

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

Writ Petition No. 8172 of 2011

* Neeta Gopalrao Rapatwar,
Age 22 years,
Occupation : Student,
R/o Kalamandir, Mill Road,
Nanded, Taluka Nanded,
District Nanded. **.. Petitioner.**

Versus

- 1) The State of Maharashtra,
Through the Secretary,
Education Department,
Mantralaya, Mumbai - 32.
- 2) Maharashtra State Council
for Examination,
Through its Commissioner,
having its address at
17, Ambedkar Road, Pune.
- 3) Director of Education (Primary)
Maharashtra State, Pune. **.. Respondents.**

Shri. R.B. Narwade-Patil, Advocate, for petitioner.

Shri. R.V. Dasalkar, Assistant Government Pleader, for
respondent Nos.1 and 3.

Shri. A.R. Nikam, Advocate, for respondent No.2.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date : 2 MAY 2018

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

1) The petition is filed under Articles 226 and 227 of the Constitution of India and also under Articles 12, 14 and 19 of the Constitution of India. The petitioner has claimed reliefs like directions to the respondents to publish wait list of candidates of C.E.T. 2010 on merit basis as per Government Resolution dated 16-12-2009 and call them for oral interview so that they can be selected. A direction is also claimed to the effect that clause 9(K) of Government Resolution dated 16-12-2009 is mandatory. Both the sides are heard.

2) The petitioner had applied for the post of Shikshan Sevak through C.E.T. in response to advertisement published by the respondents in February 2010. It is the case of the petitioner that she has secured 140 marks out of 200 in the C.E.T. It is the contention of the petitioner that the respondents published merit list on 4-12-2010 but in the said list wait list candidates were not shown. It is contended that she tried to get information under Right to Information Act about the vacancies which

are there after completion of the aforesaid process but the said information was not supplied to her. It is her case that separate wait list ought to have been published in accordance with the aforesaid Government Resolution and as that is not done, directions of aforesaid nature need to be given.

3) The respondents have filed reply-affidavit and they have contended that necessary procedure was followed and as per the procedure the cut off marks for the category of the petitioner, OBC category, was 144 but the petitioner got only 140 marks and so she is not shown in the list. It is contended that the list was prepared as per the vacancies available in the schools and the list includes the candidates from wait list also who had secured 144 or more marks. A copy of cut-off marks report is produced on the record and it is consistent with the aforesaid contentions made in the reply-affidavit. Thus, the case of the petitioner that wait list candidates were not mentioned is denied by the respondents

4) Learned counsel for the petitioner has placed reliance on some observations made by the Apex Court in the case reported as **1994 Supp (2) SCC 591 (Gujarat State Deputy Executive Engineers Association v. State of Gujarat)**. In that case the Apex Court has observed that ordinarily wait list needs to be prepared and while preparing the merit list and wait list not only the vacancies which were actually there on the date of advertisement need to be considered but the posts which will become available in future due to retirement etc. also need to be considered and that period can be of one year. In other case reported as **(2011) 2 SCC 734 (Naseem Ahmad & Others v. State of U.P. & Another)** similar observations are made. Learned counsel for the petitioner has placed reliance on the case of Allahabad High Court reported as **2002 (4) AWC 2804 (Trilok Nath Mishra v. State of U.P.)**.

5) In all the aforesaid matters some factual aspects were involved. In the present matter, the petitioner is not having any information about the vacancies which were likely to occur within one year from

the date of advertisement. On the contrary, there is reply-affidavit of the respondents showing that as per the vacancies available merit list was prepared and all the candidates who had secured cut off marks or more than cut off marks were enlisted by the respondents. Thus it is the case of the respondents that the list includes candidates who were in wait list. There is nothing to controvert this contention and there is no reason to disbelieve the respondents in this regard. The petitioner got only 140 marks when the cut off marks were 144. In view of these circumstances, this Court holds that no relief can be granted in favour of the petitioner. In the result, the petition is dismissed. Rule discharged.

Sd/-
(SUNIL K. KOTWAL, J.)

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

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