



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 4257 OF 2013

Mr. Udaysing Jalamsing Valvi,  
Age 37 years, Occu. Nil,  
R/o. At Post Ghosale, Tal. Roha,  
District- Raigad.

....Petitioner

Vs.

1 The Secretary,  
District Selection Committee,  
Raigad Z.P, Alibagh,  
District Raigad.

2 The Chief Executive Officer,  
Raigad Z.P, Alibagh,  
District Raigad.

....Respondents.

Ms. Vaishali K. Jagdale for the Petitioner.  
Mr. C.G. Gavnekar for Respondent Nos. 1 and 2.

**CORAM : ANOOP V. MOHTA AND  
B.P. COLABAWALLA, JJ.  
RESERVED ON : 08 JANUARY 2014.  
PRONOUNCED ON : 22 JANUARY 2014.**

**ORAL JUDGMENT:- (PER ANOOP V. MOHTA, J.)**

Rule returnable forthwith.

2 Heard finally, by consent of the parties.

3 The Petitioner's main prayer is to direct the Respondents to appoint the Petitioner on the post of Senior Assistant (Accounts) under Scheduled Tribe reserved category, as by communication dated 2 November 2012, the Respondents rejected the representation and claim of the Petitioner, though being waiting list candidate No.1 and as the post was vacant, as the appointed candidate unable to join the post, as unable to furnish the caste certificate.

4 Respondent No.1 issued advertisement on 1 September 2011, for the post of Senior Assistant (Accounts) out of which one post was reserved for Scheduled Tribe category (for short, ST category). As two candidates appeared under the ST category, after written and oral examination, in October 2011, a list was published, in which the name of one Mr. Pritam Hiraji Surekar shown as selected candidate. The Petitioner was shown in the waiting list at Serial No.1, the remaining candidate.

5 Mr. Surekar could not submit his caste validity certificate despite of three months extension to submit the same. Therefore, the Petitioner made a representation on 30 March 2012 to consider his case being eligible and qualified and as also having caste validity certificate, validated by the Caste Scrutiny Committee. The Respondents, instead of appointing the Petitioner, issued another advertisement on 15 April 2012, but not filled the post in question of Senior Assistant (Accounts) under ST Category. The Petitioner, therefore, submitted another representation on 22 May 2012, and again demanded to appoint him being eligible for the vacant post. Respondent No.2 could not take decision, as six months period was not over, but without communicating anything adverse, representation dated 22 May 2012 was kept pending. Another representation was made by the Petitioner on 23 July 2012.

6 On 8 August 2012, the caste of Mr. Surekar was invalidated by the Scrutiny Committee, Konkan Division, Thane. Therefore, on 15 September 2012/ 12 October 2012, the Petitioner demanded the appointment. Respondent No.2 by order dated 2 November 2012, for the first time communicated that the list was

lapsed in November 2012 itself and therefore, he could not be appointed.

7           The Petitioner made other representations on 5 December 2012 and 7 December 2013, but in vain. Respondent No.1, without considering the above issue, published a fresh advertisement on 11 April 2013 for the post in question. The Petitioner, therefore, filed the present Petition on 29 April 2013, as the post is still vacant. This Court, on 3 September 2013, recorded that appointments made to the post subject to further orders which may be passed in the Petition.

8           Respondent Nos. 1 and 2 filed their reply affidavit on 17 July 2013 and supported their decision. They relied Clause-9 of the Government Circular/Decision dated 19 October 2007. There is no dispute that the candidate who was appointed/selected could not submit the certificate inspite of opportunity/time given, apart from the fact that he never joined the post. The period of six months, even if any, for getting the caste certificate validated, in no way, in the present facts and circumstances, assist the Respondents to deny the right of the Petitioner, who was otherwise eligible in view of the fact that the

post was vacant during the said period of one year. The Petitioner made innumerable representations, mentioned above. The timely decision within a period of one year if taken by the Respondents, the Petitioner being eligible at serial No.1 waiting list candidate for the post, could have been appointed. They failed to do so. The advertisement in question therefore, for the next year for the same post and/or after one year for the same post, in our view, is in no way sufficient reason to deny the established right of the Petitioner in view of above admitted facts on record.

9           The Government Circular in question so referred and read, just cannot be read to mean and/or permit the Respondents to deny the claim and/or deny the appointment, though post is vacant in that period of one year. The Respondents themselves failed to take action by not appointing the Petitioner and they kept the post vacant for undisclosed reason and/or for the reason, which in our view is not sufficient to deny the crystalized rights of the Petitioner for the post in question, as the appointed candidate failed to join the post within the prescribed period.

10 Clause-9, in our view, cannot be read to mean that the person though appointed as per the list so prepared, if failed to appear, no other person can be appointed on the post within that year. In our view, the appointed candidate if failed to appear within reasonable time and in the present case, never appeared for want of caste certificate and as the Petitioner being the next eligible candidate having validity certificate, ought to have been appointed in that year itself. The communication therefore, so given and thereby rejected the claim of the Petitioner shows non-application of mind to the facts, as well as, to the Government Circular itself. The Respondents cannot be permitted to deny the rights of the Petitioner, as in our view crystalized as referred above, merely because the Respondents failed to take action within the prescribed period of one year. We are inclined to observe, in the present facts and circumstances, that the Respondents ought to have appointed the Petitioner on the post of Senior Assistant (Accounts) once Mr. Surekar's caste certificate itself was invalidated. They themselves never rejected the case of the Petitioner within one year, on the contrary asked to wait for some more time. Their inability to take decision, as they were awaiting for Mr. Surekar to join and submit the caste certificate, but once the caste

certificate itself was invalidated of Mr. Surekar, there was no question to keep the post vacant, as done by the Respondents. Therefore, the Respondents' failure to appoint the Petitioner, within one year though post was vacant, in our view, is unacceptable situation. The Respondents cannot act arbitrarily, by not appointing the candidate by not following their own Circular within the prescribed period of one year. The submission of expiry of one year or lapse of waiting list is also unacceptable. Once the Petitioner falls within the ambit of zone of consideration and eligible even otherwise, the inaction cannot be read against the Petitioner to deny his right to be appointed on the vacant post.

11 Resultantly, the following order-

**ORDER**

1) The Petition is allowed in terms of prayer clauses

(a) and (b), which read as under:-

“(a) By a suitable order/direction, this Hon'ble High Court may be pleased to quash and set aside the impugned communication dated 2.11.2012 passed by the Respondent No.2,

forthwith.

- b) By a suitable order/direction, this Hon'ble High Court may be pleased to direct the Respondents to appoint the Petitioner on the post of Senior Assistant (Accounts) under Scheduled Tribe reserved category, forthwith, with all other consequential service benefits.”

- 2) There shall be no order as to costs.

(B.P. COLABAWALLA, J.)

(ANOOP V. MOHTA, J.)