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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13375 OF 2017

Shri. Kailas Kashiram Kamadi .. Petitioner

v/s.

The State of Maharashtra Through The
Regional Dy. Commissioner And Ors. .. Respondents

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Mr. R.N. Gite, for the Petitioner.

Mr. N.K. Rajpurohit, AGP, for State/Respondent Nos. 1 to 3.

Mr. Sarfaraj J. Shaikh, i/b. Sachin S. Gite, for Respondent No.4.

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CORAM: SUNIL B. SHUKRE &
G.A. SANAP, JJ.

DATE : 6 APRIL 2022

P.C:-

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent.

3. The Petitioner has been appointed as “Kamathi”, a post reserved for Scheduled Tribe Category, by following due procedure by Respondent No.4. Following of due procedure of selection is a fact not

in dispute. This is evident from the proposal of Respondent No.3 dated 11 August 2016 sent to Respondent No.1, seeking approval to the appointment of the Petitioner. Respondent No.3 in the said letter, has dealt with every aspect of the selection procedure and has confirmed that same has been properly followed by Respondent No.4 in making appointment of the Petitioner as Kamathi. Respondent No.2 also did not dispute the fact of following of selection procedure completely by Respondent No.4. But, Respondent No.2 rejected the proposal on some different ground by passing an order on 19 June 2017, which is impugned here.

4. On going through the impugned order, we find that it is not sustainable in the eye of law for the reason that it rejects the proposal on some extraneous ground. Although, the impugned order does not dispute following of proper selection procedure by Respondent No.4 in making appointment of the Petitioner as Kamathi, it states that as there was one post of cook, which was in excess, the post of Kamathi ought to have been filled-up by absorbing the excess cook working on the establishment of Respondent No.4. This fact was already known to Respondent Nos. 2 and 3 when permission was granted to Respondent No.4 for filling up the post of Kamathi from Scheduled Tribe Category by inviting applications through advertisement. But, at that time, Respondent No.4 was not informed that one cook being already there, who was in excess, should be

adjusted on the post of Kamathi, which had fallen vacant on account of the erstwhile incumbent. Besides, the impugned order does not say anything about the permissibility of filling-up of a post reserved for ST Category by selecting a person, who is already working as cook. For these reasons we find that the impugned order is illegal and deserves to be quashed and set aside.

5. In the result, the petition is allowed in terms of prayer clause (b).

6. Rule is made absolute in the above terms. No costs.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)