

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.338/2015.

Dr. (Smt.) Sangeeta Vishnupant Pakade,
Aged about 50 yrs.,
Occ-Govt. Servant,
Presently working as Director,
Govt. Vidarbha Institute of Science & Humanities, Amravati.
R/o 58, Vijay Colony, V.M.V. Road,
Amravati.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Technical Education,
Mantralaya, Mumbai-440 032.
- 2) The Director of Education,
(Higher Education), (M.S.),
Pune-1.
- 3) The Joint Director, (Higher Education),
Amravati Division, Amravati.

Respondents

Shri S.A. Marathe, the learned counsel for the applicant.
Shri A.M. Ghogre, the learned P.O. for the respondents.

Coram:- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

JUDGMENT

(Delivered on this 11th day of August 2017.)

Heard Shri S.A. Marathe, the learned counsel for the applicant and Shri A.M. Ghogre, the learned P.O. for the respondents.

2. The applicant has been appointed to the post of Director / Principal in the Government Institute i.e. Department of Higher and Technical Education. She was selected for the said post under reserved category for Open (Women) quota. As per clause No.3.2.8.2 of the brochure, any backward class category candidate who gets appointment on the post reserved for women category has either to submit his/ her caste certificate or non creamy layer certificate issued by the competent authority. Before the applicant was appointed, her caste certificate was verified and after verification of the caste certificate, she was appointed on 28.5.2009.

3. One Miss Pratima Gavai from SC category was also appointed from women quota and in respect of her appointment, opinion was given that since she has submitted caste certificate, there was no necessity to submit the non creamy layer certificate.

4. Some anonymous complaints were received against the applicant for non submission of non creamy layer certificate and on two occasions, internal enquiry was also conducted at Chief Secretary

level and it was found that the appointment of the applicant was legal and proper and that the complaints were false and frivolous.

5. Suddenly on 24.11.2014, the Government kept the applicant under suspension. A chargesheet was also served on the applicant whereby it was alleged that she has not produced non creamy layer certificate and, therefore, was not eligible for being appointed. The applicant has filed an appeal against the order of suspension. Even suspension allowance was also not paid to the applicant and, therefore, the applicant has filed this O.A.

6. In the original O.A., the applicant claimed that the impugned order of her suspension dated 24.11.2014 be quashed and set aside and the respondents be directed to pay her suspension allowance. It was also requested that, the departmental proceedings initiated against the applicant vide memorandum of charge dated 25.3.2015 (Annexure A-2) also be quashed and set aside.

7. During the pendency of this O.A., appeal filed against the order of suspension came to be decided. The Govt. of Maharashtra was pleased to revoke the suspension of the applicant. However, the departmental enquiry is still pending. The applicant has, therefore, prayed that the departmental enquiry is not tenable, since the

applicant has not committed any misconduct and, therefore, the said enquiry proceedings be quashed and set aside.

8. Reply affidavit has been filed on behalf of the respondents and the respondents admitted the fact that the applicant has been reinstated. It is stated that, the chargesheet has been issued against the applicant vide memorandum dated 26.3.2015 on the ground that she has secured the appointment on the post of Director on the reserved post for OBC and showing family income below the non-creamy layer ceiling, but failed to submit the non-creamy layer certificate. It is stated that her appointment was subject to production of non-creamy layer certificate and, therefore, the enquiry can be continued from the said charge.

9. Clause 3.2.8 and 3.2.8.2 is material clause to be considered in this case. The said clause reads as under:-

3.2.8: मागासवगऱ्यांया ँवगाऱील महला उमेदवार खुऱ्या ँवगाऱील जागांकऱता ँकऱप देतील ँकवा ँकऱप न देताहऱ मागासवगऱ्यांया ँवगाऱील महला उमेदवारांची ँवड खुऱ्या ँवगाऱील महलांया आरऱत पदावर झऱयास, अशा महला उमेदवारांना ँमाणपऱ सादर करऱयाबाबत खालऱ ँकऱप राहतील:-

3.2.8.2: सदर महला उमेदवार / संबंघत जातीचे ँमाणपऱ सादर कऱ इऱछित नसतील ँकवा सादर कऱ शकत नसतील तर अशा महला उमेदवारांनी खुऱ्या ँवगाऱील महलांमाणेच पऱशऱट-पाच नुसार ँवहत केलेले उऱनत ँयऱती / गट (ऱमी लेयर) मऱये मोडत नसऱयाबाबतचे ँमाणपऱ सादर करणे आवऱयक राहऱल.”

10. Plain reading of the aforesaid clause clearly shows that, those women candidates who applied for the post from Open (Women) category have to submit either (i) caste certificate or (ii) non creamy layer certificate. It is clearly stated that, if the caste certificate is produced, non creamy layer certificate need not be produced. It seems that after verifying caste certificate of the applicant she was appointed to the post vide appointment order dated 28.5.2009 as Open (Woman) candidate. It is an admitted fact that, previously on two occasions, frivolous complaints were filed against the applicant on the similar cause that she has not produced the non creamy layer certificate and obtained appointment fraudulently. Admittedly, on both the occasions, these complaints were dismissed and no cognizance was taken and only after verification of caste certificate, appointment was given to the applicant.

11. The appellant authority seems to have considered all the aspects of the case of the applicant while revoking the order of suspension. The order of appellant authority is dated 20.10.2015 and the same has been placed on record at Annexure A-30, page Nos. 173 to 176 of the O.A. (both inclusive). The appellant authority has observed as under:-

महिला व बाल विकास विभागाच्या शासन ज्ञणथ . मसेआ-
२०००/०.० . ४१५/का-२ द. २५.५.२००१ मधील यासंदर्भात उलेख झालेया तरतुद पुढील
आहेत:-

(१) मागासवग्य वगातील या महिला उमेदवार खुया वगातील
जागांकरता वकप देतील क्वा वकप न देताह
मागासवगयांया वगातील या महिला उमेदवारांची जवड
खुया वगातील महिलाया आरत पदावर झायास, अशा
महिला उमेदवारांना माणप सादर करयाबाबत खाल दोन
वकप राहतील:-

(अ) अशा महिला उमेदवारांनी सामाजिक याय विभाग,
आदवासी विकास विभाग अथवा वमुत जाती, भटया
जमाती, इतर मागास वग व विशेष मागास वग
कयाण विभाग यांनी वहत केयामाणे यांया
संबंधित जातीची माणप सादर करावी व या
विभागांनी वहत केलेया कायप्रधतीनुसार तपासून
घेयात यावी अशा महिला उमेदवारांकून खुया
वगातील महिलाकरता वहत केलेले मीलेअरचे
माणप घेयाची आवयकता राहणार नाह

(ब) जर या याया संबंधित जातीचे माणप सादर क
इच्छित नसतील क्वा सादर क शकत नसतील तर अशा
महिला उमेदवारांनी खुया वगातील महिलामाणे या शासन
ज्ञणथाया परशाट-३ नुसार वहत केलेले यती/ गट
(मीलेअर) मये मोडत नसयाबाबतचे माणप सादर
करणे आवयक राहल.

सदर तरतुद व दोह बाजूने मांडयात आलेल बाजू विचारात घेता
माया असे जदशवास आले आहे क, तरतुदनुसार २ (क) (अ) मधील तरतुदनुसार
अजदार महिला ह मागासवग वगातील असयास व तने खुया वगातील महिला
आरत पदासाठी वकप दला असेल क्वा न देताह यांची खुया वगातील महिला
आरत पदावर जवड झायास अशा महिला उमेदवारांना माणप सादर
करयासंदर्भात खालमाणे २ पया उलध आहेत:-

- (१) सामाजिक ँयाय ँवभाग / आद्ववासी ँवकास ँवभाग / ँवमुत जाती व भटया जमाती, इतर मागास ँवग व ँवशेष मागास ँवगकयाण ँवभाग यांनी ँवहत केयामाणे ँयांया संबंध्यत जातीची ँमाणपे सादर करावी व ती ती ँया ँवभागांनी ँवहत केले ँया कायप्रधतीनुसार तपासून घेयात यावी अशा उमेदवारांनी ँ मीलेअरचे ँमाणपे सादर करयाची आवयकता राहणार नाह.
- (२) ँया महला उमेदवार जात ँमाणपे सादर करणार नाहअश उमेदवारांनी ँ मीलेअरचे ँमाणपे सादर करणे आवयक आहे.

डॉ. पकडे यांनी आयोगाकडे केले ँया अजात महला आरणचा दावा केला आहे. तसेच ँयांया ँनयुतीया वेळी ँयांचे बार या जातीचे ँमाणपे सादर केले असून सदर ँमाणपे वैध असयाचा अहवाल ँवभागीय जाती पडताळणी सप्तती .१, अमरावती यांचा अहवालह द. १८.४.२००९ ँया पयावये ँत झाला आहे. सुनावणी दरयान ँ मीलेअरसाठ आई वडलांचे उपण ँचारात यावे ँवा पती, पानी, मुले यांचे उपण ँचारात यावे याबाबतची चचा झाल णीमती पकडे यांनी सुनावणी दरयान शासनाया . संकण२००७/(२४०७)/वशी-४ द. २५.७.२००७ ँया पयाकडे तसेच सदर पयात उलेख असलेया ँ शासनाया . ३६०३३/५/२००४ Estt. (Res.) द. १४.१०.२००४ ँया पयातील पखेद . ८ मधील तरतुदकडे वेधले असून सदर तरतुदनुसार सरळसेवेने भरावयाया पदावरल ँनयुतीसाठ संबंध्यत उमेदवार ँ मीलेअरमये मोडतात ँवा कसे हे ठरवयासाठ उमेदवाराचे ँवतःचे ँवा पती / पानीचे उपण ँचारात न घेता ँ शासनाया उपरोत उलेखत पयातील तरतुदनुसार उमेदवाराचे उपण ँचारात न घेता आई वडलांचे उपण ँचारात घेयाची तरतुद आहे.

वरलमाणे वतुथिती असल तर मायापुढे फत ँलंबन आदेशावध अपील ँचाराधीन आहे. णीमती पकडे यांनी जात ँमाणपे सादर केले असून ते वैध ठरले आहे. ह वतुथिती ँचारात घेता शासन ँण द. २५.५.२००९ नुसार उपलध असलेया दोन पयांापैक पया पयांांची पूतता होत असयाने ँणजे णीमती पकडे यांनी जात ँमाणपे सादर केले असयाचे उपरोत . १ येथील ँकापातील अट पूण होत आहे. यामुळे दुसरया पयांांतून ँयांनी ँ मीलेअर ँमाणपे सादर करयाची आवयकता नाह असे असले तर णीमती पकडे आयोगाकडे सादर केले ँया अजात आई वडलांचे उपण दशावले असून ँ शासनाया द. १४.१०.२००४ ँया पयातील तरतुद व सदर तरतुद राय शासनाने द. २९.१०.२००४ ँया पयावये ँवीकारया असयाने ँयातील तरतुदनुसार मागासवगय ँवगातील उमेदवारांया बाबतीत ँ मीलेअरच

माणपासाठ आई वडलांचे उपापन्न वचारात घेण्याची असलेली तरतूद वचारात घेता मीमती पकडे ज्ञयुतीस पाठ ठरतात, या ज्ञकषात मी आलो असून यानुसार पुढीलमाणे आदेश पाठत करत आहे.

आदेश

डॉ. संगीता वणुपंत पकडे यांनी उच्च व तल्लक्षण वभागाचे आदेश . तार-२०१३/०.०.१८७/१३/मशी-१ द. २४.११.२०१४ अणवये करयात आलेले जलंबन आगे घेयात यावेत.”

12. The aforesaid order is self speaking and there remains no doubt that the applicant was duly appointed and there is nothing on record to show that, she has ever misrepresented the Government while obtaining appointment order. Since suspension has been revoked, the very reason for departmental enquiry seems to be vanished. In fact, there is no cause of action, now to initiate departmental enquiry against the applicant in view of order passed by the Government on 20.11.2015 as aforesaid. Continuation of the departmental enquiry against the applicant on similar cause of action as per memorandum dated 25.3.2015 (A.2) will be nothing, but harassment to the applicant and nothing will come out by conducting such enquiry. In view thereof, following order is passed:-

ORDER

- (i) The O.A. is allowed.
- (ii) The departmental proceedings initiated against the applicant vide memorandum

dated 25.3.2015 (Annexure A-2) stands quashed and set aside.

- (iii) The respondents are directed to pay to the applicant full suspension allowance, if not paid till today.
- (iv) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman (J)

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