

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 668 OF 2018
(Subject – Kotwal)**

DISTRICT : OSMANABAD

Sangita D/o Shripatrao Telang,)
Age : 33 years, Occu. : Nil,)
R/o : Sambhajinagar, Diksal,)
Tq. Kalamb, Dist. Osmanabad.) .. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through its Secretary,)
Revenue Department,)
Mantralaya, Mumbai- 32.)
- 2) **The Sub-Divisional Officer and**)
Chairman Taluka Recruitment)
Committee, Kalamb, Tal. Kalamb,)
Dist. Osmanabad.)
- 3) **The Tahsildar and Member**)
Secretary Taluka Recruitment)
Committee, Kalamb, Tq. Kalamb,)
Dist. Osmanabad.)
- 4) **Dadasaheb S/o Panditrao Khandekar,**)
Age – 27 years, Occu. Nil,)
R/o. Diksal, Tq. Kalmab,)
Dist. Osmanabad.)
- 5) **Ashok S/o Gowardhan Barate,**)
Age – Major, Occu. Nil,)
R/o. Sapnai, Tq. Kalmab,)
Dist. Osmanabad.) .. **RESPONDENTS**

APPEARANCE : Shri D.B. Bhange, Advocate for the Applicant.

: Shri B.S. Deokar, Presenting Officer for
Respondents.

CORAM : **B.P. PATIL, ACTING CHAIRMAN.**
RESERVED ON : **17.01.2020.**
PRONOUNCED ON : **22.01.2020.**

ORDER

1. By filing the present Original Application, the applicant has challenged the order dated 20.07.2018 issued by the respondent No. 3 in favour of respondent No. 4 and the order dated 30.08.2018 issued by the respondent No. 3 in favour of respondent No. 5 appointing them on the post of Kotwal of Talathi Sajja Dadoli, Tq. Kalamb, Dist. Osmanabad and prayed to quash and set aside the said orders and prayed to direct the respondent Nos. 2 & 3 to appoint the applicant on the post of Kotwal of Talathi Sajja Dadoli, Tq. Kalamb, Dist. Osmanabad.

2. The respondent Nos. 2 and 3 issued notification/proclamation dated 11.06.2018 inviting applications from the aspiring candidates for the appointment on the post of Kotwal on the establishment of Tahsildar, Kalamb, Dist. Osmanabad. As per the advertisement, 12 posts of Kotwal in Kalamb Tahsil have to be filled up. Out of 12 posts, two posts were reserved for open female category, while one post was reserved for OBC category

and remaining 9 posts were to be filled up by without horizontal reservation. It has been mentioned in the said advertisement that if the female candidate will not be available, then the said posts will be filled up from the male candidates of the same category. The eligibility criteria have been laid down in the said advertisement. In response to the said advertisement, the applicant has filed an application for the appointment on the post of Kotwal on 28.06.2018. It is her contention that she possesses qualification of M.A., B.Ed. Thereafter, she appeared for the written examination held on 15.07.2018. She has passed the written examination and secured 37 marks. Thereafter, she was called for oral interview on 18.07.2018 along with the original documents for verification. After oral interview, the respondent Nos. 2 & 3 prepared list of the selected candidates and waiting list. It is her contention that as per the said list, three female candidates were called for oral interview for the post of Kotwal, but the respondents have filled up only one post from that category. Her name has been shown in the waiting list for the female open category. The name of respondent No. 4 was shown in the category of selected candidate against the post filled from Open female category. It is her contention that in fact five posts from Open category has to be filled as per the

Advertisement, but the respondent Nos. 2 and 2 filled six posts of Kotwal. It is her contention that the respondent No. 4 had not joined the duty within 10 days from the date of appointment order. Therefore, the respondent No. 2 appointed the respondent No. 5 in his place with ill-intention. It is her contention that the respondent No. 3 ought to have considered her name and appointed her against the post reserved for open female category. It is her contention that the orders issued by the respondent Nos. 2 and 3 were illegal and against the terms and conditions mentioned in the advertisement. It is her contention that she was eligible for appointment on the post of Kotwal reserved for Open female category, but the respondents had not selected appointed her from that category and therefore, she approached this Tribunal and prayed to quash and set aside the impugned orders issued in favour of the respondent Nos. 3 and 4 by the respondent No. 3 appointing them on the post of Kotwal of Talathi Sajja Dadoli, Tq. Kalamb, Dist. Osmanabad and prayed to appoint him on said post by allowing the present Original Application.

3. The respondent Nos. 1 to 3 have filed their affidavit in reply and resisted the contentions of the applicant. They have

admitted the fact that the respondent Nos. 2 and 3 have published the advertisement/proclamation on 11.06.2018 and invited applications of aspiring candidates for appointment on the post of Kotwal on the establishment of Tahsildar Kalamb, Dist. Osmanabad. It is their contention that in the said advertisement, details about the vacancies, reservation, etc. were mentioned. In the said advertisement two posts were reserved for Open female category. One Ku Nikita Bharat Bargule filed her application under the said category and Sangita Shripatrao Telang i.e. the applicant had filed her application from S.C. category. It is their contention that as per the advertisement, fees for filing application from General category was Rs. 400/-, while fees for filing application under reserved category was Rs. 200/-. The applicant deposited fees of Rs. 200/-, which shows that she filed application from reserved category. They have admitted the fact that the applicant appeared for the written examination and also appeared for oral interview. It is their contention that in the written examination, the applicant secured 37 marks. Therefore, she has been called for oral interview and she secured 19 marks in the oral interview, while Ku. Nikita Bharat Bargule secured 48 marks in the written examination and 11.50 marks in oral interview. The applicant secured 56 marks

in aggregate, while Ku. Nikita Bargule secured 59.50 marks in aggregate. Therefore, Ku. Nikita Bargule was selected from open female category for the post of Kotwal of Talathi Sajja Dadoli, Tq. Kalamb, Dist. Osmanabad. It is their contention that one Pama Kadam secured 32 marks in written examination and 11.5 marks in oral interview. She secured 43.50 marks in aggregate. It is their contention that the applicant stood second by securing 56 marks in aggregate from that category and therefore, her name has been mentioned in the waiting list. It is their contention that out of two posts, one post has been filled from Open female category and another remained vacant. The respondent No. 4 was selected against that post from general category on merit on the basis of marks secured by him. Therefore, the appointment order has been issued in favour of respondent No. 4, but he had not joined the duty within 10 days. Therefore, next candidate i.e. the respondent No. 5, who secured more marks, has been appointed against that post. It is their contention that there is no illegality in the said selection process conducted by the respondent Nos. 2 and 3 and therefore, they have justified the same. Therefore, they have prayed to dismiss the present Original Application.

4. The applicant has filed rejoinder affidavit and resisted the contentions of the respondents raised in their affidavit in reply and reiterated the contention raised in the O.A. It is her contention that she should have been considered from Open female category and she should have been appointed on the second post, reserved for Open Female category. But the respondent Nos. 2 and 3 have not considered her candidature for the said post and selected the respondent Nos. 4 and 5 against the said post and appointed the respondent Nos. 4 and 5 illegally. It is their contention that the respondent No. 3 prepared back dated orders in favour of the respondent Nos. 4 and 5 and therefore, it is illegal. On these grounds, she has prayed to quash and set aside the impugned orders by allowing the present Original Application.

5. I have heard Shri D.B. Bhange, learned Advocate for the applicant and Shri B.S. Deokar, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

6. Admittedly, the respondent Nos. 2 and 3 issued notification/proclamation dated 11.06.2018 inviting applications from the aspiring eligible candidates for the appointment on the

post of Kotwal on the establishment of Tahsildar, Kalamb, Dist. Osmanabad. As per the said advertisement, 12 posts of Kotwal on the establishment of Tahsildar, Kalamb have to be filled in. They have notified the details regarding posts and categories from which it have to be filled. Out of 12 posts, three posts were reserved for female category. Out of the said 3 posts, two posts were reserved for female from Open category, while one post is reserved for female from OBC category. Admittedly, the applicant is belonging to S.C. category. The applicant applied for the post of Kotwal on 28.06.2018. She appeared for the written examination along with other candidates and she secured 37 marks in the said examination. She had been called for oral interview and she secured 19 marks in oral interview. She secured 56 marks in aggregate, while on Ku. Nikital Bharat Bargule secured 48 marks in the written examination and 11.5 marks in oral interview and thereby secured 59.50 marks in aggregate. Ku. Nikita Bharat Bargule was selected for the post of Kotwal from the posts reserved for open female category. The name of the applicant was kept in the waiting list. Admittedly, no other candidate was available from Open female category for filling the second post and therefore, the said post was filled up from the candidate belonging to Open General category and

accordingly, the respondent No. 4 was declared as selected candidate, as he secured more marks, but he had not jointed the post within stipulated time and therefore, next candidate who secured higher marks i.e. the respondent No. 5 has been appointed by the respondent No. 3 against that post. Admittedly, the applicant deposited fees of Rs. 200/- prescribed for the reserved candidates. Admittedly, fees of Rs. 400/- was prescribed for candidates, who belong to Open/General category.

7. Learned Advocate for the applicant has submitted that the respondent Nos. 2 and 3 issued Advertisement dated 11.06.2018 inviting applications from the eligible candidates for the appointment on the post of Kotwals on the establishment of Tahsildar Kalamb, Dist. Osmanabad. Out of 12 posts, three posts were reserved for female candidates. He has submitted that out of three posts one post is reserved for a female from O.B.C. category and two posts were kept reserved for female from Open category. He has submitted that the applicant has submitted her application in pursuance of the said advertisement for the appointment on the post of Kotwal from Open female category. He has submitted that the applicant appeared for written examination, as well as, oral examination and she stood second

in merit in the successful candidates, who appeared for the examinations from Open female category. He has submitted that the respondents had not selected her from Open female category and selected only one candidate viz. Ku. Nikita Bharat Bargule. He has submitted that instead of appointing her on second post, the respondent Nos. 2 and 3 selected male candidates from Open category against the vacancy of female category and thereby appointed the respondent No. 4 on the post of Kotwal of Talathi Sajja Dadoli, Tq. Kalamb, Dist. Osmanabad. He has submitted that as the respondent No. 4 had not joined the duty within prescribed period, the respondent Nos. 2 and 3 issued appointment letter in favour of respondent No. 5. He has submitted that the appointment order issued in favour of respondent Nos. 4 and 5 are illegal and therefore, the same require to be quashed and set aside. He has submitted that the applicant belongs to S.C. category, but she had not availed the benefit for the reserved category and she had not filed her application under reserved category. The name of the applicant kept in the waiting list from the Open Female category. He has submitted that the respondent Nos. 2 and 3 committed illegalities in selecting and appointing the respondent Nos. 4 & 5 and therefore, he has prayed to quash and set aside the

impugned orders and prayed to direct the respondents to declare the applicant as selected candidate from Open Female category by allowing the present Original Application.

8. Learned Presenting Officer has submitted that the applicant belongs to S.C. category. She has moved her application under the same category. She has deposited fees of Rs. 200/- which was prescribed for filing the application for reserved category. The applicant has filed an application from reserved category. He has submitted that the applicant had not filed her application from Open female category and therefore, she had not considered for the post of Kotwal, which was to be filled from Open Female category. He has submitted that due to mistake, the name of the applicant has been shown in the waiting list of the candidates to be appointed from Open Female category. He has submitted that as no female candidate was available from Open category, one seat from Open Female category has been filled up from Open General category and accordingly, the respondent No. 4, who secured more marks, has been selected and appointed on the post of Kotwal of Talathi Sajja Dadoli, Tq. Kalamb, Dist. Osmanabad. But the respondent No. 4 had not joined the post and therefore, next person from the

waiting list i.e. the respondent No. 5, who secured more marks has been appointed on the post of Kotwal and there is no illegality in it. Therefore, he has prayed to dismiss the present Original Application.

9. On perusal of the documents on record, it reveals that in pursuance of the Advertisement/proclamation dated 11.06.2018, the applicant has filed her application for appointment on the post of Kotwal on the establishment of Tahsildar Kalamb, Dist. Osmanabad on 28.06.2018. On perusal of the application form, it reveals that in column No. 11, she has mentioned her caste as “हिंदू मांग (S.C.)”. In column No. 13.4, she has been mentioned that she possess Caste certificate. She has not filled the Column No.13.6, as to whether she possesses Non Creamy Layer Certificate. She has not mentioned anything against column No. 13.5 as to whether she possesses Caste Verification Certificate. She has deposited fees of Rs. 200/- by D.D. dated 27.06.2018. As per the advertisement, fees of Rs. 200/- has been prescribed for the candidates belonging to reserved category and fees of Rs. 400/- has been prescribed for the candidates belonging to Open General category. As per the Clause No. 10.2 of the Advertisement, the female candidates have

to produce Non Creamy Layer Certification to claim 30% reservation. The said clause is material and therefore, I reproduce the same:-

“१०. महिला उमेदवारांकरिता

१०.१

१०.२ मागासवर्ग प्रवर्गातील इतर मागासवर्ग, वि.ज. (अ), भ.ज (ब), भ.ज. (क), भ.ज. (ड) या प्रवर्गातील उन्नत आणि प्रगत व्यक्ती अथवा गटात मोडत नसलेल्या महिला सदस्यांनी ३० टक्के आरक्षणाचा लाभ मिळणेसाठी नॉन क्रिमिलेअर गटात मोडत नसल्याचे प्रमाणपत्राची छायांकित प्रत साक्षांकित करून अर्जासोबत जोडावी व मुळ प्रमाणपत्र अंतिम निवडीच्या वेळी सादर करणे बंधनकारक राहिल. सदर प्रमाणपत्र ३१.३.२०१९ पर्यंत वैध असणे आवश्यक आहे.”

It means that the applicant was knowingly filled her application under reserved category. She has deposited fees of Rs. 200/-, which was prescribed for the candidates belongs to reserve category. All these facts show that she knowingly filled the application form for the appointment on the post of Kotwal from reserved category. She had not filled the application for the appointment on the post of Kotwal under Female Open category. She had not produced Non Creamy Layer Certificate, which was essential for claiming appointment on the post from Female category. The said fact has been noticed by the scrutiny committee. In the scrutiny sheet it has been mentioned that she has not produced Non Creamy Layer certificate and she has mentioned her Caste. Therefore, the respondent Nos. 2 and 3

have rightly considered the case of candidates from reserved category. As she had not filed application from Open Female category, her name has not been considered while selecting the candidate from Open Female category. Only one candidate viz. Ku. Nikita Bharat Bargule, was selected from Open Female category, as she secured highest marks in that category and accordingly, she was selected for the post of Kotwal. As no other female candidate was available from the Open Female category, the second post from that category has been filled from General/ Open category and the name of respondent No. 4, who secured more marks has been declared as selected candidate, but the respondent No. 4 had not joined the post and therefore, the next candidate, who secured more marks i.e. the respondent No. 5 has been declared as selected candidate for the post of Kotwal from Open General category and accordingly, he has been appointed on the post of Kotwal. The name of the applicant has been maintained in the waiting list from the Open Female category mistakenly and therefore, the applicant cannot take benefit of the said mistake and claim that she has been selected from Open Female category. Therefore, in my view, there is no illegality in the selection process conducted by the respondent Nos. 2 and 3 and they have rightly selected the candidates from

Open General category against the one post/seat reserved for Open Female category and accordingly appointed the respondent No. 5 on that post. The respondents have conducted the recruitment process as per the rules and therefore, I find no illegality in it. There is no merit in the present Original Application. Consequently, the Original Application deserves to be dismissed.

10. In view of the discussions in the foregoing paragraphs, the Original Application stands dismissed with no order as to costs.

PLACE : AURANGABAD.

DATE : 22.01.2020.

(B.P. PATIL)

ACTING CHAIRMAN

KPB S.B. O.A. No. 668 of 2018 BPP 2020 Transfer