

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8599 OF 2017

Badrinath Rustum Wankhare .. **Petitioner**
Versus
The State of Maharashtra and others.. **Respondents**

Shri Henumanth P. Jadhav, Advocate for the
Petitioner.

Shri A. V. Deshmukh, A.G.P. for Respondent Nos. 1
to 4.

Shri V. D. Patnurkar, Advocate for Respondent No.
5.

Shri Sushant V. Dixit, Advocate for Respondent No.
6.

**CORAM : S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

DATE : 12th July, 2018

PER COURT :

1. The petitioner assails the order passed by the Member, Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad (*hereinafter referred to 'Tribunal'*) dated 21.06.2017, so also, the order appointing respondent no. 6 as a 'Police Patil'.

2. Pursuant to the advertisement for the recruitment of village Police Patil of village

Ladgaon amongst other candidates petitioner and respondent no. 6 applied. The petitioner and respondent no. 6 both secured equal marks i.e. 64. Initially respondent no. 4 appointed the petitioner under order dated 14.03.2016. The present respondent no. 6 challenged the same before the Tribunal by filing Original Application No. 552 of 2016. The Tribunal set aside the order of appointment and directed respondent no. 4 to consider afresh. Pursuant thereto, respondent no. 4 appointed respondent no. 6.

3. Mr. Jadhav, learned counsel for the petitioner submits that the petitioner and respondent no. 6 secured equal marks viz. 64. As per the relevant Government Resolution dated 22.08.2014, if two or more candidates secured equal marks, then the candidate who has a higher qualification has to be preferred. The learned counsel submits that the qualification of respondent no. 6 is graduation i.e. B.A., whereas the petitioner after passing his graduation had

cleared third semester of M. Com. and had appeared for the final semester. The result was not declared. Considering the above, the petitioner ought to be held as having higher qualification and the petitioner ought to have been given appointment order. The learned counsel to substantiate his contention relies on the **Judgment of the Division Bench of this Court in Writ Petition No. 8441 of 2016** dated **13.02.2018**, so also, the **Judgment of the Apex Court** in a case of **Government Of A.P. Vs. P. Dilip Kumar** reported in **1993 (2) SCC 310**.

4. Mr. Dixit, learned counsel for respondent no. 6 submits that the petitioner cannot be said to possess higher qualification as he did not possess the post graduation degree, both possess graduation degree. In view of the said Government Resolution when two or more persons have equal marks and their qualification also do not differ, then the person senior in age has to be preferred and appointment order is to be given. The learned

counsel to substantiate his contention that unless a post graduation degree is obtained the same cannot be considered as higher qualification relies on the Judgment of the Division Bench of this court in Writ Petition No. 1818 of 2017 dated 13.02.2017.

5. With the assistance of learned counsel for respective parties we have gone through the Judgment delivered by the Tribunal, the impugned order, so also, the Government Resolution dated 22.08.2014.

6. It is undisputed that the present respondent no. 6 is senior in age to the petitioner. It is also undisputed that the petitioner and respondent no. 6 both secured 64 marks. The gravamen of the petitioner's contention is that, as the petitioner has appeared for final semester examination of a post graduation course the petitioner's qualification should be considered on a higher pedestal than of respondent no. 6 possessing

graduate qualification.

7. It is also not disputed that as on the date of filing the application the petitioner had not cleared his post graduation, the result was also not declared. In absence of any post graduate degree being conferred upon the petitioner, it cannot be said that the petitioner possesses higher qualification. A person would acquire the post graduate qualification only upon passing the examination and completing the course. Till the petitioner completes the course of post graduate and obtains the post graduate degree he would only be recognised as a graduate. The said aspect was considered in a Judgment of the **Division Bench of this Court** in **Writ Petition No. 1818 of 2017** dated **13.02.2017** to which one of us (*S. V. Gangapurwala, J.*) was a party. In the said Judgment we have held that, as the petitioner therein did not possess the masters degree at the relevant time but had only appeared in the examination the same cannot be considered as a higher qualification.

8. The Judgment in Writ Petition No. 8441 of 2016 relied by the learned counsel for the petitioner may not enure to the benefit of the petitioner in as much as the Court had refused to exercise its jurisdiction over the selection made of the candidate who was in second year B.A. course and the petitioner therein was in first year B.A. course. However, in the said Judgment there is no detail discussion as to how it can be said to be a higher qualification.

9. For possessing higher qualification the person must possess a degree. The higher qualification is not like possessing an experience. The qualification of a post graduation would be conferred only after the petitioner passed the examination and the degree is conferred upon him. To illustrate, if a candidate appeared in the final year examination of the post graduate course but fails the same certainly would not mean that the person has a higher qualification than a graduate. So also, if a person has only appeared

for examination and has not been conferred by any degree the same would not tantamount to higher qualification only because he has appeared in the examination.

10. In the light of above, it cannot be said that the petitioner has a higher qualification. The preference is to be given to the person who is senior in age as per the said Government Resolution. Admittedly, respondent no. 6 is senior in age to the petitioner and he has been given the appointment order.

11. In the light of that, no case for interference is made out. Writ Petition accordingly stands disposed of. No costs.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

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