IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10360 OF 2023

Padmakar Mohanrao Hanmante,
age 37 years, Occ. Unemployed,
R/o at Post Kingaon,
Tq. Ahmedpur, District Latur. Petitioner.

VERSUS

1. The State Of Maharashtra
Through It's Principal Secretary,
General Administration Department,
Mantralaya, Mumbai-32.

2. The Maharashtra Industrial Development Corporation,
Through it's Chief General Manager,
(Udyog Sarthi), Mahakali Caves Road,
Andheri (E), Mumbai – 400093.

3. The Sainik Welfare Department,
Through It's Director, Raigad Building,
Opposite National War Memorial Ghorpadi,
Pune (MS)-411001. Respondents.

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Advocate for Petitioner : Mr. A.B. Chalak
AGP for Respondent no.1 : Mr. B.B. Bhise
Advocate for Respondent no.2 : Mr. S.S.Deve

CORAM : NITIN B. SURYAWANSHI &
ABASAHEB D. SHINDE, JJ.
Reserved on : October 12, 2026
Pronounced on : October 22, 2026

JUDGMENT :- (Per Abasaheb D. Shinde, J.)

1. Rule. Rule made returnable forthwith. With consent of the parties, writ petition is heard finally at the admission stage.

FACTUAL MATRIX :-

2. By this writ petition filed under Article 226 of the Constitution of India,the petitioner has put forth following substantive prayers.

> "A. Quash and set aside the impugned decision communicated through a letter dated 6.7.2023 issued by the respondent no.2 to similarly situated eligible candidates from wait list, under which the respondent no.2 refused to operate the entire waiting list dated 7.3.2022 since the same stood lapsed on account of expiry of one year from the date of publication, by issuing a writ of certiorari, orders, directions or any other appropriate writ as the case may be.
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> B. To direct the respondent no.2-MIDC to convert the unfilled vacancies for the posts of Pump Operator (Grade-II) Class-C reserved for Ex-serviceman (Scheduled Caste) to Scheduled Caste (General) on account of "non-availability of the eligible candidates from the category of Ex-serviceman (Scheduled Caste)" pursuant to the advertisement dated 17.07.2019, by issuing a writ of mandamus, orders, directions or any other appropriate writ, as the case may be.
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> C. To direct the respondent no.2-MIDC to operate the waiting list dated 7.3.2022 since the vacancy occurred within one year from the date of publication and in view thereof to issue appointment order in favour of the petitioner on the post of Pump Operator (Grade-II) Class-C along with all other consequential service benefits, being eligible candidate from Scheduled Caste (General), by issuing a writ of mandamus, orders, directions or any other appropriate writ as the case may be."

3. It is case of the petitioner that respondent no.2-MIDC issued an advertisement on 17.07.2019 for various posts of Group-C and Group-D. In response to the said advertisement, he applied for the post of 'Pump Operator' (Grade-II) Class-C

from Scheduled Caste (General) category. The results of the written examination were declared on 15.12.2021, in which petitioner secured 140 marks and his name figured at serial no.2 in the wait list published on 07.03.2022. After completion of the entire selection process, respondent no.2 published a list of eligible candidates on 07.06.2022. In said list, the post belonging to Ex-servicemen (Scheduled Caste) category was shown vacant for want of candidate. On 20.12.2022 final select list was published by respondent no.1, in which the wait listed candidate at serial no.1 namely Mayur S. Sahare, who was originally belonging to Scheduled Caste (General) category came to be selected and appointed from Scheduled Caste (Sports Person) category. Since the post of Ex-servicemen (Scheduled Caste) category was vacant, the petitioner requested respondent no.2 to convert the unfilled vacancy reserved for Ex-serviceman (Scheduled Caste) category to Schedule Caste (General) category. Respondent no.2, however, by impugned order dated 06.07.2023 turned down his request on the ground that petitioner being a wait-listed candidate, is not entitled for being selected since wait list has been lapsed on account of expiry of one year from the date

of it's publication. Therefore, the petitioner has approached this Court.

SUBMISSIONS :-

4. Learned counsel appearing for the petitioner submits that in view of the fact that candidates from the post reserved for Ex-servicemen (Scheduled Caste) category to the post of pump operator (Grade-II) were not available, petitioner ought to have been considered for the said post. He further submits that, if candidate from horizontal reservation is not available, then the post would go to a candidate from vertical reservation. In support of his submissions, he relied upon a judgment of this Court in case of **Nikhil Santosh Chaudhary Vs. The State of Maharashtra and others** dated 05.09.2018 in Writ **Petition No.6064 of 2014**.

5. Per contra, learned counsel appearing for respondent no.2 submits that, petitioner is a wait listed candidate from Schedule Caste (General) category, therefore, he cannot be considered for the post reserved from horizontal reservation. He submits that, by virtue of Government Resolution dated 16.04.1981 (for the sake of brevity hereinafter referred to as "GR of 1981") the post from vertical reservation cannot be

converted into horizontal reservation. He invited our attention to the relevant portion of GR of 1981, which reads thus :-

> "I say and submit that the vacancies for SC (Ex-servicemen) category were 2 Nos. and the eligible SC (Ex-servicemen) candidates were not available for the said category. Though, the post of SC (Ex-servicemen) were vacant, the answering respondent could not considered the name of the petitioner for giving an appointment for the said category as per the Maharashtra Government Resolution No.RTA/1079/0/482/16-A dated 16.4.1981, which reads as under :-
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> II - **Release of unfilled reserved vacancies :-**
> The vacancies reserved for ex-servicemen in respect of Class-III posts and class IV posts should not be released to any general candidates until and unless the appointing authority has (a) obtained a certificate regarding "Non-availability of ex-servicemen" from the Employment Exchange, Zilla Sainik Board, Regional Selection Board or the Maharashtra Public Service Commission, depending upon the nature of the job and (b) recorded a certificate that such a "Non-availability" certificate has been obtained."

6. Learned counsel appearing for respondent no.2 further submits that in light of aforesaid provision of GR of 1981, respondent no.2 has solicited necessary directions from the Director, Soldiers Welfare Department, Maharashtra State, Pune, as well as from the Employment Exchange as to whether the post of Ex-serviceman (SC) category could be converted into unfilled vacancies from any other category, however, till date, there is no response from either of the authorities. He,

therefore, urges that writ petition is devoid of any substance and the same deserves to be dismissed.

CONCLUSION :-

7. We have given our thoughtful consideration to the submissions advanced by learned counsel appearing for the petitioner, learned AGP for respondent no.1, learned counsel appearing for respondent no.2 at length and perused the record.

8. Indisputably, the petitioner is at serial no.2 in the wait list prepared pursuant to the selection process initiated by respondent no.2. He belongs to the Scheduled Caste (General) category. The wait listed candidate at serial no.1 belonging to Scheduled Caste (General Category) has been selected by converting the said post into Schedule Caste (Sports Person) category. Petitioner therefore being wait listed candidate at serial no.2 ought to have been considered for the post reserved for Ex-serviceman (Schedule-Caste) on account of non-availability of the candidate from the said category. We find that learned counsel appearing for the petitioner has rightly relied upon decision of this Court in case of **Nikhil Chaudhary** (supra), wherein this Court permitted conversion of the post

from horizontal reservation to vertical reservation. Relevant observations in said judgment reads thus :-

> 2. From the OBC category one Badgujar Gajanan Eknath was selected and one Kapadne Mahindra Popat who had secured 112 marks was included in the list from the OBC category as no female candidate from said OBC category was available. Still there were two posts, one for OBC (Ex-service) and second for OBC part time. The said posts meant for horizontal reservation were not filled in. The petitioner approached the Maharashtra Administrative Tribunal by filing Original Application No.939/2012. The tribunal in its judgment dated 07.01.2014 observed that as far as the post of Ex-serviceman OBC is concerned, as no eligible candidate is available, the post cannot be filled in from OBC General category. The same was based on Government Resolution dated 16.04.1981. The tribunal further observed that as far as the other post OBC (part time) is concerned the same would go to the vertical reservation as from said horizontal reservation post for part time candidate was not available. The tribunal has considered that respondent No.3 has got more marks than the petitioner as such respondent No.3 should be considered for the appointment and if respondent No.3 does not respond then the petitioner's claim be considered for the appointment. The petitioner assails the said order by filing the instant writ petition.
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> 3. Learned AGP submits that the tribunal has considered the Government Resolution dated 16.04.1981 which states that the post of Ex serviceman cannot be filled up unless there is compliance of Clause-ii of the said Government Resolution which states that the post for ex-serviceman cannot be filled in, if the candidate is not available.
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> 4. Mr. Bajaj, learned counsel for the petitioner and Mr. Katneshwarkar, learned counsel for respondent No.3

relied on the Government Resolution dated 16.03.1999 to submit that if the persons from the horizontal reservation are not available, the said post has to be filled in from the member of the vertical reservation.

5. According to the learned AGP the Government Resolution dated 16.04.1981 is not superseded and as such the same was relied.

6. Government Resolution dated 16.03.1999 is subsequently issued based on the judgment of this Court and the Apex Court. The reference to the said judgments is given in the said Government Resolution itself. Naturally the said the Government Resolution has to be implemented.

7. Considering the above, two remaining posts from the OBC category meant for Ex-serviceman and part time shall be filled in from the persons of OBC category as per the final list published. The respondent No.3 has secured 109 marks and the petitioner has secured 108 marks. The petitioner and respondent No.3 are required to be considered for the appointment.

9. It is pertinent to note here that this Court on 23.08.2023 while granting interim relief has passed a reasoned order by directing the respondent no.2 to keep one post of Pump Operator vacant, which was allocable to the Ex-serviceman category. Meaning thereby, one post of Ex-serviceman is still lying vacant and the petitioner can certainly be accommodated on the said post.

10. In light of aforesaid observations of this Court in case of Nikhil Chaudhary (supra), we find that writ petition deserves to be allowed. In result, we proceed to pass the following order.

O R D E R

i. Writ petition is **allowed** in terms of prayer clauses '**A' and 'B**'.

ii. The Respondent no.2 shall consider the petitioner for appointment on the post of pump operator (Scheduled Caste) Category as the candidate from Ex-serviceman (Scheduled Caste) category was not available pursuant to said advertisement. The said exercise would be done within a period of Four (4) weeks from the date of receipt of copy of this order.

iii. Rule is thus made absolute in the above terms.

iv. Writ petition stands **disposed of.**

(ABASAHEB D. SHINDE, J.) **(NITIN B. SURYAWANSHI, J.)**

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