

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5880 OF 2012

PRATAP MAHADEORAO GARJE
VERSUS
THE STATE OF MAH AND ORS

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Advocate for Petitioner : Shri S.B.Talekar
AGP for Respondent 1 : Shri V.D.Godbharale
Advocate for Respondents 2 & 3 : Shri P.P.More

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CORAM : B.P. DHARMADHIKARI & RAVINDRA V. GHUGE, JJ.

Dated: September 20, 2013

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PER COURT :-

1. Heard learned counsel for the respective parties.
2. The petitioner, a candidate belonging to NT(D) category and having validity, applied against a reserved post in response to the public advertisement dated 21.1.2009. He was duly selected, however, not against the NT(D) post but against the VJ(A) post. His selection and subsequent recruitment was questioned before this Court in Writ Petition Nos.7939 of 2010 and 1293 of 2011. Both petitions have been disposed of by common judgment dated 29.2.2012. Petitioner Vishal Jadhav (in Writ Petition No.7939 of 2010) was found to possess more marks than the present petitioner in VJ(A) category and hence the direction was issued to substitute the petitioner by appointing Vishal Jadhav. Another petitioner Arvind Rathod (in Writ Petition No.1293 of 2011) was found not to possess that merit and as he was lower in list in so far VJ(A) category is concerned, that petition was disposed of. By that time, the petitioner had put in about two and half years of service.

3. Present petition is filed by the petitioner with a grievance that as per the Government Policy in vogue since 1971, the vacancies prevailing in NT(C) category are interchangeable with NT(D) category and entitlement of the petitioner to NT(C) category vacancy, therefore, needs to be considered. By placing reliance upon the judgment of this Court dated 6.9.2013 in Writ Petition No.2562 of 2012 as also reply affidavit filed before this Court by respondent Nos.2 and 3 on 7.8.2012, effort is made to show that out of total seven posts available for NT(C) category, only three were filled in and four vacancies were available. Subsequently, out of four vacancies, only one was filled in and thus three posts are still available.

4. In this background, Shri Talekar, learned Advocate for the petitioner submits that as the petitioner was not at fault, he must be considered against the available vacancy in NT(C) category by invoking rule of interchangeability.

5. Learned AGP Shri Godbharale for respondent No.1 and learned Advocate Shri More for respondent Nos.2 and 3 strongly oppose the petitioner.

6. Shri More, learned Advocate submits that the petitioner has no right to post and he cannot take advantage of accidental error or mistake to claim any preference in the matter of employment.

7. Respondent No.2 is the Maharashtra Pollution Control Board and respondent No.3 is its Chief Administrative Officer. Employment with respondent No.2 is a public employment and hence is regulated by Articles 14 and 16 of the Constitution of India. The petitioner could not have been selected in 2009 in NT(D) category i.e. the post for which he has applied. By an accident, he came to be appointed against a vacancy not meant for him in VJ(A) category. This Court has found that one Vishal Jadhav, who had more marks than the petitioner ought to have been given that post in VJ(A) category and hence by its judgment delivered in Writ Petition No.7939 of 2010, has extended that employment to Vishal Jadhav. Thus, the employment provided to the petitioner was found erroneous and wrong.

8. Thus a candidate, who is not entitled to recruitment, was provided employment by superseding the claim of a better placed person and continued in service for about two and half years. On the basis of that continuation and further pleading ignorance and innocence, present petition has been filed.

9. It is not the case of the petitioner that at the relevant time, when he was recruited, the petitioner could have been and should have been considered against the vacancy then available in NT(C) category.

10. Subsequent vacancies becoming available and not advertised in the year 2009 cannot be made available for consideration of claim of the petitioner. Direction of this Court was only to consider the entitlement of the

petitioner in terms of 2009 advertisement. The petitioner has not pointed out any violation of that direction. We, therefore, has found no case warranting interference.

11. In the result, Writ Petition is rejected. No order as to costs.

(RAVINDRA V. GHUGE, J.)

(B.P. DHARMADHIKARI, J.)

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