

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

WRIT PETITION NO.9973 OF 2017

Ujwala Bhaidas Deore,
Age 38 years, Occu. Service,
R/o C/o Dr. Ulhas Bhaidas Deore,
Main Bazar Peth, at post Borkund
Taluka and District Dhule

..Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai

2. The Chief Executive Officer,
Zilla Parishad, Jalgaon,
District Jalgaon

..Respondents

Mr G.S. Rane, Advocate for petitioner
Mrs V.N. Patil Jadhav, A.G.P. for respondent no.1
Mr S.B. Munde, Advocate for respondent no.2

**CORAM : S.V. GANGAPURWALA &
A.M. DHAVAL, JJ**

DATE : 2nd May 2018

PER COURT

1. Mr Rane, learned Counsel for the petitioner submits that the petitioner participated in the selection process of contractual Gramsevak pursuant to the advertisement issued by the respondent. The petitioner was also selected, however, at the time of considering the petitioner for appointment, grievance was made and it was stated that the petitioner does not possess any class. The requirement as per the advertisement is that the candidate should secure 60% marks in H.S.C. Examination or its equivalent. According to the learned Counsel, if the total marks obtained by the petitioner in all the subjects are considered, the petitioner has secured more than 60%

marks. The advertisement does not state that the marks should be obtained in first attempt only. The qualification has to be commensurate to the post. According to the learned Counsel, the advertisement will have to be considered as it is and no modifications, alterations in the required eligibility can be made either by the respondents or by this Court. The learned Counsel to buttress his submission, relied on the judgment of Apex Court in a case of **P.U. Joshi and ors., Vs. Accountant General, Ahmedabad and ors.**, reported in **AIR 2003 SC 2156**, another judgment in a case of **State of Gujarat and ors., Vs. Arvindkumar T. Tiwari and anr.**, reported in **2013 (1) Mh.L.J. 555** and in a case of **Chandigarh Administration through The Director, Public Instructions (Colleges), Chandigarh v. Usha Kheterpal Waie and ors.**, reported in **AIR 2011 SC 2956**.

2. The learned Counsel for the respondent no.2 submits that even the mark-sheet of the petitioner does not show any class obtained by the petitioner in H.S.C. Examination.

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

4. There cannot be any dispute with the proposition that it is for the rule making authority or the appointing authority to prescribe the mode of selection and the minimum qualification for any recruitment and the Courts cannot encroach upon the powers of the concerned authority.

5. The petitioner had appeared for H.S.C. Examination in the month of March 1997. The petitioner had failed in the examination and in compulsory language had secured only 13 marks. The mark-sheet issued to the petitioner showed that the petitioner had failed. The petitioner again appeared in the failed subject in October 1997 and secured 69 marks. The percentage of marks was shown as passed. The mark-sheet was only to the extent of subject in which the petitioner had appeared for the second time. Even, the mark-sheet issued to the petitioner does not state that the petitioner has secured any class. If the arguments of the petitioner are accepted, then the candidate who has secured 59% marks by passing all the subjects would be ineligible and the candidate, who has failed in some subjects and thereafter appeared for the second time for the same subject and secured more marks would be eligible. The same would lead to absurdity. For the second examination, the petitioner appeared with exemption. It was benefit of exemption the petitioner got.

6. It was for the respondent-appointing authority to consider the qualification of the petitioner. The respondent on considering the aspect that the petitioner had failed found the petitioner ineligible. The contention of the petitioner that advertisement does not mention that he should obtain 60% marks in first attempt, does not stand to any reason. When it is stated that the candidate should obtain 60% marks then meaning thereby that the candidate should be meritorious and not the one who had failed. Even, the candidate who has failed in some subjects and subsequently passed, his percentage are not

counted as is clear from the mark-sheet. The gradation is given to the person who has passed in all subjects and no gradation is given to a person or candidate, who has failed earlier, the percentage of marks is also not given.

7. Considering the above, no case for interference is made out. Writ Petition is dismissed. No costs.

(A.M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)

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