

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO. 563 OF 2016**

**DISTRICT :BEED**

Ganesh s/o. Gajendra Giri )  
Age-30 years, Occu. Driver, )  
R/o: Kandani Road, Kaij, Tq. Kaij, )  
Dist. Beed. )...**Applicant**

**VERSUS**

1. The State of Maharashtra, )  
Through its Secretary, )  
Public Work Department, )  
Mantralaya, Mumbai -32. )
2. The Superintending Engineer, )  
Public Work Department, )  
Pune Circle, Department, )  
Camp, Pune – 411 001. )
3. Ganesh s/o Kanhu Bhagwat, )  
Age:27 yrs, Occu: Driver/service, )  
R/o: Public Work Department, )  
Sub-Division Shirur, Tq. Shirur, )  
Dist: Thane. )....**Respondents**

Shri C.R. Thorat, the learned Advocate for the Applicant.

Ms. N.G. Gohad, learned Presenting Officer for the Respondents No.1 and 2.

None for the Respondent No.3.

**CORAM : Shri Rajiv Agarwal, Vice-Chairman**  
**Shri R.B. Malik, Member (J)**

**DATE : 27.01.2017**

**PER : Shri Rajiv Agarwal, Vice-Chairman**

**ORDER**

1. Heard Shri C.R. Thorat, the learned Advocate for the Applicant and Ms. N.G. Gohad, learned Presenting Officer for the Respondents No.1 and 2. None for the Respondent No.3.
2. This Original Application has been filed by the Applicant challenging the order dated 8.2.2016 passed by the Respondent No.3 appointing the Respondent No.3 as Driver from NT-B category.
3. Learned Counsel for the Applicant argued that the Respondent No.2 has issued an advertisement on 12.8.2014 to fill up various posts, including 25posts of Drivers. The Applicant applied for the said post and his name was included in the list of successful candidates published on 9.11.2014, along with the Respondent No.3. Both scored 78 out of 100 marks. However, the Respondent No.2 appointed the Respondent No.3 as Driver and the Applicant was not given appointment. Learned Counsel for the Applicant argued that as per G.R. dated 5.8.2015, if two candidates secure equal marks, the candidate more in age has to be

selected. On that criterion, the Applicant was eligible to be selected. This G.R. has been issued in suppression of earlier G.R. in the wake of order issued by Hon'ble Bombay High Court in W.P.No.4723 of 2013. Learned Counsel for the Applicant prayed that the selection of the Respondent No.3 may be cancelled and the Applicant be given appointment in the post of Driver.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent Nos. 1 and 2 that out of 25 posts of Drivers advertised on 12.8.2014, one post was reserved for NT-B category. Both, the Applicant and the Respondent No.3 obtained equal marks in the selection process. As the selection process was started on 12.08.2014 by issuing the advertisement, the G.R. dated 27.8.2008 was applied. As per this G.R. in case of equality of marks between two candidates, the candidate with higher educational qualifications is selected. As the Respondent No.3 was admitted having higher qualifications, he was selected. Learned P.O. argued that G.R. dated 5.10.2015 is applicable prospectively and all vacancies are required to be filled as per old rules.

5. We find that the Respondent No.2 has selected the Respondent No.3 as Driver from NT-B category, as he had higher qualifications than the Applicant, who is also from NT-B category and both secured equal marks. This is in accordance with G.R. dated 27.6.2008. The selection process was started by issuance of advertisement on 12.8.2014. The

Applicant is claiming relief as per G.R. dated 5.10.2015. Para 4 of this G.R. reads as follows:-

“ ४. ज्या प्रकरणी, हे आदेश निर्गमित होण्यापूर्वी जाहिरात प्रसिध्द करून निवड प्रक्रिया सुरु करण्यात आली आहे अशी प्रकरणे वगळता, हे आदेश तात्काळ अमलात येतील.”

The decision of the Respondent No.2 is in accordance with G.R. dated 5.10.2015 also. This G.R. or para 4 has not been challenged by the Applicant.

6. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

**(R.B. MALIK)**  
**MEMBER (J)**

**(RAJIV AGARWAL)**  
**(VICE-CHAIRMAN)**

**Date : 27.01.2017**

**Place : Mumbai**

**Dictation taken by : SBA**

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