

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATIONS NO 975, 976 & 977 OF 2019

1) ORIGINAL APPLICATION NO. 975 OF 2019

DISTRICT : GADCHIROLI

Shri Gulab Shamrao Bhajbhujje)
Occ : Student, R/at Aurangabad,)
Permanent R/o Bhajbhujje House,)
Tembha Road Village-Tembha,)
Tal & Dist-Gadchiroli.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
General Administration Dept,)
Mantralaya, Mumbai.)
2. Upper Commissioner,)
Tribal Development, Nasik.)
Adivasi Vikas Bhavan,)
Ground floor, Gadkari Chowk,)
Old Agra Road, Nasik 422 002.)
3. The Principal Secretary,)
Tribal Development Department)
1st floor, Mantralaya [Annexe],)
Madam Cama Road,)
Hutatma Rajguru Chowk,)

- Mumbai 400 032.)
4. Sadanand s/o Purushottam Dhudase)
Age – Major, Occ-Nil.)
5. Satish s/o Rameshrao Zampalwar)
Age-Major, Occ-Nil.)
6. Ankush s/o Dnyaneshwar Bondre)
Age-Major, Occ-Nil.)
Respondents at Sr.no. 4 to 6 are the)
Resident of Upper Commissioner,)
Tribal Development, Nasik.)
Adivasi Vikas Bhavan, Ground floor,)
Gadkari Chowk, Old Agra Road,)
Nasik 422 002.)...**Respondents**

2) ORIGINAL APPLICATION NO. 976 OF 2019

DISTRICT : LATUR

- Shri Balaji s/o Antram Karale,)
Occ : Student, R/o Village Dhanora Bk.)
Taluka – Ahmedpur, Dist-Latur 431 523.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
General Administration Dept,)
Mantralaya, Mumbai.)
2. Upper Commissioner,)
Tribal Development, Nasik.)
Adivasi Vikas Bhavan,)
Ground floor, Gadkari Chowk,)
Old Agra Road, Nasik 422 002.)

3. The Principal Secretary,)
 Tribal Development Department)
 1st floor, Mantralaya [Annexe],)
 Madam Cama Road,)
 Hutatma Rajguru Chowk,)
 Mumbai 400 032.)
4. Shahadat s/o Shamrao Puyed,)
 Age – Major, Occ-Nil.)
5. Satish s/o Eknath Pavase)
 Age-Major, Occ-Nil.)
 Respondents at Sr.no. 4 & 5 are the)
 Resident of Upper Commissioner,)
 Tribal Development, Nasik.)
 Adivasi Vikas Bhavan, Ground floor,))
 Gadkari Chowk, Old Agra Road,)
 Nasik 422 002.)...**Respondents**

3) ORIGINAL APPLICATION NO. 977 OF 2019

DISTRICT : GADCHIROLI

1. Kajal d/o Gangadhar Dhanvijay)
 Occ : Student, R/o Aurangabad.)
 Permanent R/o: House No. 55,)
 Bhagat Singh Ward, Nanipur Road,)
 Desaiganj (MCL), Tal-Desaiganj,)
 Dist-Gadchiroli.)
2. Subhangi d/o Purnamal Gaymukhe)
 Occ-Student, R/o Aurangabad.)
 Permanent R/o Near Veer Baburao)
 Shemake Smarak, Chamroshi Road,)
 Gokul Nagar Ward No. 21,)
 Gadchiroli [MCI],)
 Tal & Dist-Gadchiroli.)...**Applicants**

Versus

1. The State of Maharashtra)
Through the Secretary,)
General Administration Dept,)
Mantralaya, Mumbai.)
2. Upper Commissioner,)
Tribal Development, Nasik.)
Adivasi Vikas Bhavan,)
Ground floor, Gadkari Chowk,)
Old Agra Road, Nasik 422 002.)
3. The Principal Secretary,)
Tribal Development Department)
1st floor, Mantralaya [Annexe],)
Madam Cama Road,)
Hutatma Rajguru Chowk,)
Mumbai 400 032.)
4. Madhuri d/o Ashok Pawar,)
Age – Major, Occ-Nil.)
5. Minakshi d/o Waman Nandeshwar)
Age-Major, Occ-Nil.)
6. Pratibha d/o Santosh Salunkhe)
Age-Major, Occ-Nil.)
7. Trishalya d/o Kashinathrao Khune.)
Age-Major, Occ-Nil.)
8. Pranalee d/o Dnyaneshwar Satdive)
Age-Major, Occ-Nil.)
9. Poonam d/o Namdeo Sable.)
Age-Major, Occ-Nil.)
10. Sonali d/o Bhausahab Gaikwad.)
Age-Major, Occ-Nil.)

11. Swati d/o Venkatrao Kapale,)
Age-Major, Occ-Nil.)
12. Mamata d/o Krushnrao Munjamkar)
Age-Major, Occ-Nil.)
13. Dipti d/o Sunil Nikam,)
Age-Major, Occ-Nil.)
14. Minakshi d/o Suresh Sonawane,)
Age-Major, Occ-Nil.)
15. Trupti d/o Ashok Tayade,)
Age-Major, Occ-Nil.)
- Respondents at Sr.no. 4 & 15 are the)
Resident of Upper Commissioner,)
Tribal Development, Nasik.)
Adivasi Vikas Bhavan, Ground floor,)
Gadkari Chowk, Old Agra Road,)
Nasik 422 002.)...**Respondents**

Mr J.V Patil, learned counsel for the Applicants.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula R. Bhatkar (Chairperson)**
Shri P.N Dixit (Vice-Chairman) (A)

DATE : **01.07.2021**

PER : **Justice Mridula R. Bhatkar (Chairperson)**

J U D G M E N T

1. Heard Mr J.V Patil, learned counsel for the Applicants and Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

2. The applicants who are aspiring for the post of Ashram School Superintendent, in Nasik Division, seek directions that the Respondents be directed to add the names of the applicants in the select list of selected candidates as per the advertisement dated 18.12.2018, issued by Respondent no. 2.

3. All the applicants submitted application in different categories, i.e. applicant in O.A 975/2019, O.B.C category, applicant in O.A 976/2019 in S.E.B.C category and applicants in O.A 977/2019 in Female (SC) category. As per the advertisement, all the candidates were required to hold minimum educational qualification of Bachelor's Degree in Social Work. In all total 84 posts were advertised for the post of Ashram School Superintendent (Female) and 28 posts were advertised for the post of Ashram School Superintendent (Male). Four posts were reserved for OBC, three posts for S.E.B.C and four posts for Female (SC). The applications were processed and the applicants appeared for the examination and all of them passed in the Written Examination. Thereafter select list was prepared on the basis of Rules of 2004 amended in 2006 and so also as per G.R dated 1.12.2018. As per the policy 50% of marks in Bachelor in Social Work were taken into consideration, while preparing the select list.

After calculating the marks of the applicants, they were held not qualified to be included in the select list. Hence the applicants have filed the present Original Application before this Tribunal, on the ground that the calculation of 50% marks of the Degree in Bachelor in Social Work is not consistent with the earlier policy and the Rules of 2004, amended in 2006.

4. Learned counsel for the applicants pointed out to the advertisement dated 18.12.2018 and especially clause in respect of educational qualification and submitted that the educational

qualification as per the advertisement was Bachelor in Social Work. However, all the applicants hold additional educational qualification. They all are Post Graduates M.S.W, i.e. Master in Social Work. Therefore, it was necessary for the Respondents to give necessary weightage to their Post Graduation Degree while calculating 50% marks. Learned counsel for the applicants demonstrated that if the 50% marks secured by the applicants in Master's in Social Work is considered, then the applicants will go above the other candidates and they will be eligible to get entry in the select list.

5. Learned Chief Presenting Officer relied on the affidavit in reply filed by Shri Pramod N. Patil, Assistant Project Officer in the office of the Additional Tribal Commissioner, Nasik, dated 17.1.2020 and also relied on the affidavit in reply of Dr. Anup Kumar Yadav, Secretary, Tribal Development, Mantralaya, Mumbai dated 28.6.2021. Learned C.P.O submitted that the policy of calculation of 50% of the marks is followed as per the Rules of 2004 and there is no inconsistency or any contradiction in the G.R and so also in the letter dated 15.2.2019, addressed by Deputy Commissioner, Tribal Development Department, Nasik to Manager, Maha On-line Ltd, Lower Parel, Mumbai. Learned C.P.O further submitted that as per the formula mentioned in the said letter the merit list for the post of Ashram School Superintendent (Male/Female) was prepared and published by Respondent no. 2. It is explained in the letter dated 15.2.2019, that if a candidate who possess Degree in Bachelor of Social Work, then 50% of marks of the said Degree is to be considered and the candidate who holds Degree both in Bachelor of Social Work and Master of Social Work, 50% of marks in Bachelor of Social Work is to be considered and the candidate who possess Degree only in Master in Social Work, then 50% marks of Degree in Master's in Social Work are to be

taken for calculation of marks in educational qualification. Learned C.P.O submitted that thus applying this formula, the applicants are not qualified to be placed in the select list because they have secured less marks in Bachelor of Social Work, though they might have secured more marks in Master of Social Work. Learned C.P.O further submitted that as per the affidavit in reply filed by Mr Pramod N. Patil, Assistant Project Officer, in the office of the Additional Commissioner, Tribal Development, Nasik dated 17.1.2020, the number of seats for O.B.C were reduced from 3 posts to 2 posts, as the Respondents had absorbed excess candidates from Amravati Division.

6. The issue involved in all these matters revolves around the relevant clauses in the advertisement and in the G.R dated 1.12.2018. As per Rule 5, amended in 2006, the candidate should possess a Degree in Social Work or Social Welfare or Administrative Welfare or Tribal Welfare Administration. Thereafter, we now turn to the advertisement wherein it is reiterated in clause 1 about educational qualification. However, in the opening of the advertisement, Government has mentioned that as per G.R dated 1.12.2018 the recruitment is to be carried out. Hence, we address the said G.R and the relevant clause mentioned therein about the recruitment process.

7. In clause 4 (2)(a) of the said G.R dated 1.12.2018, the process of selection of candidates and the calculation of marks is given in detail. This entire process is challenged only on the point when the candidate with 50% marks only in Masters degree in Social Work, i.e. M.S.W are considered then why then candidates who hold both Degrees in Bachelor in Social Work as well as Masters in Social Work, only 50% of marks in Bachelor in Social Work is to be considered. Thus, it is a case of a particular class of

candidates who hold Post Graduation, i.e. Master in Social Work after holding Degree in Bachelor in Social Work and not only Bachelor in Social Work.

8. The procedure of calculation of 50% marks of different candidates is explained in the letter dated 15.2.2019, wherein the combination of different Degrees in Social Work and the calculation in the degree marks is given in detail. There is no dispute if 50% of the marks of the candidates holding Single Degree in Bachelors in Social Work or Masters in Social Work is to be taken into account. The said letter, which is explanatory to the G.R dated 1.12.2018, states that the candidates holding 50% marks of the total marks they have secured in Bachelor in Social Work is only to be considered. Thus, the marks obtained by such candidates in Post Graduation, i.e. Masters in Social Work, are not taken into account.

9. Here, we address the relevant clause 4, 2(a) of G.R dated 1.12.2018. The said clause is reproduced at verbatim.

2. For special recruitment, process to be observed on the basis of following criterion/marks.

(a) Educational qualification- For the above post, minimum qualification, so also additional qualification are to be taken into consideration of the selected candidates on the basis of educational qualification and 50% marks are to be given. (emphasis placed).

Thus, this clause 2(a) of the G.R, on the contrary states that the weightage is to be given to the additional educational qualification while calculating 50% of the marks. The minimum qualification is also to be considered and the additional qualification cannot be ignored.

10. In the advertisement dated 18.12.2018, the method of calculating the marks, which is mentioned in the letter dated 15.2.2019 and what procedure is to be followed are not mentioned and the procedure explained in the said letter is not consistent with clause 4 of the G.R dated 1.12.2018, which is referred to in the advertisement. Learned C.P.O while defending the procedure adopted by the Respondents in calculation of the marks pointed out that the Government issued G.R dated 8.3.2019, wherein they have done away clause 2(a) of G.R dated 1.12.2018, wherein candidates who hold Degree in Social Work and the said marks are to be considered.

11. Learned counsel for the applicants pointed out rightly that the advertisement was issued on 18.12.2018, the result was declared on 20.8.2019 and the G.R dated 8.3.2019 was issued before the declaration of the result of the examination. However, the process of the examination and scrutiny has already commenced and hence this G.R cannot be made applicable. Moreover, we find that the G.R dated 8.3.2019 does not do away with clause 2(a), but it is modification to the extent of eligibility of educational qualification only for a class of Teachers. Therefore, this G.R cannot be stretched and made applicable to the applicants in the present O.A, who have applied for the post of Ashram School Superintendent.

12. Thus, we are of the view that the methodology while calculating 50% marks for candidates holding Degree in Bachelor of Social Work and for candidates holding Degree in Master in Social Work is not properly followed.

13. We further made query to the learned C.P.O about the vacancies available in Nasik Division of the categories for which

the applicants have applied for. Learned C.P.O while answering this query has submitted that the Government of Maharashtra while filling the posts all over Maharashtra, pursuant to the advertisement dated 18.12.2018 had applied the same policy consistently and most of the posts are filled in. We insisted learned C.P.O to take instructions from the Respondents and find out any vacancy is available in Nasik Division in the category for which the applicants have applied for, as the candidates have approached this Tribunal on 3.10.2019 challenging the select list dated 3.9.2019 and 8.9.2019. Thus the applicants have taken immediate steps to challenge their non-selection and their names not been shown in the select list. Thus, when the matter is decided now due to Covid-19 Pandemic, we express that if the vacancies are available the applicants can be accommodated in the same Division in the same category, if found eligible.

14. While considering this, we make it clear that due to cancellation of Maratha reservation by the Hon'ble Supreme Court by order dated 5.5.2021 in the case of Jaishri Laxmanrao Patil Vs. The Chief Minister & Ors, C.A 3123/2020, the category of S.E.B.C is to be considered as open category. Learned C.P.O after considering this position informed that if two posts of candidates belonging to S.E.B.C are not filled up, they are to be considered for the applicants Shri G.S Bhajbhujje in O.A 975/2019 and Shri B.A Karale, in O.A 976/20129, after considering their merit by calculating 50% marks of Master in Social Work and if found eligible in open merit. However, only one post of S.C candidate is available. Thus, the case of the applicants in O.A 977/2019 is to verified on after considering their position about where they stand in the merit, the applicant should be considered for appointment.

15. In view of the above, Original Applications are partly allowed.
No order as to costs.

Sd/-
(P.N Dixit)
Vice-Chairman (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 01.07.2021
Dictation taken by : A.K. Nair.

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