

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

WRIT PETITION NO. 11360 OF 2018

Anand Angadrao Hole

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Ms. Pradnya S. Talekar, Advocate i/by Talekar and Associates,
Advocate for the Petitioner.

Shri S. K. Tambe, A.G.P. for Respondent Nos. 1 to 4.

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

DATE : 25TH OCTOBER, 2018.

FINAL ORDER :

. Miss Talekar, the learned advocate for the petitioner submits that, the claim of the petitioner for appointment as a Sub Inspector Excise was recommended for the first time in the year 2002. Every time the petitioner was given assurance, but appointment order was not issued. The learned counsel submits that, the Commissioner calculated vacancies meant for Project Affected Persons Category (for short “ P. A. P. category”) in terms of 2% of the total vacant posts instead of 5% as required under the law. On or about 18.07.2008, the Government of Maharashtra amended the Government Resolution thereby directing to fill in 5% posts for P. A. P. category without inviting

applications or advertising the posts. On or about 18.02.2009, the Commissioner rejected application of the petitioner for appointment as Sub Inspector State Excise on the ground that there was no vacant post in P. A. P. category. According to the learned advocate, the original application preferred by the petitioner has been dismissed on the ground of non joinder of necessary parties. In fact, petitioner had not assailed appointments of others, who were appointed. The claim of the petitioner was recommended in the year 2002. The case of the petitioner is required to be considered as per the law existing then. The learned advocate further submits that, even on 01st April, 2011 assurance was given by the Assistant Commissioner (Administration) that the case of the petitioner would be considered in horizontal reservation meant for P. A. P. category. However, as yet the steps are not taken by respondents for issuing appointment order. The judgment of the Full Bench of this Court in a case of **Rajendra Pandurang Pagare Vs. State of Maharashtra and others** reported in **2009(5) All M. R. 830** would apply prospectively.

2. Mr. Tambe, the learned Assistant Government Pleader for respondents supports the order and submits that, since the year 2004, the post in question has been brought within the purview of M. P. S. C.

3. It appears that, the petitioner's claim was under consideration since the year 2002 for the post of Sub Inspector State Excise from P. A. P. category. It is also fact that, the petitioner is not issued with the appointment order. On or about 18.02.2009, the Commissioner rejected application of the petitioner for appointment on the post of Sub Inspector State Excise from P. A. P. category on the ground that no vacant post exist in P. A. P. category.

4. It has been observed by the Full Bench of this Court in a case of Rajendra Pandurang Pagare Vs. State of Maharashtra and others (supra) that the state is required to undertake the due selection process even for making appointment to the persons in P. A. P. category. Though the petitioner may have been under consideration, but as the appointment order was never issued, today it will not be possible for this Court to direct respondents to issue appointment order to the petitioner *de-hors* the competition.

5. In case there is policy of respondents/State to appoint the petitioner from P. A. P. category, then the petitioner may approach the respondents in that regard by filing application. The application of the petitioner would be decided on its own merits, in accordance with law and policy by the respondents.

6. In the light of the above, the writ petition is disposed of.
No costs.

[R. G. AVACHAT, J.]

[S. V. GANGAPURWALA, J.]

bsb/Oct. 18