

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

WRIT PETITION NO. 8282 OF 2018

Sayyad Asad Sayyad Nizam

..PETITIONER

VERSUS

The Superintendent of Police, Dhule

..RESPONDENT

....

Mr. A.S. Deshmukh, Advocate for petitioner.

Mr. S.K. Tambe, A.G.P. for respondent.

....

**CORAM : S.V. GANGAPURWALA AND
R.G. AVACHAT, JJ.**

DATED : 01st NOVEMBER, 2018

ORDER :

The petitioner had participated in the selection process for the post of Constable. The petitioner was placed at Serial no.2 in the wait list of Open (General) category candidates. The petitioner submits that there were 8 posts meant for Open category, out of which two posts were reserved for Open (Woman) and one post for Open (Ex-Serviceman). The respondent filled in only three posts of Open (General), one post of Open (Woman) and one post of Open (Ex-Serviceman) category was filled in from Other Backward Caste. Same is not permissible as per the Government Resolution dated 13th August, 2014 issued by the State. Tribunal did not consider the said aspect.

2. The learned A.G.P. submits that one Jagannath Namdeo Mali had 172 marks. He had applied from OBC (Ex-Serviceman) category. The petitioner had secured 151 marks. As he was not in merit, he has not been considered for the post from Open (Ex-Serviceman) category. One Laxmikant R. Mahajan was appointed from Open category, though from OBC category. He has secured more marks, but he resigned. That post can only be filled in by a fresh selection process in view of the rules and circular of the respondent.

3. We have considered the submissions. Even assuming that Laxmikant Mahajan was considered for Open (Ex-Serviceman) category and he has left, still it would appear that only four posts of Open (General) category are filled in. Jagannath Mali had applied from OBC (Ex-Serviceman) category. A person having applied from horizontal reservation cannot jump over the social reservation and he could not have been considered from Open (Ex-Serviceman) category as per Government Resolution dated 13th August, 2014 issued and relied by the respondent.

4. One post was meant for Open (Ex-Serviceman) category. It would appear that no person from Ex-Serviceman (Open category) was appointed and if there is no eligible candidate for horizontal reservation in Open category, said post would go to Open (General) category. The respondent

had not adhered to its own resolution and circular. It is stated that now appointment orders are already issued. Fresh recruitment process is being conducted. There are 14 vacant posts yet to be filled in. For these 14 posts, appointment orders have not yet been issued.

5. In light of the above, we direct the respondent to consider the petitioner for appointment in Open (General) category as he was placed at Serial no.2 in wait list and the candidate at Serial no.1 of the wait list has already been given appointment order. While doing so, the respondent shall not now undo the appointments which are already made from the respective categories. This order would not be used to the detriment of the persons to whom already appointment orders are issued. The respondent shall issue appointment to the petitioner as and when in future vacancy is available for Open category. Writ petition is disposed of. No costs.

(R.G. AVACHAT, J.)

(S.V. GANGAPURWALA, J.)

SSD