

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 694 OF 2018

WITH

MISC APPLICATION NO. 547 OF 2018

IN

ORIGINAL APPLICATION NO 694 OF 2018

DISTRICT : MUMBAI

Miss Rohini Subhash Sonwalkar)
Student, Residing at Bhadali Kd, Post-Saskal,)
Tal-Phaltan, Dist-Satara.)...**Applicant**

Versus

1. Maharashtra Public Service Commission)
Having its office at 7th & 8th floor,)
Cooperage Telephone Nigam Building,)
Maharshi Karve Road, Cooperage,)
Mumbai 400 021.)
2. The Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)...**Respondents**

Shri D.B Khaire, learned advocate for the Applicant

Shri N.P Dalvi, learned Special Counsel for Respondent no. 1.

Smt Kranti S. Gaikwad, learned Presenting Officer for Respondent no. 2.

CORAM : **Shri Justice A.H Joshi (Chairman)**

DATE : **01.11.2018**

ORDER

1. Heard Shri D.B Khaire, learned advocate for the Applicant, Shri N.P Dalvi, learned Special Counsel for Respondent no. 1 and Smt Kranti S. Gaikwad, learned Presenting Officer for Respondent no. 2.

2. The summary of facts of the case as averred by the applicant in the Original Application and Misc Application No. 547/2018 and as brought on record in M.A no 547/2018. are as follows:-

- (a) Applicant applied for selection to the post of P.S.I furtherance to Advt. No. 54/2016 for preliminary examination in open merit category.
- (b) Applicant applied in open competition category, though Applicant belongs to NT(C) category.
- (c) Applicant has secured Non-Creamy Layer Certificate dated 17.7.2017.
- (d) Applicant has secured 48 marks in preliminary examination and was cleared for appearing in the Main Examination.
- (e) Cut-off marks for open general female category for entry in main examination is 42 marks.
- (f) Cut-off marks required for NT(C) category are not declared due to absence of any reservation of post.
- (g) Separate notification for Main Examination.
- (h) Since applicant was considered eligible for main examination, she appeared for the same. Applicant has secured 107 marks and became qualified for viva-voce.
- (i) Applicant got 216 marks including viva-voce and became eligible for recommendation of her name and for appointment if otherwise eligible.
- (j) Applicant's name did not appear in the list of candidates who were recommended for appointment as P.S.I.
- (k) Applicant filed O.A 547/2018.
- (l) During pendency of O.A, applicant was informed the reason of elimination of her candidature. This was done by communication dated 5.7.2018. It is informed that applicant's candidature was considered for open general, where she did not qualify as per the bench mark fixed for that purpose.
- (m) The relevant text contained in the said communication dated 5.7.2018, Exh. Q reads as follows:-

“आपला अराखीत (सर्वसाधारण) पदांसाठी विचार करण्यात आला असता, पोलीस उपनिरीक्षक (पुर्व) परीक्षा-२०१६ करिता अराखीव (सर्वसाधारण) प्रवर्गसाठी विहित केलेल्या अर्हतामानावर आपण अर्हताप्राप्त ठरत नाही. त्यामुळे आपणास उपरोक्त परीक्षेच्या निकालप्रक्रियेतून वगळण्यात आले आहे, याची कृपया नोंद घ्यावी.”

(Quoted from Page 47 of O.A)

3. By M.A no. 547/2018, learned advocate for the applicant has brought on record a fact that a candidate belonging to NT-B female category, namely, Smt. Rupali D. Gosavi, was dealt with in a similar manner and this Tribunal allowed her Original Application.

4. Learned Advocate for the applicant has placed on record as Annexure M-2, copy of list of candidates who have been declared eligible in which name of Smt. Rupali D. Gosavi is shown. Moreover, M.P.S.C has recommended name of Smt. Rupali D. Gosavi by its communication dated 27.7.2018, copy whereof is at page 16 of M.A, which is Exh. M-3.

5. Applicant has also placed on record with said M.A, the documents showing that said Smt Rupali D. Gosavi has been appointed and posted by order dated 19.9.2018.

6. In the present O.A, after the notice was issued, M.P.S.C has appeared. During hearing, it had transpired that case proceeds on admitted facts. Therefore, this Tribunal by order dated 10.8.2018 directed M.P.S.C that result be declared and to keep one post vacant.

7. During subsequent hearing Shri N.P Dalvi, learned Special Counsel for Res. no. 1, M.P.S.C. has stated that the facts of the case as averred in O.A (which are summarized in foregoing para 2) are admitted, and hence filing of affidavit is not necessary and he is able to justify the action of M.P.S.C.

8. Based on record, Shri N.P Dalvi, learned advocate for applicant argued that the applicant was not entitled to be considered in open female category and was considered in open general category. This is done as per the policy of M.P.S.C in vogue.

9. Now the position which emerges is as follows. Case proceeds on totality of admitted background.

- (a) Applicant has passed Preliminary Examination successfully.
- (b) Applicant has passed the Main Examination.
- (c) Applicant is woman and she has in open female category though she belongs to NT-C category.
- (d) Seats are not reserved for NT-C category.

- (e) Applicant's candidature is not considered in open female category, but is considered in open general category.
- (f) Applicant's marks are above the bench mark if applicant is considered in open female category.
- (g) Applicant's marks are below bench mark if he is considered in open general category.

10. In the aforesaid premises, this O.A was heard at length on 31.10.2018 (yesterday) and upon hearing, this Tribunal recorded following order:-

- “1. Heard Shri D.B Khaire, learned for the applicant and Smt Kranti S. Gaikwad, learned P.O for the Respondents.
2. O.A is heard for sometime. Applicant has relied on the order passed by this tribunal in O.A 1052/2017, (along with O.A 1007/2017 as main O.A)
3. Applicant Ms Rupali D. Gosavi, who was applicant in O.A 1052/2017 has been recommended and sent for training.
4. According to the applicant, applicant's claim prima facie is governed on the same principle.
5. M.SP.SC is directed to make statement tomorrow as to what are the circumstances due to which applicant's case is liable to be differentiated and cannot be governed by same principle.
6. S.O to 1.11.2018.”

(Quoted from Farad dated 31.10.2018)

11. Today learned Special Counsel for MPSC Shri Dalvi, states in response to para 5 of the order quoted in foregoing para as follows:-

Since MPSC has completed the process of forwarding the list and having taken decision to decline applicant's candidature and communicated it by letter dated 5.7.2018, now MPSC cannot suo moto act to the contrary and forward applicant's name, because M.P.S.C is determined to adhere to its policy.

12. The only question to be decided in this case is as to whether M.P.S.C has any authority to consider applicant's candidature in open general category though she is a woman and has applied as candidate in open women category.

13. Moreover, the question which has arisen for consideration referred to in foregoing para is already concluded by this Tribunal in group of O.As namely,

O.A 1007/2017 decided on 29.11.2017. This decision of the Tribunal has been rendered by relying on the judgements of Hon'ble High Court in following cases:

- (i) Judgment of Hon'ble High Court of Bombay in Asha R. Gholap Vs. The President, District Selection Committee/Collector, Beed & Ors, (2016) 3 AIR Bom R 376.
- (ii) Judgment of Hon'ble High Court of Bombay, Nagpur Bench in Kanchan V. Jagtap Vs. Maharashtra Administrative Tribunal, Nagpur & Ors, 2016(1) Mh.L.J 935.
- (iii) Judgment of Hon'ble High Court of Judicature at Bombay, bench at Aurangabad, Anil P. Shep Vs. State of Maharashtra & Ors, W.P no 10396/2016.

(Quoted from page 12 of M.A)

14. Learned Special Counsel Shri N.P Dalvi, is not in a position to show any authority of law on which a female candidate who belongs to reserved category for which reservation is not provided, is not liable to be considered for open female category.

15. Therefore, prima facie, no other view is possible in this case and applicant is entitled for the relief prayed for.

16. This Tribunal had inquired with Shri Dalvi, learned Special Counsel as to how M.P.S.C can oppose present Misc Application in the background that the judgment in the case of Smt Rupali D. Gosavi, in (O.A 1052/2017 which was decided with O.A 107/2017) is already obeyed by M.P.S.C.

17. Learned Special Counsel Shri Dalvi states that M.P.S.C has obeyed the order of this Tribunal in Smt Rupali D. Gosavi's case supra, subject to outcome of Writ Petition filed before the Hon'ble High Court. Learned Special Counsel was called to state as to whether any order of stay is passed in Smt Rupali D. Gosavi's case. Learned Special Counsel states that the Writ Petition is filed, but it is not taken for admission so far.

18. The conduct of M.P.S.C speaks in volume. It shall, therefore, be imperative for M.P.S.C to act fairly and reasonably and apply the same practice which M.P.S.C had adopted by electing to challenge the order passed by this Tribunal, yet implement the same.

19. In the result, O.A is allowed in following terms:-

- (A) For the same reasons which are recorded in O.A 1052/2017 (along with O.A 1007/2017 as lead O.A), present Original Application is allowed and the impugned communication dated 20.6.2018 is quashed and set aside.
- (B) Respondent no. 2 is directed to take up the process of applicant's candidature and recommend and forward the name of the applicant to the Government for appointment as P.S.I. The said process shall be completed within 10 days from the date of receipt of the order.
- (C) Parties are directed to bear own costs.

20. Learned Special Counsel for M.P.S.C, Shri Dalvi prays for staying order for short period in the background that order passed by this Tribunal in O.A 1052/2017 is already complied by MPSC, the request to stay the order on the face of it is vexatious and hence the prayer for stay is rejected.

21. This Tribunal considered that grant of stay to the order is all the more not necessary in the light of peculiar conduct of M.P.S.C of implementing the order in Smt Rupali D. Gosavi's case. The applicant and Smt Rupali D. Gosavi belong to the same batch of selection and this Tribunal see no reason to apply different yardstick for different candidates by sheerly succumbing to the whims of M.P.S.C.

Sd/-
(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 01.11.2018
Dictation taken by : A.K. Nair.