

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

WRIT PETITION NO.11682 OF 2015

Manoj s/o Chintaman Chaudhari .. Petitioner

Versus

The State of Maharashtra and ors. .. Respondents

Mr P.V. Balkhande, Advocate for petitioner

Mr P.S. Patil, A.G.P. for respondents no. 1 and 4

Mr S.D. Dhongade, Advocate for respondent no.3

**CORAM : PRASANNA B. VARALE
AND R.G. AVACHAT, JJ.**

DATE : 21.6.2019

PER COURT :

1. Heard learned Counsel appearing for the petitioner, learned A.G.P. for respondents no.1 and 4 and Mr Dhongade, learned Counsel for respondent no.3.

2. With the consent of learned Counsel for the parties, petition is taken up for final disposal at admission stage.

3. The petitioner prays for issuance of directions to appoint the petitioner on the post of 'C' and 'D' category as per his qualifications. Our attention was invited to the documents placed on record to submit that the petitioner is a member in the family of project affected

persons and entitled to claim appointment as per the government policy. Our attention was also invited to the documents placed on record to show that the academic qualification of the petitioner is H.S.C. and having Certificate in gardening (Mali) Training, issued by Yashwantrao Chavan Maharashtra Open University, Nashik. A copy of certificate is also placed on record to show that the petitioner successfully completed certificate course known as 'MS-CIT'.

4. The learned Counsel for the petitioner then invited our attention to the copy of the waiting list prepared by the competent authority to submit that the petitioner is at Serial No.5154 and the other person by name Amit Magan Patil is at Serial No.5171 in the waiting list. Our attention was also invited to the copy of representation submitted to respondents no.2 and 3 at the instance of one Jagdish Dinkar Ingale and a communication forwarded to the State Government to consider the case of Jagdish Ingale. It is the submission of learned Counsel that respondents no.2 and 3 were entrusted a process for filling of the post of group 'C' and 'D' category and though the petitioner was possessing the requisite qualification and was also senior to one Amit Magan Patil, the respondents no.2 and 3 selected Mr Amit Magan Patil and he was appointed. Thus, the sum and substance of submissions of learned

Counsel for the petitioner is respondents/authorities acted in an arbitrary manner. The learned Counsel then prayed for issuance of directions as sought for.

5. Learned A.G.P. as well Mr Dhongade, learned Counsel appearing for respondent no.3 vehemently opposed the petition. The learned A.G.P. invited our attention to the affidavit-in-reply and the annexures placed on record to submit that the petitioner was not possessing the requisite qualification for the appointment of group 'C' or 'D' posts.

6. It would be necessary to refer to certain statements in the affidavit-in-reply. In paragraph no.4, it is stated that the name of the petitioner is enrolled at serial no.5174 in the list of project affected persons kept in the office of District Resettlement Officer. In 2009, his qualification mentioned in the register is 10th passed and completed MS-CIT course. On 16.10.2015, he has given application and has increased his educational qualification as 12th passed & F.Y. B.A. and B.Sc. Agri. In paragraph no.5 of the affidavit-in-reply, it is stated that the petitioner has been issued project affected certificate by the office of Special Land Acquisition Officer, Minor Irrigation, Jalgaon on 3.11.1994. In paragraph no.6, it is stated that the office

of the Superintending Engineer, Irrigation Project Corporation, Jalgaon has demanded names of project affected persons for five posts in group 'C' and two posts in group 'D'.

7. It is admitted in the affidavit-in-reply that though the petitioner is senior to Mr Amit Patil, the petitioner is not fulfilling the requisite qualification, whereas Mr Amit Patil was fulfilling all the requisite norms/qualification. Our attention was also invited to the order dated 6.3.2019, passed by the Division Bench of this Court in Writ Petition no.11571 of 2015 filed by Jagdish Dinkar Ingale. While dealing with the case of Jagdish Ingale, the Division Bench of this Court considering the judicial pronouncement by Full Bench of this Court in the matter of **Rajendra Pandurang Pagare and ors. Vs. State of Maharashtra and ors., reported in 2009 (4) Bom.C.R. 928**, observed that initially, policy of the State Government was invoked to appoint the persons from the category of project affected persons and this process of appointment was providing no opportunity to the other suitable candidates including the candidates from open category to compete with the candidates belonging to project affected persons category. The Division Bench then observed that in view of provisions of Articles 14, 16 and 309 of the Constitution of India all the regular persons of every category need

to be given opportunity when the posts in Government Department or Semi-Government Departments are available. On the backdrop of the observations the Division Bench could not find any favour with the petitioner Jagdish Ingale and further observed that the petitioner could not be absorbed without facing due process for recruitment and resultantly, writ petition was dismissed.

8. Considering the above referred facts, as well as the other features which also assume some importance, are that the selection process was initiated some time in the year 2009 and the petitioner raised challenge to this selection process by filing the present writ petition in the year 2015, we are of the opinion that the petition is devoid of merits and deserves to be dismissed and same is accordingly dismissed.

(R.G. AVACHAT, J.)

(PRASANNA B. VARALE, J.)

vvr