

DATE : 20.10.2016.

JUDGMENT

(Delivered on 20/10/ 2016.)

(Per: Hon'ble Shri J.D. Kulkarni, Member (J))

1. Applicant Kailsh S/o Pandit Bodakhe has claimed direction to Respondent no.2 to publish a separate list of Project Affected Persons (P.A.P.) candidate from O.B.C. category by including applicant's name and to declare the applicant as selected candidate under said category. During pendency of the application, the Respondent no.3 Shivaji Madhukar Jadhav came to be selected for the said post and therefore, the applicant is now claiming that the selection and appointment of Respondent no.3 to the post of Police Constable be quashed and the Respondent no.2 be directed to appoint the applicant on the said post from O.B.C. (P.A.P.) category.

2. The applicant belongs to a family of Project Affected Persons as the land in the name of his mother Smt. Lilabai Pandit Bodakhe situated at village Sawasani Tq. Jafarabad Dist. Jalna was acquired for Bharaj Minor Irrigation Tank

Project. The applicant belongs to Mali community which comes under O.B.C. category.

3. The advertisement was published for 107 posts of Police Constables in Jalna District on 30.9.2011. The applicant participated in the said recruitment process as a candidate of O.B.C. , P.A.P. category. Out of 107 posts 11 posts were reserved for O.B.C. category.

4. Since the applicant was eligible for the said recruitment of Police Constable he applied under O.B.C., P.A.P. category. Respondent no.2 issued a Hall ticket and the applicant appeared for Physical / Ground Test and qualified for the written test. He secured 179 marks in the written test and his name was shown as eligible person in the interim list published on 6.11.2011.

5. On 7.11.2011 a final list of 102 candidates was published, but no separate list for five persons of P.A.P. candidates from O.B.C. category was shown. A separate list was published for P.A.P. category from S.C. category,

Ex-Servicemen, Sportsmen, Earthquake as well as Homeguard category, but not for O.B.C.-P.A.P. category. Though the applicant got 179 marks his name was not found in the final list, whereas the persons having less marks from the O.B.C. category were shown selected.

6. By way of amendment the applicant submitted that, he got information under Right to Information Act from which it revealed that, the Respondent no.3 was wrongly selected from PAP category. There was only one post reserved for PAP category. The candidate at Sr.Nos. 1 & 4 in the list of OBC-General candidates are wrongly shown to be selected from PAP category. The appointment of Respondent no.3 is therefore, without considering the merits and against the G.R. issued in this regard.

7. The Respondent no.2 has filed affidavit and denied the claim of the applicant. The respondent however, admitted that, the applicant had secured 179 marks. It is stated that, 107 posts were advertised. The Respondents

had reserved right for changing the posts. It is stated that, the entire process of selection is fair and legal one.

8. We have heard Shri Kakasaheb B. Jadhav, learned Advocate for the applicant and Smt S.K. Ghate – Deshmukh, learned Presenting Officer for the Respondents. We have also perused the affidavit, affidavit in reply and various documents placed on record.

9. The material points to be considered in this O.A. are as under:-

- i) Whether the applicant is entitled to appointment to the post of Police Constable as claimed by him ?
- ii) Whether the selection and appointment of Respondent no.3 for the post of Police Constable is illegal ?

10. The fact that the applicant has participated in the process of recruitment and that he has scored 179 marks and was included in the list published on 6.11.2011 is not disputed. It is also not disputed that, the applicant's name was not included in the final list dated 7.11.2011. The

said final list is placed on record at paper book page nos. 21 to 30 (both inclusive). Perusal of the said list shows that though the advertisement was for 107 posts of Police Constable, 102 candidates were selected. The candidates of various categories are specifically mentioned in the said list. The list of OBC candidates is at paper book page no.30 from which it seems that 7 candidates are selected from OBC - General category, out of which the candidate at Sr.Nos.1 and 4 are shown under horizontal reservation i.e. PAP. Three female candidates are also selected and therefore, the total number of candidates selected from OBC-General, which includes PAP and Female is "10". The learned Advocate for the applicant submitted that, selection of PAP at Sr.Nos. 1 to 4 in the list is not as per the Govt. Resolutions issued by the Govt. in this regard.

11. The learned Advocate for the applicant invited our attention to one G.R. dated 18.7.2008. The copy of which has been placed on record at paper book page nos.37 to 39. Vide said G.R. it was decided by the Govt. that, the list of PAP shall be maintained separately and there was no

need to issue advertisement for appointment under the category of PAP. However, the said G.R. is not relevant in view of the fact that, subsequently G.R. dated 27.10.2009 was issued in view of the directions given by the Hon'ble High Court Bench at Aurangabad in Writ Petition Nos.6100/2008 & 7472/2007 in view of these directions G.R. dated 18.7.2008 and 27.10.2008 were cancelled, and a decision has been taken by the Govt. as under :-

“शासन निर्णय :

मा. उच्च न्यायालय औरंगाबाद पूर्ण खंडपीठाने (Larger Bench) दिलेल्या दिनांक ९.७.२००९ रोजीच्या निर्णयातील कार्यान्वयीन भाग सोबत जोडलेल्या परिशिष्ट-१ मध्ये दिलेला आहे. तो थोडक्यात खालीलप्रमाणे आहे.

“प्रकल्पगस्तांच्या नियुक्त्या जाहिरातीशिवाय व त्यांची सेवाप्रवेश अर्हता व गुणवत्ता डावलून करता येणार नाहीत.”

वरील निर्णयानुसार आता संदर्भाधीन क्रमांक २ येथील प्रकल्पगस्तांच्या नियुक्तीबाबत निर्गमित केलेले दिनांक १८.७.२००८ रोजीचे परिपत्रक व संदर्भ क्र. ३ येथील भूकंपगस्तांच्या नियुक्तीबाबत निर्गमित केलेला दिनांक २७.१०.२००८ चा शासन निर्णय रद्द करण्यात येत असून प्रकल्पगस्तांच्या व भूकंपगस्तांच्या नेमणूका जाहिरात देवून संबंधित पदाच्या सेवाप्रवेश नियमानुसार उमेदवाराची पात्रता तपासून व स्पर्धा परीक्षेद्वारे गुणवत्तेनुसार करण्यात याव्यात.

सर्व मंत्रालयीन विभागांनी त्यांच्या प्रशासकीय नियंत्रणाखालील सर्व शासकीय/निमशासकीय इत्यादी कार्यालयांना या शासन निर्णयानुसार आवश्यक ती कार्यवाही करण्याबाबतच्या सूचना तात्काळ द्याव्यात.

सदर शासन निर्णय महाराष्ट्र शासनाच्या वेबसाईटवर उपलब्ध करण्यात आला असून त्याचा संगणक सांकेतांक २००९१०२७१७२०३५००१ असा आहे.”

12. We have perused the selection list of the candidates from OBC category. The final select list has been placed on record by the applicant as well as respondents and the same is at paper book page nos.44-E and 66 respectively. The said list states about OBC-General and OBC-Female candidates as well as PAP candidates selected finally. The said list is as under :-

Sr. No.	Chest No.	Applicant Name	Category	Sex	DOB	Hori. Reservation	NCL	Total Marks.
OBC GENERAL								
1	2947	AJHAR SATTAR SHAIKH	OBC	M	3.5.1987	PAP	Y	184
2	2704	VILAS NEMINATH GADEKAR	OBC	M	16.3.1989		Y	184
3	2479	KAILAS MADHUKAR CHEKE	OBC	M	4.5.1988		Y	184
4	1734	PRADEEP BABASAHEB ZAREKAR	OBC	M	5.11.1991	PAP	Y	184
5	1174	IRFAN ISMAIL SHAIKH	OBC	M	5.7.1987		Y	183
6	2540	SHIVAJI MADHUKAR JADHAO	OBC	M	6.10.1986		Y	182

OBC FEMALE

1	3104	ANURADHA DNYANESHWAR BANDE	OBC	F	14.5.1993	30% F	Y	153
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2	3066	DIPEEKA RAMBHAU WAGHMARE	OBC	F	10.2.199 0			
3	3210	SAKHUBAI BHAGWAN SHINDE	OBC	F	8.2.1992	30% Sports	Y	128

OBC HOME GAURD

1	2616	MANOJ SHRIDHAR NIKAM	OBC	M	18.7.198 8	Home Gard	Y	176.
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13. From the aforesaid data it seems that, candidate at Sr.No.1 & Sr.No.4, who got 184 marks each were shown to have been selected from OBC-PAP. Candidate at Sr.Nos.2,3,5 and 6 are selected from OBC-General and candidate at Sr.no.1 under Homeguard category is appointed under OBC category and three female candidates have been appointed as OBC Female category. Thus, in all 10 candidates have been selected from OBC category.

14. From the aforesaid final list of OBC category, it seems that the female OBC candidates got 153, 152 and 128 marks each, whereas the OBC Male Homeguard candidate got 176 marks. Admittedly the applicant got 179 marks.

15. The learned Advocate for the applicant has invited our attention to the column of reservation in the advertisement dated 30.9.2011, which is at paper book page no.16. It seems from the said chart that, in all 11 posts were kept reserved for OBC and this reservation includes the reservation for PAP and other horizontal category.

16. In view of this, the learned Advocate for the applicant submitted that, had the Respondent filled 11 posts which were reserved for the OBC category the applicant should have find place in the list of selected candidates. Admittedly, the applicant got 179 marks and was very much in the interim list published on 6.11.2011.

17. The learned Presenting Officer invited our attention to the reply affidavit filed on behalf of Respondent no.2. In the said reply affidavit it is stated that the Respondent has published advertisement for post of 107 posts and it was specifically mentioned in the said advertisement that the Respondent no.2 reserves the right for changing posts. It is stated that the Additional Director General of Police,

Training Maharashtra has issued a letter dated 13.10.2011 and stated that 5 posts shall be filled up from compassionate category and therefore, the recruitment process was carried out only for 102 posts and not for 107 posts as advertised and therefore, only 10 posts were to be filled in from O.B.C. category. All these posts are filled and therefore, no post for reservation of O.B.C. is now vacant. In Exh.R-1 at paper book page no.51 a chart is given disclosing reservation from all category including break up of O.B.C. category from which it is clear that 10 posts of O.B.C. are filled in out of 102. Thus, there seems to be no vacancy for O.B.C. candidate at present.

18. So far as Respondent no.3 is concerned, it is clear that, he has secured 182 marks and is at Sr.No.6 in the OBC General merit list. Thus, he has definitely secured more marks than the applicant though he may not be belonging to PAP category and therefore, there is no justification in quashing his selection and appointment.

19. In view of the discussions in foregoing paragraphs we are therefore, satisfied that the selection process for O.B.C.

was perfectly legal and proper and it can not be said that the applicant has been de`nied his due right and hence, we pass the following order.

ORDER.

- i) The Original Application is dismissed.
- ii) No order as to costs.

MEMBER (J)
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VICE CHAIRMAN (A)

