

((1))

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

WRIT PETITION NO.9872 OF 2013

Shri Amol Rajendra Ahire,
Age 21 years, Occu. Nil/ Education,
R/o Utkarsha Colony Road, Bhimnagar,
Sakri Road, Dhule, Tq. and Dist. Dhule ... PETITIONER

VERSUS

1. The State of Maharashtra,
through its Secretary,
Rural Development and Water
Conservation Department,
Mantralaya, Mumbai
(Copy to be served on the
Government Pleader, High Court of
Bombay, Bench at Aurangabad)
2. Chief Executive Officer
Zilla Parishad, Jalgaon,
Jalgaon. ... RESPONDENTS

.....
Shri U.B. Shriram, Advocate holding for
Shri D.S. Bagul, Advocate for petitioner
Shri M.M. Nerlikar, A.G.P. for respondent No.1
Shri R.N. Chavan, Advocate holding for
Shri Vijay Sharma, Advocate for respondent No.2
.....

CORAM: T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.

DATED : 27th February, 2018

O R D E R (PER SUNIL K. KOTWAL, J.) :

1. By filing this Writ Petition under Article 226 of the

Constitution of India, the petitioner has claimed quashment of order dated 14.11.2013, passed by respondent No.2 regarding cancellation of selection of the petitioner for the post of Junior Engineer (Civil). Respondent No.1 is the State of Maharashtra and respondent No.2 is the Chief Executive Officer, Zilla Parishad, Jalgaon.

2. Shorn of unnecessary details, contention of petitioner is that, he suffers from visual impairment to the extent of 40% and Medical Board, Civil Hospital, Dhule as well as Rural Medical College, Dhule issued Disability Certificates to that effect respectively. Petitioner holds Diploma in Civil Engineering. In response to advertisement dated 10.5.2013, published by respondent No.2, the petitioner submitted application for the post of Junior Engineer (Civil). He applied from the Scheduled Caste category and that too from Visually Impaired Category. After going through the process of written test and interview, name of the petitioner appeared at Sr.No.1 in the select list from Scheduled Castes category (Handicapped), published by respondent No.2. The Executive Engineer, Construction Department, Zilla Parishad, Jalgaon, by his letter dated 20.8.2013, directed the petitioner to produce the disability certificate, which was duly complied by the petitioner. However, on 14.11.2013, suddenly respondent No.2 cancelled the selection

of the petitioner for the post of Junior Engineer (Civil). That order passed by respondent No.2 is impugned in the present petition.

3. Heard strenuous arguments submitted by learned counsel for the petitioner, learned A.G.P. for respondent no.1/State and learned counsel for respondent No.2.

4. Learned counsel for the petitioner submitted that, in the advertisement published by respondent No.2, one post of Junior Engineer (Civil) was shown as reserved for visually impaired candidate. Therefore, the respondent cannot change its stand by submitting that no post for visually impaired candidate was reserved for the cadre of Junior Engineer (Civil). He placed reliance on **K. Manjusree Vs. State of A.P. & anr.** reported in **[2008 AIR SCC 512]**, **Hemani Malhotra Vs. High Court of Delhi [Writ Petition (Civil) No.490 of 2007]** decided by the Supreme Court and **Ramesh Kumar Vs. High Court of Delhi & anr. [Writ Petition (Civil) 57 of 2008] (Supreme Court).**

5. Learned A.G.P. for respondent No.1 submitted that the petitioner falls in the category of Low Vision (LV) impairment and as per Government Resolution dated 14.1.2011, for the post of Junior Engineer (Civil), reservation is provided only for One Leg (OL), One Arm (OA) and Hearing Handicapped (HH)

candidate and in that Government Resolution, there is no mention of Visually Impaired category for the post of Junior Engineer (Civil). Therefore, though in the advertisement one post is inadvertently shown as reserved for 'visually impaired' candidate, at the time of scrutiny, the District Selection Committee noticed that the petitioner did not fall in the required category of reservation provided for handicapped person. For that reason only, the selection of petitioner was cancelled. Learned A.G.P. has placed reliance on **S. Renuka & ors. Vs. State of A.P. & anr.** reported in **[AIR 2002 SC 1523]**.

6. No doubt, in the advertisement published by respondent No.2 on 10.5.2013 one post of Junior Engineer (Civil) is shown as reserved for 'visually impaired' candidate. However, as pointed out by learned counsel for respondents, in the Government Resolution dated 14.1.2011, it is specifically mentioned that for the post of Junior Engineer (Civil) reservation is provided only for OL (One Leg), OA (One Arm) and HH (Hearing Handicapped) candidate. Thus, obviously, the petitioner does not fall in the category of Handicapped persons for whom one post of Junior Engineer (Civil) is reserved by the Government. In the circumstances, selection of the petitioner for the post of Junior Engineer (Civil), reserved for handicapped candidate with specific impairment of specific category OL (One

Leg), OA (One Arm) and HH (Hearing Handicapped) is contrary to the policy of reservation prescribed by the Government under Government Resolution dated 14.1.2011. In the circumstances, only because in the advertisement inadvertently one post of Junior Engineer (Civil) is shown as reserved for visually impaired candidate, the petitioner cannot claim that post, which is not reserved for that category of impairment.

7. In the similar circumstances, Apex Court, in "S. Renuka & ors. Vs. State of A.P. & anr." (supra) observed in para No.7 as under :

"8. It is settled law that no right accrues to a person merely because a person is selected and his or her name is put on a panel. The petitioners have no right to claim an appointment. Even otherwise, the selection was contrary to the rules in force at that time. There could not be 100% reservation for women. Also the reservation policy had not been adhered to. The posts which are created are posts of District and Sessions Judge, Grade II. There is no separate posts for Judges of Family Courts and Mahila Courts. Thus, the petitioners could not be appointed as Judges of Family Courts and Mahila Courts in ex-cadre posts even provisionally. This would amount to creation of Ex-cadre posts not sanctioned by the Government. No fault can be found with the High Court being in favour of not appointing the petitioners."

8. The ratio of this case is squarely applicable in the case at hand due to identical facts and circumstances. On the other hand, the cases "K. Manjusree Vs. State of A.P. & anr."

(supra) "Hemani Malhotra Vs. High Court of Delhi" (supra) and "Ramesh Kumar Vs. High Court of Delhi & anr." (supra) are distinguishable on facts.

9. In the result, the order passed by respondent No.2 regarding cancellation of selection of petitioner for the reason that petitioner being visually impaired candidate, does not fall in the category of impairment for which one post of Junior Engineer (Civil) was reserved, is absolutely correct, proper and needs no interference. We hold that, this petition being devoid of merits, deserves to be dismissed. Hence, we pass the following order:-

ORDER

- (i) Writ Petition No.9872/2013 is dismissed.
- (ii) No order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

fmp/