

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

WRIT PETITION NO. 6943 OF 2021

Kishor Bhaskarrao Khedkar
and others .. Petitioners

Versus

1. The State of Maharashtra and others .. Respondents

Shri Suhail Farooquo Gulam, Advocate with Shri Zaker Siddiqui,
Advocate for the Petitioner.

Shri A. R. Kale, A.G.P. for Respondent Nos. 1 to 8.

Shri D. G. Nagode, Advocate for the Respondent No. 9.

**WITH
WRIT PETITION NO. 7496 OF 2021**

Gurulingappa Vasantappa Galge .. Petitioner

Versus

1. The State of Maharashtra and others .. Respondents

Shri Chandrakant D. Biradar, Advocate for the Petitioner.

Shri A. R. Kale, A.G.P. for Respondent Nos. 1 to 4.

**WITH
WRIT PETITION NO. 11218 OF 2021**

Niteen Navnath Waghmare
and another .. Petitioners

Versus

1. The State of Maharashtra and others .. Respondents

Shri Milind K. Kakde, Advocate for Petitioners.

Shri A. R. Kale, A.G.P. for Respondents/State.

**WITH
WRIT PETITION NO. 11276 OF 2021**

Ganesh Chhaburao Karhad and others .. Petitioners

Versus

1. The State of Maharashtra and others .. Respondents

Shri Milind K. Kakde, Advocate for Petitioners.

Shri A. R. Kale, A.G.P. for Respondents/State.

**CORAM : S. V. GANGAPURWALA AND
R. N. LADDHA, JJ.**

CLOSED FOR ORDERS ON : 27.10.2021

ORDER PRONOUNCED ON : 18.11.2021

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

. The petitioners seek directions against the respondents to fill up the balance 50% vacant posts from the merit list declared on 09th April, 2021.

2. On or about 22nd February, 2019, the State Government published an advertisement for filling up the vacant posts in Group – C (Class - III) category relating to the Health Department. Though the advertisement was published, the recruitment process was delayed purportedly because of the State Assembly elections. Upon conduct of the examination, merit list, it appears is published in April 2021. The respondents issued a notification on 18.01.2021 informing that only 50% of

the available vacant posts would be filled in. The merit list was prepared only for the 50% of the vacant posts. In the interregnum the Apex Court struck down S.E.B.C. reservation introduced by the Maharashtra Reservation Act. Subsequently, fresh advertisement is issued. In view of the letter/communication dated 18.01.2021, 50% posts were filled in. Subsequently, fresh advertisement is issued on 04th August, 2021 for filling 2275 posts lying vacant with the Health Department.

3. Mr. Suhail Farooquo Gulam, Mr. Chandrakant D. Biradar, Mr. Milind Kakde, the learned advocates for petitioners in respective writ petitions canvassed the submissions. According to the learned counsel for petitioners, under the communication dated 12.12.2020 and 18.01.2021 only two reasons are given for filling up of 50% of total posts viz (i) pending challenge to the Maratha Reservation in the Supreme Court (ii) Covid – 19 pandemic situation in the State of Maharashtra. The learned counsel submit that, the decision to fill up only 50% of the vacant posts/advertised posts has resulted in depriving the right of the petitioners who stand in the merit list/select list. The decision to fill up only 50% of the advertised posts is arbitrary and violative of Article 14 of the Constitution of India. The respondent No. 1 has not given any justifiable or rational explanation for not taking up the process of filling up the vacant posts from the candidates appearing in the select list and giving a fresh advertisement. The Apex Court, subsequently, has also quashed the S.E.B.C. reservation. Said posts could have been adjusted. According to the learned counsel, total 5997 posts are vacant,

still there are many vacant posts available. The petitioners whose names appear in the select list can be accommodated as against the said posts. The learned advocates for petitioners also submit that, it is legitimate expectation of the persons whose names appear in the merit/select list for being considered for the post advertised. Abruptly taking a decision after the selection process has undergone to fill up only 50% posts is irrational, arbitrary and does not stand to any reason. According to the learned advocates for petitioners, as no plausible reason is coming forth, the action deserves to be set aside and the respondents be directed to fill in all the posts advertised. According to the learned counsel, the decision is not bonafide. The learned advocates rely on the following judgments.

- I. **Shankarsan Dash Vs. Union of India reported in 1991 AIR 1612.**
- II. **Pitta Naveen Kumar and others Vs. Raja Narsaiah Zangiti and others reported in SLP (Civil) No. 6789 of 2006 dated 14.09.2006.**
- III. **Dinesh Kumar Kashyap and others Vs. South East Central Railway and others reported in (2019) 12 SCC 798.**
- IV. **Gujrat State Dy. Executive Engineers Association Vs. State of Gujrat and others reported in 1994 (Suppl.) (2) SCC 591.**
- V. **The State of J & K and others Vs. Sat Pal reported in 2013 DGLS (SC) 96.**
- VI. **Surinder Singh and others Vs. State of Punjab and another reported in (1997) 8 SCC 488.**
- VII. **A. P. Aggarwal Vs. Government of N. C. T. of Delhi and**

another reported in AIR 2000 SC 205.

- VIII. Jain Narain Ram Vs. State of U. P. and others reported in (1996) 1 SCC 332.
- IX. Virender S. Hooda and others Vs. State of Haryana and another reported in AIR 1999 SC 1701.
- X. Maharashtra Public Service Commission Vs. Jeevan Nivurttirao Wader dated 15.02.2019 in Writ Petition No. 12845 of 2018.
- XI. Dnyaneshwar S/o Abimanyu Wakade and others Vs. The State of Maharashtra and others 30.04.2020 in Writ Petition No. 6368 of 2019.
- XII. Rakhi Ray and others Vs. High Court of Delhi and others dated 01.02.2010 in Civil Appeal No. 1133 of 2010.
- XIII. Angad Dnyanoba Shitale and others Vs. The State of Maharashtra and others dated 04.05.2021 in Writ Petition No. 11843 of 2017.
- XIV. Prem Prakas Vs. Union of India and others reported in 1984 (Supp.) SCC 687.
- XV. R. S. Mittal Vs. Union of India reported in 1995 Supp. (2) SCC 230.

4. The learned Assistant Government Pleader for respondents submits that, though the advertisement was issued on 22nd February, 2019 for filling up Class III (Group – C) posts, the Government had to take decision due to Covid-19 pandemic to fill in 50% posts from the total advertised posts and letter to that effect was issued on 18.01.2021. As per Clause Nos. 27 and 30 of the advertisement dated 22nd February, 2021, powers vest with

appointing authority to reduce the posts including the reserved posts and also to increase the posts including the reserved posts. The petitioners were well aware about the letter dated 18.01.2021, whereby the posts were reduced to 50%, still the petitioners participated in the recruitment process and only after petitioners failed to get an appointment, approached this Court by filing writ petitions. Fresh advertisement is issued on 04.08.2021 for filling in total 2725 posts lying vacant with the Health Department. The petitioners have not challenged the communication and the decision dated 28.01.2021 thereby deciding to fill in only 50% of the posts advertised in February 2019. The learned A. G. P. relies upon the following judgments.

- I. **State of U. P. and others Vs. U. P. Rajya Khanij Vikas Nigam S. S. and others reported in (2008) 12 SCC 675.**
- II. **Shankarsan Dash Vs. Union of Inida reported in (1991) 3 SCC 47.**

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. From the facts on record, it appears that, advertisement was issued on 22.02.2019 for filling up various vacant posts in Class – III (Group – C) category under the Health Department by nomination. On 23rd December, 2020, Government Resolution was issued, whereby the General Administration Department of Health Services Commissionerate resolved to fill in only 50% of total capacity of vacant posts due to Covid – 19 pandemic

situation in the State of Maharashtra and challenge to the Maratha Reservation (S.E.B.C.) pending before the Apex Court. It was also resolved to conduct the examination of the candidates pursuant to the advertisement of February 2019 on 28.02.2021. Subsequently to the said Government Resolution the exams were conducted on 28.02.2021 of the candidates applying under the advertisement of February 2019. The merit list was prepared and as the decision was taken to fill in only 50% of the advertised posts, the reservations also underwent change. Out of the 50% seats, which the respondent No. 2 had resolved to fill in 25% posts were to be filled in from general category and balance from reserved category. Subsequently, circular was also issued on 20.01.2021 that the decision has been taken to fill in 50% of the vacant posts keeping in mind challenge to the S. E. B. C. reservation in the Supreme Court of India. On or about 05.05.2021, the Apex Court struck down Maharashtra Reservation Act and held that reservation granted under S. E. B. C. is unconstitutional. The process has been completed of filling in 50% of those vacant posts advertised under advertisement dated 22.02.2019. The petitioners seek a direction that they also shall be considered for appointment on the posts which have not been filled in by the respondents though were advertised.

7. It would be clear that the examinations pursuant to the advertisement of February 2019 were held of the candidates on or about 28.02.2021. Prior to the examination, decision was already taken on 23rd December, 2020 that only 50% of the advertised posts would be filled in. Under circular dated

28.01.2021 it was also communicated that only 50% posts would be filled in. The petitioners were made aware that only 50% of the advertised posts would be filled in and thereafter they appeared for the examination on 28.02.2021. Results were declared in April 2021 and merit list was published accordingly. Because of reduction in the vacant posts the reservation underwent change.

8. It is not case that after the merit list was published, the respondents have taken decision to only fill in only 50% of the vacant posts. Much before the petitioners appeared in the examination, the petitioners were made aware pursuant to the G. R. dated 23rd December, 2020 and the circular dated 28.01.2021 that only 50% of the advertised posts are to be filled in and thereafter exams were conducted. The petitioners appeared for the examination and select list was prepared accordingly.

9. The reasons have been given for filling in only 50% of the posts viz challenge to the S. E. B. C. reservation pending before the Apex Court and the Apex Court had granted stay to the judgment of the Bombay High Court and further the pandemic situation. The decision to fill in only 50% of the posts is not without any reason.

10. The candidates finding place in the select list did not get an indefeasible right to be appointed. The Apex Court in a case of **Shankarsan Dash Vs. Union of India** (supra) relied by the

learned counsel for petitioners have clarified that the advertisement/notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. The Apex Court held that, even if vacancies are notified for appointment and adequate number of candidates are found fit, the unsuccessful candidates do not acquire an indefeasible right to be appointed. Ordinarily, the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that, the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons.

11. In the present cases, before the petitioners appeared for the examination, the petitioners were made aware that only 50% of the posts advertised would be filled in and with said knowledge the petitioners participated in the selection process, had appeared in the examination held on 28.02.2021. It is not that the State took a decision to fill in only 50% of the posts advertised after preparing the select list. The decision was taken much earlier. The reasons were also given for the said decision i. e. the Apex Court had granted stay to the S.E.B.C. reservation. The advertisement also included the posts reserved for S.E.B.C. and secondly by Covid-19 pandemic situation. The reasons were plausible reasons. We do not find any malafides in the decision

of the State Government in filling up vacancies to the extent of 50% only. In a case of **Prem Prakas Vs. Union of India and others** (supra), the Apex Court had observed that, persons selected and included in merit list were unjustifiably denied appointments by appointing against their vacancies persons who were selected in previous year but could not be appointed. The Apex Court in that case held the same to be erroneous. In a case of **R. S. Mittal Vs. Union of India** (supra), the Apex Court held that, where there is a vacancy, which can be offered to a selected candidate on the basis of his merit position, denial of appointment to him without a proper reason is unjustified. In the present case, as observed above, the reasons were already notified for filling up only 50% of the advertised posts. The said decision was taken prior to the commencement of selection process. Even the exam pursuant to the advertisement was conducted after the decision was taken to fill in only 50% of the advertised posts. The decision does not suffer from malafides, nor can be said to be arbitrary. No relief can be granted to the petitioners.

12. In view of the above, the writ petitions stand dismissed, however, with no order as to costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]