

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

COMMON ORDER IN O.A. NOS. 944, 945 AND 220 ALL OF
2017

1) **ORIGINAL APPLICATION NO. 944/2017**

DIST. : BEED

Anjali Kamlakar Kendre,
Age. 28 years, Occ. Nil,
R/o Morewadi, Near Water Tank,
Behind Petrol Pump, Ambajogai,
Tq. Ambajogai, Dist. Beed.

-- APPLICANT.

V E R S U S

1. The State of Maharashtra,
Through Principal Secretary,
Sales Department, Mantralaya,
Mumbai - 32.
2. The State of Maharashtra,
Through Principal Secretary,
General Administrative Department,
Mantralaya, Mumbai - 32.
3. Maharashtra Public Service Commission,
Through its Secretary,
5 ½, 7th, 8th Floor, Cooperage Telephone
Exchange Building, Maharshi Karve Road,
Cooperage, Mumbai - 400 021.

(copy respondents to be served
On Government Pleader of Maharashtra
Administrative Tribunal of Bombay,
Bench at Aurangabad).

-- RESPONDENTS

W I T H

2) **ORIGINAL APPLICATION NO. 945/2017**

DIST. : JALGAON

Sangita Gopal Chaudhari,
Age. 27 years, Occ. Nil,
R/o Plot no. 1, Gat No. 11/3A,
Dandekar Nagar, Pimprala Road,
Jalgaon.

-- APPLICANT.

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Sales Department, Mantralaya,
Mumbai – 32.
2. The State of Maharashtra,
Through Principal Secretary,
General Administrative Department,
Mantralaya, Mumbai – 32.
3. Maharashtra Public Service Commission,
Through its Secretary,
5 ½, 7th, 8th Floor, Cooperage Telephone
Exchange Building, Maharshi Karve Road,
Cooperage, Mumbai – 400 021.

(copy respondents to be served
on Government Pleader of Maharashtra
Administrative Tribunal of Bombay,
Bench at Aurangabad). --

RESPONDENTS

WITH

- 3) **ORIGINAL APPLICATION NO. 220/2017**

DIST. : BEED

Archana Nanabhau Shendge,
Age. 33 years, Occ. Nil,
R/o Khapar Pangari,
Post :- Pargaon Shiras,
Tal. & Dist. Beed.

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APPLICANT

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Revenue Department, M.S.,
Mantralaya, Mumbai – 32.
2. The Collector-cum-Chairman,
District Selection Committee,
Beed.

3. Smt. Priti Manohar Muyande,
R/o at Wadali Satwai,
Post : Jalgaon Nahate,
Via-Adgaon Bk., Tal. Akot,
Dist. Akola – 444 126.
4. Smt. Gayatri Vasanttrao Butle,
Clerk-cum-Typist, Revenue,
Tehsil Office, Majalgaon,
Dist. Beed.

-- RESPONDENTS

APPEARANCE :- Shri Sandeep Munde, learned Advocate for
the applicants in O.A. nos. 944 &
945/2017.

: Shri Avinash S. Deshmukh, learned
Advocate for applicant in O.A. no. 220/17

: Smt. Priya R. Bharaswadkar and Shri V.R.
Bhumkar, learned Presenting Officers for
the respective respondents in respective
matters.

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

DATE : 20TH JULY, 2018

J U D G E M E N T

(Per : Justice M.T. Joshi, V.C.)

1. Heard Shri Sandeep Munde, learned Advocate for the
applicants in O.A. nos. 944 & 945/2017, Shri Avinash S.
Deshmukh, learned Advocate for applicant in O.A. no. 220/17
and Smt. Priya R. Bharaswadkar and Shri V.R. Bhumkar, learned
Presenting Officers for the respective respondents in respective
matters.

2. In all the present Original Applications a common issue involved is regarding selection of a reserved category candidates in Open horizontally reserved category meant for Women in the various posts with the State of Maharashtra.

3. In O.A. nos. 944 & 945 both of 2017 the applicants belong to N.T.-D and O.B.C. categories respectively. They participated in the selection process of 2016 for the post of Sales Tax Inspectors conducted by the respondent – M.P.S.C. Though they belong to backward class as mentioned above, they participated as Open category candidates without securing any concession regarding relaxation of age, fees etc. 32 posts were reserved for Open Women category. They participated in the main examination and were awaiting their result. However, in the meantime, the respondent M.P.S.C. asked for copy of school leaving certificate of all these applicants. Finding that the applicants belong to backward class, it was communicated by the impugned communications by the respondent M.P.S.C. that, since they belong to the reserved class category, they would not be considered for Open horizontal reservation.

4. According to the applicants, as per the Key published by the respondent M.P.S.C. the applicants secured more marks than the candidates selected from Open Women category.

Therefore, the applicants are seeking annulment of the said impugned communications and prayed for directions to the concerned respondents to include their names in the list of candidates eligible for selection.

5. In O.A. no. 220/2017, the applicant Smt. Archana Nanabhau Shendge submitted as under :-

She participated in the selection process conducted by the res. no. 2 - the Collector-cum-Chairman, District Selection Committee, Beed - for the post of Clerk-cum-Typist, Steno-Typist, conducted vide advertisement dtd. 6.8.2016 (Annex. A. 1 page 19 of O.A. 220/2017). The applicant belongs to Open category. In the provisional select list and wait list, the res. no. 3 - Smt. Priti Manohar Muyande - and one Smt. Shalini Navnath Dadke were included in the list for O.B.C. Female category. They had secured 156 and 154 marks respectively. However, in the final select list, the res. no. 3 - Smt. Priti Muyande - from the O.B.C. Female category was taken away and was included in the select list for Open Female category after the name of one Smt. Punam Nathuji Kamble. Said Smt. Punam Nathuji Kamble though rightly selected in the Open category, the candidate having secured 163 marks, she was selected for the post of Talathi and she has also joined on the said post on 15.12.2016. Therefore, terming both

these acts as illegal, the applicant, who has secured 154 marks, was included in the provisional select list for Open female category is required to displace by selecting her.

6. Thus, while in O.A. nos. 944 & 945/2017 the applicants therein claimed their entitlement to be selected from Open Female category, though they belong to Socially Reserved Class category, albeit by not availing said concession and filing application as Open category candidates, the applicant in O.A. no. 220/2017 submits that, a Socially Reserved Women category candidate cannot be considered for Open Female category.

7. In support of their contentions, the learned Advocate for the applicants, learned P.O. and learned Advocate for the respondents advanced various submissions principally based on the following authorities :-

(A) From the side of applicants in O.A. nos. 944 & 945/2017:-

- (i) Indra Sawhney Vs. Union of India [1993 AIR (SC) 477] decided on 16.11.1992,
- (ii) Bihari Lal Rada Vs. Anil Jain (Tinu) & Ors. [2009 (4) SCC 1] decided on 13.02.2009,

- (iii) Jitendra Kumar Singh & Another Vs. State of U.P. & Ors. [2010 AIR (SC) 1851] decided on 08.01.2010,
- (iv) Uday Sisode Vs. Home Department (Police) dated 24.10.2017 decided by the Hon'ble Madhya Pradesh High Court,
- (v) Asha D/o Ramnath Gholap Vs. The President, District Selection Committee/Collector, Beed & Ors. (W.P. No. 3929 of 2015 decided on 30.03.2016 by the Hon'ble High Court of Bombay, Bench at Aurangabad),
- (vi) Vinod Dadasaheb Dhore & anr. Vs. The Secretary, Maharashtra Public Service Commission, Mumbai & Ors. (W.P. No. 11970 of 2017 decided on 20.12.2017 by the Hon'ble Bombay High Court),
- (vii) Kanchan Vishwanath Jagtap Vs. Maharashtra Administrative Tribunal, Nagpur and others. [2016 (1) Mh. L.J. 934] decided on 16.12.2015,
- (viii) Anil Pandurang Shep Vs. the State of Maharashtra & Ors. [Writ Petition no. 10396/2016 decided on 08.12.2016 by the Hon'ble High Court of Bombay Bench at Aurangabad),
- (ix) Vinod Kadubal Rathod & Anr. Vs. Maharashtra State Electricity Generation Co. Ltd. [Writ Petition no. 11574/2016 decided on 17.02.2017 by the Hon'ble High Court of Bombay Bench at Aurangabad),

- (x) Mrs. Ashwini Narayan Kale Vs. The State of Maharashtra & Ors. [O.A. nos. 1007, 1052, 1056, 1057 & 1070/2017 decided on 29.11.2017 by this Tribunal at Mumbai],
- (xi) Charushila Tukaram Chaudhari & Ors. Vs. The State of Maharashtra & Anr. [Writ Petition no. 4159/2018 decided on 25.04.2018 by the Hon'ble High Court of Bombay Bench at Aurangabad],
- (xii) Irfan Mustafa Shaikh Vs. The State of Maharashtra and Ors. (O.A. No. 301/2009 decided on 26.08.2009 by this Tribunal),
- (xiii) The State of Maharashtra Vs. Irfan Mustafa Shaikh & Ors. (W.P. No. 272 of 2010 decided on 15th November, 2010 by the Hon'ble High Court of Bombay Bench at Aurangabad)
- and
- (xiv) State of Maharashtra & ors. Vs. Irfan & Ors. (SLP (Civil) No. 15802/2011 dated 27.09.2011 by the Hon'ble Supreme Court).

(B) Learned Advocate for the applicant in O.A. No. 220/2017

- (i) Irfan Mustafa Shaikh Vs. The State of Maharashtra and Ors. (O.A. no. 301/2009 decided on 26.08.2009 by this Tribunal),
- (ii) The State of Maharashtra Vs. Irfan Mustafa Shaikh & Ors. (W.P. No. 272 of 2010 decided on 15th November, 2010 by the Hon'ble High Court of Bombay Bench at Aurangabad),

- (iii) State of Maharashtra & ors. Vs. Irfan & Ors. (SLP (Civil) No. 15802/2011 dated 27.09.2011 by the Hon'ble Supreme Court),
- (iv) Rajesh Kumar Daria Vs. Rajasthan Public Service Commission [2007 AIR (SC) 3127] dated 18.07.2007
and
- (v) Miss. Rajani D/o Shaileshkumar Khobragade @ Mrs. Rajani w/o Sanjay Shelke Vs. The State of Maharashtra & Ors. (W.P. No. 10103 of 2015 decided on 31.03.2017 by the Hon'ble High Court of Bombay Bench at Aurangabad.)

(C) Learned Presenting Officer

- (i). Irfan Mustafa Shaikh Vs. The State of Maharashtra and Ors. (O.A. no. 301/2009 decided on 26.08.2009 by this Tribunal).
- (ii) The State of Maharashtra Vs. Irfan Mustafa Shaikh & Ors. (W.P. No. 272 of 2010 decided on 15th November, 2010 by the Hon'ble High Court of Bombay Bench at Aurangabad),
- (iii) State of Maharashtra & ors. Vs. Irfan & Ors. (SLP (Civil) No. 15802/2011 dated 27.09.2011 by the Hon'ble Supreme Court).
- (iv) Rajesh Kumar Daria Vs. Rajasthan Public Service Commission [2007 AIR (SC) 3127] dated 18.07.2007.

- (v) Anil Kumar Gupta Etc. Vs. State of Uttar Pradesh and Ors. [1995 SCC (5) 173] dated 28.07.1995.
- (vi) Public Service Commission, Uttaranchal Vs. Mamta Bisht & Ors. (Civil Appeal No. 5987 of 2007) with State of Uttaranchal Vs. Mamta Bisht & Ors. (Civil Appeal No. 5982 of 2007) decided on 03.06.2010 by the Hon'ble Supreme Court.
- (vii) State of U.P. & Ors. Vs. Ashish Kumar Pandey and Ors. (Special Appeal Defective No. 338 of 2016 decided on 29.07.2016 by the Hon'ble Allahabad High Court)
- (viii) Miss Rajani D/o Shaileshkumar Khobragade @ Mrs. Rajani w/o Sanjay Shelke Vs. The State of Maharashtra & Ors. (W.P. No. 10103 of 2015 decided on 31.03.2017 by the Hon'ble High Court of Bombay Bench at Aurangabad.)

8. The general principle regarding the reservation as found in the cases of **Indra Sawhney Vs. Union of India [1993 AIR (SC) 477]** and **Bihari Lal Rada Vs. Anil Jain (Tinu) & Ors. [2009 (4) SCC 1]** that the persons belonging to reserved category can be selected from General category on his / her own merit needs no repetition. The issue before us is as to whether a socially reserved category candidate can be selected from Open horizontally reserved category. This issue is mixed with the issue of horizontal

reservation compartmentalized or otherwise i.e. overall reservation.

9. The authorities cited by the learned Advocates from our High Court make this distinction in various authorities. There is, however, no need to go into details of reasoning as case of **Irfan Mustafa Shaikh Vs. the State of Maharashtra & Ors.** (O.A. no. 301/2009) (cited supra) and relied by the applicants and the respondents equally was ultimately considered by the Hon'ble Supreme Court and definite conclusion is arrived at. Therefore, the present O.As. can be decided on the ratio laid down in the case of **Irfan Mustafa Shikh** (supra).

10. In the case of Irfan Mustafa Shaikh the applicant filed O.A. no. 301/2009 before this Bench of the Tribunal. The same was decided on 26.8.2009. The applicant Irfan Mustafa Shaikh claimed appointment as a Police Constable from Open category, but in horizontal reservation for Home Guard. In that case, relying on the G.R. dated 16.3.1999 this Tribunal held that the candidates from socially reserved category cannot be considered for the Open horizontal reserved category. This Bench of the Tribunal in the said O.A. declared that while doing the exercise of making up deficiency of seats by the candidates claiming horizontal reservations the candidates only from the same

category of vertical category are to be drawn from the lower part of the merit list. This Tribunal termed the Open category as unreserved category. Therefore, excluding the socially reserved category more meritorious candidates, only non-reserved category candidates were declared to be eligible for Open horizontally reserved seats. Thus, from general merit list so far as Home Guards category is concerned, to make up deficiency sr. nos. 1, 2, 4, 5, 6 & 9 in the merit list were declared eligible, while sr. nos. 3, 7, 8 & 10 were excluded on the ground that though they secured higher marks, as they belong to socially reserved category, cannot be counted for horizontally reserved posts meant for Home Guards.

11. The applicant Shri Irfan Mustafa Shaikh, who was at sr. no.11 in the general merit list of home guards was directed to be considered for selection in place of candidates as detailed above.

12. The respondent State of Maharashtra challenged the said decision in the Hon'ble Bombay High Court, Bench at Aurangabad vide writ petition No. 272/2010. The Division Bench of Hon'ble High Court vide order dtd. 15.11.2010 concluded that the reasoning forwarded by this Tribunal is in consonance with the principles laid down by Hon'ble Supreme Court in the case of

**Rajesh Kumar Daria Vs. Rajasthan Public Service Commission
& Ors. [2007 AIR (SC) 3127].**

13. It was further observed that while filling the post horizontally reserved category the candidate from that particular category only needs to be taken into consideration and, therefore, the writ petition of the State of Maharashtra was dismissed.

14. The said decision of the Hon'ble High Court was challenged by the State of Maharashtra in the Hon'ble the Supreme Court by way of Special Leave Petition (Civil) no. 15802/2011. The decision was rendered by the Hon'ble Supreme Court on 27.9.2011 in the said S.L.P. As there was delay of 173 days in filing the said S.L.P., application for condonation of delay was also filed. Hon'ble Supreme Court observed that the said delay is not satisfactorily explained, however, on merit of the case, the following observations were made :-

“Even on merits, we are satisfied that the reasons assigned by the Tribunal for issuing a direction for appointment of respondent no. 1 were legally correct and the High Court did not commit any error by declining to interfere with the Tribunal's order.

The Special Leave Petition is, accordingly, dismissed on the ground of delay and also on merits.”

15. Since the case of **Irfan Mustafa Shaikh** (supra) was regarding compartmentalized horizontal reservation meant for Home Guards as in the present matters we are dealing with the compartmentalized horizontal reservation for Women category, both in Open category, the said principle as has been ratified by Hon'ble Supreme Court would be applicable.

16. The applicants in O.A. nos. 944 & 945/2017 belong to socially reserved category. They could not have been selected in Open horizontal category had they disclosed their caste in the application form. They cannot be allowed to get the benefit indirectly in view of the ratio of **Irfan Mustafa Shaikh** (supra).

17. In the result, we pass the following order :-

ORDER

- (i) O.A. nos. 944 and 945/2017 are dismissed without any order as to costs and the interim relief granted by this Tribunal earlier is hereby vacated..
- (ii) O.A. no. 220/2017 is hereby allowed. It is hereby directed that the res. no. 2 in O.A. no. 220/2017 - the Collector-cum-Chairman, District Selection Committee, Beed - shall recast the final selection list for the post of Clerk-Typist dtd. 14.12.2016 (Annex. A. 5 collectively in O.A. no. 220/2017) in the light of above

observations and to take further steps regarding considering the applicant in Open Female category, and consequential order of appointment etc.

MEMBER (A)

VICE CHAIRMAN

PLACE :- AURANGABAD.

DATE :- 20TH JULY, 2018

ARJ-O.A.NOS. 944, 945 AND 220, OF 2017-D.B. JUS. MT JOSHI (APPOINTMENT)