

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

WRIT PETITION NO.3355 OF 2010

Bhausahab s/o Dadarao Salunke ... PETITIONER

VERSUS

Sambhaji s/o Sahebrao Chavan
and others ... RESPONDENTS

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Shri Rajendra Deshmukh, Advocate for petitioner
Shri V.D. Gunale, Advocate for respondent No.1
Shri S.G. Karlekar, A.G.P. for respondents No.2 to 4
Shri S.K. Shinde, Advocate for respondent No.5

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**CORAM: PRADEEP NANDRAJOG, CJ &
R.G. AVACHAT, J.**

DATE: 25th September, 2019

PER COURT :

1. Yesterday we had disposed of Writ Petition No.3328/2010 filed by Vitthal s/o Sukhdeo Rokade noting that vide order dated 5.4.2010 Original Application filed by Sambhaji Chavan had been allowed and appointment of the instant

petitioner and the writ petitioner of Writ Petition No.3328/2010 for the post of Surveyor/ Clerk-cum-Typist had been set aside. The two gentlemen had been appointed in the category reserved for an Ex-serviceman. The contention of Sambhaji Chavan was that, having a well benefit of Ex-serviceman and appointed to a Civil post, the two could not be treated as Ex-serviceman. The Tribunal had agreed and the appointment of the two had been invalidated but the applicant i.e. Sambhaji had not been granted the relief. The relief was that after removing the name of two gentlemen from the list of eligible candidates in view of the merit position the more meritorious one would be granted appointment.

2. While deciding Writ Petition No.3328/2010, we had noted the letter of appointment issued to Vitthal Rokade as a Forest Guard and had noted that he was appointed temporarily on a temporary post which was liable to be abolished any time. We had held that the Government Resolution denuding Ex-servicemen the benefit of a Ex-serviceman would be a Civil post held was on confirmed basis against a sanctioned permanent post.

3. As regards the petitioner, his letter offering

appointment shows that he was appointed as a Police Constable on temporary basis against a permanent post. The temporary appointment was for the reason confirmation had to follow on completing two years probation.

4. Thus, the petitioner would be a Civil servant holding the post of a Police Constable on temporary basis till he was confirmed and it could be arguable whether such Government servant can be held to be holding a Civil post.

5. We are not deciding the said question and we leave it open for the reason the post which the petitioner and the first respondent fight for can be held by the incumbent till he attains the age of 58 years.

6. When the Original Application was filed by Sambhaji Chavan he was 45 years. The petitioner was 39 years. The petitioner as of today would be 50 years and Sambhaji 56 years. On the strength of interim orders, the petitioner has continued to discharge duty as a Surveyor/ Clerk-cum-Typist. Even if the petition was to be dismissed, Sambhaji Chavan would not get the

job unless persons above him in the merit list refuse to join.

Thus equality is in favour of the petitioner,

7. Leaving the question as stated above open, we dispose of the petition quashing the impugned order dated 5.4.2010 insofar as the petitioner's appointment has been invalided.

8. Rule made absolute in above terms.

(R.G. AVACHAT, J.)

CHIEF JUSTICE

fmp/-