

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

Writ Petition No. 6698 of 2013

Shivganga D/o Udhav Thombre. .. **Petitioner.**

Versus

The State of Maharashtra
And Others. .. **Respondents.**

Shri. R.A. Deshmukh, Advocate, for petitioner.

Shri. M.M. Nerlikar, Assistant Government Pleader, for
respondent No.1.

Shri. V.P. Latange, Advocate, holding for Shri. Anup R.
Nikam, Advocate, for respondent No.2.

Shri. V.P. Latange, Advocate, for respondent No.3.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Date: 11 APRIL 2018

ORDER (Per T.V. Nalawade, J.):

1) The petition is filed under Articles 226 and 14 of Constitution of India for giving directions to the respondents for giving appointment to the petitioner as Shikshan Sevak in pursuance of the process which was started for selection in the year 2010. Both the sides are heard.

2) In response to the advertisement, the petitioner had applied for the post of Shikshan Sevak. At the relevant time she was H.S.C., D.Ed. and subsequently she completed B.A. also. In the year 2010 she was eligible for getting the post of Shikshan Sevak. She appeared in the C.E.T. taken for recruitment for Shikshan Sevak. She secured 132 marks. Though she has not mentioned in the petition, call letter was given to her on the basis of 132 marks for giving her appointment from category of Earthquake affected persons. She did not respond to the said letter.

3) There was reassessment process carried out and in the reassessment process the petitioner secured 136 marks. It is her contention that as she belongs to VJNT category she was entitled to get appointment from VJNT and Project Affected Persons category as she had reached the cut off mark which was for that category. It is her contention that as she is not given call letter, appointment order, direction needs to be given to the respondents to that effect.

4) The respondents have opposed the petition by contending that the petitioner had mentioned that her application was from earthquake affected persons category and also from the project affected persons category and as she had reached cut off marks fixed for earthquake affected persons category she was given call letter but she did not turn up. It is not disputed that after reassessment she got 136 marks.

5) It is the contention of the petitioner that she had not mentioned the category like earthquake affected person in the application and as the call letter was given to her from wrong category she did not respond to the call letter and on the contrary she had requested to consider claim from project affected persons category. In this regard the original record is available with the respondent and it shows that she had mentioned both categories like project affected persons category and earthquake affected persons category. The petitioner produced photo copy of the application but the application shows that she has overwritten in the bracket kept for mentioning the preference and initially preference No.1 was mentioned to

show that she was from earthquake affected persons category and subsequently it was changed to make it to show that she was not from that category. The record like application made by her subsequently shows that only after increase in her marks after reassessment she applied to give appointment from project affected person category. Admittedly she is not from earthquake affected persons category and she had no such certificate. Thus, it can be said that she had falsely mentioned her category as earthquake affected persons category and due to that initially even call letter was given to her. During verification she could not have shown the certificate and so she did not turn up for verification process.

6) The submissions made and the record show that in view of the direction given by this Court in Writ Petition No.1829/2011 a committee was constituted for redressal of such grievances and the committee has the power to consider the grievances and even to make recommendation to make appointment if after verification the marks are increased and the candidate crosses cut off mark and if vacant posts are available. Thus the

Committee was there for redressal of the grievances of the present nature but the petitioner preferred not to go to that Committee and she came to this Court. These circumstances cannot be ignored.

7) The learned counsel for the petitioner has placed reliance on other correspondence of Government made with the institution created for taking CET. That correspondence dated 15-10-2010 shows that if a candidate was not able to produce certificate in respect of particular category, at the time of interview, for verification, appointment can be given to such candidate in other category in which the candidate was entitled due to marks secured by the candidate. This correspondence dated 15-10-2010 is there but on the basis of such correspondence the petitioner cannot get anything as she had falsely mentioned her category as earthquake affected person and she had not turned up for verification process when call letter was given to her. As per the policy decision if she had crossed the cut off marks after the reassessment, she could have been considered but that was subject to some conditions. There is nothing on

the record to show that she had crossed that benchmark. The petitioner is relying on the list of candidates recommended by the aforesaid grievance committee for making appointment to show that many candidates were recommended from other category. As she did not prefer to go before that committee, the petitioner cannot now say that she could have also been considered by the grievance committee.

8) The respondents placed reliance on the observations mad by the Apex Court in the case reported as **(2016) 1 SCC 454 (Madras Institute of Development Studies v. K. Sivasubramaniyan)**. In this case the Apex Court has held that when candidate consciously takes part in selection process, he subsequently cannot turn around and question the very selection process. In that case candidate could not show that merit was by-passed. In the present matter also the petitioner was not able to show that merit was by-passed and she had crossed the bench mark. There are more circumstances, like mentioning other category falsely and not appearing before the Committee which was a forum created for

redressal of grievances of all kinds. Due to these circumstances, this Court holds that no relief can be granted to the petitioner. The selection process was of the year 2010 and we are now in the year 2018. In the result, the petition stands dismissed.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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