

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

WRIT PETITION NO.14937 OF 2017

Bharati d/o Barku Khairnar.

Petitioner.

Versus

The State of Maharashtra and others.

Respondents.

Mr. V.B. Wagh and Shriniwas Wagh, Advocate for the petitioner.

Mr. K.N. Lokhande, A.G.P. for the State.

Mr. A.S. Hoge Patil, Advocate for respondent No.3.

**CORAM : S.V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

Dated : 9th July, 2018.

FINAL ORDER :-

. Mr. Wagh, learned Counsel for the petitioner submits that pursuant to the advertisement for the post of 'Aarogya Sevika Mahila', the petitioner had applied from physically handicapped (one leg) category. The petitioner is partially deaf to the extent of 47 %. Learned Counsel submits that the respondents were duty bound to apply Section 36 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 wherein if the candidate is not available, then the same is

interchangeable. The petitioner had filed Writ Petition No.1397 of 2015. The Division Bench of this Court, under order dated 17.02.2016 directed the respondents to consider case of the petitioner in the current advertisement. The respondents have not considered the same.

2. Learned Counsel for respondent No.3 submits that in fact the Selection Board has been disbanded by the Government and the posts were to be filled in at the level of the Government. However, subsequently the Government Resolution is issued on 2nd July 2018 whereby now the advertisement is directed to be issued by 31st July 2018. According to the learned Counsel, as per the Government Resolution dated 14.01.2011, reservation from the handicapped category for the post of Arogya Sevika Mahila is available only to a person with handicapped of one leg and the same cannot be interchangeable. Learned A.G.P. also adopts the argument of learned Counsel for respondent No.3.

3. We have considered the submissions. In the year 2014 and in the year 2015 advertisements were issued by the respondents for filling in the post of Arogya Sevika Female. The posts were also reserved for disabled person having disability of one

leg. The respondents did not get any candidate. Petitioner approached this Court by filing Writ Petition No.1397 of 2015. This Court under order dated 17.02.2016 observed thus :

“In that view of the matter, since the recruitment process which was undertaken has been already completed by the respondents, we are not inclined to entertain the petition. However, in case the District Selection Committee issues an advertisement for recruitment for the current year, and if the candidate from the aforesaid category, i.e. “Apang” (handicapped by one leg) is not available in earlier recruitment process, it is incumbent upon respondent Nos.2 and 3 to invoke the provisions of Section 36 of the said Act, and advertise the said post and in case a suitable person with disability is not available, follow the process of interchange among the three categories, including the category from which petitioner has applied”.

4. The aforesaid order is accepted by all the parties. It is further not disputed that after the order is passed by the Court, no fresh advertisement has been issued. In view of that, now whenever the fresh advertisement would be issued, the respondents would be bound by the order of this Court referred to supra.

5. In light of that, as it is already stated that fresh advertisement would be issued by 31st July 2018, the case of the petitioner shall be considered in tune with the observations made by

this Court in Writ Petition No. 1397 of 2015 decided on 17.02.2016.

6. With these observations, Writ Petition is disposed of. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

vdd/