

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION NO. 553/2015.**

Anshuja Madhukar Garate,  
Aged about 33 years,  
R/o Govt. Quarter No.B Type 20/1,  
Ravi Nagar, Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through its Addl. Chief Secretary,  
General Administration Department,  
Mantralaya, Mumbai-440 032.
- 2) The Maharashtra Public Service Commission,  
Through its Chairman,  
7<sup>th</sup> and 8<sup>th</sup> floor, Cooperage Telephone Nigam Bldg,  
Maharshi Karve Marg, Cooperage,  
Mumbai-21.

**Respondents**

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Shri D.M. Kakani, Advocate for the applicant.  
Shri P.N. Warjekar, P.O. for the respondents.

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**Coram:- B. Majumdar, Vice Chairman and  
S.S. Hingne, Member (J).**

**Dated: - 7<sup>th</sup> July 2016.**

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**ORDER**

**PER : VICE-CHAIRMAN**

Heard Shri D.M. Kakani, learned counsel for the applicant and Shri P.N. Warjekar, learned P.O. for the respondents.

2. The matter is heard and decided at the admission stage with the consent of the parties.

3. The applicant is aggrieved that she has not been selected and appointed to Maharashtra State Service, Group-A in terms of the advertisement dated 16.12.2013.

4. Facts of the case in brief are that in the selection process for the post as above, the applicant had scored the highest marks, i.e., 283 in the category of ST (Female) from which she had applied. One Vaishali S. Patange had also scored 283 marks. The applicant's date of birth is 14.4.1982 whereas that of Vaishali S. Patange is 10.4.1982. As the latter was older in age, in terms of the Government policy for selection among candidates who have scored equally she was appointed. On 13.4.2015, MPSC recommended the appointment of Vaishali S. Patange subject to validity of her caste claim of Scheduled Tribe. As her caste claim was rejected by the Caste Scrutiny Committee, she was not granted appointment. She had filed W.P. No. 5648/1999 before Aurangabad Bench of Bombay High Court challenging rejection of her caste claim. The writ petition was decided on 20.4.2015 by upholding the decision of the committee.

5. It is the applicant's submission that along with Vaishali Patange she was the highest scorer on merit. As Vaishali Patange was not found fit for appointment, the MPSC should have

recommended her name and the Government should have granted her appointment.

6. The MPSC (R.2) submits that it had recommended the appointment of Vaishali Patange as per rules in force and the issue whether the applicant should be considered for appointment was within the purview of the Government.

7. Shri Ajit Sopan Deshmukh, Under Secretary, G.A.D. has filed a reply in affidavit on behalf of Additional Chief Secretary, G.A.D., Mumbai (R.1). He submits that on 6.4.2015 MPSC had issued a list of selected candidates who had been declared successful in the State Service (Main) Examination, 2014. As the applicant's name was not in the list, it was necessary for the MPSC to recommend her name to enable the Government to consider granting her appointment.

8. Shri D.M. Kakani, learned counsel for the applicant submitted that undisputedly the applicant is next in merit to the selected candidate Vaishali Patange. As the latter was not found fit for appointment, the applicant has a legitimate right to be considered for appointment on merit. However, the only reason why the applicant is not being considered for appointment is that her name was not recommended by MPSC (R.2). Thus, the applicant has been unfairly denied appointment, even though she has a clear case in merit. He

further submitted that the MPSC does follow the practice of recommending a substitute candidate if the selected candidate is found to be unfit for appointment. In this regard, he referred to the case of Abhinav Pawar in whose case MPSC had revised the select list on the basis of approval of his sports certificate by substituting his name in place of Shri Suhas Jagannath Waychal (MPSC's communication to Govt. in P.W.D. dated 23.3.2016 (P. 263 of PB). He also referred to the order of the Principal Bench of this Tribunal at Mumbai **dated 17.8.2015 in O.A. No. 680/2013 (Ajit Ramchandra Pawar V/s MPSC, the Government and Manish Shankarrao Gavai).**

The Tribunal, after holding that the appointment of Shri Manish Shankarrao Gavai was irregular had directed the respondents to consider the applicant Shri Pawar for the post of Language Officer (Hindi) in place of the respondent Shri Gavai.

9. Shri P.N. Warjekar, learned P.O. for the respondents reiterated the submission of the respondents. He referred to Rule 10 (8) (a) of the MPSC Rules of Procedure, 2014. The said Rule states that in case of recruitment by competitive examination, wherever multiple posts / cadres are involved, reserved list shall not be maintained. Thus, in terms of the statutory rules of MPSC, the applicant could not be recommended for appointment.

10. Having considered the arguments of both sides, we find that the following facts are beyond any dispute:

(a) The applicant with the score of 283 is next in the merit to Vaishali Patange whose name was recommended by MPSC for appointment, subject to verification of her tribe claim.

(b) Vaishali Patange was not appointed as her tribe claim was rejected. She has not challenged her non selection before this Tribunal or any other forum.

(c) The only reason why the applicant is not appointed consequent to rejection of appointment of Vaishali Patange is that her name has not been recommended by MPSC.

11. In view of the above, it is very clear that the applicant has a case in her favour for being appointed to the State Civil Service, Group-A consequent to the rejection of appointment of Vaishali Patange. We are of the further view that respondent No.2, under the circumstances, is required to recommend the name of the applicant for appointment to the Government, even though Rule 10 (8) of the MPSC Rules of Procedure precludes it from maintaining the wait list for recruitment to multiple cadre posts, keeping in view the action taken by it in case of Dr. Abhinav Pawar (O.A. No.03/2015) as well as in regard to O.A. No. 680/2013 (supra)

12. We are also of the view that the Government is required to take cognizance of the situation when a candidate recommended by MPSC for appointment is subsequently not found fit for this purpose and this would entail selection of an alternate candidate. In this regard, the Government is required to move MPSC to review the provisions of Rule 10 (8) as above.

13. The O.A. therefore stands allowed in terms of the following order:

(a) The respondents are directed to consider the appointment of the applicant to State Civil Service, Group-A in place of Vaishali Patange who is found unfit for appointment. The respondents will take above action within six weeks of receipt of this order.

(b) We direct the Government to move MPSC to review the provisions of Rule 10 (8) of the Rules of Procedure to address a situation where absence of a wait list may preclude the selection of an alternative candidate on merit, once the candidate already selected is subsequently found to be unfit for appointment.

(c) No order as to costs.

sd/-

(S.S. Hingne)  
Member (J)

sd/-

(B.Majumdar)  
Vice-Chairman