

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH, NAGPUR
CIVIL APPLICATION NO. 140/2022 IN
ORIGINAL APPLICATION NO. 279/2022 (D.B.)

Kishor S/o Punjaram Autade, Occupation-Nil,
Aged about 31 years,
R/o Mu. Agathan Post Mehaboob Kheda,
Tq. Gangapur, District Aurangabad.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) Additional Director General of Police &
Special Unit, Maharashtra State,
Mumbai.
- 3) Commission of Police,
Amravati, District Amravati.

Respondents.

Shri N.A.Waghmare holding for Shri P.B.Patil, Id. Advocate for the applicant.

Shri S.A.Sainis, Id. P.O. for the respondents.

**Coram :- Shri Shree Bhagwan, Vice-Chairman and
Shri M.A.Lovekar, Member (J).**

Dated :- 16/09/2022.

JUDGMENT

Per :Vice Chairman.

Heard Shri N.A.Waghmare holding for Shri P.B.Patil, Id.
Counsel for the applicant and Shri S.A.Sainis, Id. P.O. for the respondents.

2. The applicant applied for Police Constable Driver's Post pursuant to the advertisement published by Police Commissioner,

Amravati City (A-1, Pg. No. 23) and Home Department dated 30.11.2019 (A-2, Pg. No. 24). The application of applicant is at A-3, Pg. No. 41 and in category applicant has mentioned E.W.S. only and he has attached certificate of E.W.S. which is at A-4, Pg. No. 42. After going through all the procedures respondents have published result which is at A-5, Pg. No. 43. Applicant's name is in E.W.S. category, waiting list at Sr. No. 1.

3. Ld. Counsel for the applicant submits that since there was no candidate available against ex-serviceman quota and as per vacancy shown in A-1, there was one post in the vertical category of E.W.S. and horizontal category of ex-serviceman applicant should have been considered against the vacancy of E.W.S., Ex-serviceman quota. Ld. Counsel for the applicant has relied on G.R. dated 13.08.2014 (Pg. No. 102) and Judgment in W.P. No. 6064/2014 of Hon'ble High Court Bombay, Bench at Aurangabad. Ld. Counsel for the applicant has sought following reliefs in para no. 7 which are reproduced below:-

“i) Quash and set aside the impugned decision dated 08.02.2022 by respondent no. 3 & dated 29.10.2021 issued by respondent no. 2 to respondent no. 3 at Annexure-A-8 & 9, respectively with further declaration that the applicant is entitled to get appointment on the post of (District) Police Constable Driver against the vacancy of Ex-Serviceman under

E.W.S. category which remained vacant in the establishment of respondent no. 3 C.P., Amravati, forthwith.

ii) Direct the respondents to give all emoluments and benefits admissible to post in question including deemed date of appointment from the date of appointment of other candidates selected in the same recruitment process.

iii) Hold and declare that action of respondent no. 3 in not considering the claim of applicant for giving appointment against the vacancy of ex-serviceman E.W.S. category being next meritorious is void and illegal and violative of Article 14 of the Constitution of India with further direction to consider the claim of the applicant forthwith and give all benefits admissible to the said post.”

4. The reliance is placed by ld. Counsel for the applicant on G.R. dated 13.08.2014 (Pg. No. 102). It explains procedure for vertical and horizontal reservations to be given to the applicants as per their category. We have perused the documents. On perusal of documents it is clearly seen that applicant had applied against E.W.S. category column and he has also attached certificate of E.W.S..

5. However, he has neither mentioned ex-serviceman category nor attached certificate of ex-serviceman category. Ex-serviceman reservation is a horizontal reservation and it can be given to E.W.S. category if certificate to that effect is made available to the respondents. Applicant has not mentioned these facts in his application form and he has also not attached certificate of ex-serviceman. In this situation he was only treated as E.W.S. category candidate and that is the reason why applicant has been placed in selection list of E.W.S. category at waiting list Sr. No. 1.

6. The Id. Counsel for the applicant has relied on the Judgment dated 05.09.2018 delivered by the Hon'ble High Court Bombay, Bench at Aurangabad in W.P. No. 6064/2014 (Nikhil Santosh Chaudhari Vs. State of Maharashtra and 2 Ors.). In this case G.Rs. dated 16.04.1981 and 16.03.1999 were considered and it was held:-

“Considering the above, two remaining posts from the O.B.C. category meant for Ex-serviceman and part time shall be filled in from the persons of O.B.C. category as per the final list published. The respondent no. 3 has secured 109 marks and the petitioner has secured 108 marks. The petitioner and respondent no. 3 are required to be considered for the appointment.”

The Hon'ble High Court then proceeded to grant the relief as follows:-

“(ii) Respondent nos. 1 & 2 shall consider the petitioner and respondent no. 3 for appointment to the post of Measurer from the O.B.C. category as the persons from the O.B.C. Ex-serviceman and O.B.C. part time are not available, pursuant to the said advertisement. Same shall be considered within a period of four weeks.”

7. In the instant case the applicant applied for the post in question from the category of E.W.S.. In the advertisement dated 30.11.2019 one post was reserved for E.W.S. Ex-serviceman. It is the contention of the applicant that he should be considered as against said reservation. This contention receives full support from the above referred case of the Hon'ble Bombay High Court, Bench at Aurangabad.

8. We have referred to prayer (i) made in this original application. It is in two parts. The first part refers to the impugned decisions dated 08.02.2022 and 29.10.2021 issued by respondents 2 & 3 respectively. The communication dated 29.10.2021 is already quashed in the common Judgment dated 31.03.2022 passed by this Tribunal in O.A. Nos. 22, 308, 309 & 325/2022 by observing thus:-

“Since the job of clearing ambiguity which had crept in the advertisement dated 03.09.2019 was only half done by incorporating part 4 in Clause 11.10 in advertisement dated 30.11.2019 by way of the second prohibition, the applicants who have participated in the second phase cannot be deprived of the same relaxation which was extended to those who had participated in the first phase of recruitment. As a result, we hold that the applicants cannot be held to have incurred disqualification on account of making more than one application for the same post in more than one unit. The respondents shall consider their candidature on its own merits and in accordance with Law. The applications are allowed in these terms with no order as to costs.”

The second part of prayer i) is covered by the aforementioned Judgment of the Hon’ble High Court relevant portions of which are already quoted hereinabove. In the result we pass the following order:-

O R D E R

The Original application is allowed in the following terms:-

- A. Communication dated 08.02.2022 (A-8) is quashed and set aside.
- B. Communication dated 29.10.2021 (A-9) is already quashed and set aside by the Judgment and order dated 31.03.2022.
- C. The respondents shall consider the applicant for appointment to the post of Police Constable Driver from E.W.S., Ex-serviceman category provided he furnishes the requisite certificate as the persons from this category are not available, pursuant to the advertisement dated 30.11.2019. The same shall be considered within a period of four weeks from today. Depending upon this determination further steps with regard to training, if required, shall be taken by the respondents.
- D. No order as to costs.

(M.A.Lovekar)
Member(J).
Dated :-16/09/2022.
*aps.

(Shree Bhagwan)
Vice-Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 16/09/2022.

Uploaded on : 19/09/2022.