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

WRIT PETITION NO.12890 OF 2018

Ganesh s/o Sitaram Bahirwal,
Age : 30 years, Occu. Labour,
R/o Pimpalwadi,
Tq. & Dist. Beed

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Transport Department,
Mantralaya, Mumbai – 32
2. Managing Director,
Maharashtra State Road
Transport Corporation (MSRTC),
Central Office, Mumbai-08
3. Divisional Controller,
Maharashtra State Road
Transport Corporation (MSRTC),
Beed

..RESPONDENTS

Mr. A.N. Nagargoje, Advocate for petitioner;
Mr. S.K. Tambe, A.G.P. for respondent no.1;
Mr. A.B. Dhongade, Advocate for respondents no.2 & 3

**CORAM : R.D. DHANUKA
AND
S. G. MEHARE, J.J.**

**[Date of reserving the judgment : 29.3.2022
Date of pronouncing the judgment : 7.4.2022]**

JUDGMENT (Per S.G. Mehare, J.)

1. Rule. Learned A.G.P. waives service for respondent no.1.

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Learned Counsel Mr. Dhongade waives service for respondents no.2 and 3.

2. Rule is made returnable forthwith. By consent of the parties heard finally.

3. Petitioner has prayed for a Writ of Certiorari to quash and set aside the communication dated 27.2.2018 issued by respondent no.2 and a Writ of Mandamus to appoint him to the post of Assistant (Junior) either from the general or O.B.C. category, within a stipulated period.

4. In response to the advertisement dated 7.1.2017 issued by respondent no.2 Corporation, the petitioner had applied for the post of Assistant (Junior) from the O.B.C/ Project Affected Person (P.A.P) category for the Beed Division. Petitioner cracked the written examination and was declared at third position in the merit list of the open category. Petitioner has secured the highest numbers in the O.B.C. category. The petitioner had applied for both, the O.B.C./P.A.P category.

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5. Respondent no.3, by its communication dated 27.2.2018, turned down the petitioner's claim as the petitioner did not submit the P.A.P certificate within time. Hence, this petition.

6. Respondent no.3, in his affidavit-in-reply dated 25.6.2019, contended that the petitioner had applied from O.B.C. and P.A.P category. Since the petitioner was in merit, he has been selected from the Open P.A.P category candidate in the final list. At the time of verification of the documents on 31.11.2017, instead of his P.A.P, he produced the P.A.P certificate of his brother Satish Sitaram Bahirwal. Thereafter, on 20.6.2018, the petitioner submitted the certificate of P.A.P in his name, but till that Date, the drive for direct recruitment was over. Therefore, the respondent could not consider the petitioner's claim at such a belated stage. The Committee disqualified the petitioner for failing to submit the P.A.P certificate in the given time. In view of the representation made by the petitioner to the Central Office of the Corporation, issued the impugned communication. It is further submitted that since the petitioner has applied from the O.B.C./P.A.P category, the respondent could not consider in the open category.

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7. During the hearing on 15.3.2022, it was found that the advertisement for 64 posts in all for Beed Division was published. The learned Counsel for the petitioner pointed out that the petitioner was at Sr. No.3 in the merit list declared by the respondents. He also pointed out various final results of the various categories and also raised a question that no separate list of P.A.P. categories was published. On this fact, the learned Counsel for respondents nos.2 and 3 sought time to produce the separate list of P.A.P. categories and to make a statement whether any of the candidates out of three posts reserved were appointed from the P.A.P. category. In pursuance of the said order dated 15.3.2022, respondent no.3 filed an additional affidavit in reply on 20.3.2022.

8. It is submitted that respondents had hired the outsourcing services of M/s. U.S. Technology Pvt. Ltd. for recruitment. The said agency conducted the recruitment process and presented the result to the Corporation, and the Corporation has taken steps accordingly. He reiterated that the petitioner did not submit his P.A.P. certificate in time. The outsourcing agency provided the data in software as well as in hard copies. The numbers/marks secured by the candidates were published on the official website of the Corporation, and objections were invited. However, respondent no.3 has candidly conceded that no separate list of P.A.P. category candidates was prepared or

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published. Instead, a common final merit list of selected candidates was prepared for the categories, viz. Open, SC, S.T., and O.B.C. The list which was published did not mention the parallel reservations, namely, Women, Ex-servicemen, Part-Time, Project Affected, Earthquake Affected, Sportsman, etc. The said parallel reservations were taken into consideration, and the final list was published.

9. In the said docket sheet provided by the outsourcing agency, the merit list included parallel reservations. It is placed on record at Exhibit P-1. From the open category final selection list, 35 candidates were appointed as per the merit and its parallel reservation, out of which the candidates as shown below were appointed from the open P.A.P. category:-

Sr. No. in List	Name of the Candidate	Category Open-Project Affected	Marks obtained
9.	Bharat Ugale	Yes	84
14.	Akash Munde	Yes	80
27.	Nilesh Firange	Yes	76
34.	Shivaji Mote	Yes	60

10. From the Open/P.A.P category, the candidate at Sr. No.27 – Nilesh Firange, has not joined the service. As per the merit list from the open category, four candidates were selected, and one from the O.B.C. category was selected. In a nutshell, respondent no.3 again has

contended that the petitioner was at fault for not producing the P.A.P certificate. Hence, the petition deserves to be dismissed.

11. The learned Counsel Shri. Nagargoje, for the petitioner, vehemently argued that the petitioner had applied as per the advertisement. Since he was third in the merit, he was selected from the open category instead of considering for reserved posts, though he had applied for the reserved post. He urges that the petitioner to be accommodated on one post still lying vacant in the said category. He also urged that the post on which the petitioner was declared selected in the merit list is also lying vacant. He submits that when three posts were reserved for P.A.P in Beed Division, as per the docket sheet, excess posts from that category for reserved and open have been filled. To bolster the arguments, learned Counsel for the petitioner relied on the order passed in the case of **Nilesh Narendra Khairnar vs. The State of Maharashtra & ors., Writ Petition No.3000 of 2020** by a Co-ordinate Bench of this Court, dated 23.2.2021.

12. Per contra, learned Counsel for the respondents Mr. Dhongade argued that since it is the utter failure of the petitioner to submit the P.A.P certificate in time, he is rightly declared disqualified by the Corporation. Though the post from the same category, i.e. open

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category, is lying vacant, it would be very difficult for the Corporation to accommodate him, as it may affect the roster in future. The petitioner had knowledge that he had applied from the OBC/PAP category; he ought to have been armed with the P.A.P. certificate at the time of verification of the documents soon after the merit list was published. At the time of verification of documents, the P.A.P. certificate was not in his name and after the completion of the recruitment process, he submitted the said certificate. Hence, there is no merit in the present petition.

REASONS AND CONCLUSION

13. The advertisement was published showing vertical and horizontal reservations. The terms and conditions of the advertisement bind employer. The mistake appears to have been committed by the Corporation while declaring the merit list. The Corporation has erred in not listing the selection of the candidates as per their category. The contention in the affidavit in reply is clear that no separate list, as per the reservations of various classes, particularly the P.A.P. was published. The docket (P-1) shows that the petitioner was in the category of P.A.P., but the said list was not published any time before. Hence the petitioner had no opportunity to raise an objection, if any. The respondent has declared the petitioner selected to be in merit in the open category. Now, the employer/ respondent

Corporation cannot take a turn from its own decision. That apart, the petitioner has subsequently submitted the P.A.P certificate. It is not in dispute that many other candidates having secured lesser marks than the petitioner in other categories have been selected. A meritorious candidate cannot be refused an appointment. Apparently, the petitioner is not at fault since, he was in the merit in all categories.

14. The docket placed at Exh.P-1 (page no.126) reveals that when two posts for Open/P.A.P category were reserved, the outsourcing agency has selected three candidates, including one Nilesh Firange, who did not join the post as he had been selected elsewhere.

15. Learned Counsel for the petitioner is also agreeable for appointment of the petitioner in the open category. In the Beed Division, one post undisputedly is still lying vacant. Petitioner has made a categorical statement that the post on which he was selected in the merit is also vacant. In the similarly situated facts in the case of Nilesh Khairnar cited supra, the Division Bench of this Court has considered the candidate and directed the employer to accommodate him. The said case comes to the petitioner's aid.

16. In the light of the aforesaid facts, the petitioner shall be

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accommodated with respondent Corporation in O.B.C. category or Open category, as may be.

17. We have passed the aforesaid order as the post on which the petitioner is selected and the candidate at Sr. No.5, namely, Nilesch Firange being not joined, has remained vacant, and the petitioner was in merit competing with all candidates from all categories. The respondents shall issue the appointment order to the petitioner, as directed above, within two weeks from the date of uploading of this judgment on the official website of this Court. Writ petition is allowed in aforesaid terms. Rule is made absolute accordingly.

18. No order as to costs. Parties to act on the authenticated copy of this order.

(S. G. MEHARE, J.)

(R.D. DHANUKA, J.)

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