consistent policy permits the Respondent Nos. 1 and 2 to take recourse to the above, there is no reason why in the case of the Petitioner alone there should be a departure or deviation. For these reasons, Mr. Kudle would submit that the Writ Petition be allowed. He would rely upon the order passed by this Court on 10th July, 2015 which is an ad-interim order. Mr. Kudle would submit that this Court directed the Respondents to maintain the status-quo with regard to one post in question. After that ad-interim order if the post is still vacant then, the Respondents cannot defeat the order passed by this Court by urging that the wait list exhausted itself. Therefore, Mr.

Kudle would submit that the Writ Petition be allowed.

8. Mr. P.G. Sawant, learned AGP appearing on behalf of Respondent Nos. 1 and 2 submits that there is no merit in the Writ Petition. Admittedly, the Petitioner is a wait listed candidate. A wait listed candidate cannot be better of, than a select list candidate. Even a candidate in the select list has no vested right of appointment. No one can claim that because his name is appearing at serial number 1 in the wait list, that wait list be continued and operated endlessly.

9. In the present case, according to the Mr. Sawant, the wait list exhausted itself after the period of one year namely 25th July, 2015. In the circumstances, even if the post is vacant, it would have to be filled in by taking recourse to issuance of fresh advertisement. Meaning thereby, a fresh recruitment process would have to be commenced and to fill up the vacancy. This vacancy together with others would be filled in by the Maharashtra Public Services Commission or such of the examination bodies which are empowered by the rule to conduct the examination or undertake the selection process. The Petitioner cannot rely upon the ad-interim order of this

Court. The candidate who has approached this Court in July, 2015 therefore cannot claim any relief. He would submit that Writ Petition be dismissed.

10. We have heard learned counsel at great length. With their assistance, we have perused the Petition, its annexures and all the affidavits placed on record.

11. It is a common ground that an advertisement came to be issued for filling various posts on the establishment of the Municipal Council in several districts, including Solapur. We are concerned with the Municipal Council, Pandharpur, which is part of Solapur district. This advertisement was published on 31st January, 2014. As far as the category relied upon by Petitioner is concerned, out of the 10 open posts, 5 posts are vacant and available to be filled in this category. Two (2) posts were kept aside for ladies and 1 for Ex-servicemen, 1 post could have been filled in by appointing a part time employee. 1 post can be filled in by the process of Horizontal Reservation.

12. The Petitioner received a letter dated 5th July, 2014 to

attend an interview on 17th July, 2014. Admittedly, the Petitioner, though eligible, was not in a position to have his name entered in the select list. He could be placed in the wait list at serial No. 1. That wait list was of July, 2014. The Petitioner sought information in February, 2015 as to how the process had been concluded and therefore he relied on the information derived from the application under the Right to Information Act, 2005. It is in this regard that he would submit that the advertisement, read with relevant clauses, enables the Respondent Nos. 1 and 2 to appoint him. In the Petition he has pleaded that in spite of reservation for OBC-ladies, the candidate from OBC-general category came to be selected. It means interchangeability from female to male is permissible. If that is a recourse permissible in the case of OBC candidates, then, even while appointing candidates from open category, it is permissible to take recourse to the same. Thus, the principle of interchangeability is relied upon in para 8 of the Petition.

13. This plea proceeds on the footing that there is some sort of reservation when the seats are to be filled up by appointing open category candidate. This clearly means that even in non reserved

seats, or in the open category, a specified number of seats are carved out for appointing women or Ex-servicemen. Admittedly, the reserved category candidates can compete for open posts is well settled principle. However, when the candidates are not available, then the principles of interchangeability would postulate on the own showing and as per the terms and conditions and relied upon, that the authority can, if possible, if women/Ex-servicemen/part time employee are not available fill up the post by appointing the reserved category candidates and that would be taken as a horizontal reservation. However, this term and condition must be read along with prior two conditions. The prior 2 conditions are that it is possible that because of administrative reasons the number of posts may get reduced and equally there would be a change or alteration in the reservation/ horizontal reservation. Therefore, while taking recourse to the process of interchangeability, the guidelines issued by the Government should be applied and followed. It is apparent from the present case that out of 5 posts, 2 posts of open category are reserved for women and 1 for Ex-servicemen and 1 was reserved for part time employee. Then, it is possible to take recourse to this horizontal reservation. Even with regard thereto what we have on record relied

upon by the Petitioner himself is an Annexure to the affidavit filed in reply by the District Administrative Officer, Solapur on behalf of Respondent Nos. 1 and 2.

14. The affidavit indicates that pursuant to clause No. 4 from Annexure A to the advertisement dated 31st January, 2014 (page 24), select list and wait list for filling up 10 posts in Water Supply and Sanitary Engineering Department in various Municipalities/ Nagar Parishads in Solapur district was valid for one year from the date of result of the examination conducted for the said 10 posts. The result of the said examination was declared on 25th July, 2014, and the said select list and wait list came to an end on 24th July, 2015.

15. Thus, 10 posts were to be filled in. Out of the said 10 posts, 5 posts were for Open category and out of the said 5 posts, 2 posts were reserved for Women, 1 post was reserved for Ex-servicemen, 1 post was reserved for Part Time candidate and 1 post was for General category. The affidavit states that except the post reserved for Ex-servicemen, all the 9 posts were duly filled in various municipalities in Solapur district. As far as 1 post for Ex-servicemen,

that was vacant. The post of Ex-servicemen is to be filled in only from the category of Ex-servicemen and not from any other category. The Petitioner is an open category candidate but not Ex-serviceman. He, therefore, cannot be appointed.

16. It is thus disputing this position that the Petitioner files the rejoinder affidavit and in the rejoinder affidavit, he raised for the first time a plea that it is possible for the Respondent Nos. 1 and 2 to appoint the meritorious candidate from other category. In para 2 of the rejoinder affidavit, he states that on account of non-availability of open Ex-servicemen there can be horizontal reservation and there is a provision of appointing other meritorious candidate from that particular category. It is in that regard he would submit that the vacant post can be filled in by appointing him, who is a open category candidate, though non Ex-serviceman. He relied upon a circular Exhibit P-1 to the affidavit in rejoinder (page Nos. 72 and 74) to the paper book. What we have noted from this circular is that on 16th March, 1999, there is a social reservation that is to be taken as vertical reservation, and special reservation. There is also another reservation which is styled as “*horizontal reservation*” in this circular.

Thus, the categories stated are social, vertical, special and horizontal. Then reference is made in this circular to several orders passed, including the order passed by the Hon'ble Supreme Court of India. Referring to the same, it is opined that there is no procedure set out as of date for implementing the policy of vertical, special and horizontal reservation. Rather, vertical and horizontal reservations and that is why categories of reservations styled as “*social reservation*” are set out in para 2 of this circular. Then, there is “*special reservation*” which is styled as “*horizontal reservation*”. The said circular clarifies that after the Supreme Court judgments on the point of reservation are noted that each reservation permissible under the Constitution by the Supreme Court judgment is carved out, then, in the recruitment process, what should be done is, at the first stage there should be a select list prepared in order of merit. In that it may not be necessary to accommodate all categories of reservation, but at the second stage what should be done is that there should a list prepared of the reserved category candidates. Thereafter, at the third stage in the social reservation and in terms of the percentage of this reservation, even the horizontal reservation should be accommodated. We do not see how reliance on this circular alone,

can benefit the Petitioner in this case. Even when there are guidelines issued by the State Government in Government Resolution dated 13th August, 2014 what is revealed is that there were certain proceedings initiated by the candidates who were open category candidates. Therefore, it is necessary to see the initial circular dated 16th March, 1999. That is why in clause 5 of the further Government Resolution dated 13th August, 2014 the State Government clarifies the earlier Government Resolution dated 16th March, 1999 and then what is communicated is that the procedure set out in this Government Resolution may be followed.

17. Mr. Kudle relied upon page 79 of the paper book, which is nothing but an extract of revised list of recommended candidates. We do not see how reliance can be placed on this list because this is nothing but a revised list of recommended candidates. We do not find how reliance can be placed thereon unless and until these candidates have been appointed. We find that there is additional affidavit which is filed in reply on 4th August, 2016. In that affidavit, the Petitioner has relied upon the order passed by the Division Bench in Writ Petition No. 4257 of 2013 dated 22nd January, 2014 but it is

contended that the said decision is distinguishable on facts. Once the Petitioner is not from the category of Ex-servicemen and the post is reserved for Ex-serviceman, then, horizontal reservation cannot come to aid of the Petitioner. The Petitioner, however persists by filing additional affidavit in rejoinder. He submits that there are certain candidates who have been appointed by taking recourse to the above Government Resolution.

18. We cannot see how on the strength of the recommended list of candidates alone can we presume that the horizontal reservation procedure listed was followed and applied to these candidates. Therefore, once the Petitioner is not an Ex-servicemen, he may be an open category candidate, cannot be accommodated by taking recourse to horizontal reservation procedure. Thus, the Writ Petition has no merits.

19. The final argument that the post is vacant and wait list has not exhausted itself, fails to impress us. The ad-interim order passed by this Court of status-quo and in relation to one post styled as “*vacancy in the open category*” cannot be carried forward beyond the

life of wait list. There is no challenge to the rule and regulation by which a wait list exhausts itself after a period of one year. In the present case, the order passed by this Court on 10th July, 2015 by the Division Bench, cannot extend beyond life of the wait list. That list cannot be continued by merely relying on the ad-interim order. True it is the ad-interim order directs the post to be kept vacant. The post may lie vacant but there is no right in the Petitioner to be appointed to the said vacant post. Once he has to go through the process of recruitment and to fill up a public post, then, we cannot on the basis of the ad-interim order direct the Petitioner to be appointed. This Court is not concerned with the criteria. The decisions of the Expert and In-charge of the Administration cannot be interfered with by us.

20. So long as their actions and decisions are not found to be violative of the constitutional mandate enshrined in Article 14 and 16 of the Constitution of India, then, we are not inclined in our writ jurisdiction to interfere with the same. As a result of the above discussion, the Writ Petition fails and is dismissed. No costs. The Ad-interim order stands vacated forthwith.

(B.P. COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)