

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

WRIT PETITION NO. 6503 OF 2016

Mahendra s/o. Zinga Jadhav .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.P.R. Patil, Advocate for the petitioner.
Mr.S.B. Joshi, AGP for respondent/State.
Mr.Y.B. Bolkar, Advocate for respondent No.3.
Mr.N.R. Pawade, Advocate for respondent Nos. 4 and 5.
Mr.D.A. Mane, Advocate for respondent No.6.

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.
DATED : 30.08.2018**

P.C. :-

1. Mr.Patil, learned Counsel for the petitioner submits that the petitioner is a handicapped person with 50% disability. The petitioner was working with respondent No.5-College as a Librarian from the academic year 2000-2001 till 31.03.2015 on clock hour basis. Learned Counsel submits that respondent No.5 is receiving 100% grant-in-aid and is affiliated to respondent No.3-University. Learned Counsel submits that the reservation

is required to be provided to the physically challenged persons. The roster is required to be maintained for physically challenged persons. As per roster said post has to be given to the physically challenged person. To substantiate his contention, learned Counsel relies on the judgment of the Apex Court in the case of **The Union of India Vs. National Federation of Blind, (2013) 10 SCC 772**. Learned Counsel submits that not a single person from the physically disabled category is appointed by respondent No.5-College. Respondent No.5 published an advertisement inviting applications for the post of Librarian on 20.03.2015. Learned Counsel submits that the petitioner since 14 years was working with respondent No.5-College as a Librarian on clock hour basis. Respondent No.5 could not have issued advertisement and ought to have appointed the petitioner as a full time Librarian. In-spite of the same, respondent No.5 advertised the post. The petitioner applied pursuant to the advertisement and received interview call. However, the Selection Committee submitted report recommending

name of respondent No.6 for the post of Librarian to respondent No.5-College.

2. Learned Counsel submits that same is against the provisions of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955. Learned Counsel relies on the judgment of the Apex Court in the case of **Bhudev Sharma Vs. The District Judge, Bulandshahr & Anr., (2008) 1 SCC 233**. Learned Counsel also relies on the judgment of the learned Single Judge of this Court in the case of **Jugalkishore Bhagwatiprasad Shukla Vs. Nirala Education Society & Ors., 2009(2) BomCR 241** and submits that even if advertisement is issued and the person has participated in the selection process, he could still challenge the same on the ground that the provisions of law have been flouted. Learned Counsel also relies on the judgment of the Division Bench of Madhya Pradesh High Court in the case of **Rashmi Thakur Vs. High Court of M.P. & Ors., WP No.19833/2017** and submits that it is

imperative to identify the post for reservation. The benefits of Section 33 of the Act of 1955 cannot be denied. Learned Counsel submits that as no person from disabled category is appointed, the petitioner, who worked with respondent No.1 for 14 years on clock hour basis, deserves to be appointed as full-fledge Librarian and selection of respondent No.6 deserves to be set aside.

3. Mr. Patil, learned Counsel for the petitioner submits that after the advertisement was issued, the petitioner has filed Writ Petition No.4579 of 2015 only with a request that his candidature be considered as he possesses M.Phil qualification and the petitioner had not challenged the advertisement, as at that time the petitioner was not aware as to whether any other candidate from physically challenged category would apply. Learned Counsel further submits that there is different procedure for finalizing roster for disabled category. Learned Counsel also relies on the judgment of

the Apex Court in the case of **Rajiv Kumar Gupta Vs. Union of India and Ors., (2016) 13 SCC 153** and submits that even the Apex Court observed that low number of person with disability are in employment and the objective behind 1955 Act is to integrate the persons with disabilities into the society and to ensure their economic progress.

4. Mr.Pawade, learned Counsel for respondent Nos.4 and 5 submits that after the advertisement was issued inviting applications for the post of Librarian, the petitioner had challenged the said advertisement by filing Writ Petition bearing No.4579 of 2015. At the said time the petitioner did not raise ground that the advertisement is not in consonance with the roster or the provisions of the Disabilities Act, 1955 and prayed that his candidature be considered as he possesses M.Phil qualification. This Court disposed of the petition by directing that the petitioner can participate in the selection process for the post of Librarian and the

respondent shall not insist for NET/SET qualification. Thereafter, the petitioner participated in the selection process and was not selected and he cannot turn around and challenge the advertisement. Learned Counsel for the respondents further submits that the roster is verified by the Cell and in the roster also no post is reserved for physically disabled category.

5. Learned Counsel for respondent No.6 submits that respondent No.6 has NET qualification. Respondent No.6 was found more suitable by the Selection Committee and he has been selected.

6. We have considered the submissions canvassed by the learned Counsel for the respective parties.

7. It appears that the petitioner is working with respondent No.5-institution since the academic year 2000-2001 on clock hour basis and approvals are granted to his appointment on clock hour basis from time to time on the

condition that he should obtain NET/SET qualification.

8. It appears that in the year 2008 the respondents had issued advertisement for the post of Librarian. The petitioner, pursuant to the advertisement issued on 26.08.2008 by respondent No.5, participated in the selection process, but was not selected. The petitioner did not raise any grievance to the said selection process and thereafter continued working on clock hour basis. The petitioner claims to have acquired M.Phil qualification on 10.06.2009. Respondent No.5 issued fresh advertisement on 20.03.2015 inviting applications from the eligible candidates for the post of Librarian. The petitioner assailed the said advertisement by filing Writ Petition No. 1579 of 2015. Prayer clause (B) in the said petition reads thus :-

(B) By issuing writ of Mandamus or any other appropriate order of directions in the like nature, the advertisement dated 20.03.2015 (EXH-I) may kindly be quashed and set-aside.

9. The challenge to the advertisement by the

petitioner was only on the ground that the petitioner possessed M.Phil qualification and the same is sufficient qualification and not acquiring NET/SET qualification would not debar the petitioner from being considered as eligible. This Court disposed of the writ petition holding that the candidature of the petitioner would not be rejected only on the ground that the petitioner does not possess NET/SET qualification. Though the petitioner assailed advertisement dated 20.03.2015, however, the petitioner did not claim any benefit of being a person with disability.

10. The petitioner pursuant to the order of this Court in Writ Petition No.4579 of 2015 was allowed to participate in the selection process. The Selection Committee did not find the petitioner suitable. The Selection Committee recommended name of respondent No.6. Eventually, respondent No.6 was selected and appointed as a Librarian. Thereafter, the instant writ petition is filled challenging the selection of respondent No.6 as a

Librarian. The challenge is on the ground that the respondents have not maintained roster and the first post under reservation would belong to a person with disability. The respondents have failed to provide reservation for the persons with disabilities.

11. It would appear that the petitioner had assailed the advertisement by filing earlier writ petition bearing No.4579 of 2015. However, did not challenge the advertisement on the ground that the reservation to person with disabilities is not provided. After having been unsuccessful in the selection process, the petitioner is assailing the selection process.

12. It is a trite that a person cannot be allowed to assail the selection process after having participated in the selection process and failed therein. Till the petitioner failed in the selection process, the petitioner at no material point of time challenged the advertisement on the ground that he is a person with

disability and reservation for the person with disabilities has not been kept, nor roster is maintained giving reservation to the person with disabilities. The respondents have contended that the post of Librarian is an isolated post and as such reservation would not apply. We may not enter into said controversy for the simple reason that the petitioner never assailed the advertisement on the ground that he is a person with disability and the post should be reserved for person with disabilities. The petitioner had challenged the advertisement by filing Writ Petition No.4579 of 2015 but consciously did not assail the advertisement on the ground that reservation for the post of Librarian from the person with disabilities has not been maintained. It would be too late in the day, for the petitioner to contend that he only ought to have been selected as no person with disabilities is working with respondent/ institution. The judgment of the Apex Court in the case of Union of India (Supra) deals with the implementation of the Act of 1955. There cannot be any dispute with the

proposition put-forth by the learned Counsel that the provisions of the Act are required to be implemented. However, in the present case, same needs no consideration, as the petitioner had participated in the selection process and after having been unsuccessful is turning around and challenging the advertisement. The petitioner had challenged the advertisement but had not raised any ground of providing reservation for person with disabilities. The judgment in the case of Jugalkishore (Supra) would not inure to the benefit of the petitioner in as much as the petitioner in the said case was not eligible to participate as per the advertisement and as such the Court held that even if the petitioner had participated, he was not eligible as per the terms in the advertisement and so, that would not make any difference.

13. In the present case, the facts are otherwise. The petitioner had challenged the advertisement by filing earlier writ petition but had not raised any issue of

reservation not being provided for the persons with disabilities. The petitioner, thereafter, was allowed to participate in the selection process. The petitioner was not selected and after respondent No.6 was selected and appointed, present writ petition is filed.

14. In the light of above, no case of interference is made out. The writ petition is dismissed. No costs.

[S.M.GAVHANE, J.]

[S.V.GANGAPURWALA, J.]