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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 7365 of 2013.

1 Sachin Vishwas Kamble, **PETITIONER**
Plot No. 37, Ambedkar Nagar,
Nagaon, Tahsil Hathkangale,
District Kolhapur-416 122.

VERSUS

1 Maharashtra State Road Transport
Corporation Limited having its head
office at Mumbai Central Depot.
Mumbai Central, Mumbai. **RESPONDENTS**

2 Maharashtra Knowledge Corporation
Limited, ICC Trade Tower, A Wing, 5th
Floor,
Senapati Bapat Marg, Shivaji Nagar,
Pune.

3 Sunil Prakash Belekhar,
at Bele, Bhutache Post Kurukli, Taluka
Karveer, District Kolhapur-416 001,
Maharashtra.

4 Amol Ramesh Mahabodhi,
Siddharth Nagar, at present Vadgaon,
Taluka Hatkanangale, Dist. Kolhapur -
416 112, Maharashtra.

Appearance:-

Mr. Neel G. Helekar, Advocate for the
Petitioner.

Ms. Chandana Salgaonkar for
Respondent No.2.

Mr. Gopal Krishna Shivaram Hegde for
Respondent No.1.

**CORAM:- S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

RESERVED ON:- 27th November, 2017.

PRONOUNCED ON:- 22nd December, 2017.

JUDGMENT (PER: SMT. BHARATI, H. DANGRE,J)

1 Rule. Respondents waive service. By consent, Rule is made returnable forthwith and the petition is taken up for hearing and final disposal. The petitioner has approached this Court with a grievance that in a selection process conducted by respondent No.2 for filling up the post on the establishment of respondent no.1, the name of the petitioner was placed in the merit list prepared for the post of Assistant Painter, but no appointment order was issued in his favour and on the other hand respondent no. 3 and 4 came to be appointed to the post of Assistant Painter in the category to which the petitioner belonged namely the Scheduled Caste Category.

2) The undisputed facts giving rise to the petition can be simply stated as below:-

Respondent No.1 is the Maharashtra State Road Transport Corporation (MSRTC for short) which initiated a process for filling up the post of Assistant Painter through an advertisement issued for filling up various technical posts like motor mechanic, wireman, electrician, Painter etc. In the present petition, we are concerned with the post of Assistant painter. The petitioner claims to be belonging to Scheduled Caste and he submitted his on line application in pursuance of an advertisement since he possessed the requisite educational qualification for the said post. With regard to the details of the educational qualification, since it is not in dispute that the petitioner was educationally qualified for being considered for appointment to the said post for which he applied. Respondent No.1 appointed respondent No.2 Maharashtra Knowledge Corporation Ltd (MKCL for short) to conduct the entire procedure of selection of candidates on the posts advertised for its establishment. The petitioner was called for written examination and the result-sheet reflected that the

petitioner had secured 60 out of 100 marks and the petitioner has placed on record the extract of the result sheet which was displayed on the website of respondent No.2-Corporation declaring him to have passed and securing 60 marks as against the post of Assistant Junior Painter. According to the petitioner, there was no other Scheduled Caste Candidate who has applied for the said post of Assistant Junior Painter and the petitioner has placed on record a collective merit list prepared by respondent No.2 to make such an assertion. It is the case of the petitioner that he was also called for verification of documents and his documents were verified. The petitioner's contention is that he kept waiting for an order of appointment but he was shocked and surprised when he came to know that respondent no.3 and 4 were declared selected and when he collected the information it was revealed by him that respondent No.3 had secured 53 marks and respondent No.4 had secured 45 marks, which are undisputedly lesser than the marks scored by the petitioner. The petitioner preferred representations to respondent No. 1 and 2 agitating his grievance and causing them to rectify the error committed by them in selecting

respondent No. 3 and 4, which were according to the petitioner was not attended and this constrained the petitioner to approach this Court by filing the present writ petition.

3) In the writ petition, the petitioner makes representation that there is serious lacuna in the selection process conducted by respondent No. 1 and 2. He contends that when he was already selected and passed the examination and stood first in the list of Scheduled Caste, respondent No. 1 and 2 ought not to have selected respondent No. 3 and 4 and there is no justification coming from respondent No. 1 and 2 as to why the petitioner has been deprived of his right of selection in-spite of his better performance in the written examination as against respondent No. 3 and 4 in the Scheduled Caste category. The petitioner has therefore prayed for quashing and setting aside the appointment order of respondent No. 3 and 4 and has prayed for direction to respondent no. 1 and 2 to consider the claim of the petitioner on merit and appoint him on the post of Asstt. Painter.

4) In response to the writ petition, respondent No.1 so also respondent No.2 have filed their affidavit responding to the

contentions raised in the petition. As far as respondent No.1 is concerned, in the affidavit filed by the Personal Officer of the Corporation on 6/4/2015, it is stated that respondent No.1 had issued an advertisement and in the advertisement 35 was set out as passing grade. It is stated in the affidavit that 50% posts were reserved for General Industrial Training Institute (ITI) candidates and 50% posts are reserved for candidates who have completed job training in State Transport Workshop and are holding ITI certificate for Trade Apprentice i.e. who have completed one year training in MSRTC Workshop and such candidates belong to 'Apprentice category'. The affidavit further states that it had appointed respondent No.2 MKCL to conduct the selection process. It is further stated that initially merit list was issued by respondent No.2 including the name of the petitioner, but it was realized by respondent No.1 that it has not considered the reservation of 50% of the posts in favour of ITI candidates who have completed training as aforesaid in the MSRTC Workshop i.e. Apprentice Category and, therefore, respondent No.1 made a request to respondent No.2 to revise the said merit list by

taking into consideration said reservation of 50%. Respondent No.2 accordingly corrected the merit list.

5) Respondent No.2 has also placed on record an affidavit, in which it is stated that as per policy of respondent no.1 as contained in GR No. RP/EMPCL/Astha/UR/201-E/3739 dated 10/9/2009, 50% of the posts are reserved for General ITI Trainee candidates and 50% posts are reserved for candidates who have completed job training in MSRTC Workshop and holding ITI certificate for Trainee Apprentice Candidates. It is stated that the candidates who have completed Apprenticeship would get benefit of 50% reservation in the same Department. Two Groups namely ITI and R.P. candidates who have completed job training in State Transport would be called independently in the ratio of 1:5 and after the reservation in 50% posts, the candidates would be selected according to social and horizontal reservation. It is stated further that preference is given to the candidates who have completed one year training with the MSRTC and who are included in the "Apprentice Category", versus the candidates who have undergone training with ITI and worked

elsewhere i.e. “non-apprentice category”. A copy of Government Circular dated 10/9/2009 is also placed on record along with the affidavit.

6) We have heard learned Advocate appearing for the petitioner and Shri Neel G. Helekar, Advocate for the Petitioner, Mr. Gopal Krishna Shivaram Hegde for Respondent No.1 and Ms. Chandana Salgaonkar for Respondent No.2.

7) With the assistance of the learned counsel, we have perused the writ petition along with its annexures and also the affidavits placed on record along with the annexures. The short controversy revolves around the reservation criteria prescribed by respondent No.1 and the reservation in favour of the “Apprentice Category.” Reliance is placed on Circular issued by Respondent No.1 Corporation on 10/9/2009 and it is gainful to refer to the same at this stage.

Circular No. 18/2009 Subject : About keeping posts under reservation while recurring Assistant (Junior) posts in regular recruitment of I.T.I. Trained Workshop trainee

candidates of R.P. Corporation.

The decision has been taken as per the Corporation Resolution No. 2009:02:15 dated 17/2/2009 that for the post of Assistant (Junior) posts recruitment 50% posts of available posts should be reserved for the general I.T.I. Certificate holder candidates and 50% posts in the R.P. Workshop for the candidates who have completed apprenticeship and holding I.T.I. Certificate. For the enforcement of this decision the following instructions have been given.

- 1) The 50% posts should be reserved from the available posts for the Assistant (Junior) category posts for the general I.T.I. Trained candidates and 50% posts should be kept reserved for the candidates who have completed training in the R.P. Workshop and holding I.T.I. Certificate only for the Trade Apprentice candidates.
- 2) The provision of giving 3 extra marks in the interview for the recruitment of the candidates of Assistant (Junior) category posts.
- 3) It is necessary for the candidates to submit application according to the advertisement by the candidates who have completed trainee apprenticeship in which department he has completed training.

That is in which department the candidate has completed apprenticeship will get benefit of 50% reservation in the same department.

4) 2 groups should be called for the interview in 1:5 ratio.

5. While calling for the interview of these two groups should be called independently. Their ratio will be 1:5.

6) According to the prevailing provisions while calling candidates for the interview for deciding 1:5 ratio in two groups the basis should be observed on the merits of marks obtained in the I.T.I examination.

7) For calling the candidates for interview in 1:5 ratio if sufficient number of trained candidates are not available then in that ratio general I.T.I. Candidates can be called for interview.

8) As mentioned above after reservation of 50% posts while electing finally the candidates should be selected according to social and horizontal reservation.

9) While keeping reservation of 50% posts for the candidates who have completed apprenticeship if the sufficient candidates are not available then the said posts cannot be carry forward. Then such

posts should be filled from the general I.T.I. Trained candidates in the said recruitment procedure. As well as if the more candidates were available for interview for the 50% reserve posts then firstly number of 50% reservation posts should be filled according to the merits of the candidates and remaining candidates from group 1 candidates from the general I.T.I. Candidates according to their merits.

10) After interview while selecting the candidates as per the prevailing provisions 75% wait-age should be given to the marks obtained in the I.T.I. Examination and marks obtained in the interview should be given 25% wait-age for selection.

11) The independent list should be prepared of the candidates who have completed apprenticeship and general I.T.I. Category candidates should be selected for the interview.

Perusal of the said Circular reveals that 50% posts of Assistant Painter (Junior) are to be reserved for General ITI Certificate holder and 50% posts are reserved for those candidates who have completed apprenticeship and holding ITI certificate. The Circular reflects that while calling the candidates for interview of these two groups, process would be independently carried out and the ratio

prescribed is 1:5. The Circular also mentions that after reservation of 50% posts while electing finally the candidates should be selected by applying social and horizontal reservation criteria. It is also imperative that the independent list should be prepared of the candidates who have completed the apprenticeship and General ITI category who are to be selected.

Perusal of the affidavit and the procedure adopted by respondent No.2 and 3 reveals that respondent No.3 and 4 belong to the 'apprentice category' and they have applied for assistant junior painter post from Ratnagiri division from S.C. Apprentice Category whereas the petitioner had applied for the said post of Assistant Painter from Ratnagiri division from SC 'non-apprentice category'. Thus, the petitioner and respondent 3 and 4 belong to two different categories and are to be judged in separate categories. The petitioner is only aware of the fact that he belongs to SC category and he states that he had secured 60 marks in the written examination. He would further contend that respondent 3 and 4 have secured 53 and 44 marks respectively. This is not disputed by the respondents. However, there is

sufficient force in the contention of respondents that the petitioner's candidature was considered in 50% category of 'non-apprentice category'. Whereas respondent no.3 and 4's candidature was considered from the 'apprentice category' and therefore there is no comparison of their merit and scores between the petitioner on one hand and respondent no. 3 and 4 on the other hand. The respondents have admitted in their affidavit that initially unmindful of the said reservation prescribed as per the policy of respondent no.1 in its Circular dated 10/9/2009, a common merit list was prepared and the petitioner was placed above respondent No. 3 and 4 with 60 marks him since then they had less marks than the petitioner. However, on revising that merit list which was prepared without adhering to the policy of respondent no.1 contained in Circular dated 10/9/2009 prescribing demarcation in “non-apprentice” and “apprenticeship category” and preparing separate merit list for both categories and keeping them distinct respondent no.2 again revised the merit list and the petitioner came to be placed in a separate “non-apprenticeship category.” The petitioner being placed in a separate category of non-

apprentice of could not qualify as there were other candidates who had obtained more marks than him whereas respondent no. 3 and 4 who were placed in the 'apprentice category' could make up to the said post as the performance of the candidates in the said category justified their selection on the basis of marks obtained by the said candidates. Perusal of the application form of respondent no. 3 and 4 which has been placed on record by respondent no.2 along with their affidavit reflect that respondent no.3 Sunil Belekar has work experience with MSRTC, Kolhapur in the capacity of painter from 2/10/07 to 1/10/08 and respondent no.4 has work experience as apprentice from 15/10/99 to 14/10/2000. The petitioner admittedly lacks the said experience and therefore was not considered for the 'apprentice category'. We find sufficient force in the stand of the respondents in not considering the petitioner to be selected for the post of Asstt. Junior Painter and we do not find any fault in the selection of respondent no. 3 and 4.

In the light of aforesaid discussion, we are of the opinion that there is no merit in the contention of the petitioner and the

selection and appointment of respondent no. 3 and 4 cannot be said to be suffering from any illegality or arbitrariness.

The writ petition is dismissed. No order as to costs.

[SMT.BHARATI H. DANGRE,J.]

[S.C. DHARMADHIKARI, J.]