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

WRIT PETITION NO.7830 OF 2020

**SAVITRI GANESHRAO DUDHATE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. S.S. Jadhavar, Advocate for petitioners;
Mrs. V.N. Patil-Jadhav, A.G.P. for respondent no.1;
Mr. M.N. Navandar, Advocate for respondent no.2

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

DATE : 7th October, 2021

PER COURT:

1. By this petition, the petitioners have put-forth prayers (B), (C), (D) and (E) as under:-

“(B) By issuing writ of mandamus or any other appropriate writ order or direction, respondent No.2 may kindly be directed to provide at least 50% reservation to the project affected persons in the selection process pursuant to the advertisement dated 25.11.2014 and 04.12.2014 and only thereafter to finalize select list.

(C) By issuing appropriate writ, order or direction, the respondent No.2 may kindly be restrained from proceeding further with the selection process pursuant to the advertisement dated 25.11.2014 and 04.12.2014 unless and until 50% reservation is provided to the project affected persons category.

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(D) By issuing writ of mandamus or any other appropriate writ order or direction, respondent No.2 may kindly be directed to include the name of petitioners in the list of candidates for scrutiny of the documents from the category of project affected persons and to select them for the post to which they have applied for and to issue appointment orders in their favour.

E) Pending hearing and final disposal of the present Writ Petition, the respondent No.2 may kindly be restrained from proceeding further with the selection process pursuant to the advertisement dated 25.11.2014 and 04.12.2014 unless and until 50% reservation is provided to the project affected persons category.”

2. The petitioners have laid heavy reliance on the judgment delivered by this Court in the case of **Ashok Manikrao Shinde & ors. vs. State of Maharashtra & ors., 2016 4 ALL MR 797**, to buttress their contention that the conclusions drawn by this Court in paragraph nos.10 to 15 and the clarificatory paragraph no.16 introduced by the Court vide order dated 1.12.2015 in Review Application Nos. 167 and 168 of 2015, lay down a ratio for the purposes of all recruitments made by the respondent university, in the Class III & IV categories..

3. Paragraphs 10 to 15 of the judgment in Ashok Manik Shinde (supra) read as under:-

“10. [The Rehabilitation Act 1999](#) is a beneficial legislation meant for rehabilitation of the persons affected by certain projects for the

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State of Maharashtra. Sec. 6 (c) of the [Rehabilitation Act](#) of 1999 casts a duty on the project authority apart from other duties as laid down in clauses (a), (b), (d), (e) and (f) of Sec. 6 to give highest propriety in Class - III and Class- IV category of services on the project established to one member of the affected family nominated by the affected person if such member is eligible for such employment according to the recruitment rules for such posts and subject to any reservation validly made and subject to the availability of the posts. The proviso to Sec. 6(c) further mandates that while recruiting a member of affected family against such quota, the project authority shall as far as possible employ not less than 50% of such nominees who are affected by the project under execution. Reading Sec. 6(c) along with proviso to Sec. 6(c) it is manifest that, an obligation is cast on the project authority to employ not less than 50% of such nominees who are affected by the project. Of course, the same has to be in consonance with the recruitment rules and subject to the availability of posts and reservation validly made. It is for the project authority to perform its obligation as mandated by the statute to employ not less than 50% of the nominees who are affected by the project under execution. It is one of the ways of the rehabilitating the project affected persons.

11. The respondents have placed emphasis on Sec. 10(6)(a), which lays down that in all Class - III and Class - IV category of services under the establishment of the State Government, etc. there shall not be less than 5% priority quota for the employment of nominees of the affected persons. According to the respondents, this provisions restricts reservation of nominees of affected persons to 5% only and it is from these 5%, 50% are to be employed, i. e. 2.5% who are affected by the project under execution.

12. Sec. 6(c) and Sec. 10(6)(a) will have to be interpreted harmoniously. It is well settled that all provisions have to be read together and construed harmoniously and even when there are apparent inconsistencies between the sections of the Act and the Rules framed thereunder. There should be a harmonious

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construction so as to give effect to the intention of the legislation and to achieve the object of the Act.

13. [The Rehabilitation Act](#) of 1999 is a beneficial piece of legislation. In interpreting such a beneficial legislation the construction has to be liberal. The beneficial provision has to be liberally interpreted so as to give it a wider meaning rather than restrictive meaning which would negate the very object of the statute. It is also settled proposition that in construing the provisions of beneficent enactment the Court should adopt the construction which advances and fulfills the object of the Act, rather than the one which would defeat the same rendering the benefit illusory. [The Rehabilitation Act](#) of 1999 is enacted for the benefit of the persons affected by the certain projects. The provisions of Sec. 6(c) and 10(6) (a) will have to be read harmoniously in a manner they further the object of the statute. Head on collision between these provisions will have to be avoided. Sec. 10(6)(b) of the [Rehabilitation Act](#) of 1999 cannot be interpreted in a manner that would render Sec. 6(c) of the [Rehabilitation Act](#) of 1999 otiose or a dead letter. Sec. 10(6)(b) of the [Rehabilitation Act](#) lays down a general preposition that the State Government and the other persons, societies, etc shall provide employment to not less than 5% of the cadre strength of Class III and Class IV or equivalent of non technical employees to the nominees of the affected persons. The said provision does not at all restrict said reservation only for 5%. It on the other hand provides that it should not be less than 5%. Along with clause (b), clause (c) of sub Sec. 6 of [Section 10](#) will also have to be considered, which requires that the Collector shall maintain a register showing the recruitment position in the District and ensure removal of backlog in recruitment of the nominees of the affected persons. However, at any recruitment percentage of the persons so recruited from amongst the nominees shall not exceed 50%, meaning thereby that for removal of backlog for recruitment of nominees of affected persons the percentage of persons so recruited from and amongst the nominees can be upto 50%. The whole object of the Act is to rehabilitate the affected persons or their nominees. Considering the provisions of Sec. 6(c)

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and its proviso, so also Sec. 10(6)(b) and (c), it is manifest that the reservation for nominees who are affected by the project under reservation can be upto 50% of the posts. If the reservation to such project affected persons is restricted to 2.5% i. e. 50% from 5% then, the object of the Act would never be achieved may be it would be frustrated. Interpreting both these provisions coherently, it is manifest that, special drive can be implemented for filling up the backlog of the nominees who are affected by the project under execution to the extent of 50% of the posts.

14. While doing so the social reservation cannot be lost sight of. The social reservation would be vertical reservation and reservation for P.A.P. category would be horizontal in nature. The balance can be struck by applying inter locking reservation i. e. from the horizontal reservation across the vertical reservation called as inter locking reservation. The persons from this P.A.P. category can be placed in the category of the social reservation which they belong to i. e. if a person from P.A.P. category belongs to S.C. category he be placed in that quota by necessary adjustment and so on. In this way the social reservation would not be affected.

15. Considering the above, it is clear that, the advertisement issued on 26.08.2009 was legal and valid and the subsequent letters issued by the respondents thereby cancelling earlier advertisement are illegal and same deserves to be quashed and set aside."

4. Paragraph 16, is a clarificatory paragraph, deleting earlier paragraph 16 from the said judgment, thereby modifying the judgment. The inclusion of the new paragraph 16, makes things absolutely clear. Paragraph 16 reads thus:-

"16. The recruitment process pursuant to the advertisement dated 25.11.2014 and 4/5.12.2014 be processed further in a

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manner it would not affect the posts to be filled in for Project Affected Persons Category vide advertisement dated 26.08.2009 and the recruitment process undertaken vide advertisement dated 25.11.2014 and 4/5.12.2014 be conducted simultaneously with the recruitment process undertaken for Project Affected Persons Category vide advertisement dated 26.08.2009.”

5. It is, therefore, apparent that the judgment dated 29.10.2015 with inclusion of the clarificatory paragraph 16, leads to a conclusion that the special drive for recruitment of Project Affected Person (PAP) candidates as per the advertisement dated 26.8.2009 would be treated as a special recruitment in view of the law laid down by this Court in paragraph nos.10 to 15 which are exclusive in relation to the said advertisement dated 26.8.2009. By the new paragraph 16, it is obvious that this Court has concluded that the recruitment pursuant to the two advertisements dated 25.11.2014 and 4/5.12.2014 be proceeded further in a manner that would not affect the positions to be filled in through project affected persons category vide advertisement dated 26.8.2009 and the recruitment process undertaken by the two advertisements be conducted simultaneously with the recruitment process undertaken for project affected persons category vide the 2009 advertisement.

6. We find from the pleadings set out by the petitioners that the ratio laid down by the Court in relation to the advertisement dated 26.8.2009 is misinterpreted to mean that it should be equally made applicable to the advertisement dated 25.11.2014 and 4/5.12.2014, for making further

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appointments upto 50% from the PAP category. The petition appears to be based on apprehension developed by the petitioners that a select list has been prepared and the respondent university has violated the dictum laid down by this Court in the judgment dated 29.10.2015 along with the modified paragraph 16. This Court has clearly laid down that the 2009 advertisement is for the special drive to recruit PAP candidates upto 50% and the two advertisements of 2014 are for an independent recruitment, unconnected with the 2009 special drive.

7. As such, this petition is disposed off. Needless to state, that if the petitioners can specifically point out certain instances of candidates who have been selected and appointed by the respondent university which is in contradiction to the ratio laid down in the judgment in Ashok Manik Shinde (supra), to the extent of the 2009 advertisement - special drive for project affected persons, they are at liberty to seek redressal of their grievance.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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