IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO. 3077 OF 2011

Magas Varga Karmachari Adhikari Suraksha Mahasangh

PETITIONER

VERSUS

The State of Maharashtra and ors.

RESPONDENTS

Mr. S.R. Barlinge, Advocate for the Petitioner. Mr. V.H. Dighe, A.G.P. for the Respondent-State.

CORAM : B.R. GAVAI AND

M.T. JOSHI, JJ.

DATED : 29 TH SEPTEMBER, 2011

ORAL ORDER:

1. Heard.

2. Prima faice, the impugned circular is in conflict with Sub-Section (1) of Section (6) of the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Class) Act, 2001. (Hereinafter referred to as "the said Act"). No doubt that in view of the Government Resolution dated 5.12.1994, in case a particular post is

required to be filled in on account of urgent basis, the proposal is required to be forwarded through the concerned Administrative Department to the General Education Department for approval for filling up the said post on temporary basis. It can thus be seen that a special care is taken by the Government Resolution dated 5.12.1994, wherein a particular post reserved for a particular reserved category, cannot be filled in on account of non-availability of a candidate from that particular category, but on account of certain exigency, the post is required to be filled in.

- 3. By the impugned circular, the right which is created by substantive provisions of sub section (1) of Section (6) of the said Act of keeping the post vacant for a period of three years, in case of promotion on account of non-availability of a candidate from that category, is being taken away.
 - 4. It can thus be seen that though the substantive provision mandates the post to be kept vacant for about three years and the Government Resolution dated 5.12.1994 permits in case of certain

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exigencies, the said post to be filled in only on temporary basis, and that too after the approval of the General Administration Department, the impugned Circular permits the post to be inter-changed on the permanent basis, thereby taking away the substantive right as provided under sub-section (1) of section (6) of the said Act.

- We, therefore, find that prima facie the Circular whittles down the protection granted under sub-section (1) of section 6 of the said Act and the Government Resolution dated 5.12.1994. We are therefore inclined to stay the said circular.
- Rule. Rule returnable early. There shall be 6. interim relief in terms of prayer clause (C).

sd/-

[M. T. JOSHI, J.] [B. R. GAVAI, J.]