

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

112 WRIT PETITION NO. 14113 OF 2017

SHRI AMBAJI DILIP JADHAV AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr.Chalak Amol B.
AGP for Respondent Nos 1 to 3 : Mr.N.T. Bhagat
Advocate for Respondent Nos 4 & 5 : Mr. Bajaj Anil S.

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

DATE : AUGUST 6, 2018

O R D E R :

Mr. Chalak, learned counsel submits that all these petitioners applied for benefit of reservation of Maratha caste.

2. Advertisement was issued in August, 2014 and pursuant to it the petitioners had applied. The learned counsel submits that on the date when the applications were given pursuant to the advertisement, the petitioners had applied for getting caste certificates of Maratha caste. Their applications were

pending. The petitioners had to state in the application that they are possessing the necessary certificates, as unless and until applications contain the statement that they possess necessary caste certificate and non creamy layer certificate the applications could not have been accepted.

3. The learned counsel submits that after the stay granted by this Court at the Principal Seat at Bombay to the Maratha reservation in November, 2014, subsequently caste certificates were not issued.

4. The learned counsel submits that the Court passed interim order that the candidates who had applied for benefits to Maratha reservation should be given first appointment for eleven months and subsequently their appointments would be pursuant to the interim orders of the Court.

5. The learned counsel submits that even otherwise the petitioners secured more marks on merits and they can be considered from open category. The learned counsel to buttress the submissions relied upon the judgment of the Division Bench of Delhi High Court in the case of **Hari Singh vs Staff Selection Commission and another**, reported in **2010 (116) DRJ 668**.

6. According to the learned counsel, if posts are vacant the respondent can consider the petitioners on vacant posts. The candidates who had applied from ESBC category and similarly situated, as the present petitioners, have subsequently been appointed.

7. Mr. Bajaj, learned counsel for respondents submits that petitioners had made wrong statement in the applications. In the applications they represented that they possessed caste certificates

and also non creamy layer certificates. In fact, they were not possessing the required certificates and it was specifically stated in the advertisement that in case wrong statement is made in the application, application is liable to be rejected. The petitioners have made wrong statement. Learned counsel further submits that appointments are given considering the orders passed by this court for a period of 11 months only. If petitioners would have produced caste certificates and non creamy layer certificates they would have been considered.

8. We have considered submissions canvassed by learned counsel of respective parties. We have also gone through the applications filed by the petitioners pursuant to the advertisement. In the applications the petitioners have made statement that they possess necessary caste certificates and non creamy layer certificates. The statement of the petitioners is erroneous. Admittedly on the date of

application, petitioners did not possess caste certificate nor possessed non creamy layer certificate. It is submitted by petitioners that they had applied for caste certificates. The petitioner could not have got caste certificates after November, 2014 i.e. the date when this Court stayed the policy decision of the Government of giving reservation to the Maratha community.

9. In absence of certificates of caste, so also non creamy layer certificates the petitioners did not satisfy minimum requirements to accept their forms in ESBC category. The anomalous situation arises because subsequently stay has been granted by this court and thereafter caste certificates could not have been issued to the petitioners.

10. We would have considered the case of the petitioners if the petitioners had produced caste certificate and necessary directions could have been

given to consider the case of the petitioners.

11. At the first instance, the petitioners made wrong statement in the application that they are possessing caste certificates and non creamy layer certificates. However, in fact, the petitioners did not possess either of the certificates. On this count itself case of the petitioners cannot be considered. Even otherwise subsequently also petitioners could not produce caste certificates or non creamy layer certificates.

12. Considering the above, it would not be possible for us to give directions to the respondents in this regard, however, if respondents are inclined to consider case of the petitioner, they may do so.

13. Writ petition accordingly disposed of. No costs.

[SUNIL K.KOTWAL, J.] [S.V.GANGAPURWALA, J.]
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