

(2016) 08 BOM CK 0009
In the Bombay High Court
Case No : Writ Petition No. 1309 of 2016

Balaji S/o Vithalrao Savalkar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 02-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 ALLMR 362

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. M.L. Dharashive, Advocate, for the Petitioner; Mr. P.N. Kutti, A.G.P, for the Respondent/State; Mr. M.C. Syed, Advocate, for the Respondent No. 4

Final Decision : Allowed

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. By consent of the learned counsel appearing for the parties, Heard finally.

2. By way of filing this Writ Petition, the petitioner seeks direction to the Respondent Authorities to cancel the appointment of Respondent No. 4 and appoint himself to the post of Arogya Sevak from handicapped (Deaf) category in the Health Department, Zilla Parishad, Beed.

3. It is the submission of the learned counsel appearing for the petitioner that pursuant to the advertisement issued by Respondent Nos. 2 and 3 on 2nd November, 2015 to fill up the various posts, Online applications were invited from the qualified candidates. He invites our attention to the copy of the said advertisement and submits that three posts are meant for handicapped category and out of the three posts, one is for deaf category. It is submitted that the petitioner filled in Online application and appeared for the written test and scored 90 marks out of 200 marks. He secured minimum marks required for passing of the said examination. The petitioner is the only candidate for the appointment to

the post of Arogya Sevak from handicapped (deaf) category and no other candidate submitted an application for the said post from that category. Therefore, the petitioner is entitled for the appointment to the said post. It is submitted that even the petitioner was called for verification of the documents and he appeared for verification of the documents before Respondent Nos. 2 and 3. It is submitted that at the relevant time, the petitioner was having the certificate of the Competent Authority showing that the petitioner is from handicapped (deaf) category and extent of the said disability shown in the said certificate is of 83%. However Respondent Nos. 2 and 3 ignoring the claim of the petitioner appointed Respondent No. 4 to the said post. It is submitted that Respondent No.4 is not from the handicapped category, and therefore, his selection should be cancelled and the Respondents may be directed to appoint the petitioner on the post of Arogya Sevak from handicapped (deaf) category. It is submitted that the petitioner is from the Scheduled Caste Category and physically handicapped (deaf), and therefore, there was no reason for Respondent Nos. 2 and 3 to reject his candidature for the said post.

4. On the other hand, the learned counsel appearing for Respondent No. 4 submits that Respondent No.4 is also from the reserved category. He invites our attention to the corrigendum issued by Respondent Nos. 2 and 3, and submits that the posts were made available for the candidates from reserved/open category. He submits that the petitioner secured only 90 marks, however Respondent No. 4 secured 154 marks, and therefore, Respondent No. 4 was selected. Respondent No. 4 is from Scheduled Caste (General) category. He submits that there was proper selection by the Selection Committee. Therefore, he submits that the Petition is devoid of any merits and the same may be rejected.

5. The learned A.G.P. appearing for Respondent Nos. 1 and 2 and the learned counsel appearing for Respondent No.3, jointly submit that the selection process was properly carried out. There was no infirmity. The petitioner is less meritorious candidate, in as much as, he secured only 90 marks and Respondent No.4 secured 154 marks. Therefore, they submit that the Petition may be rejected.

6. We have heard the learned counsel appearing for the petitioner, the learned A.G.P. appearing for the Respondent/State and the learned counsel appearing for the respective Respondents. With their able assistance, we have perused the pleadings/grounds in the Petition, annexures thereto, reply filed by Respondent Nos. 3 and 4 and the Government Resolution dated 14th January, 2011 issued by Rural Development and Water Conservator Department, Government of Maharashtra (which is placed on record at Exhibit `R2"), which provides for 3% reservation for the appointment on the class-III and Class-IV posts.

7. It appears that Respondent No. 3 issued advertisement No. 2/2015) on 2nd November, 2015, thereby inviting Online applications for the various posts including the post of Arogya Sevak. Upon careful perusal of the clause (4) of the

said advertisement, it appears that the recruitment for three posts of Arogya Sevaks (40%) namely the candidates belonging to Scheduled Caste, Scheduled Tribe and N.T. (B) are earmarked. So far one post from the Scheduled Caste is concerned, it is mentioned in the said column as under :

"Inj laoxkZr viaxkpk 2 inkap k eqdc/khj @ d.kZc/khj 1 vYin`"Vh 1 vuq"ks"k f"kyGd vls ueqn izoxkZrqu ik= viax mesnokj miyC/k >kY;kl R;kph fuoM dj.;kr ;sbZG o viax mesnokj miyC/k >kGk ukgh rj loZ/kkj.k mesnokjkph xq..kiRrsuuqlkj fuoM dj.;kr ;sbZG"

8. Therefore, it follows from the said advertisement that the posts, which are reserved for Scheduled Caste category, are to be filled in from the candidates, who are dumb, hearing impaired and low vision. It is not in dispute that the petitioner belongs to the Scheduled Caste category. The petitioner has placed on record the copy of the disability certificate in Form-IV issued by the Government of Maharashtra signed by the three Competent authorities in the field. Therefore, it is undisputed position that the petitioner's disability is hearing impairment, affect part of body is both ears and diagnosis stated in the said certificate is Bilateral severe sensorineural hearing loss and disability is 83%. It is also mentioned that, the above condition is permanent, non progressive, not likely to improve. Reassessment of disability not necessary. Therefore, it is crystal clear that the petitioner is entitled for the seat reserved for said category.

9. Even if the corrigendum dated 4th November, 2015 issued to the Advertisement No. 2/2005, in that case also, there is 3% reservation provided for candidates from handicapped category. There are four posts earmarked for handicapped category namely three posts for dumb and hearing impaired and one post for low vision. For the candidates belonging to the scheduled caste category, total 15 posts are made available. It appears that in all there are 65 posts of class-III and class-IV are advertised. However, subject to appointment of four candidates from handicapped category, three candidates from dumb and deaf and hearing impaired and one post from low vision.

10. In the light of discussion herein above, there is no manner of slightest doubt that the petitioner, who belongs to scheduled caste and physically impaired, ought to have been selected for the post reserved for the said category. The petitioner was only candidate from the said category. The petitioner secured 90 marks. Requirement of passing is 45% and he achieved that benchmark. For the reasons aforesaid, inevitable conclusion is that the selection of Respondent No. 4 on the post reserved for scheduled caste meant for physical impaired and handicapped category was not keeping in view the posts advertised in the advertisement. In the result, the selection of Respondent No. 4 from the said category stands quashed and set aside. Respondent Nos. 2 and 3 are directed to issue appointment letter in favour of the petitioner, as expeditiously as possible, however, within two weeks from receiving the copy of the order of this Court. In case, there is vacant post from the social reservation category from which Respondent No. 4 belongs to, it will be open for Respondent Nos. 2 and 3 to

consider his candidature for the said post.

11. The Petition is allowed to the above extent. Rule is made absolute accordingly. No costs.