

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11378 OF 2019

...
Nikhil Suresh Patil ...Petitioner
v/s.
The Union of India & Ors. ...Respondents

....
Mr. Jayendra D. Khairnar for the Petitioner.
Mr. Rui Rodrigues a/w Mr. Ashok Varma for Respondent No.1-UOI.
Mr. Yuvraj P. Narvankar i/b Mr. Adwait A. Agashe for Respondent Nos.2, 3
and 4.

...
**CORAM : A.A. SAYED &
MADHAV J. JAMDAR, JJ.**

**DATED : 22 JUNE 2021
(THROUGH VIDEO CONFERENCING)**

P.C.:

1. The Petitioner claims to be a person with disability (Orthopedic handicapped/hearing handicapped) and had applied for the post of Junior Office Assistant with the Respondent No.3-India Security Press under the category of 'person with disability'. In the advertisement, out of the 35 posts, one post was stated to be reserved for 'person with disability'. In his Application, the Petitioner had shown his caste category as "unreserved"
2. It is the case of the Petitioner that he had secured 101 out of 200 marks and there were 2 other candidates who had applied under category of 'person with disability' who secured 113 and 101 marks, who opted not to join the employment and therefore he ought to have been appointed on the

said post.

3. It is only after Affidavit-in-Reply was filed by the Respondent Nos.3 and 4 wherein it was pointed out that since the Petitioner had scored only 101 marks and the minimum qualifying marks were 110 marks for general category, that the Petitioner by way of amendment to the Petition is now praying that he may be considered under the 'reserved' caste of OBC category as the minimum qualifying marks for the reserved category of OBC is 100 marks. According to the Petitioner in his Application he had inadvertently applied under the 'unreserved' category though he belongs to 'reserved' category of OBC. It is not disputed before the Court that even in the correspondence, the Petitioner had not brought it to the notice of Respondent No.3 and 4 that he belongs to 'reserved' category of OBC and this ground that he belongs to 'reserved' category of OBC is taken in the Petition for the first time only by way of amendment to the Petition.

4. Learned Counsel for the Respondent Nos.3 and 4 has pointed out that the Petitioner had not applied under the 'reserved' caste category in his Application and therefore there was no question of considering him under the 'reserved' caste category. He has pointed out that a fresh recruitment process is underway and a fresh advertisement has been issued wherein two posts are reserved for 'person with disability' category and the Petitioner can apply afresh.

5. In the circumstances, we dispose of the Petition by passing the

following order:

ORDER

(i) Without prejudice to the rights and contentions of the parties, the Petitioner may apply under the new recruitment process for which a fresh advertisement has been issued.

(ii) We grant liberty to the Petitioner to make a representation to the Respondent Nos.3 and 4 to consider the Petitioner's earlier Application under the reserved category of OBC. If such representation is made within a week from today, the same shall be decided within three weeks from the receipt of the representation, without prejudice to any Application being made by the Petitioner under the new recruitment process.

(iii) The ad-interim relief granted earlier not to fill up the post reserved for person with disability shall operate till the disposal of the representation of the Petitioner.

6. The Petition to stand disposed of in the aforesaid terms.

(MADHAV J. JAMDAR, J.)

(A.A. SAYED, J.)