

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 498 OF 2015

DISTRICT – BEED

1. **Fakirsaheb s/o Bhairavnath Deshmukh,**
 Age. 32 years, Occ. Nil,
 R/at Kopra, Post. Apegaon,
 Tal. Ambejogai, Dist. Beed. *(name of applicant no. 1
 deleted as per Order
 dtd. 7.8.2015)*
2. **Jivan s/o Digambar Domle,**
 Age: - 30 years, Occ.: - Nil,
 R/ at C/o Somnath Ganpt Dutonde,
 At post Fulambri, Tq. Fulambri,
 Dist. Aurangabad. .. APPLICANTS

V E R S U S

- 1] **The State of Maharashtra,**
 Through its Secretary,
 Public Health Department,
 Mantralaya, Mumbai 32.
 (copy to be served on Presenting
 Officer of the State of Maharashtra
 Administrative Tribunal,
 Bench at Aurangabad)
- 2] **The Director of Health Services,**
 Office of Directorate,
 Maharashtra State, Arogya Bhavan,
 4th floor, Saint Georges Hospital
 Compound, Mumbai.
- 3] **The Joint Director of Health Services,**
 (Maleriya Faleriya), Sy. No. 94/19
 (Aryogya Bhavan), Alandi Road,
 Vishrntwadi, Pune. .. RESPONDENTS

APPEARANCE : Shri V.B. Wagh, learned Advocate for the
 applicant.
 : Shri M.P. Gude, learned Presenting Officer
 for the res.

CORAM : **JUSTICE M.T. JOSHI, VICE CHAIRMAN
AND
ATUL RAJ CHADHA, MEMBER (A)**

DATE : **19th October, 2018**

J U D G E M E N T

(Per : Justice M.T. Joshi, Vice Chairman)

1. Heard Shri V.B. Wagh, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents.

2. The name of applicant no. 1 – Shri Fakirsaheb s/o Bhairavnath Deshmukh – was deleted on the application of the applicants and applicant no. 2 – Shri Jivan s/o Digambar Domle – continued the present O.A.

3. By the present O.A., the applicant is seeking following reliefs :-

“B) To quash and set aside the communication dated 1.4.2015 and direct the respondents to appoint the applicants only on the post of Laboratory Technician from project affected category.

C) To direct the respondents to implement the government resolution dated 16.3.1999 and by considering 5% quota of project affected category candidates applicants only be appoint on the post of Laboratory Technician.”

4. The present applicant made a representation to the res. no. 3 vide letter dtd. 19.3.2015. By the said letter he submitted that the condition of obtaining cut-off of marks for filling in horizontal post of

Project Affected Persons category for the post may be relaxed. He pointed out in the said letter that similar exercise was carried regarding differently abled category candidate (termed as handicapped) be applied in the present case also. Needless to say, both the present applicants belong to the P.A.P. category, who appeared for the examination for selection to the post of Laboratory Technician. However, as they could not secure the cut-off marks, they were not selected.

5. Number of submissions were made from both the sides. In para 8 of the present O.A., the applicant, however, vaguely pleaded as under :-

“8. Applicants say and submits that, applicant no. 2 (i.e. present applicant) and others filed O.A. before this Hon’ble Tribunal for the relax the cut of marks but O.A. is rejected same is confirm by the Hon’ble High Court.”

6. The applicant, however, did not file the copy of the said decision in the present O.A. Unfortunately, the respondent State also neither gave the details of the said O.A. nor filed copy of order passed by the Tribunal therein. The fact, however, remains that the present applicant has earlier challenged the selection process on the same ground, which is raised in the present O.A. The said O.A. was admittedly dismissed by this Tribunal and Hon’ble High Court has also confirmed the said order of the Tribunal. In this situation, practically, there remains nothing to decide in the present O.A.

7. Applicant, however, submits that one differently abled candidate was not selected as she could not secure cut-off marks in the selection process. Her O.A. was also dismissed by the Tribunal. The said candidate, however, approached the competent authority i.e. the Commissioner, Handicap Welfare Commissionerate, Pune. The said Commissioner vide decision dtd. 15.5.2012 decided the matter (Annex. A. 6 page 73). Vide the said decision the Commissioner directed the respondents to relax the condition of cut-off marks as regards the applicant therein and all the posts for the category of differently able candidates be filled in. In the circumstances, the present applicant submits that similar directions be issued in the present matter also.

8. Upon hearing both the sides and upon going through the decision of the Commissioner (Annex. A. 6 page 73) it is crystal clear that the differently abled candidate viz. Smt. Asha Genba Gayke in her complaint before the Commissioner did not whisper that earlier she has filed O.A. before the Tribunal and the same was dismissed. It appears that the present respondents also in the said proceedings did not bring to the notice of the learned Commissioner this fact. In the circumstances, relying on the provisions of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1995 (i.e. अपंग व्यक्ति (समान संधी, हक्कांवे संरक्षण आणि संपूर्ण सहभाग) अधिनियम, १९९५), the Commissioner gave directions as

above. In the circumstances, there is no merit to again adjudicate the present matter. Hence, we pass following order :-

ORDER

The Original Application is dismissed without any order as to costs.

**(ATUL RAJ CHADHA)
MEMBER (A)**

**(M.T. JOSHI)
VICE CHAIRMAN**

Place : Aurangabad

Date : 19th October, 2018

ARJ-O.A. NO. 498-2015 D.B. (DIRECTIONS)