

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10474 OF 2016

SUBHASH SHANKAR SONWANE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Khade Kishor D.
AGP for Respondents No. 1 & 2 : Mr. Y. G. Gujrathi
Advocate for Respondent No. 3 :
Mr. P. D. Suryawanshi
Advocate for Respondent No. 4 :
Mr. M. L. Dharashive
Respondents No. 6 and 7 - served

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CORAM: S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.

DATE: 04th APRIL, 2019

PER COURT :

1. The petitioner assails order dated 02.08.2016 passed in Writ Petition NO. 1309 of 2016, so also, seeks further relief challenging the selection list for the post of Arogya Sevak.

2. Amongst various candidates the petitioner and respondents no. 4 to 7 appeared for the post of Arogya Sevak (Male) pursuant to the advertisement dated 02.11.2015. All these persons applied for

the post of Arogya Sevak (Male) from Physically Handicapped category. One post was reserved for Deaf and Dumb candidate. All these persons except respondent no. 7 were from Deaf and Dumb category. Respondent no. 7 was from SC (General) category.

3. The Select List was prepared. The petitioner secured 104 marks. Respondent no. 4 / Balaji secured 90 marks, Respondent no. 5 / Satish secured 144 marks, Respondent no. 6 / Vilash secured 106 marks. Respondent no. 7 / Vikas was from SC (General) category. He has secured 154 marks.

4. From SC one post was meant for Deaf and Dumb and one for Low Vision. Naturally, one post in SC is reserved for Deaf and Dumb and for low vision. The post for SC Physically Handicapped, could not have been filled in from SC (General) category. Horizontal reservation will have to be adhered to. It appears that present respondent no. 4 filed writ petition bearing no. 1309 of 2016 challenging the appointment of present respondent

no. 7 as present respondent no. 7 was not from Physically Handicapped category. This Court under its judgment and order dated 02.08.2016 allowed the writ petition holding that 3% reservation for appointment of Class - III and Class - IV posts was not followed. A person from the Physically Handicapped category was not appointed but a person from SC (General) category was appointed. This Court after considering the fact that the petitioner / Balaji, in Writ Petition No. 1309 of 2016 belongs to Physically Handicapped category (Deaf and Dumb) and the respondent therein Vikas Bhagwanrao Dongare did not belong to the Physically Handicapped category he could have been appointed for the post reserved for Physically Handicapped category, allowed the writ petition and directed the Zilla Parishad to issue letter in favour of the petitioner therein i.e. Balaji Vithalrao Savalkar (present respondent no. 4).

5. We have heard Mr. Khade, learned counsel for the petitioner, Mr. Dharashive, learned counsel

for the respondent no. 4, Mr. Suryawanshi, learned counsel for respondent no. 3. The other respondents are served.

6. It is not disputed that all these petitioner and respondents belong to SC category. The horizontal reservation has to be considered in the respective social reservations. For the post reserved for SC category one post was to be filled in from a person who is Deaf and Dumb and one post from a person possessing the low vision. All these persons are from Deaf and Dumb category except respondent no. 7. The filling of one post reserved for Physically Handicapped (Deaf and Dumb) from SC will be amongst the petitioner and respondents no. 4 to 6 and the one who has secured maximum marks after satisfying all other criteria will have to be selected. It is not disputed by any of the parties that the petitioner herein has secured 104 marks. Respondent no. 4 / Balaji Vithalrao Savalkar has secured 90 marks. Respondent no. 5 / Satish Eknathrao Taktode has secured 144 marks and

respondent no. 6 / Vilash Pralhad Manwar has secured 106 marks. There are two persons above the petitioner in the same. Naturally, the respondent no. 4 is below the petitioner herein.

7. It appears that it was not brought to the notice of the Court dealing with Writ Petition No. 1309 of 2016 that there are three more candidates above the petitioner therein in merit from Physically Handicapped (Deaf and Dumb) category. In absence thereto, this Court under order dated 02.08.2016 in Writ Petition No. 1309 of 2016 gave directions to appoint the petitioner therein (present respondent no. 4). On merits, respondent no. 4 certainly could not have been considered for appointment as more meritorious candidates are required to be selected.

8. The contention of Mr. Dharashive, learned counsel for respondent no. 4 that this Court had allowed the writ petition and now this Court cannot consider the said judgment is not countenanced by law. In the earlier writ petition,

the fact of more meritorious candidates in the fray than present respondent no. 4 in the fray was not brought to the notice of the Court. However such an order certainly would not have been passed if this fact of more meritorious candidates in the list would have been brought to the notice of the Court. It was the duty of respondent no. 4 (petitioner in writ petition no. 1309 of 2016) to bring it to the notice of the Court deciding writ petition no. 1309 of 2016 that more meritorious candidates than him are in the select list such a suppression amounts to fraud and that Court can examine the same.

9. Neither the present petitioner nor respondents no. 5 and 6 were parties in the said writ petition no. 1309 of 2016, so as to bind them of the judgment in Writ Petition No. 1309 of 2016.

10. Considering the above, we set aside the judgment dated 02.08.2016 passed in Writ Petition No. 1309 of 2016 to the extent of directing the petitioner therein (present respondent no. 4) to

be given appointment. The other part of the order setting aside the selection of the present respondent no. 7 herein needs no interference. In view of the above, it is made clear that the directions given to appoint the present respondent no. 4 on the post of SC Physically Handicapped (Deaf and Dumb) category is to that extent set aside and recalled.

11. The Zilla Parishad shall appoint a person meritorious as per the select list on the post of Physically Handicapped (Deaf and Dumb) i.e. SC. The first offer will have to be given to respondent no. 5 / Satish Eknathrao Taktode who has secured 144 marks. If he does not join the post within a period of seven days from issuing communication to him then next offer shall be given to respondent no. 6 / Vilash Pralhad Manwar who has secured 106 marks. If he does not join within seven days of the communication then offer shall be given to the petitioner for the said post.

12. Writ Petition is allowed accordingly. No costs.

[A. M. DHAVAL, J.] [S. V. GANGAPURWALA, J.]

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