

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

WRIT PETITION NO. 6064 OF 2014

Nikhil Santosh Chaudhari, **...PETITIONER**
Age-25 years, Occu-Nil,
R/o. Plot NO.28/2, Gut NO.331/1,
Dattatraya Nagar, Old Kanalda Road,
Jalgaon

VERSUS

1. The State of Maharashtra **...RESPONDENTS**
Through its Secretary
(Command Area Development)
Water Resolurces Department,
M.S.Mantralaya, Mumbai-32
2. The Member Secretary,
Regional Selectinon Committee-cum-
Superintending Engineer (Doors)
Central Design Institute &
Zonal Officer,
Nashik Zone, Nashik
3. Roshan Punjaram Bhadane,
At post Khirmani, Tq. Baglan,
Dist. Nashik

Mr.Anil S. Bajaj, Advocate for the petitioner
Mr.P.R.Katneshwarkar, Advocate for respondent No.3
Mr.S.K.Tambe, AGP for the respondent/State

**CORAM : S.V. GANGAPURWALA &
S.M.GAVHANE, JJ.**

DATED : 05.09.2018

ORAL JUDGMENT [PER:S.V. GANGAPURWALA, J.]

. Pursuant to the advertisement dated 31.12.2011 the petitioner and respondent No.3 applied for the post of Measurer from the OBC category. There were total four posts for OBC category. From the said four posts, one post was for OBC woman, one for OBC Ex-Serviceman, one for part time employee and one other.

2. From the OBC category one Badgujar Gajanan Eknath was selected and one Kapadne Mahindra Popat who had secured 112 marks was included in the list from the OBC category as no female candidate from said OBC category was available. Still there were two posts, one for OBC (Ex-service) and second for OBC part time. The said posts meant for horizontal reservation were not filled in. The petitioner approached the Maharashtra Administrative Tribunal by filing Original Application No.939/2012. The tribunal in its judgment dated 07.01.2014 observed that as far as the post of Ex-serviceman OBC is concerned, as no eligible candidate is available, the post cannot be filled in from OBC General category. The same was based on Government Resolution dated 16.04.1981. The tribunal further

observed that as far as the other post OBC (part time) is concerned the same would go to the vertical reservation as from said horizontal reservation post for part time candidate was not available. The tribunal has considered that respondent No.3 has got more marks than the petitioner as such respondent No.3 should be considered for the appointment and if respondent No.3 does not respond then the petitioner's claim be considered for the appointment. The petitioner assails the said order by filing the instant writ petition.

3. Learned AGP submits that the tribunal has considered the Government Resolution dated 16.04.1981 which states that the post of Ex-serviceman cannot be filled up unless there is compliance of Clause-II of the said Government Resolution which states that the post for ex-serviceman cannot be filled in, if the candidate is not available.

4. Mr. Bajaj, learned counsel for the petitioner and Mr. Katneshwarkar, learned counsel for respondent No.3 relied on the Government Resolution dated 16.03.1999 to submit that if the

persons from the horizontal reservation are not available, the said post has to be filled in from the member of the vertical reservation.

5. According to the learned AGP the Government Resolution dated 16.04.1981 is not superseded and as such the same was relied.

6. Government Resolution dated 16.03.1999 is subsequently issued based on the judgment of this Court and the Apex Court. The reference to the said judgments is given in the said Government Resolution itself. Naturally the said the Government Resolution has to be implemented.

7. Considering the above, two remaining posts from the OBC category meant for Ex-serviceman and part time shall be filled in from the persons of OBC category as per the final list published. The respondent No.3 has secured 109 marks and the petitioner has secured 108 marks. The petitioner and respondent No.3 are required to be considered for the appointment.

8. In the light of above, we pass the

following order.

ORDER

I. The order passed by the tribunal is set aside.

II. Respondent Nos. 1 and 2 shall consider the petitioner and respondent No.3 for appointment to the post of Measurer from the OBC category as the persons from the OBC EX-serviceman and OBC part time are not available, pursuant to the said advertisement. Same shall be considered within a period of four weeks.

III. The writ petition is, accordingly, allowed. No costs.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]