

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

**REVIEW APPLICATION STAMP NO. 13466 OF 2019
IN
WRIT PETITION NO. 8282 OF 2018**

The State of Maharashtra and others .. Applicants

Versus

Sayyad Asad Sayyad Nizam .. Respondent

Shri S. B. Yawalkar, Addl. G. P. for Applicants.

Shri A. S. Deshmukh, Advocate for the Respondent.

**CORAM : S. V. GANGAPURWALA AND
R. G. AVACHAT, JJ.**

DATE : 08TH NOVEMBER, 2019.

FINAL ORDER :

. Mr. Yawalkar, the learned Additional Government Pleader for applicants submits that, as this Court while passing the order under review did not consider Clause 12 of the Circular dated 20.01.2016, present review application is maintainable. The wait list is in force only for a period of one year and if a person resigns from the post, wait listed candidate cannot be considered on the said post. According to the learned Addl. G. P., the non applicant was down in the wait list. The persons more meritorious to the petitioner were appointed. If candidates in horizontal reservation are considered, said post would not be available to the non applicant . The learned Addl. G. P. relies on the judgment of the Division Bench of this Court dated 08th August,

2019 in Writ Petition No. 4159 of 2018.

2. Mr. Deshmukh, the learned counsel for the non applicant supports the order.

3. We had observed that, after the selection process was conducted posts were increased. There were eight posts meant for open category. Out of these eight posts, two were reserved for open (Woman) and one post was reserved for open (Ex-serviceman) category. Present non applicant filled in form from O.B.C. category. We had considered that, one Mahajan was considered from open (Ex-serviceman) category, still there would be four posts of open (General) category are filled in. Jagannath Mali had applied from O. B. C. (Ex-serviceman) category. A person having applied from horizontal reservation cannot jump over the social reservation and he could not have been considered from open (Ex-serviceman) category. No person from open (Ex-serviceman) category was appointed, and if there is no eligible candidate for horizontal reservation in open category. Said post would go back to the open (General) category. We had observed that, in fact, the non applicant ought to have been appointed on the vacant post, as the non applicant was at Sr. No. 2 in the wait list. Out of five Open (General) posts, three were filled in. A candidate from wait list of O. B. C. was also issued with the appointment order. However, only with a view that the petitioner should not displace

other candidates, in equity, we had directed that the respondents shall not undo the appointments which are already made from the respective categories. It was further observed that, the respondents shall issue appointment to the original writ petitioner as and when in future vacancy is available for open category.

4. We do not find any error apparent on the face of record. The review application as such is rejected.

[R. G. AVACHAT, J.]

[S. V. GANGAPURWALA, J.]

bsb/Nov. 19