

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

WRIT PETITION NO.3001 OF 2020

Sanjeev S/o Balaji Ubale,
Age 49 years, Occu. Agri.,
R/o Gadegaon, Wajegaon,
Nanded, Tq. & Dist. Nanded.

... **Petitioner**

Versus

1. The State of Maharashtra,
Through its Secretary,
Finance Department Mantralaya,
Mumbai.
2. The Director of Account
And Treasuries, Finance Department,
Government of Maharashtra,
Mumbai, Mumbai Post Trust, Fort House,
Thakrasi House, 3rd floor, Shurji Vallabhdas Marg,
Belard Estate, Mumbai-400 001.
3. The Assistant Director of Local
Fund Accounts Audit, 3rd floor,
Lekha Kosh Bhavan, Near Collector Office,
Fazalpura, Aurangabad Division,
Aurangabad.
4. The Assistant Director Selection Committee,
Through the Director of Local
Fund Accounts Audit, 3rd floor,
Lekha Kosh Bhavan, Near Collector Office,
Fazalpura, Aurangabad Division,
Aurangabad.
5. Shivaji S/o Manchakrao Deshmukh,
Age 49 years, Occu. Nil,
R/o Nandgaon (Dudhna), Tq. Jintur,
Dist. Parbhani.

... **Respondents**

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Advocate for Petitioner : Mr. A. G. Vasmatkar.
AGP for Respondents/State : Mr. P. S. Patil.
Advocate for Respondent No.5 : Mr. P. N. Kalani.

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**CORAM : RAVINDRA V. GHUGE AND
S. G. MEHARE, JJ.**

DATE : 05.10.2021

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has put forth prayer clauses "B" and "C" as under :

"B] By issuing appropriate writ, order or direction in the like nature, this Hon'ble court may please to direct the respondents authorities to give the appointment of present petitioner on the post of Junior Auditor."

"C] The judgment and order dated 16.01.2020 passed by the member of Maharashtra Administrative Tribunal in Original Application No.25/2020 may kindly be quashed and set aside."

3. We have considered the strenuous submissions of the learned advocates for the petitioner and the respondents. With their assistance, we have gone through the petition paper

book. We have perused the impugned judgment dated 16.01.2020, threadbare, delivered by the learned Maharashtra Administrative Tribunal in Original Application No.25 of 2020 filed by the petitioner.

4. Following factors are undisputed :-

- (a) The petitioner has secured 96% marks out of 100% in written exam conducted by the competent authority.
- (b) Respondent No.5 has secured 90% marks in the said examination.
- (c) Both, the petitioner as well as respondent No.5, have secured less than 55% marks at the commerce graduation level. The petitioner has secured only 51% marks.
- (d) A person who has scored less than 55% marks at the graduation level in the commerce faculty, is not eligible to be considered for appointment.
- (e) The petitioner apprehends that respondent No.5 may be considered.

(f) An affidavit-in-reply has been filed on behalf of respondent Nos.1 to 4 in which the State has taken a specific stand that one who is not eligible to be appointed, would not succeed in securing an employment.

(g) Relaxation of 5% at the graduation level is prescribed for candidates belonging to the schedule castes and schedule tribes categories and the petitioner has not applied through any of these categories. He has applied from the S.E.B.C. (Socially and Economically Backward Classes), which was applicable in the State of Maharashtra at the relevant time.

5. Considering the above, it is apparent that the petitioner, having scored less than 55% marks at the graduation level and having not applied through the Scheduled Castes or Scheduled Tribes Categories, would neither be eligible for appointment nor would the relaxation of 5% applicable to the Scheduled Castes and Scheduled Tribes categories be made applicable to him.

6. The Hon'ble Apex Court has held in *S. K. Kushwaha and others Vs. D. K. Joshi and others, AIR 2002 SC 1455* that when there is any provision for relaxation of a condition while considering a candidate for selection, the said relaxation has to be made judiciously and the factors warranting relaxation should be verified carefully.

7. Considering the above, we do not find that the petitioner could be said to be eligible for appointment. The rejection of his candidature cannot be faulted. The order of the learned Maharashtra Administrative Tribunal dated 16.01.2020 cannot be termed as being perverse or erroneous.

8. In view of the above, this petition is dismissed.

9. Rule is discharged.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-