

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

1000 WRIT PETITION NO.11148 OF 2017

GAUTAM BHIKAJI MOKALE

.. Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS .. Respondents

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Advocate for Petitioner : Mr S.S. Thombre
Addl. GP for Respondent No.1 : Mrs M.A. Deshpande
Advocate for Respondent Nos.3 & 4 : Mr A.R. Vaidya
Advocate for Respondent No.5 : Mrs A.N. Ansari
Advocate for Respondent No.6 : Mr G.J. Kore

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

DATE : 05-08-2021

PER COURT : -

1. We have heard Mr Thombre, learned Advocate for the petitioner and the respective learned Advocates for the respondents.

2. The learned Advocate for the petitioner submits that the advertisement was issued for the post of Special Expert under 'Sarva Shiksha Abhiyan' with the Municipal Corporation, Aurangabad. Respondent nos.5 and 6 were appointed on the said post. Respondent no.6 did not possess the necessary qualification of diploma in special subject. The learned Advocate further submits that reservation policy

is not followed. Respondent Nos.5 and 6 are appointed from OBC category, which is illegal. The petitioner belongs to SC category. No post is reserved for SC category. The mandate of reservation policy requires that the post for SC category ought to be reserved. The qualification prescribed by respondent no.2 was also not clearly mentioned in the advertisement. The petitioner was more qualified, still he is ignored. The petitioner is also physically disabled. The post was also required to be reserved for physically disabled person.

3. Mr Vaidya, learned Advocate for the Corporation submits that as per the policy, the marks are also given for percentage in the graduation level. Respondent no.6 had 73%, he was given 3% additional marks. The petitioner had only 59% and he was given 1 additional mark. The post was on contractual basis. As such, the reservation was not provided for. Respondent no.5 also possesses the necessary qualification considering the special subject. Respondent no.6 has a degree qualification in Hearing Impaired. Respondent nos.5 & 6 had also far more experience of resource persons of inclusive education. Respondent nos.5 & 6 had also experience of children with special needs under SSA, experience regarding school readiness program, experience under non residential bridge course / Day care

centre, work and teaching experience.

4. We have considered the submissions made by the learned Advocates appearing for the respective sides. This Court would be more concerned with the adherence to the decision making process. The petitioner had participated in the selection process pursuant to the advertisement and after having failed in the selection process has challenged the appointments made. It is clear that, once the petitioner participated in the selection process, the petitioner does not have a right to assail the terms and conditions of the advertisement.

5. Respondent Nos.3 & 4 have in detail set out the qualifications of respondent nos.5 & 6, the experience and the marks obtained by them, they appear to be better in every department than the petitioner.

6. In light of that, no case for reservation is made out. Writ Petition is accordingly disposed of. No costs.

[R.N. LADDHA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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