

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

WRIT PETITION NO. 695 of 2023

Swapnil Bhaurao Salankar

vs.

State of Maharashtra, through its Secretary, Medical Education and Drugs Department,
Mumbai and ors.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri P. S. Sahare, Advocate for petitioner.

Ms N. P. Mehta, Assistant Government Pleader for respondent nos. 1 and 2.

CORAM :- A.S.CHANDURKAR AND MRS.VRUSHALI V. JOSHI, JJ.

DATE :- JANUARY 30, 2023.

The challenge raised in this writ petition is to the judgment dated 21.12.2022 passed by the Maharashtra Administrative Tribunal in Original Application No.612 of 2017. By the said judgment the Tribunal dismissed the original application by holding that the petitioner was not entitled to seek appointment on the post of 'Artist' (Group-C) from Other Backward Class category.

We have heard the learned counsel for the petitioner and the learned Assistant Government Pleader for respondents.

It can be seen from the record that the petitioner has been agitating his claim for being declared entitled to be appointed on the post of Artist from the Other Backward Class category pursuant to the online advertisement dated 17.11.2014. Though the name of the petitioner did not figure in the revised provisional merit list that was initially declared, the petitioner responded to a public notice issued on 01.08.2016 by which vacancies in various posts were sought to be filled in on the basis of the State Merit List that was prepared pursuant to the earlier examination. Insofar as the Other Backward Class category is concerned, candidates at Serial Nos. 8

to 20 in the State Merit List were called upon to submit their documents for verification. At that stage, the petitioner submitted his documents as well as his caste certificate to indicate that he belonged to Other Backward Class category and was thus entitled to appointment. Since he was not successful, the petitioner preferred Original Application No.612 of 2017. By the judgment dated 08.08.2019 the said Original Application was dismissed on the ground that in the online application submitted by the petitioner he had not mentioned that he belonged to Other Backward Class category and had sought appointment from the Open category. He had also not mentioned that he was not holding a non-creamy layer certificate. This judgment was challenged by the petitioner by filing Writ Petition No.6612 of 2019. On 21.12.2020 this Court noticed that there was a document dated 09.08.2016 on record which indicated that the petitioner had sought to exercise his option to availing the benefit of social reservation. Hence by the order dated 28.01.2021 the proceedings were remanded to the Tribunal for a fresh consideration in the light of that application.

The Tribunal on remand passed an order on 25.08.2021 directing the respondents to consider the petitioner's communication dated 09.08.2016 by which it was stated that he was claiming the benefit of social reservation. Accordingly, on 15.09.2021 the Director, Medical Education and Research, Mumbai considered the said communication and held that the petitioner had not mentioned in the application that he was claiming benefit of social reservation. The petitioner then filed Writ Petition No.4012 of 2021 challenging the communication dated 15.09.2021 and by the order dated 15.06.2022 that writ petition was disposed of with liberty to the petitioner to challenge the communication dated 15.09.2021 before the Tribunal in the Original Application that was pending. It is pursuant to this direction that the petitioner amended the Original Application. On 21.12.2022 the Original

Application was dismissed by holding that the petitioner had not sought appointment on the post of Artist from Other Backward Class category. It is this order that is challenged in the present writ petition.

We find that Clause 5.3 of the advertisement required a candidate who was claiming benefit of social reservation to indicate the same in the online application form failing which it was stated that such claim would not be entertained subsequently. To ascertain this aspect a fact finding exercise was undertaken and as noted above, the Director, Medical Education and Research, Mumbai found that the petitioner had not mentioned the fact that he was claiming the benefit of social reservation. We therefore find that all possible grievances of the petitioner in the context of the advertisement dated 27.10.2014 have been considered from time to time either by the Tribunal or by this Court. An opportunity was also given to the petitioner to substantiate his claim before the Director, Medical Education and Research, Mumbai, in that regard since the petitioner was relying upon his communication dated 09.08.2016.

When the factual aspect is now clear, we do not find that there is any reason whatsoever to hold that the petitioner despite failing to mention in his online application form that he was seeking benefit of social reservation would still be entitled to seek appointment in the Other Backward Class category. There being no error of jurisdiction committed by the Tribunal, the writ petition stands dismissed with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)