

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6612 OF 2019

Swapnil S/o Bhaurao Salankar

-- Petitioner

vs.

State of Maharashtra and others

--Respondents

Mr. P. S. Sahare, Advocate for the Petitioner.

Ms. Kalyani Deshpande, AGP for the Respondent Nos.1 and 2.

CORAM : NITIN JAMDAR &

ANIL S. KILOR, JJ.

DATED : 28 JANUARY 2021

P. C. :

The Petitioner has challenged an order passed by the Maharashtra Administrative Tribunal dated 08 August 2019, rejecting the Original Application No.612 of 2017 filed by the Petitioner.

2. On 17 November 2014 the Respondent No.1 issued an online advertisement for filling up the post of Technical and Paramedical Staff (Class III). Under the said advertisement, Petitioner applied for the post of Artist Group-A. The Petitioner's case is that no post was available for Other Backward Class category when the advertisement was issued and therefore, Petitioner applied under Open category. Later on, when a vacancy

arose, and the post was available to appoint Other Backward Class candidate, the Petitioner's claim was not considered, even though Petitioner belongs to Other Backward Class category. The Tribunal rejected the petitioner's application by the impugned order because the Petitioner did not mention his caste in the online application and did not possess the creamy layer certificate.

3. Regarding the creamy layer certificate is concerned the Petitioner case is that it would be a secondary aspect to consider the Petitioner from the Other Backward Class category and if he is so considered, he will be mandated to produce the necessary certificate. As regards the Petitioner not mentioning his caste in the application, the Division Bench of this Court on 21 December 2020 passed the following order :-

“Heard Shri Sahare, learned Counsel for the petitioner, and Shri Patil, learned Assistant Government Pleader for the respondent nos.1 and 2. Nobody is present for respondent no.3.

2) After going through the documents filed along with the petition, we came across one document, which is an application made by the petitioner to the respondent no.2 on 9/8/2016. This application indicates that the petitioner had exercised his option to avail of social reservation benefit under “Other Backward Classes” category and it further shows that the petitioner had also given reason for not availing of this benefit at the time when he had made his first application. It appears to us that this application

has not been considered in any manner by the respondent no.2 and even Maharashtra Administrative Tribunal.

3) Prima facie we find that the “Other Backward Class” claim made by the petitioner subsequently through the application dated 9/8/2016 ought to have been considered by respondent nos.1 and 2. We would request the learned Assistant Government Pleader to seek necessary instructions in the matter and file a detailed reply of respondent nos.1 and 2 as regards what they did on receipt of the application dated 9./8/2016 and what was the reason for not entertaining this application. We expect that at least now respondent nos.1 and 2 would accept this application.

4) Stand over to three weeks.”

4. The matter has been adjourned from time to time, even last chance was given, but no reply is filed by the same. In the order dated 21 December 2020, the Division Bench has opined that the document dated 09 August 2016 indicates that the Petitioner claimed the post as a candidate belonging to Other Backward Class. In the Original Application, this document has been annexed, which was before the Tribunal. There is no reference to this document where the Petitioner has claimed appointment through Other Backward Class, nor is there any discussion about implications thereof.

5. In view of the order passed dated 21 December 2020; we are of the opinion that the matter needs to be remanded to the

Maharashtra Administrative Tribunal in the light of the above order to reconsider the application.

6. The Writ Petition is disposed of by quashing and setting aside the impugned order dated 08 August 2019 and restoring the Original Application No.612 of 2017 on the file of the Maharashtra Administrative Tribunal, Nagpur to be disposed of as per law. It is open to the Petitioner to request the Tribunal for early disposal of the Application upon remand.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]