

(2014) 10 BOM CK 0087

In the Bombay High Court

Case No : Writ Petition No. 9214 of 2014

Amey Avinash Nirmale

APPELLANT

Vs

Maharashtra Animal Fishery Sciences University

RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

Citation : (2015) 3 ALLMR 770 : (2015) 2 BomCR 644

Hon'ble Judges : Anoop V. Mohta, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : Nikhilesh Pote, Advocate for the Appellant; Avinash K. Jalsatgi a/w C.M. Lokesh, S.S. Bhende, AGP and A.S. Ranade, Professor and head of Poultry Science Dept. Bombay Veterinary College, Advocate for the Respondent

Judgement

1. The Petitioner who is belongs to Scheduled Caste category applied for admission to the B.V. Sc. and A.H. Course for the year 2014-15 based upon the prospectus published by the Respondents on or about 21.6.2014. There is no issue so far as the constitutional reservation which the Respondents need to follow as provided in Clause-9. We are concerned with Clause No.9.2.(a) i.e.

"Reservation of Seats: (a) Scheduled Caste and SC converted to Buddhism [SC]: 13.0% (30% seats shall be reserved for female 1 / 6 candidates)"

2. The Petitioner has stated to be at 106 of Regional List and at 381 of the State Merit List. The Petitioner by this petition dated 4.10.2014 prayed that his application be considered as belongs to Scheduled Caste category on the basis of merit in accordance with law.

3. The learned Counsel appearing for the Respondents by affidavit dated 9.10.2014 placed on record the actual vacancies as of today, which is the last date of special round declared by them. This chart shows that four-seats are still vacant for this category. The submission is that based upon the Government Resolution dated 11.6.2013 immediately after second round they have declared that all these seats now will be filled in from the balance list available with them

based upon the merit, irrespective of compliances of constitutional percentage of reservation so fixed and declared. A reference is made to the prospectus, wherein it has been mentioned that seats remaining vacant after first round of State as well as Regional quota admission will be filled in during the second round as per the following stepwise procedure:

"Step-I Filling of vacant seats separately in reserve and unreserved category as per vacancy position.

Step II- filling of vacant female seats in reserve and unreserved category separately as per vacancy position irrespective of horizontal reservation as mentioned at 9.3.

Step III- Conversion of female seats to male seats separately (if the female candidate of particular category are not available in Reserve/unreserved category along with original horizontal reservation.

Step IV- Conversion of horizontal reservation into respective reserve and unreserved categories.

Step V- Filling of vacant seats in reserve categories (if any) by SBC candidates (Max 2%)

Step VI Filling of remaining vacant seats by inter se within reserve categories

Step VII After filling the vacant seats by step I to Step VI if there are any vacancies those will be filled in by Common State merit inter se .

Note: After completion of every steps the next step will start immediately.

(xix) The seats remaining vacant after second round State as well as Regional quota admission will be filled in during the third round by common state merit inter se.

(xx) The seats remaining vacant after third round of admission will be filled in during the special admission round by common state merit."

4. The respondents therefore resisted the Petitioner's prayer. The chart itself shows that there are vacancies even for students of other categories. This itself means that the Respondents have not fulfilled the constitutional mandate as well as Rule 9.2.

5. The submission that after the second round they have no choice but to declare the seats open for all the candidates, in our view, is unacceptable. That will be in clear breach of the constitutional mandate so referred above. The Respondents are under the obligation to give admission and to fill the seats as per the percentage so prescribed by following due procedure in case of vacant seats in particular category to adjust the students firstly from other reserved category and if still seats are vacant, to open it for open category and not otherwise. The Respondents in the present case though the students are available like Petitioner belong to scheduled caste category without considering his case, the statement

is made that as the seats are open for all the categories, the Petitioner will not be considered though he belongs to Scheduled Caste category of which four-seats are still vacant. Tomorrow being the last date in special round, therefore, we have suggested the Respondents to wait for final decision/final list so that meritorious students than the petitioner belong to Scheduled caste category if available and or admitted and if still fail to join, the Petitioner's case can be considered automatically.

6. The learned Counsel appearing for the Respondents, however, on instructions, makes statement that as they have already declared all the seats for open category/all categories, there is no question of giving preference to the Petitioner though he belongs to Scheduled Caste category and four-seats are vacant. We are inclined to observe that the Respondents are under the constitutional obligation to fill in all the seats as per the percentage prescribed by selecting the students of a particular category and if not available then only they can proceed to follow the procedure so prescribed.

7. Therefore, the submission that they have followed the Government Resolution so referred above and the prospectus so read and referred above, is unacceptable. There is no such Government Resolution and or any such intention to overlook and/or destroy the scheme of the reservation so already announced and recognized throughout even by the Respondents for so many years. The Respondents' reliance on annexure-II of the Government Resolution in no way sufficient to overlook the constitutional mandate so referred above.

8. Therefore, taking into consideration overall view of the matter and as today is the last date in view of special round and no other candidate has challenged and/or raised such plea and as the Respondents are not willing to fill in the seats as per the reservation category, we are inclined to pass the following order:

ORDER

(a) The Respondents are directed to allot the seat under the reservation Scheduled Caste category to the Petitioner by following due process of law, if otherwise eligible and if other meritorious students than the Petitioner are not available in the said reserved caste category.

(b) Stand over to 14 October 2014. To be placed high on board.

(c) As the matter is heard in the presence of concerned Officer who is present in the Court, parties to act on the basis of authenticated copy of this order, but that should not be the reason not to consider the case of the Petitioner for want of copy of this order.