

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12952 OF 2017

Shri Dr. Tukaram Bhikaji Bhutkar,
Age-50 years, Occu:Service,
R/o-Parbhani, Veterinary and Animal
Husbandry College, Parbhani,
Tq. & Dist-Parbhani.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Agricultural and Animal Husbandry
Department, Mantralaya, Mumbai,
- 2) Maharashtra Animal and Fishery
Sciences University, Nagpur,
Through its Vice Chancellor,
- 3) Veterinary and Animal Husbandry
College, Parbhani,
Through its Associate Dean,
- 4) Shri Amit Chandrbhan Lohakare,
Age-28 years, Occu: Service as
Live Stock Development Officer,
Nagpur, R/o-Thorane Lay Out
Near PWS College, Kalmeshwar,
Nagpur, Dist-Nagpur.

...RESPONDENTS

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Mr.Anand V. Patil(Indrale) Advocate for Petitioner
Mr.A.R. Kendre, A.G.P. for Respondent No.1
Mr.P.G. Rodge Advocate for Respondents No.2 & 3

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**CORAM: SUNIL P. DESHMUKH AND
S.M. GAVHANE, JJ.**

DATE : 20TH AUGUST, 2019

ORDER :

1. Pursuant to advertisement dated 17th July, 2014 issued by respondent No.2 calling applications, inter-alia, for the post of assistant professor for appointment in veterinary and animal husbandry extension department, petitioner who had been working as laboratory technician, filled in application, claiming to be possessing requisite educational qualification to occupy the post of assistant professor. In the selection process, the petitioner had been shown as wait listed candidate for the post of subject matter specialist. While the advertisement had been issued for the post of assistant professor, along with the post of subject matter specialist, it has been specifically referred to under the 'conditions and general instructions', only one application for the post of assistant professor/subject matter specialist/hospital registrar should be submitted giving preference in column No.38 of the application form.

2. Since after the selection process, while the wait listed assistant professor candidate did not join and the post,

according to the learned counsel for the petitioner, is vacant which had been initially reserved for economically and socially backward class category has not been filled in, the petitioner ought to have been appointed to the post of assistant professor in view of the government resolution dated 2nd December, 2015. According to learned counsel for the petitioner, there is no distinction so far as the educational qualifications for the post of assistant professor and subject matter specialist and the nature of duties are inter-changeable and therefore subject matter specialist can be accommodated in the post of assistant professor. He therefore, submits that case of the petitioner for appointment to the post of assistant professor could have been considered and therefore, writ petition be entertained and it be declared that the petitioner is selected for the post of assistant professor.

3. On the other hand, learned counsel appearing for respondents No.2 and 3 contends that assistant professor and subject matter specialist are two different posts and nature of duties are different. While the petitioner had been interviewed, while judging his suitability, while he was found suitable to the post of subject matter specialist only and not to the post of

assistant professor, and had been accordingly kept on wait list as subject matter specialist.

4. The post of assistant professor was reserved for economically and socially backward class category and same had been lying vacant and the person who had been wait listed for said post of assistant professor had not joined.

5. Over and above this, learned counsel for respondents No. 2 and 3 submits though common selection process had been undertaken for the said two posts, the posts are not interchangeable having regard to the fact that nature of duties are different. During pendency of the litigation, the post has been re-advertised and is accordingly being filled in by a fresh selection process for said post wherein the petitioner had even participated, however, could not be selected. While in the selection process the petitioner could not find place for appointment on the post of assistant professor, the petitioner is not entitled to the reliefs claimed.

6. This particular aspect is sought to be disputed by learned counsel appearing for the petitioner by submitting that

in the first place it could not be said that the post has been reserved for economically and socially backward class category and further that it would not be proper to say that the petitioner has not been selected in the selection process, as the same is still going on.

7. In the circumstances, the claim being made by the petitioner in the present petition, for appointment to the post of assistant professor does not appear to stand on a firm footing. Regard may have to be given to that even a selected candidate does not have indefeasible right to appointment. In the present case, it appears that petitioner's claim to the post of assistant professor, being wait-listed candidate for the post of subject matter specialist, at least as of now, may not have any significance, as according to learned counsel for respondents No. 2 and 3, the post which the petitioner is claiming in the present petition is stated to be being filled in by adopting fresh selection process and petitioner appears to have participated in the same.

8. Thus, the position emerges that claim under writ petition gets watered down with participation of petitioner in

selection process. Writ petition, therefore, is not being entertained and stands disposed of.

(S.M. GAVHANE, J.)

[SUNIL P. DESHMUKH, J.]

asb/AUG19