

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 4229 OF 2013

Pathan Ayyaz s/o. Nawaj Khan

....Petitioner.

Versus

The State of Maharashtra and Ors.

....Respondents.

Mr. Quadri Taher Ali h/f. Mr. Zia Ul Mustafa, Advocate for petitioner.

Mr. M.M. Nerlikar, AGP for respondent No. 1/State.

Mr. S.G. Chapalgaonkar, Advocate for respondent No. 3.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : FEBRUARY 20, 2018.**

ORDER : [PER T.V. NALAWADE, J.]

1. The petition is filed for relief of setting aside notice dated 23.4.2012 issued by respondent No. 3 and also for setting aside the second selection list published by respondent No. 3 in pursuance of the notice. Consequential reliefs are also claimed which are against selected candidates, but they are not made party to the present proceeding. Both the sides are heard.

2. The petitioner was working as apprentice with respondent Maharashtra State Road Transport Corporation (hereinafter referred to as 'MSRTC' for short). On 7.8.2012 MSRTC

published advertisement for filling post like Assistant Junior Tinsmith/Welder. It is contended that in the advertisement, it was shown that 50% seats were reserved for the candidates, who had done apprenticeship with MSRTC. It is the case of petitioner that he applied for post from open category and in the result declared on 1.12.2012, he had secured 50 marks in written examination. It is contended that in list dated 1.12.2012 his name was shown as candidate who was short listed for further selection process, for verification of documents etc. It is contended that to his surprise on 23.4.2013, the list of shortlisted candidates was cancelled by giving excuse that wrong key was used and reservation policy was not implemented. It is the case of petitioner that no reason is given for cancelling his selection and necessary procedure for cancellation is not followed. By making such contentions, aforesaid reliefs are claimed.

3. Copy of the advertisement is produced on record. In the advertisement, there is the mention that the persons, who had worked with MSRTC as apprentice were entitled to apply through reservation quota which was 50%, but they were to be selected as per their performance in written test. It is not disputed that he was working as apprentice with MSRTC and certificate is also produced on the record which was issued for the period from August 2008 to

July 2009. Copy of the list of candidates who were shortlisted is also produced and in that list, the petitioner was shown as candidate from open category, but from parallel category of Ex-serviceman. Considering the age of the petitioner, it can be said that he was not belonging to that category.

4. The submissions made and the record show that initially the seats were not allotted as per the reservation policy by the agency, respondent No. 3, which was appointed for taking test and declaring the result. Subsequently, the necessary procedure was followed and new list was prepared. In view of the aforesaid circumstances and as the petitioner could not show any candidate who is selected in subsequent process, but who had secured less marks than the petitioner, this Court holds that it is not possible to interfere in the matter.

5. In reply affidavit filed by respondent No. 3, it has tried to save its own skin, but the submissions show that reservation policy was not followed which was required to be followed by the Government Corporation like MSRTC. It is the contention of respondent No. 3 that in initial instruction, the logic of applying horizontal and vertical reservation for declaring result was not taken in to consideration and due to that the mistake was committed. On

the basis of the submissions, it can be said that only due to the mistake, the petitioner was shown to be shortlisted for selection process. The learned counsel for petitioner placed reliance on some observations made by the Apex Court in the case reported as **(2013) 4 SCC 540 [Tej Prakash Pathak and Ors. Vs. Rajasthan High Court and Ors.]**. The observations made were altogether in different context and those observations cannot be used in favour of the petitioner. In the result, the petition stands dismissed.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/