

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.152 OF 2020

DISTRICT:- HINGOLI

Avinash s/o. Balasaheb Londhe,
Age : 31 years, Occ. Unemployed,
R/o. Nandanvan Colony,
Behind Sanjivan Hospital,
Latur, Dist. Latur.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Principal Secretary,
Revenue & Forests Department,
Mantralaya, Mumbai-32.
2. The District Selection Committee,
Through its President,
The Collector, Hingoli,
Dist. Hingoli.

... RESPONDENTS

APPEARANCE : Smt. Poonam V. Bodke Patil,
Advocate for the Applicant.
: Smt. M.S.Patni, Presenting Officer
for the respondents.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI BIJAY KUMAR, MEMBER (A)**

**Reserved on : 04-05-2022
Decided on : 14-06-2022**

O R D E R
(PER: HON'BLE SHRI BIJAY KUMAR)

1. This Original Application has been filed by one Shri Avinash S/o Balasaheb Londhe on 11.03.2020 invoking provisions of S.19 of the Administrative Tribunals Act, 1985 challenging the impugned selection list dated 20.02.2020, published by the respondent No. 2 in the capacity of the President, District Selection Committee Hingoli, thereby, published names of only four eligible candidates from Socially & Educationally Backward Class (in short, "SEBC") category for the post of Talathi as against five vacancies for the SEBC category, shown in advertisement dated 25.02.2019.

2. **Facts of the matter:**

a) The process of filling vacant posts of Talathis had been initiated by respondent No. 2 by providing for reservation for Socially and Educationally Backward Class (in short, "SEBC") as provided for by the Maharashtra State Reservation (of seats for admission in educational institutions in the State and for appointments in public services and posts under the State) for Socially and Educationally Backward Classes (SEBC) Act, 2018, (in

short, "SEBC Act, 2018"). Accordingly, Respondent No.1 had issued advertisement dated 25.02.2019 on Maha Pariksha Portal for selection of candidates for filling up 24 vacant posts of Talathis in Hingoli district.

b) As per provisions of S.4 of the SEBC Act, 2018, Marathas had been declared Socially & Educational Backward Class (in short, "SEBC") and provided for 16% reservation of seats for admission in educational institutions and appointments in public services. Accordingly, the said advertisement had mention of caste-wise and social reservation wise break-up in a Tabular form. However, in the said Table, total number of posts vacant and to be filled was shown in the second column of the Table as 24 but total No. of posts to be filled was shown as 25 in the last column of the said Table. This discrepancy has been cited by the applicant as one of the important grounds for cause of action and hence will be analyzed in following paras.

c) Legality and Constitutional validity of SEBC Act, 2018 had been challenged before Hon'ble High Court of Judicature at Bombay in PIL No.175 of 2018. Hon'ble Bombay High Court vide order dated 27.06.2019 upheld

the constitutional validity of the SEBC Act, 2018 but modified the percentage of reservations for SEBC category according to which reservation for admission in educational institution was reduced from 16% to 12% and reservation for SEBC category in respect of public employment was reduced from 16% to 13%. Accordingly, the respondent No.1 passed the Maharashtra State Reservation (of seats for admission in educational institutions in the State and for appointments in public services and posts under the State) for socially and educationally Backward Classes (SEBC) (Amendment) Act, 2019, (in short, "SEBC Amendment Act, 2019") was passed on 03.07.2019 and General Administration Department issued a Government Resolution dated 04.07.2019.

d) In view of pending PIL before Hon'ble Bombay High Court, respondent No. 2 had first withheld selection list for SEBC Category and the PIL was decided by Hon'ble High Court, the respondent No. 2 modified number of seats to be reserved for SEBC Category from 16% to 13% which resulted in reduction of posts reserved for SEBC category from 5 to 4. The applicant has also contended this decision of respondent No.2 on the ground that the order of Hon'ble Bombay High Court modifying percentage of reservations in

public employment in this case needs to be given effect prospectively only. The applicant has also contended that in case the number of posts reserved for SEBC Category is reduced by one, then the number of posts for General Category ought to have been increased by one. He has cited decisions taken by other districts in the State as rule applicable for respondent No.2.

e) Judgment of Hon'ble Bombay High Court delivered in PIL No. 175/2018 had been challenged by filing Civil Petition No.3123/2020 before Hon'ble Apex Court and Hon'ble Apex Court vide judgment delivered on 05.05.2021 declared the SEBC Act, 2018 *ultra vires* to the Constitution.

f) The respondent No.1 has given effect to the judgment of Hon'ble Apex Court in Civil Petition No.3123/2020 and issued GR dated 06.07.2021 prescribing revised roster points for reservation for different caste-categories.

3. **Relief Prayed For:** The applicant had prayed for interim relief in terms of para 11 of the Original Application which is included at page 13 of the paper-book. The relief prayed for in terms of para 12 of the Original Application is reproduced below for ready reference-

“12) *IT IS THEREFORE PRAYED:*

A) *The original application may be allowed;*

B) *That, the impugned selection list dated 20.02.2020 published by the respondent No.2 thereby published name of only 04 eligible candidates from Socially and Educationally Backward Class category, for the post of Talathi as against 05 vacancies shown in the advertisement dated 25.02.2019 and keeping applicant at Sr. No.1 in the waiting list despite he is being eligible candidate, may kindly be quashed and set aside.*

C) *That, this Hon’ble Court be pleased to declare that the applicant is eligible to be selected from SEBC quota, in view of his marks and advertisement dated 25.02.2019 published by respondent No.1 for Direct Recruitment Talathi Examination-2019.*

D) *That, this Hon’ble Court be pleased to direct the respondents to issue appointment order/letter to the applicant for the post of Talathi, pursuant to the advertisement dated 25.02.2019 published by respondent No.1.*

E) *Any other relief to which the applicant found entitled in the facts and circumstances of the case may kindly be granted in his favour in the interest of justice.*

4. **Pleadings:**

a) Affidavit in reply was filed on behalf of respondent No.2 on 13.08.2021 which was taken on record and a copy thereof was supplied to the other side. Rejoinder to affidavit in reply was filed on behalf of applicant on 26.10.2021. Sur-rejoinder was filed on behalf of respondent No.2 on 10.02.2022 and Additional Affidavit

was also filed by learned Presenting Officer on behalf of respondent No. 2 on 04.05.2022 giving details as called for by this Tribunal. The two sides argued the matter and made oral submissions on 04.05.2022.

b) Learned Advocate for the applicant has mainly argued that the Judgment of Hon'ble Bombay High Court ought to have been given prospective effect and not to the process of selection that had already commenced. Further, if the number of posts reserved for the SEBC Category is reduced by one, then the number of seats for Open Category should have been increased by one making the same to 8. She has also contended that the respondent No.2 should not have changed reservation matrix without giving public notice. The applicant has also cited a judgment delivered in the case of **Prem Prakash Vs Union of India & Ors**, [1984 AIR 1831], [1985 SCR (1) 564] (judgment delivered on 22.08.1984) wherein, at para No.15 the Hon'ble Apex Court had held that *"once a person is declared successful according to the merit list of selected candidates, the appointing authority has the responsibility to appoint him, even if the number of vacancies undergoes a change after his name is included in the list of selected candidate."*

c) On the other hand, the learned Presenting Officer has countered the arguments advanced by learned Advocate for the applicant by stating that once Hon'ble Bombay High Court had modified the percentage of reservation for SEBC category while considering constitutional validity of the SEBC Act, 2018 the same is applicable to all the actions yet to be taken under provisions of the said act. Learned P.O. has also submitted that the select list for SEBC category was published by respondent No.2 only after the judgment was delivered by Hon'ble Bombay Supreme Court and therefore, the judgment of Hon'ble Supreme Court in ***Prem Prakash Vs Union of India (supra)***, as cited by the applicant does not find application in the present matter. Learned P.O. has also clarified that one seat reduced from SEBC category had not been de-reserved for open category and eligible candidates for 1 post of OBC (Part-time graduate) category and 1 post of ST (Ex-Serviceman) were not available which cannot be transferred across different Social Reservation Categories nor the post of ex-serviceman be de-reserved for General Category under the same Social Reservation Category without carrying the same forward for next year, therefore, two posts are vacant. Thus only 22

posts (ST-1, SC-1, NTD-D 1, OBC-6, SEBC-4, EWS-2 and Open 7) have been filled up.

5. Analysis of Facts on Record:

a) Let us, first of all, analyze the discrepancy in number of posts vacant and to be filled as cited by the applicant. For this, the number of posts vacant and to be filled as shown in a TABLE is referred to and for ready reference the same is being reproduced and referred to as TABLE- 1 that follows. It is noticed that number of posts vacant and to be filled has been shown in second column of the TABLE-1 as 24. Further, one post reserved for Disability (Low Vision) category has been shown as common to all caste-category as the classification of selected candidate is to be allocated to caste-category the selected candidate actually belongs. The last row of the TABLE-1 shows total number of posts reserved for various Horizontal Reservation Categories under different Social Reservation Categories which totals as 25. This is well explained by the fact that one post which is reserved for Physical Disability Category gets added at the cell in the TABLE-1 formed at intersection of the last column and the last row. Therefore, in fact, correct total number of posts vacant and to be filled up by the selection process undertaken is only 24.

| Category | Posts vacant & for filling | General | women 30% | Sports 5% | Ex Servicemen 15% | PA P 5% | EQ affected 2% | PH-low vision 3% | Part time graduates 10% | Orphans 1% | Total posts to be filled up | |
|--------------|----------------------------|----------|-----------|-----------|-------------------|----------|----------------|------------------|-------------------------|------------|-----------------------------|--------------|
| S.T. | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 1 | |
| S.C. | 2 | 0 | 1 | 0 | 1 | 0 | 0 | | 0 | 0 | 2 | |
| NDT-A | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | |
| NDT-B | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | |
| NDT-C | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | |
| NDT-D | 1 | 0 | 0 | 0 | 0 | 1 | 0 | | 0 | 0 | 1 | |
| SBC | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | |
| OBC | 6 | 2 | 2 | 0 | 1 | 0 | 0 | | 1 | 0 | 6 | |
| SEBC | 5 | 3 | 2 | 0 | 0 | 0 | 0 | | 0 | 0 | 5 | |
| EWS | 2 | 2 | 0 | 0 | 0 | 0 | 0 | | 0 | 0 | 2 | |
| Open | 7 | 2 | 3 | 1 | 1 | 0 | 0 | | 0 | 0 | 7 | |
| Total | 24 | 9 | 8 | 1 | 3 | 1 | 0 | | 1# | 2 | 0 | 25 ## |

getting double counted as the candidate selected is counted in quota of the OBC (General) and due to non-availability of eligible OBC (part-time graduate) is not to be carried forward, instead put under OBC (General)

Due to double counting as explained in Note marked as

b) Respondent No.2 had published select list of candidates for the post of Talathis, withholding the select list for SEBC category, on 25.11.2019 following directions issued by GAD vide letter dated 25.02.2019 (page 110 of paper-book). Select list for SEBC category was published on 20.02.2020 as per direction of GAD dated 04.07.2019 (page 111 of paper-book). Therefore, even if the argument advanced by the learned Advocate for the applicant citing judgment of Hon'ble Supreme Court in **Prem Prakash Vs Union of India & Ors** (*supra*) that "once a person is declared successful according to the merit list of selected

candidates, the appointing authority has the responsibility to appoint him, even if the number of vacancies undergoes a change after his name is included in the list of selected candidate”, in our considered opinion, does not apply in this case.

c) The learned Advocate for the applicant has also argued that the judgment of Hon’ble Bombay High Court to modify percentage of reservation for SEBC category has only prospective application and therefore, the same cannot be applied on recruitment process started prior to the date of delivery of the judgment. In our considered opinion, Hon’ble Bombay High Court had delivered judgment on legality and constitutional validity of the SEBC Act, 2018 in PIL No. 175 /2018 and therefore, the judgment applies from the date of SEBC Reservation Act, 2018 coming in force.

d) Though the contesting parties have not based their arguments on the judgment of Hon’ble Apex Court delivered in Civil Petition No.3123/2020, we take the same too, for examining whether the same has any effect on this matter. It is a matter of record that the Judgment of Hon’ble Bombay High Court delivered in PIL No. 175/2018 had

been challenged by filing Civil Petition No.3123/2020 before Hon'ble Apex Court and Hon'ble Apex Court vide judgment delivered on 05.05.2021 declared the SEBC Act, 2018 *ultra vires* to the Constitution. However, by that time, recruitment process for the post of Talathis which is the subject matter for adjudication before this Tribunal has already been completed. Cancelling the process of recruitment at this stage will not only lead to multiple litigation but will also permanently damage the future of selected candidates who may have served for a number of years by now and some of them may have become over-age. Therefore, in our considered opinion, the recruitment process which has been completed under provisions of SEBC Act, 2018 may be granted quietus .

e) Last but not the least, for fulfilling 10% quota for part-time graduates out of vacancies of 24, 2 candidates under this category are required to be selected whereas, so far only one candidate stands selected. After one post of SEBC category is added to Open social reservation category making number of vacancy under Open Category to 8, then the additional post so added to Open Category may go to Part-Time Graduate horizontal reservation category (10% of 8 posts), for which eligible candidates seem to be available.

The applicant has not produced any evidence to counter this possibility.

6. **Conclusion:-** From the above analysis, it is inferred that the Original Application is devoid of merit. Hence, following order is passed:

O R D E R

- A. The Original Application No.152 of 2020 is dismissed.
- B. No order as to costs.

(BIJAY KUMAR)
MEMBER (A)

(JUSTICE P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 14-06-2022.