

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.641 OF 2020

Gulab Balu Sukenkar,)
At/Post Saikheda, Village : Soangaon,)
Tal. Niphad, District Nashik.) **....APPLICANT**

VERSUS

1. Maharashtra Public Service)
Commission)

2. Secretary, Woman and Child)
Development, Dept. Government of)
Maharashtra, Mantralaya, Mumbai.)

3. Ganesh Gandhair Vaibhute,)
Office at Child Development, Project)
Officer, Jawhar Gramin, Dargaali/)
Near Court Jawhar, Dist. Palghar.) **..RESPONDENTS**

Mr. K.G. Jagdale, learned Counsel for the Applicant.

Mr. A.J. Chougule, learned Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar, Chairperson
Ms. Medha Gadgil, Member (A)**

DATE : 22.11.2023

J U D G M E N T

1. Applicant prays to quash and set aside impugned recommendation and appointment order of Respondent No.3. Further, Applicant prays to quash and set aside impugned disqualification by the Respondent No.1 in the list. Further, Applicant be declared eligible and Respondent No.1 be directed to recommend the Applicant on the said post.

2. Respondent No.1, Maharashtra Public Service Commission (M.P.S.C.) has issued Advertisement dated 20.03.2018 for various common posts of Inspector certified school and institution/ organization and methods Officer/ Lecturer/ District Women and Child Development/ Superintendent Statistical Officer/ Group-B, Child Development (Rural). Applicant cleared written examination and was called for the interview. Applicant has applied in OBC category. His name appeared in the merit list dated 29.05.2019. Applicant was called for the interview which was scheduled on 14.06.2019. Respondent No.1 declared result on 21.06.2019 in which the name of the applicant did not appear in the select list. It is the case of the applicant that he and Private Respondent No.3 secured equal marks. Respondent No.3 has also applied in same OBC category. However, name of Respondent No.3 was shown as selected. Hence, Applicant challenges the said recommendation and prayed that

Respondent No.1, M.P.S.C. be directed to recommend his name and declare him eligible for the said post.

3. Learned Counsel Mr. Jagdale has submitted that the G.R. dated 05.10.2015 issued by the G.A.D. states the guidelines about giving preferences to the candidates who have secured equal marks in the examination. Learned Counsel has submitted that the Applicant is older in age than Private Respondent No.3 and therefore Applicant is eligible and Respondent No.1 is to be directed to recommend the name of the Applicant. Learned Counsel relies on the judgment of High Court of Judicature at Bombay, Nagpur in **Writ Petition No.4723/2013, Vikas Vasantaji Diwate Versus The State of Maharashtra & Ors. dated 05.05.2015.**

4. Learned P.O. for the Respondents while opposing this O.A. has relied on the Maharashtra Public Service Commission Rules of Procedure 2014 (hereinafter referred as 'MPSC Rules 2014' for brevity). Learned P.O. has pointed out that Rule 10 of MPSC Rules 2014 pertains to Appointment of Interview Committee and declaration of result. He pointed out that sub Rule 7 of Rule 10 states that if the candidates have secured equal marks, then how the ranking can be made while recommending the candidates. As per sub Rule 7 criteria shall be made in sequential manner one after the other from (i) to (vii) of sub Rule

7. Respondent No.1, M.P.S.C. has considered higher educational qualification of Respondent No.3 and therefore the name of Respondent No.3 was recommended. Applicant's basic qualification is B.A, while Respondent No.3 holds degree of M.Sc. Agriculture which is higher than the qualification of the Applicant. Hence, M.P.S.C.'s decision to recommend the name of Respondent No.3 is correct and legal.

5. The G.R. dated 05.10.2015 issued by the G.A.D. is not related to the examination conducted by M.P.S.C. It is pertinent to the note that the examination of Secondary Services Selection Board is conducted by the Regional Selection Board or the Collector and not by M.P.S.C. Hence, sequence mentioned in the said G.R. stating that in the event of candidate securing equal marks preference is to be given to the candidate who is senior in age this preference is not applicable for M.P.S.C. especially when there is specific Rule mentioned in the MPSC Rules 2014. Sub Rule 7 of Rule 10 of the MPSC Rules 2014 is reproduced below :-

“(7) While preparing the final recommendation list for deciding the ranking of the candidates securing equal marks, the following criteria shall be made use of in a sequential manner one after the other :-

(i) Educational Qualification as on the last date of receipt of application is descending order as Ph.D. M.Phil, Post Graduation, Post Graduation by distance Education.”

6. We are in agreement with the learned P.O. that in sub Rule 7, first preference is given to the educational qualification of the

candidates / securing equal marks the age factor is also considered as preference, but it comes at Sr. No.6. In sub Rule 7 it is specifically mentioned that following criteria shall be made used in sequential manner one after the other. We have perused the judgment of **Diwate (supra)**. However, the facts in the case of **Diwate (supra)** are different from the present O.A. hence, not applicable.

7. Thus, considering the educational qualifications of both the candidates i.e. Applicant who is B.A. and Private Respondent No.3 who is MSc. Agriculture. Appointment of Respondent no.3 is legal and hence justified in view of MPSC Rules 2014.

8. In view of above, O.A. stands dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

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