

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
AURANGABAD BENCH, AURANGABAD
ORIGINAL APPLICATION No. 227 of 2014 (D.B.)

Jijabrao s/o Dodhu Khairnar,
Age 45 yrs., Occ. Business,
R/o 25-A, Dnyandeep Society,
Dhule Road, Nandurbar,
Tq. & Dist. Nandurbar.

Applicant.

Versus

1) The State of Maharashtra
through its Secretary,
Department of Water Resources,
Mantralaya, Mumbai-32.

2) The controlling officer and
The Executive Engineer,
Ghat Ghar, Water Electricity,
Project Circle, Nashik,
Tq. and Dist. Nashik.

3) The Superintendent Engineer,
Nashik Irrigation Department,
Dhule Division,
Sinchan Bhavan Dhule,
Tq. and Dist. Dhule.

4) Sanjay S/o Madhukar Khairnar,
Age 39 yrs., Occ. Service,
R/o Plot No. 5, Shanti Nagar,
Shahada, Tq. Shahada,
Dist. Nandurbar.

Respondents

Shri N.B.Jadhav, Id. Advocate for the applicants.

Smt. S.K.Ghate, Id. P.O. for the respondent nos. 1 to 3.

Shri P.B.Patil, Id. Advocate for the respondent no. 4.

**Coram :- Hon'ble Shri J.D. Kulkarni, Vice-Chairman (J) &
Hon'ble Shri P.N.Dixit, Member (A).**

JUDGEMENT

(Delivered on Day 07th of April, 2018)

Heard Shri N.B.Jadhav, Id. counsel for the applicant, Smt.S.K.Ghate, Id. P.O. for the respondent nos. 1 to 3 and Shri P.B.Patil, Id. counsel for the respondent no. 4.

2. The applicant is a graduate in Arts and he is suffering from serious disease viz. Cancer for which he is undergoing treatment. The applicant, in response to the advertisement issued by respondent no. 3 on 21/04/2008 applied for the post of Peon. As per the said advertisement, two posts are reserved for Project Affected Persons for Open General category. The written examination was conducted on 25/05/2008 and call letter was also issued to the applicant for oral interview. The oral interview was conducted by the duly constituted committee on 06/08/2008 and the list of successful candidates was published. The applicant's name was shown at Sr. No. 1 in the Open General Project Affected Persons' category. It was orally intimated to the applicant that he will receive appointment order in due course. Since no

intimation was received, the applicant sought information under the Right to Information Act and it was intimated that the Government Resolution whereby the seats were reserved for Project Affected Persons, was cancelled vide Government Resolution dated 18/07/2008 and, therefore, the modified list was published.

3. Being aggrieved by the aforesaid action, the applicant filed Writ Petition no. 2225/2009 before the Hon'ble High Court at Bench Aurangabad. The said W.P. was allowed by the Hon'ble High Court vide Judgment and order dated 03/05/2010. The Hon'ble High Court was pleased to allow the petition and directed the respondents to complete the selection process and issue appointment orders to those candidates who have been duly selected in the said selection process, in accordance with their merits. This process was to be completed within two months from the date of order. However, the process could not be completed within two months and, therefore, the Superintending Engineer, Nashik Irrigation Circle, Nashik, has filed Civil Application No. 9696/2010 in W.P.No.2225/2009 for seeking extension. Vide order dated 08/01/2013, the Civil Application was disposed of.

4. According to the applicant, vide G.R. dated 17/07/2008, it is expected that direct recruitment could not be done for category of

Project Affected Persons. In the merit list, the name of the respondent no. 4 was shown in Open General Category whereas the name of the applicant was shown in Project Affected Persons' Category. However, the respondents changed the category illegally in favour of respondent no. 4 and the respondent no. 4 has been appointed, instead of the applicant. The applicant has, therefore, prayed for direction to the respondents to issue appointment order in his favour and to cancel the appointment order dated 30/09/2010 in respect of respondent no. 4 and hence this O.A.

5. The respondent nos. 1 to 3 have filed affidavit-in-reply. The respondents admitted that the entire process of recruitment including written test, oral interview published after final select list etc. It is stated that it was necessary to implement the direction of the Hon'ble High Court as per the Judgment dated 03/05/2010 and, therefore, the post meant for Project Affected Persons' category was to be filled. The G.R. dated 18/07/2008 was, therefore, cancelled. It is stated that the Hon'ble High Court vide order dated 03/05/2010 has allowed the group of W.Ps. and further directed the respondents to complete the selection process and issue appointment orders to the candidates who have been duly selected in accordance with their merit. In the said merit list, the applicant got 79 marks, whereas the respondent no. 4, Shri Sanjay

Madhukar Khairnar got 82 marks. The respondent no. 4 was, therefore, meritorious than the applicant and, therefore, the respondent no. 4 has been appointed. It is material to note that the respondent no. 4 also is from Project Affected Persons' category and he got more marks than the applicant and, therefore, his name was kept in the Open General category. There was no post reserved for Open General category for Peon and, therefore, the claim of the respondent no. 4 was considered for Project Affected category, but on merits.

6. We have perused the various documents placed on records. It is clear from the record that the selection process has been completed by the respondent authorities. In W.P. No. 2225/2009, the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur, in case of Dodhu S/o Jajabrao Khairnar Vs. State of Maharashtra & 2 Ors. in group of W.P., on 03/05/2010, has observed as under :-

"The Full Bench in the said Judgment had held that merely because the candidates were project affected persons, that would not permit them to seek appointment dehors the regular selection process and the project affected candidates were required to undergo selection process. In the present case, an advertisement had been issued and written examinations had been held and thereafter oral interviews had also been held. Thus, the selection process was complete and only the issuance of the appointment orders was deferred on account of the judgment of the Division Bench. The aforesaid Judgment of the

Division Bench has been reversed by the Full Bench and consequently, according to us, there is no impediment whatsoever in taking the selection process to its logical conclusion and issuing appointment orders to the candidates, who have been duly selected. If the respondents are permitted to issue fresh advertisement, many of the candidates, who had either applied or who may be selected in the selection process would become age barred and thus would not be entitled to get the appointment orders. The selection process is not vitiated in any manner as there is no flaw in the selection process."

7. In view of the aforesaid directions, the respondents seemed to have been carried out the process of recruitment and since the applicant got less marks than the respondent no. 4, the respondent no. 4 was selected for the Project Affected Persons' category. We do not find any illegality in the process of recruitment.

8. The Id. counsel for the applicant submits that the applicant is age barred and, therefore, his case shall be considered sympathetically. This aspect has already been considered by the Hon'ble High Court while deciding W.P. No. 2225/2009 along with the group matters and in order to avoid inconvenience to the age bar candidates, the selection process was continued and was not cancelled by the Hon'ble High Court. If the applicant could not succeed on merits in the said process, this Tribunal cannot help him, though the sympathy may be with applicant.

9. In view of the discussion in foregoing paras, we do not find any merit in the O.A. Hence the following order:-

ORDER

O.A. stands dismissed with no order as to costs.

(P.N.Dixit)
Member (A)

(J.D. Kulkarni)
Vice-Chairman (J).

Dated:-07/04/2018

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