

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5810 OF 2012

Mr.Vikas Chandrakant Sale ...Petitioner
V/s.
Satara maratha Vidya Prasarak Samaj & Ors. ...Respondents

Mr.Kumud A. Bhatia for the Petitioner.

Mr.V.A. Shastry for Respondent Nos.1 and 2.

Ms.S.D. Vyas 'B' Panel counsel for Respondent Nos.3 to 5.

**CORAM : S.C. DHARMADHIKARI &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 10th DECEMBER 2018

P.C.:

1. By this petition under Article 226 of the Constitution of India the petitioner claims that he should have been appointed as a full time teacher in History with all consequential benefits.

2. It is not disputed that this very petitioner filed a Writ Petition, being Writ Petition No.10476 of 2011, claiming same relief.

3. On 24.02.2012 on the agreement of the petitioner, this Court disposed of that petition with a direction to the Directorate of

Secondary and Higher Secondary Education, Government of Maharashtra, Pune to consider his grievance and render a decision.

4. That decision is now rendered and the petitioner is aggrieved thereby. Thus, this is a second writ petition, on the same cause of action, to challenge the order dated 25.04.2012.

5. Ms.Bhatia appearing in support of this petition would not deny that the petitioner is a post-graduate in History, with Bachelor of Education in the same subject, M.Phil in First Class Journalism. The petitioner belongs to Scheduled Caste. He was appointed in the Arts and Commerce College, Satara, not in the degree College, but in the Junior College from 01.04.2004. His appointment was as a part-time teacher in History. The appointment was made from year to year.

6. Presently, the petitioner is not working, but complains that because he brought a litigation repeatedly that the Management has deliberately and intentionally overlooked him.

7. The petitioner also does not dispute that in the junior college, the sanctioned posts are arranged as follows. One of the

teaching post was kept reserved for Scheduled Caste candidate, one for Scheduled Tribe and one for VJNT and one for Other Backward Class. Apart from these four posts, 4 others are kept open. That is how a balance is struck and the eight posts of teachers, duly sanctioned have to be filled in.

8. It is common ground that the Management initially reserved for the Scheduled Tribe a post in English subject. No candidate from that category was available to fill in that post. However, one Mr.S.Y. Boye a Scheduled Caste candidate applied for being appointed as a teacher in English. However, he did not attend the interview to fill up that post held on 29.09.2011. Later on he came and met the principal. Thus, the backlog for the Schedule Tribe remained because no appointment was made. Once the Management was confronted with such a situation then it worked out the roster by keeping the 8 posts, in the forefront. Out of these eight posts, in one post a teacher teaching History retired on 30.09.2011. One fulltime History teacher's post become available and it was vacant from 01.10.2011. That post was then reserved for Scheduled Tribe candidate. The complaint is that the reservation for this category was shifted from English subject to History. The English subject teacher's post was kept for Open category

candidates.

9. If the petitioner is indeed working from 2004 as a part-time teacher now the workload for full time History teacher is available, then, the petitioner should have been considered is the grievance before us. Ms.Bhatia says that even if the post is reserved and to be filled by Scheduled Tribe candidate but in the event such candidate is not available, the petitioner can be considered and this Court is not precluded from granting this relief even if the same could have been claimed earlier. This Court should not take a hypertechnical view that such relief is deemed to have been refused.

10. After considering the rival contentions we cannot find any fault with the view taken by the Director. We have proceeded on the basis of the records. He has not taken an extreme stand and allowed the Management to defeat the reservation policy. He has, within the frame work of the Rules, operated the policy, but for the benefit of the reserved or backward category candidates. The Director has ensured that their claims are not overlooked.

11. When we asked Mr.Shastry as to what was happened after the order of the Director, any appointment was made as a full

time History teacher by selecting a candidate from the Scheduled Tribe Category, he says that after the Director's order and as impugned in the Writ Petition was passed, the Government of Maharashtra imposed a Ban on the recruitment. That has been operative from May 2012. The ban is likely to be relaxed, but periodically.

12. On such statement being made, we are of the view that this writ petition can be disposed of by observing that in the event the ban is relaxed and the post of full time History teacher as sanctioned and approved is advertised, then, let the petitioner who has already served the institution also apply. In the event the petitioner applies but there is no eligible Scheduled Tribe Candidate available to fill in the said post, then, together with the other candidates of the Scheduled Caste category, the petitioner's claim be also considered. In the event the petitioner succeeds, then, the appointment order can be issued subject to the availability of the Scheduled Tribe category candidate in future. In the event such candidate becomes available for being considered, the petitioner will have to forego his claim.

13. We cannot entertain a second petition on the same

cause of action and now grant any substantive relief. Beyond observing as above, we do not think the petition merits further consideration. The Writ Petition is therefore, disposed of in above terms. There shall be no order as to costs.

(SMT.BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI,J.)