

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14772 OF 2022

Amarnath Madhukar Havshett and Anr.	}	
	}	Petitioners
versus		
Maharashtra Public Service Commission and Ors.	}	
	}	Respondents

Mr. Hassan Khan with Mr. Sayyed Tauseef Yaseen for the petitioners.

Mr. Ashutosh M. Kulkarni with Mr. Sarthak S. Diwan for respondent no. 1 (MPSC).

Mr. Mihir Desai, Senior Advocate with Mr. P. P. Kakade, Government Pleader, Mr. Akshay Shinde, 'B' Panel Counsel for respondents 2 to 5 (State).

Ms. Neeta Karnik for respondents 6 to 25.

Mr. Sumant Bhange, Secretary, General Administration Department, GoM present.

**CORAM: DIPANKAR DATTA, CJ. &
ABHAY AHUJA, J.**

DATE: DECEMBER 1, 2022

P.C.:

1. This writ petition is directed against an order dated 29th November 2022 passed by the Maharashtra Administrative Tribunal, Mumbai (hereafter "the Tribunal", for short) disposing of Miscellaneous Application No. 695 of 2022 filed in Original Application No. 280 of 2022.

2. The original applicants were the applicants in M.A. No.695 of 2022. Recruitment on 111 posts reserved for candidates belonging to the Economically Weaker Section

(hereafter "EWS", for short) in the Maharashtra Engineering Services (MES) is the subject matter of the original application. The applicants, in their original application, have *inter alia* prayed for direction on the State of Maharashtra not to offer appointment to the candidates belonging to the Socially and Educationally Backward Classes (hereafter "SEBC", for short) who had applied for appointment on the posts reserved for SEBC candidates but were later on considered for appointment on posts reserved for the EWS candidates after the Socially and Educationally Backward Classes Act, 2018 came to be struck down by the Supreme Court vide its decision in **Jaishri Laxmanrao Patil vs. The Chief Minister and Ors.**, reported in (2021) 2 SCC 785.

3. While admitting the original application, the Tribunal by its order dated 29th March 2022 had directed that appointments, if offered, would abide by the result of the original application. However, no appointments were offered and the original application progressed for final hearing which is scheduled on 2nd December 2022, i.e., tomorrow.

4. The applicants claimed to have learnt on 21st November 2022 that appointment letters in favour of the SEBC candidates, for appointment on posts reserved for EWS candidates, would be issued on 1st December 2022, i.e., today. This triggered M.A. No.695 of 2022, whereby it was prayed that the Government be restrained from issuing appointment letters to the SEBC candidates on EWS reserved posts. The Tribunal refused the interim prayer on the ground that the original application has been fixed for final hearing on 2nd December 2022 and also in view of the fact that

undertakings/bonds are likely to be executed by the SEBC candidates who would be appointed on posts reserved for the EWS candidates that they would not claim any equity, and this would render the appointments conditional depending on judicial decision.

5. We have heard Mr. Khan, learned advocate for the petitioners, Mr. Desai, learned senior advocate for the State, Mr. Kulkarni, learned advocate for the Maharashtra Public Service Commission and Ms. Karnik, learned advocate for the private respondents.

6. It does not appear from the order dated 29th November 2022, which is impugned before us, that the decision of a coordinate Bench of this Court dated 29th July 2022 passed in a bunch of writ petitions, with W.P. No.2663 of 2021 (**Vikas Balwant Alase and Ors. vs. Union of India and Ors.**) being the lead matter, was considered by the Tribunal. By the said judgment, a similar decision taken by the Maharashtra State Electricity Distribution Company Limited (MSEDCL) allowing SEBC candidates to be appointed on posts reserved for EWS candidates was interdicted. Although the decision dated 29th July 2022 has reportedly been carried in appeal to the Supreme Court by MSEDCL, no stay is operative.

7. We are informed by Mr. Desai that it is a fact that appointments are being offered for filling up 111 posts reserved for EWS candidates in the MES, and candidates belonging to SEBC have been selected therefor. The recruitment process started in 2019. The Government could not fill up the posts during the last 3 (three) years, whatever be the reason. It has waited so long to issue appointment

letters, despite interim relief as claimed in the original application being refused by the order dated 29th March 2022. Since the Government has now taken a decision on 21st November 2022, i.e., 10 (ten) days prior to the date of final hearing of the original application to issue appointment letters and that the Tribunal has refused to grant any interim stay on the ground that appointments made, if any, would be conditional and subject to the decision on the original application without, however, even considering the applicability of the decision in **Vikas Balwant Alase** (supra) and the decisions referred to therein, mainly paragraph 28 of the decision in **M. Surender Reddy vs. State of Andhra Pradesh and Ors.**, reported in (2015) 8 SCC 410, we are of the view that complications are bound to arise if appointments letters are issued today when the Tribunal has itself fixed 2nd December 2022 as the date for final hearing of the original application and should the original application succeed in future. A strong *prima facie* case having been set up in M.A. No.695 of 2022 based on the decision in **Vikas Balwant Alase** (supra), which has surfaced after the original application was admitted, together with the factor that third party interests could arise if we decline interim relief, in our view, interest of justice would be best served if the Government is restrained from issuing any appointment letters to fill up the quota of 111 posts reserved for candidates belonging to the EWS category by SEBC candidates till a final decision is pronounced by the Tribunal on the original application. We order accordingly.

8. Although we normally refrain from interfering with the

business of the Tribunal to decide pleas pending before it, having regard to the importance of the present issue, we would encourage the Tribunal to make earnest endeavor to proceed with the hearing of the original application without granting any unnecessary adjournment to any party so that the final decision can be pronounced by it by the end of January 2023.

9. The Government shall, however, be at liberty to issue appointment letters to the selected candidates for filling up posts other than the posts reserved for the EWS category. We record the statement of Mr. Desai that in the event the petitioners succeed before the Tribunal, their seniority would be reckoned from the date of appointment of the other candidates in the MES pursuant to the recruitment process in question and that their *inter se* seniority shall be determined according to the extant rules.

10. We leave it open for the SEBC candidates represented by Ms. Karnik to pursue their remedy before the appropriate forum, in accordance with law, if at all they are entitled to be considered for appointment on open posts but are not so considered.

11. With the aforesaid directions, the writ petition stands disposed of. No costs.

12. All contentions of the parties are left open and the Tribunal shall be at liberty to decide the original application without being influenced by any observation contained in this order.

SALUNKE
J V

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by SALUNKE J V
Date: 2022.12.02
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(ABHAY AHUJA, J.)

(CHIEF JUSTICE)