



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

WRIT PETITION NO.519 OF 2019

Kirankumar s/o. Dagadu Wanve

... PETITIONER

VERSUS

1. Dr. Babasaheb Ambedkar
Marathwada University Aurangabad,
through its Registrar
2. Shri B.A. Chopde,
Vice Chancellor,
Dr. Babasaheb Ambedkar Marathwada
University Aurangabad
3. His Excellency the Hon'ble Chancellor,
Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad Rajbhavan
Malbar Hill, Mumbai
4. The Principal Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai 400 032
5. Sanjay s/o Kishanrao Pawar

... RESPONDENTS

WITH

WRIT PETITION NO.9908 OF 2019

Sanjay s/o. Kishanrao Pawar

... PETITIONER

VERSUS

1. The State of Maharashtra
through Principal Secretary
Higher and Technical Education
Mantralaya, Mumbai – 400032
2. The Hon'ble Chancellor,
Dr. Babasaheb Ambedkar
Marathwada University Aurangabad,
Rajbhavan Malbar Hill, Mumbai
3. Dr. Babasaheb Ambedkar Marathwada,
University, Aurangabad through
it's Registrar

4. Shri B.A. Chopde
Vice-Chancellor,
Dr. Babasaheb Ambedkar
Marathwada, University, Aurangabad
(deleted as per Court's order dated
13.08.2019 and 27.09.2019)
5. Smt. Sadhana Pande,
Incharge Registrar,
Dr. Babasaheb Ambedkar
Marathwada, University, Aurangabad
(deleted as per Court's order dated
13.08.2019 and 27.09.2019)
6. Kirankumar s/o Dagadu Wanve

... **RESPONDENTS**

...

Advocate for petitioner in WP/519/2019
and for Respondent No.6 in WP/9908/2019: Mr. A.S. Deshpande
Advocate for petitioner in WP/9908/2019 : Mr. D.J. Choudhari
Advocate for Resp. Nos.1 & 2 in WP/519/2019
& for Resp. No.3 in WP/9908/2019 : Mr. S.S. Thombre
AGP for Resp. Nos.1 & 2 in WP/9908/2019: Mrs. Kalpalata Patil
Bharaswadkar

...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**Reserved on : 30.07.2024
Pronounced on : 20.09.2024**

JUDGMENT (PER : MANGESH S. PATIL, J.) :

Heard. Rule in both the matters. It is made returnable forthwith. Mr. S.S. Thombre waives service for the respondent – University. The learned advocates for the petitioner/s waive service of notice to the respective petitioner who have been arrayed as respondent in one another's proceeding, and Mrs. Bharaswadkar waives service for respondent – State.

2. These are separate writ petitions by two candidates aspiring to be selected to the post of Assistant Registrar in the selection process undertaken by the respondent – University pursuant to the advertisement dated 06.03.2012. Since the dispute arises out of the recruitment process

and most of the facts are admitted, in order to avoid rigmarole both these matters are being disposed of by this common judgment and order.

3. Obviating mention to the chequered history, it would suffice to observe that the advertisement was published for recruitment of six posts of Assistant Registrar and the post in question was expressly reserved for VJ-A category, *albeit*, as per the advertisement so also general instructions in clause 10.4 and even the provisions of Section 4(3) of the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jati), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 (herein after the Reservation Act), though, as per the roster, the post was reserved for VJ-A, it was interchangeable amongst the other categories that is NT-B, NT-C and NT-D.

4. The eligibility criteria was prescribed *inter alia* of having 50% marks in the Post Graduate Degree of the statutory University and five years experience in administrative cadre not below the rank of Superintendent or Lecturer, with three years teaching experience. Besides, few other criteria were also provided like proficiency in the language, computer knowledge and administrative experience.

5. The selection was to be made on the basis of the marks scored at the written examination of 70 marks, interviews of 20 marks and experience which was of 10 marks. The benchmark was only prescribed for the written exam of scoring 40% of 70 marks. No separate

benchmark was fixed in respect of total score.

6. There is also no dispute about the scores. Petitioner Wanve had scored 66.16 marks (Written Test 53/70, Experience 10/10 and Oral 3.16/20), whereas, petitioner Pawar had scored 49.83 marks (Written Test 32/70, Experience 10/10 and Oral 7.83/20).

7. After some issues were raised by both these petitioners by filing writ petitions, ultimately the interviews were conducted by the duly constituted selection committee comprising of six members, on 20.08.2018 but it resolved that no candidate was suitable. Admittedly, the Chancellor's nominee had recorded a dissent note in the minutes and opined that these two petitioners could have been considered. Aggrieved thereby, the petitioners are before this Court in separate writ petitions.

8. Mr. Wanve, as submitted by his learned advocate Mr. Despande, is challenging the process *inter alia* attributing *mala fides* on the part of the duly constituted selection committee except the Chancellor's nominee who had put up a note of dissent. He would categorically point out as to how except Chancellor's nominee, the other five members had given him negligible marks out of 20 in the interview. He would submit that still, he could score fairly well in aggregate having scored 66.16 marks. There was no benchmark for the performance at the interview though it was there for the written test at 40% out of 70 marks. He would, therefore, submit that the selection committee ought not to have but seems to have changed the rules of the game after it was played,

as held in the matter of **Durgacharan Misra Vs. State of Orissa and Ors.; (1987) 4 Supreme Court Cases 646**. He would submit that even though petitioner - Pawar was from VJ-A category, since the post was interchangeable, having scored highest marks amongst all the candidates Mr. Wanve ought to have been selected and appointed.

9. Mr. Deshpande would, lastly, submit that in fact, there were six posts of Assistant Registrar and a person appointed from open category Mr. Nage had scored 65.2 marks and Mr. Wanve in spite of having scored more, irrespective of the category ought to have been selected and appointed.

10. Per contra, the learned advocate for the University would justify the action of selection committee finding no suitable candidate and resolving to that effect. He would submit that even if there was a note of dissent, five out of six members were unanimous and had found none of the candidate suitable for being selected. Since it is a matter of selection process conducted by a duly constituted committee comprising of six individuals, in the absence of strong evidence/material, to attribute *mala fides* or procedural impropriety, this Court while exercising the judicial review under Article 226 of the Constitution of India has limitations. It was a conscious decision taken unanimously and cannot be a subject matter of judicial review. He would rely upon decision in the matter of **Union of India and Ors. Vs. Kali Dass Batish and Anr.; AIR 2006 Supreme Court 789**.

11. Mr. Chaudhari learned advocate for the petitioner - Pawar would submit that the petitioner belongs to VJ-A category. As per roster the post in question was reserved for that category. Though it was interchangeable amongst VJ-A, NT-B, NT-C and NT-D, it is only if a suitable candidate was not available from VJ-A category that it could have been offered to the other sub-categories that is NT-B, NT-C and NT-D. He would submit that since petitioner - Pawar had scored maximum marks from amongst the candidates from VJ-A category, there was no reason for the selection committee to resolve that no candidate was found suitable. As is the stand of petitioner - Wanve, Mr. Choudhari would also point out that though the resolution was unanimous, Chancellor's nominee had put up a note of dissent and petitioner - Pawar could have been easily selected and appointed.

12. Mr. Chaudhari would submit that claim of petitioner Wanve simply on the basis of interchangeability of the post amongst VJ-A, NT-B, NT-C and NT-D is misplaced. As the post was reserved for VJ-A category, it is only in the case of non-availability of any candidate from that category that Mr. Wanve could have laid claim. Since the petitioner - Pawar had, admittedly, scored more than 40% marks out of 70 in the written examination, which alone was prescribed as the benchmark, there was no reason for the selection committee to deny him the selection and the post.

13. Mr. Choudhari would, additionally, submit that even in the

earlier selection process for the same post conducted in the year 2006 petitioner – Pawar was selected by the duly constituted committee as the first preference if the person selected Mr. Netke D.M. could not join. He would submit that the whole action of the selection Committee to abort the selection process is arbitrary.

14. We have considered the rival submissions and perused the papers.

15. There is no dispute about the fact that in all six posts of Assistant Registrar were advertised and the seat against which both these petitioners are seeking to be selected and appointed, was reserved for VJ-A category. There is also no dispute that not only in the advertisement but the instructions contained a specific stipulation that that post was interchangeable amongst VJ-A, NT-B, NT-C and NT-D. Even as per Reservation Act, 2001, Section 4(3) such a seat would be interchangeable.

16. There is also no dispute about the fact that the selection was to be made on the basis of total 100 marks, wherein, Written Examination was of 70 marks, Education Qualification and Experience were to have 5 marks each and the remaining 20 marks were of interview. The benchmark was provided only for the written examination, of scoring minimum 40% which comes to 32 marks out of 70 marks. There was no stipulation providing for any benchmark for the performance at the interview.

17. There is also no dispute about the fact that in aggregate petitioner - Wanve had scored 66.16 whereas petitioner - Pawar had scored 49.83. There is not even a dispute that both had crossed the benchmark of scoring 40% in the written examination. Admittedly, the petitioner - Wanve was not from VJ-A category but was from NT-D category. Even it is not in dispute that the petitioner - Wanve had scored 3.16 and petitioner - Pawar had scored 7.83 at the interview.

18. Once having borne in mind the aforementioned facts and circumstances, it is apparent that petitioner - Pawar who is belonging to VJ-A category has been in the process and even staking a claim for being selected and appointed against that post. Sub-Section 3 of Section 4 of the Reservation Act, 2001 clearly mentions that the reservations specified for categories mentioned at serial Nos.3 to 6 from Sub-Section 1 which sequentially are, VJ-A, NT-B, NT-C and NT-D, shall be inter-transferable. However, it further provides that if suitable candidates for the posts reserved for any of the said categories are not available in the same recruitment year, the post/s shall be filled by appointing suitable candidate/s from any other of the said categories. It is thus abundantly clear that percentage of reservation specified under Sub-Section 2 apart, it is only when a suitable candidate/s for the post of the said category is/are not available that it can be filled by a suitable candidate from the other three categories. It cannot be interpreted to mean that irrespective of percentage of reservation any seat reserved for any of these four

categories can be filled in without any reference to the specific reservation and roster point. Meaning thereby, it is only if according to the roster when a post is to be filled in from a specific category out of these four but there is no suitable candidate, that it can go back to the other categories.

19. The advertisement as also the instructions to the aspiring candidates expressly stipulated and described that one post of Assistant Registrar was reserved for VJ-A. It is thereafter by a bracketed portion it was notified that the post was inter-transferable amongst these four categories. The fact that such inter-transferability was expressly notified by putting a bracket was clearly in consonance with the provision contained in Sub-Section 3 of Section 4 of the Reservation Act.

20. Once having reached this stage, when the petitioner - Pawar is from VJ-A category for which the post in question was reserved, it is only if either he or other candidates from that VJ-A category were found not suitable that the post could have been filled by a candidate from the other three categories that is NT-B, NT-C and NT-D. Petitioner - Wanve being a NT-D category candidate would not have any vested right of being considered for selection and appointment against that post unless petitioner - Pawar was held to be not suitable. It is only to this extent that petitioner - Wanve can place his foot to keep the door ajar.

21. This takes us to the decision of the selection committee to hold both these petitioners as also the other candidates as not suitable.

22. As per the service jurisprudence, and the inherent limitations on the powers of this Court to undertake judicial review in the matter of selection process, it would not suffice for the petitioners to contend and point out some defects or errors and attribute some ill-intention. Suffice for the purpose to observe that even if it is a matter of record that the selection committee was comprising of six members including the Vice-Chancellor and the impugned decision holding that no suitable candidate was found was a majority decision, wherein, five members had unanimously reached the conclusion, the dissenting note of the 6th member, who was the Chancellor's nominee, would not take the petitioners case any further much less would not be sufficient to attribute gross error or arbitrariness in undertaking the selection process. Since it was decided by the Selection Committee that no candidate was suitable, even there would not be any substance in alleging and attributing *mala fides* on the part of the members of the selection committee. Being the experts if they, by such a thumping majority, could unanimously reach a conclusion, it would not be within the realm of the judicial review to undertake any further scrutiny and substitute its inference in place of the decision of the selection committee.

23. Merely pointing out that the other members had given very less marks and only the Chancellor's nominee could give fair marks would not *ipso facto* be sufficient to upset the majority decision of the selection committee holding that no candidate was suitable for the post.

24. Obviously, it is trite that rules of the game cannot be changed after it was played, being the basic theme, as laid down in the matter of **Durgacharan Misra's** case (supra), the submission of Mr. Deshpande to resort to it is of no consequence for the simple reason that it is based on hypothesis. There is absolutely no material to demonstrate that the selection committee having applied some parameter without any indication to the candidates before hand. Though no benchmark was provided for the over all selection, and was prescribed only for, in all probability, weeding out unsuitable candidates securing less than 40% of marks in the written test, it cannot be said that any benchmark was actually applied.

25. Assuming for the sake of arguments that the ultimate decision of the selection committee to hold that no candidate was found suitable is based on purely on the basis of the score at the interview, the petitioner - Pawar who is VJ-A would get selected automatically having scored better (7.83/20) than petitioner - Wanve (3.16/20). As has been observed earlier since the post in question was specifically reserved for VJ-A category, petitioner - Pawar could be preferred as opposed to petitioner - Wanve who is from NT-D category. Therefore, there is no substance in the submission of Mr. Deshpande in respect of non-observance of the principle laid down in the matter of **Durgacharan Misra** (supra). It is not the matter of changing the rules of the game.

26. The argument of Mr. Deshpande that an open candidate Mr.

Nage, who had secured 65.2 marks, having been appointed against one of the six posts, petitioner - Wanve having scored more than him at 66.16, and ought to have been selected is indeed appealing. However, one cannot lose sight of the fact that for whatever reasons, though there were six posts of Assistant Registrar advertised providing for reservation according to the roster, the selection process to the extent of the other posts except the post in question was allowed to be concluded independently. Pursuant to the disputes amongst these petitioners and another candidate Mrs. Rathod, who all had preferred writ petitions and even there was a petition of some association, only to the extent of the post in question, the selection process lingered. This, in all probability, has resulted in such dichotomy.

27. One need not delve to discuss as to how the reservation policy is to be implemented. Irrespective of the category the selection has to be on the basis of merit only across all the candidates. It is thereafter that the reservations are to be applied. This would enable a meritorious candidate of a reserved category to get selected against an unreserved post purely on the basis of merit. This sequence ensures and avoids the paradoxical situation as is now being pointed out by Mr. Deshpande, wherein, Mr. Nage having scored less than petitioner - Wanve could be selected against an unreserved post. Precisely for this reason, had all the six posts of Assistant Registrar been filled in in the same selection process everything could have fallen in place.

28. When the selection process was disrupted and was allowed to be proceeded without any demur, it would lead, as it is being demonstrated in the present matter, to such incongruous effect.

29. It is not the case of the petitioner - Wanve about having ever challenged such holding of selection process in a piecemeal manner and he ever having even independently objected to selection of Mr. Nage who had scored less than him. Consequently, petitioner - Wanve cannot derive any benefit from such state of affairs.

30. This boils down to the fact that petitioner Pawar being a VJ-A candidate for which the post in question was reserved was also in the process and had scored more than petitioner – Wanve, at the interview, but still neither of them was found suitable. Since it is a matter of selection process conducted by a duly constituted committee comprising of six individuals including the Vice-Chancellor of the University, unless there is gross arbitrariness and serious *mala fides* attributable to all the members of the selection committee, which according to us cannot be made out on the basis of the facts demonstrated, we are bound by the consistent view in catena of decisions viz. **R.S. Dass Vs. Union of India, (1987) 1 SCR 527, National Institute of Mental Health and Neuro Sciences Vs. K. Kalyana Raman and Ors.; MANU/SC/0342/1992, and M.V. Thimmaiah and Ors. Vs. Union Public Service Commission and Ors.; (2008) 2 Supreme Court Cases 119.** This court cannot sit in appeal over the decision of the selection committee.

Since none has been selected even bias cannot be attributed as also the *mala fides*.

31. Resultantly, there is no merit in either of the petitions and both are liable to be dismissed.

32. The writ petitions are dismissed. Rules are discharged.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

habeeb