

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 508 OF 2020

DIST. : AHMEDNAGAR

Bhojane Sangita Prabhakar,)
 Age. 26 years, Occu. Nil,)
 R/o A/p, Satewadi, (Morwadi))
 Tq. Akole, Dist. Ahmednagar.) .. **APPLICANT**

V E R S U S

1. The Director,)
 Directorate of Medical Education)
 and Research,)
 Government Dental College Building,)
 St. George's Hospital Compound,)
 4th Floor, Near Chhatrapati Shivaji)
 Terminus (C.S.T.),)
 Mumbai 400 001.)

2. Geeta Deu Bhoje,)
 Age. Major, Occu. Service,)
 R/o Government Medical College,)
 T.B. Hospital Campus, Ramnagar,)
 Chandrapur, Maharashtra.).. **RESPONDENTS**

 APPEARANCE :- Shri C.V. Dharurkar, learned counsel for
 the applicant.
 : Shri V.R. Bhumkar, learned Presenting
 Officer for the respondent no. 1.
 : Respondent No. 02 absent, though duly
 served.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar,
Member (A)

DATE : **07.03.2024**

ORAL - ORDER

[Per :- Justice P.R. Bora, V.C.]

1. Heard Shri C.V. Dharurkar, learned counsel for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondent no. 01.

Respondent no. 02, who is private respondent though has been served, did not cause her appearance in the matter.

2. To fill up 528 posts of Staff Nurse in the Government Medical Colleges and Hospitals across the State, Respondent no. 01 had issued an advertisement on 21.02.2019. Applicant applied for the said post as she was qualifying the criteria prescribed for the said post. Applicant had applied from the category of S.T. as also the category of Physically Handicapped. One post was earmarked for the candidate falling in the said category i.e. S.T. (Physically Handicapped). Name of the applicant was included in the merit list also. On 02.08.2018 Notification was published by respondent no. 01 calling upon the successful candidates for documents verification and for filling up preference form. Accordingly on 24.08.2018 applicant remained present in J.J. Hospital at Mumbai and marked her

preferences. Applicant had given preference for 02 places, first for Akola and second for Dhule.

3. It is the grievance of the applicant that in the ST (Physically handicapped) Category, though, she has scored highest marks, appointment has been denied to her and next second candidate in order of merit i.e. respondent No. 2 has been given the appointment. By filing the present O.A. the applicant has challenged the appointment of respondent No. 2.

4. Respondent No. 1 has filed affidavit in reply resisting the contentions raised in the O.A., as well as, prayers made therein. As contended in the said affidavit since the applicant did not give all 13 preferential options, she was not considered for her appointment. Except the aforesaid, there seems no other ground raised by respondent No. 01 for not issuing appointment order in favour of the applicant.

5. Learned counsel for the applicant submitted that the applicant had recorded the preferences for two places; first for Akola and second for Dhule in the preference form filled in by her. Learned counsel submitted that no such instruction was ever given to the candidates whether they are supposed to record all 13 preferences as prescribed in the format. Learned

counsel further submitted that in absence of any such direction issued, the candidate was not expected to record all 13 options. Learned counsel then invited our attention to the notification issued by respondent No. 1 on 12.06.2019. Learned counsel submits that even prior to that on 01.06.2019 also one notification was issued. Learned counsel pointed out that as mentioned in aforesaid both the notifications the omission on part of the applicant in not giving 13 preferences at the most could have resulted in giving her posting at any other place in the State according to availability instead of giving posting to her at Akola or Dhule, but in no case respondent No. 1 on the aforesaid ground could have deprived the applicant from appointment more particularly when in the category for which the applicant had submitted her candidature, she was most meritorious candidate.

6. Learned counsel further submitted that before considering respondent No. 2 for giving appointment against the seat reserved for ST (Physically Handicapped), the applicant must have been given an opportunity to submit whether she is ready to join at Chandrapur and unless refused by her the appointment on the said post, could not have been issued in favour of respondent No. 2. Learned counsel in the

circumstances, prayed for setting aside the order of appointment issued in favour of respondent No. 2 and direct respondent No. 1 to appoint the applicant on the said post.

7. Shri V.R. Bhumkar, learned Presenting Officer appearing for respondent No. 1 submitted that since the applicant had given preference only for 02 places, first at Akola and second at Dhule and since before the post for which the applicant had applied was taken up for consideration, the vacant posts at Dhule & Akola were already allotted to the candidates who have recorded all 13 options. In the circumstances, when the turn of the applicant came for consideration by the authorities and when it was noticed that except Akola & Dhule no other preferences are recorded by the applicant and having regard to the fact that seats at Akola & Dhule were already allotted to earlier candidates, the application of the applicant was not entertained by the system and that is the reason the applicant could not get the appointment. He further submitted that, had the applicant given all 13 preferences, most probably she would not have remained unconsidered and must have been received appointment at other places than Dhule or Akola where vacancies were available. In the circumstances, according to

learned P.O., no blame can be attributed on part of respondent No. 01. He, therefore, prayed for rejecting the O.A.

8. We have duly considered the submissions made on behalf of the applicant, as well as, respondent No. 01. It is not in dispute that applicant applied for the subject post claiming reservation for ST candidate and amongst the said category reserved for Physically Handicapped Candidate. It is also not in dispute that in the said category applicant has received highest marks and next candidate in order of merit is respondent No. 2. Having considered the position as above, the explanation as has been given by respondent No. 01 for not considering the candidature of the applicant appears unconscionable and the reason which has been assigned is unacceptable. Mere non-submission of 13 preferences as prescribed in the format could not deprive the candidate from securing appointment, if the candidate concerned has proved her merit for the said category. It appears to us that when in the ST Physically Handicapped Category the applicant had scored more meritorious position, she was entitled to be appointed against the said reserved seat.

9. In the advertisement it is not provided as to at which places the vacancies are available for ST Physically Handicapped Category. No such information is provided in the

advertisement or in the brochure annexed thereto showing the vacancy position category-wise. In the circumstances, according to the notifications issued by respondent No. 01 even if the applicant had not recorded all 13 options and had recorded only 02 options i.e. for Akola & Dhule at the most the appointment at her preferred places could not have been given to the applicant, but there was no reason for respondent No. 01 to keep the claim of the applicant out of consideration. The only consequence of not filling in all 13 options would be that the person could not get appointment as per his choice, but it will be given as per availability of the vacancies anywhere in the State.

10. Having considered the facts as aforesaid it is quite evident that respondent no. 01 has grossly erred in not giving appointment to the applicant against the seat reserved for S.T. (Physically Handicapped) category and in giving said appointment in favour of respondent no. 02 having less meritorious position than the applicant. Respondent no. 02 was duly served as we have mentioned above. Despite service of notice respondent no. 02 had remained absent. After having considered the submissions made on behalf of the applicant and respondent no. 01 and after having perused the documents

as aforesaid there has remained no doubt that the appointment to the applicant has been denied or not given for erroneous reasons and appointment has been given to respondent No. 02, who is admittedly having less meritorious position than the applicant. In the circumstances, the applicant has made out a case for cancellation of appointment of respondent No. 2 and has proved her claim for appointment on the said post.

11. During the course of arguments it was revealed that quite a good number of posts of Staff Nurse are still lying vacant out of 528 advertised posts. If this be so, it would be open for respondent no. 01 to accommodate respondent no. 02 on any such vacant post. Similarly without disturbing the appointment of respondent no. 02 if the present applicant can be accommodated at any such vacant place, such an option also can be invoked by the respondents. Hence, the following order:-

ORDER

(i) Selection and consequent appointment of respondent no. 02 on the post of Staff Nurse against the seat reserved for S.T. (Physically handicapped), is cancelled. However, having regard to the fact that some of the posts are still lying vacant, it would

be open for respondent no. 01 to accommodate respondent no. 02 on any such vacant post.

(ii) Respondent no. 01 is directed to issue the order of appointment in favour of the applicant against the seat reserved for S.T. (Physically handicapped) within 04 weeks from the date of this order i.e. date on which the present order will be uploaded on the official website of this Tribunal.

(iii) The Original Application stands allowed in the aforesaid terms, however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 07.03.2024

ORDER UPLOADED ON : 26.03.2024