

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 11571 OF 2015

Jagadish s/o. Dinkar Ingale

....Petitioner.

Versus

The State of Maharashtra & Ors.

....Respondents.

Mr. P.V. Balkhande, Advocate for petitioner.

Mr. P.N. Kutti, AGP for respondent Nos. 1 & 5.

Mr. S.D. Dhongde, Advocate for respondent No. 4.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**

DATED : 06/03/2019

ORDER :

1) The petition is filed for giving direction to respondent, Irrigation Department to give appointment to the petitioner on proper post as per his qualification which may be 'C' and 'D' category post. Both the sides are heard.

2) It is the case of petitioner that he is project affected person as his land was acquired for public purpose in the year 1992. It is his contention that writ petition was filed in this Court and directions were given by this Court to give posting to the project affected persons and in view of that direction, posts were actually given to many project affected candidates. It is contended that his

name was also there in the list prepared in the year 2009 and he was expected to get appointment on 30.7.2009 on the post of Storekeeper. It is contended that as the post was not given to him, he made representation on 28.5.2010 and at that time, many vacant posts were available with respondent department. It is contended that the branches of the office had informed that they had no objection to give appointment to the petitioner, but no appointment is given to him.

3) The learned counsel for petitioner took this Court through the communication dated 6.10.2010 of Superintending Engineer, Irrigation Department, Jalgaon and also the communication dated 29.11.2010 made with the Secretary of the department. He took this Court through some appointment orders including the appointment order issued in his favour in March 2009. But that record is not consistent with his case that no appointment was given to him. It appears that applications were taken from him and they were processed.

4) The various Governments Resolutions (G.Rs.) issued on the point involved show that in the past, there was scheme of the Government to give such appointments and then in Writ Petition No. 7472/2007 by order dated 31.3.2008, direction was given by the

High Court to the Government to see that as per the seniority list, wait list, appointment can be given to the project affected persons and they were not expected to compete with open category candidates. Copy of that decision is produced on record. Subsequently, larger bench was constituted to consider this matter and three matters like Writ Petition No. 5266/2008, 6100/2008 and 7185/2008 were heard together by Full Bench and direction was given by this Court that without advertising the posts and without making necessary scrutiny by holding recruitment test, the recruitment cannot be made. In accordance with this decision, G.R. was issued on 27.10.2009. One more decision was taken and the percentage of reservation for project affected persons was to be implemented by way of giving horizontal representation and 2% reservation was to be given to earthquake affected persons which was also horizontal and the reservation given to project affected and also earthquake affected persons which was given inside of the reservation for projected affected persons was deleted from that category. Thus, it was made clear that only by giving open advertisement, the recruitment will be made. On this point, there cannot be any dispute. In view of the provisions of Articles 14, 16 and 309 of Constitution of India, all the regular persons of every category need to be given opportunity when the post in Government Department or Semi-Government Department are available. In view

of these circumstances, this Court holds that direction cannot be given in favour of the petitioner and petitioner cannot be absorbed directly without facing due process for recruitment. In the result, the petition stands dismissed.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

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