

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7143 OF 2019

Nagnath Shamrao Jadhav

.. Petitioner

Versus

The State of Maharashtra and another .. Respondents

Shri V. S. Panpatte, Advocate for the Petitioner.

Shri A. S. Shinde, A.G.P. for the Respondent Nos. 1 and 2.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

DATE : 12.09.2022.

FINAL ORDER (Per Sandeep V. Marne, J.) :-

. By present petition, the petitioner challenges judgment and order dated 06.02.2019 passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad (for short 'Tribunal') in Original Application No. 484 of 2013. In his original application, the petitioner had prayed for sponsoring his name for appointment under the Freedom Fighters category. The Tribunal has dismissed the original application relying upon the judgment of the Full Bench of this Court in the case of **Rajendra Pandurang Pagare and another Vs. State of Maharashtra and others** reported in **2009(4) Mh.L.J. 961**.

2. Mr. Panpatte, learned counsel appearing for the petitioner has relied upon the order passed by the Tribunal in previous round of litigation on 21.11.2003, whereby the Collector was

directed to sponsor petitioner's name as per his turn and seniority on receipt of requisition for any post suited to the qualification possessed by him and whenever recruitment process of special category of freedom fighters was to take place. He also relies upon the order of the Division Bench of this Court dated 14.03.2008 in Writ Petition No. 7955 of 2006. Mr. Panpatte, seeks to distinguish the Full Bench decision of this Court in the case of **Rajendra Pandurang Pagare and another** (supra) by contending that said decision was rendered for the category of Project Affected Persons and, therefore, same would not apply to the category of freedom fighters. He would submit that category of freedom fighters is an altogether separate category for which separate scheme is applicable. He would further submit that the decision of the Full Bench was delivered on 09.07.2009 and that the same would not govern petitioner's case in which direction was issued by the Tribunal much earlier on 21.11.2003.

3. Mr. Shinde, learned Assistant Government Pleader for the respondent State supports the order passed by the Tribunal and prays for dismissal of the petition.

4. In the case of **Rajendra Pandurang Pagare and another** (supra), the Full Bench of this Court has decided the issue as to whether the posts falling under horizontal reservation could be filled in without advertising them and without following method of selection. The Court has held that for filling in posts under the horizontal reservation category, it is necessary to advertise

the posts and follow the criteria of qualification and merits. Even though the Full Bench was concerned with the appointment against project affected persons category, the principles expounded by the Court would equally apply to the category of freedom fighters as well. What is held essentially is that there cannot be any right to appointment without competing in a selection process with other candidates falling under the same category. Therefore, in our opinion, the Tribunal has correctly relied upon the Full Bench decision in the case of **Rajendra Pandurang Pagare and another** (supra). The contention of Mr. Panpatte, that decision would not apply retrospectively is required to be summarily rejected. It is trite that every judgment of a Court applies retrospectively, unless the same is made specifically prospective in its operation.

5. Consequently, we do not find any merit in the present petition. Same is dismissed without any orders as to the costs.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

bsb/Sept. 22