

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

904 WRIT PETITION NO.11613 OF 2022
WITH WP/11763/2022

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
VERSUS
AMIT RAJU GAIKWAD

Mr.P.S.Patil, AGP for the Petitioner/State.
Mr.Avinash S.Deshmukh, Advocate for the Respondent.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : MARCH 17, 2023

PER COURT :

1. These matters were heard for a considerable length on 05.01.2023, 15.02.2023, 09.03.2023 and today.

2. After an extensive and lengthy hearing over a couple of days, we find that the issue turns on the issue as to whether the appointments of the original Applicants, whose score was below the cut off marks, could be sustained, as being legal and proper. There has been no dispute that none of such 6 appointees had scored above the cut off marks. It is also undisputed that there was no relaxation prescribed in Law and in the

advertisement, by which relaxation in the cut off marks for the reserved category candidates would have been permissible.

3. However, going through the voluminous record, we noticed a peculiarity in the appointments of these applicants. Each of them, though below the cut off marks, were highest amongst the respective reserved categories to which they belong. We do not find that any of them were selectively picked and chosen, akin to the phrase “*cherry picking*” while issuing them with the appointment orders.

4. Two aspects were glaring. Firstly, that none of these Petitioners were heard before their services were dispensed with, which was contrary to the law laid down by the Hon’ble Supreme Court in **Basudev Tiwary Vs. Sidokanhu University [1998, AIR (SC) 3261]**. Secondly, none of these 6 candidates belong to the open category. Each of them belongs to a particular reserved category and amongst the candidates from such reserved categories, they have scored the highest marks, *albeit*, below the cut off marks of 90.

5. In view of the above, we made the learned AGP aware that

we are likely to consider these 2 aspects and on the point of adherence to the principles of natural justice and in the light of the judgment of the Hon'ble Supreme Court in **Basudev Tiwary** (supra), the State will have to be directed to give an opportunity of hearing to these candidates by keeping their termination orders in abeyance, though without passing an order of reinstatement in service.

6. The learned AGP has taken instructions and has tendered a copy of the written communication dated 16.03.2023 received from the Under Secretary, Department of Public Health, Mantralaya, Mumbai. The same is marked as "X" for identification. Vide the said communication, the State Government has agreed to consider the individual representations of these 6 appointees, out of which 2 are before us, and thereafter, pass appropriate orders.

7. In view of the said communication, the learned Advocate for the original Applicants had sought an overnight pass over. Today, he informs us on specific instructions that the Applicants are willing to tender their written representations and the same may be considered by the appropriate authorities within a particular timeframe.

8. In view of the above, both these petitions are disposed off with the following directions :-

a) The judgment of the learned Maharashtra Administrative Tribunal, impugned in these 2 petitions, would merge with our order and would lose its efficacy.

b) The original Applicants before us, as well as those selectees, who may or may not have approached any Tribunal or legal forum, would be at liberty to tender their written individual representations to the Commissioner, Health Services Commissionerate, on or before 31.03.2023. These representations can be tendered either by e-mail or by serving hard copies on the Commissioner, Health Services Commissionerate, Aarogya Bhawan, P. Dimelo Road, Mumbai.

c) After receiving such representations, the said Authority would take into account the available vacancies and assess as to whether it was on account of any reservation that these appointees were considered for appointment.

d) The points raised by these appointees, as well as the judgments cited, would be taken into account and a reasoned order would be passed on or before 15.06.2023, in the light of the Rules and Policies

applicable.

e) Until such orders are passed, though the Petitioners would not be granted the relief of reinstatement, their termination orders would be kept in abeyance.

f) In the event, the Authorities arrive at a decision of not continuing with the appointments of these Petitioners, the said decision would relate back to the date of the termination orders.

g) In the event, the Authorities arrive at a decision to continue with the appointment of these candidates, the termination orders would stand recalled and they would be granted notional continuity of service from the dates of their termination, with only 50% back wages so as to reduce the rigours of termination and meet the expenses of litigation. The original Applicants before us are agreeable.

9. Needless to state, if an adverse order is passed in terms of clause (f) as above, the Petitioners would be at liberty to take recourse to a legal remedy for the redressal of their grievance.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)