

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST) NO.98876 OF 2020

Dhananjay Ambadas Patil ...Petitioner

Versus

State of Maharashtra & Ors. ...Respondents

AND

WRIT PETITION (ST) NO.97023 OF 2020

Sanjaykumar Shashikant Kokane & Ors. ...Petitioners

Versus

State of Maharashtra ...Respondents

AND

WRIT PETITION (ST) NO.97030 OF 2020

Bhimashankar Mallinath Mitakre & Ors. ...Petitioners

Versus

State of Maharashtra & Ors. ...Respondents

AND

WRIT PETITION (ST) NO.98060 OF 2020

Chintaman Gulabrao Vanjari ...Petitioner

Versus

State of Maharashtra ...Respondents

AND
WRIT PETITION (ST) NO.13058 OF 2018
WITH
INTERIM APPLICATION NOS.3798 TO 3800 OF 2020

Bholaso s/o Vitthal @ Vithu Chaugule ...Petitioner

Versus

State of Maharashtra ...Respondents

AND
WRIT PETITION NO.10955 OF 2016

Rajesh Bhanudas Andhale ...Petitioner

Versus

State of Maharashtra ...Respondents

Mr. Sugandh B. Deshmukh for the Petitioners in WP(ST) No.97023/2020, 97030/2020, 98060/2020 and 10955/2016.

Mr. Mahendra Shingade for the Petitioner in WP No.98876/2020.

Mr. Vinod Sangvikar a/w. Ms. Vaishnavi Gholave for the Petitioner in Writ Petition No.13058/2018.

Mr. Balasaheb Deshmukh for the Applicant in IA Nos.3798/2020 and 3799/2020.

Mr. A. M. Kulkarni 'A' Panel Counsel a/w. Ms. Ashwini A. Purav, AGP for the State in WP No.13058/2018.

Mr. A. M. Kulkarni, 'A' Panel Counsel a/w Mr. A. A. Alaspurkar, AGP for the State in WP No.10955/2016.

Mr. N. K. Rajpurohit, AGP for the State in WPST Nos.98876/2020, 97023/2020, 97030/20 and WP ST No.98060/2020.

**CORAM : NITIN JAMDAR &
MILIND JADHAV, JJ.**

DATE : 5 JANUARY 2021.

P.C.:

. Heard the learned Counsel for the parties.

2. In all these petitions, the Petitioners are claiming their right of promotion under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 as being physically challenged.

3. On 3 November 2020, we had passed an order regarding two of these petitions (Writ Petition No.13058 of 2018 and Writ Petition No.10995 of 2006) as under:

“ Heard learned Counsel for the parties.

2. In Writ Petition No. 10955 of 2016, the Petitioner is visually challenged with over 40% disability. The Petitioner is working as Extension Officer (Education), Class III, Grade II with the Respondent – Zilla Parishad, Ratnagiri. The Petitioner sought promotion to the post of Assistant Block Development Officer, Grade II, Group B, which was denied. The Petitioner filed a Writ Petition which was disposed of on 14 July 2015, directing the Authorities to consider his representation. The Authority rejected his request for promotion on the ground that since the Petitioner is seeking promotion under the category of physically challenged, there were no Rules or Government Resolutions which permit reservation in

promotion. The Petitioner's representation was rejected on 23 March 2016. The Petitioner filed the present Petition on 20 July 2016, and it is pending. The Petitioner, by this Petition, has prayed for suitable directions regarding his promotion.

3. In Writ Petition No. 13058 of 2018 the Petitioner is working as a Sectional Engineer in the Irrigation Department of State of Maharashtra. The Petitioner is physically challenged with 58% disability. The Petitioner sought promotion to the post of sub-Divisional Officer, which was denied to the Petitioner on the ground that there is no reservation under the Act of 2016 to promotional vacancies. The Petitioner is due to retire on superannuation on 31 May 2021.

4. The Petitioner In Writ Petition No. 13058 of 2018 moved a praecipe on 7 September 2020. Both the Petitions were tagged together. On 15 September 2020, we passed the following order:-

“ The hearing of this petition was deferred by order passed on 30 January 2019 in view of the pendency of the Reference to the larger bench made in the Supreme Court on the subject matter. The learned Counsel for the Petitioner states that the decision has now been rendered by the Supreme Court. The learned AGP seeks time to take instructions. Stand over to 29 September 2020.”

When the Petition came up on board on 29 September 2020, we passed the following order:-

“Heard.

2. On 15 September 2020, the following order was passed :

“ The hearing of this petition was deferred by

order passed on 30 January 2019 in view of the pendency of the Reference to the larger bench made in the Supreme Court on the subject matter. The learned Counsel for the Petitioner states that the decision has now been rendered by the Supreme Court. The learned AGP seeks time to take instructions. Stand over to 29 September 2020.”

3. Learned AGP States that she had received instructions to take time of six weeks to file reply affidavit.

4. In the present case, a decision on the position of law has been rendered by the Apex Court. This decision, therefore, will have to be considered by the State Government as regards the implementation of the position of law as declared. For that purpose, modalities will have to be worked out. The office of the Government Pleader will place the file of this matter along with the decision of the Supreme Court rendered on 15 January 2020 before the Principal Secretary, General Administration Department, Government of Maharashtra so that the stand of the State is made clear on the next date.

5. Stand over to 27 October 2020.”

The reply affidavit filed by the Deputy Secretary, Water Resources Department, Mumbai dated 26 October 2020 was taken on record. It is informed that the proposal for providing the reservation in promotion belonging to Group A and Group B (Physically Challenged) is submitted to the Government for placing it before the Cabinet Government for approval.

5. Both these Petitions were pending since the issue was referred to the larger bench in the case of Rajiv Kumar

Gupta along with the Review Petition. The Supreme Court has now settled the issue in the case of Siddharaju v/s. State of Karnataka. The view taken in the case of Rajiv Kumar Gupta is affirmed.

6. Petitioners have filed the additional affidavits placing on record that the Respondent – State is proceeding to fill in the promotional post by initiating the promotion process. In Writ Petition No. 10995 of 2016 the Petitioner has asserted as under:-

“ I say that the process for the purpose of appointment by promotion on the B group post is initiated by the Deputy Commissioner (Administration) Konkan Region, Navi Mumbai and written letter to the Chief Executive Officer, Zilla Parishad, Thane Palghar, Raigad, Ratnagiri, Sindhudurg dated 07.09.2020. True copy of the letter dated 07.09.2020 is enclosed herewith and is marked as EXHIBIT-B.”

In Writ Petition No. 13058 of 2018 the Petitioner has asserted as under:-

“ I say that, in spite of being aware of the law laid down by the Hon’ble Supreme Court, the Respondent No.1 issued the notification on 21.10.2020 thereby calling options from their selected officer for the promotion on the post of the Sub-Divisional Officer. Hereto annexed and marked as Exhibit “R-6” is the copy of the Government Notification dated 21.10.2020.”

7. The learned AGP states that the matter is pending for consideration before the Cabinet for taking a further decision and seeks six weeks.

8. The Petitions were pending only because a reference to the larger bench was pending before the Supreme Court on the issue. The same has been decided in favour of the

Petitioners by the decision in the case of Siddaraju. The Respondent State is bound by this decision. The matter is now stated to be placed before the Cabinet. This would be for working out modalities. However, if the promotion process continues, it would infringe the rights of the Petitioners, physically challenged, now recognized by the Supreme Court. While acceding to the request of the learned A.G.P for adjournment, it would be necessary, to avoid further complications to pass orders that the promotion process regarding the Petitioner's claims are not taken forward till the State Government takes appropriate action.

9. As and by way of an interim order in Writ Petition No. 10955 of 2016, we direct that the process of appointment by promotion to Group-B post initiated by the Deputy Commissioner (Administration) Konkan Region for the post of Assistant Block Officer shall not be finalized till further orders passed in this Petition.

10. Writ Petition No. 13058 of 2018, as and by way of an interim order we direct that the process for selecting officers for the promotion to the post of Sub-Divisional Officer in the Irrigation Department, State of Maharashtra shall not be finalized till further orders.

11. List both these Writ Petitions after six weeks i.e. on 15 December 2020.

12. This order will be digitally signed by the Personal Assistant/ Private Secretary of this Court. All concerned to act on production by fax or email of a digitally signed copy of this order.”

4. Later on 15 December 2020, we had passed an order in Writ Petition (ST) Nos.97023 of 2020, 97030 of 2020 and 98060 of 2020 as follows:

“In W.P. No.10955 of 2016 and W.P. No.13058 of 2018, we had passed an ad-interim order on 3 November 2020. It was noted that the entitlement of the physically challenged, in respect of reservation in promotion has been upheld by the Apex Court and a proposal for working out the modalities for providing such reservation is placed before the Cabinet for approval. By the ad-interim order we had directed the State in the meanwhile not to finalize the promotions in respect of these departments as it would prejudice the rights of the Petitioners.

2. Three more petitions have been filed by identically situated petitioners. An application is taken out for intervention by those government servants who are not physically challenged and want the promotion process to proceed. An application is filed by the State Government for vacating the ad-interim order.

3. As regards the vacating of the ad-interim order granted earlier is concerned, it is to be noted that the State Government has not disputed the entitlement and right of the Petitioners in respect of reservation in promotions and a proposal for working out modalities is placed before the Cabinet for a decision. Since the petitions were adjourned at the instance of the State Government on various dates and no concrete statement was forthcoming, we had to pass the ad-interim order to protect the rights of the physically challenged Petitioners. The promotion process cannot be allowed to go without securing the rights of the Petitioners. Therefore, if the State Government is desirous of speeding up the promotions then the / remedy lies in the State Government working out the modalities at the earliest.

4. The learned Counsel appearing for the State

Government states that he has received instructions limited to Writ Petition No.13058 of 2018 that certain percentage of the posts will be kept aside for the physically challenged. On a query to the learned Counsel whether the State Government has taken a general decision to keep aside the posts, the learned Counsel for the State Government states that he will have to take instructions. It is quite obvious that an uniform decision will have to be taken otherwise it will lead to complications and further petitions to be filed.

5. To enable the learned Counsel to take instructions and file affidavit in this regard, hearing of these petitions are deferred to 5 January 2021. The ad-interim order granted earlier to continue. As regards the Writ Petition (St) Nos.97023 of 2020, 97030 of 2020 and 98060 of 2020, the ad-interim arrangement in Writ Petition Nos.10955 of 2016 and 13058 of 2018 shall also govern these petitions as well.

5. Today, Writ Petition (ST) No.98876 of 2020 has been added to the group.

6. The learned “A” Panel Counsel for the State Government in WP No.13058 of 2018 WP No.10955 of 2016 and learned AGP appearing in WP(ST) Nos.98876 of 2020, 97023 of 2020, 97030 of 20 and 98060 of 2020 submitted that the policy matter is still under consideration of the Cabinet and also guidance from the Central Government is sought. It is also informed that application for vacation of ad-interim order has been moved in the Apex Court. The learned “A” Panel Counsel and learned AGP upon instructions from the

Administration Department have informed that it is not possible at this stage to keep any specifically earmarked percentage of posts aside, however, with the vacancy position as it is, the right of the Petitioners would not be jeopardized.

7. The learned counsel for the Petitioners in Writ Petition No.10955 of 2016 submitted there is no question of the matter being placed before the Cabinet for taking policy decision as the law has already been declared and only modalities have to be worked out. Learned Counsel has drawn our attention to the order passed by the Division Bench of this Court in Writ Petition No. 10955 of 2016 on 18 April 2018 wherein the statement of the learned Advocate General was recorded that the State Government would initiate process of identifying promotional posts of Group A and Group B in the State Service subject to the outcome of the order passed by the Supreme Court in the case of *Siddaraju vs. State of Karnataka and Others*.¹ The Learned counsel submitted that despite this assurance and that directives have been issued from time to time as per provisions of law, modalities have not been worked out by the Government.

8. Learned counsel for the intervenor submitted that because of the ad-interim order promotion have not been given effect to and some intervenors have retired on superannuation.

9. We have clarified it in our order dated 15 December 2020

¹ 2020 SCC online SC 45

that it is because of the circumstances stated therein , to protect the rights of the physically challenged we had to pass an ad-interim order. We had expected the State Government to file an affidavit to place before us to show how the right of the physically challenged in promotion, now recognized by the Apex Court ,will be protected. No such affidavit is forthcoming. The learned Counsel for the Petitioner is right in contending that there is no question of taking any policy decision but only modalities have to be worked out. In spite assuring the Court in the year 2018 that the modalities will be worked out, nothing has been done. Till the time a positive statement on oath assuring that right of the physical challenged will not be jeopardized and in what manner it will secured, it is not possible to vary the ad-interim order. We had also indicated that an uniform decision will have to be taken as more petitions are being filed raising identical grievances from different departments.

10. As regards the Writ Petition (ST) No.98876 of 2020 which is listed on board today, the ad-interim order /direction granted on 3 November 2020 and 15 December 2020 in the other Petitions not to finalize the promotion process for the post claimed by the Petitioner, shall operate in this Petition as well.

11. We give one more opportunity to the State Government to place on record how it intends to protect the rights of the physically challenged in respect of promotions of Group A and Group B. We

expect the State Government to positively place on record by way of an affidavit the steps that the State Government intends to take to ensure that the rights of the physically challenged for promotion are not jeopardized or frustrated. Once such an affidavit is placed on record the Court may consider whether to continue the ad-interim order or not.

12. Stand over to 19 January 2021.

(MILIND JADHAV, J.)

(NITIN JAMDAR, J.)

R.S.
Karve

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