

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 845/2012 (D.B.)

Miss Nilu Survanandji Farkunde,
(now married) aged about 33 years,
Occ. Housewife and resident of ward no.2,
Shedepar Road, Deori, Dist. Gondia.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Department of Revenue and Tribal Development,
Secretariat, Bombay-400 032.
- 2) Additional Commissioner,
Integrated Tribal Development Project,
Aadiwasi Vikas Bhavan, Opp. RTO, Giripeth,
Nagpur.
- 3) Project Officer,
Integrated Tribal Development Project,
Deori, Dist. Gondia.
- 4) Bhojraj Chambru Belkhede,
C/o Project Officer, Integrated Tribal
Development Project, Deori, Dist. Gondia.

Respondents.

**S/Shri Shashikant Borkar, P.M. Sangidwar, Advs. for the
applicant.**

Shri S.A. Sainis, P.O. for respondent nos. 1 to 3.

None for respondent no.4

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Date of Reserving for Judgment : 27th November, 2019.

Date of Pronouncement of Judgment : 6th December, 2019

JUDGMENT

Per : M (J).

(Delivered on this 6th day of December,2019)

Heard Shri S. Borkar, learned counsel for the applicant and Shri S.A. Sainis, Id. P.O. for respondent nos.1 to 3. None for respondent no.4.

2. In this case the applicant is claiming that selection of the respondent no.4 on the post of Cook is illegal, therefore, it be quashed and the respondents be directed to issue fresh advertisement for selection of Cooks. The facts in brief are as under –

3. The respondent no.3, the Project Officer, Deori, District Gondia published advertisement in Daily Loksatta Newspaper on 08/12/2011 for filling the posts of Cooks, 9 posts of Cook were to be filled. Out of 9 posts, 8 posts were reserved for Ex-servicemen in the respective categories. 2 posts were reserved by horizontal reservation for S.C. Ex-servicemen, 1 post for NT (A) Ex-serviceman, 1 post for NT (D) Ex-serviceman and 4 posts were reserved for OBC Ex-servicemen.

4. The applicant applied for the post of Cook in OBC category, she was called for the written examination, she cleared the

written examination, thereafter, she was called for the interview. After completion of selection process, the applicant learnt that she was not considered and the respondent no.4 was selected as a Cook on one post from the OBC quota.

5. It is contention of the applicant that it was necessary for the respondent nos.1 to 3 to keep reservation for the woman. The respondent nos.1 to 3 illegally reserved 8 posts out of 9 for the Ex-servicemen and as no post was made available for giving representation to the woman, therefore, it was in violation of the public policy. It is contention of the applicant that in comparison to respondent no.4, being lady she was the best candidate and therefore the respondent nos.1 to 3 should have appointed her instead of respondent no.4.

6. The application is opposed mainly by the respondent nos.1 to 3 on the ground that as per the staffing pattern there were 83 sanctioned posts of the Cooks on the establishment of respondent no.3 and 28 ladies Cooks were already in service. The total number of the lady Cooks was more than 30% quota of the reservation and there was vacancy in the reservation quota for Ex-servicemen, therefore, decision was taken to fill 8 posts in Ex-serviceman category. It is submitted that there is no illegality committed by the respondent

nos.1 to 3 in issuing the advertisement without making any reservation for the woman Cook.

7. The main contention of the respondent nos.1 to 3 is that as the applicant has participated in the recruitment , therefore, only because she is not selected, she has no right to challenge the entire recruitment. It is further submitted that as the respondent no.4 scored more marks than the applicant in the examination and he was OBC and as one post was available for the OBC candidate, therefore, he was selected and appointed on that post. It is submitted that there is no substance in the O.A. and it is liable to be dismissed.

8. We have heard the submissions on behalf of the applicant and on behalf of the respondents. The application is mainly attacked on the ground that the applicant participated in the selection process and now after completion of the selection process, she is challenging the selection process, therefore, it is not permissible in law. The learned P.O. has invited our attention to the Judgment delivered by the Hon'ble Apex Court in case of **Municipal Corporation of Delhi Vs. Surender Singh & Ors. (2019) 2 SCC (L&S), 464.** In this case the Hon'ble Apex Court held that the principle of approbate and reprobate applicable and the candidate after completion of the recruitment process cannot challenge the selection process or the advertisement. In our opinion the law explained in this case is

squarely applicable to the situation before us. In the present case also the applicant was aware that out of 9 posts, 8 posts were reserved for Ex-servicemen by horizontal reservation, with this knowledge the applicant applied for the remaining one post of the Cook which was available in OBC quota. The applicant was permitted to appear in the written examination and as she cleared the written examination, she was called for the oral interview considering the performance of the applicant and other candidates, the respondent no.4 was selected on one post available in OBC quota. It is important to note that the applicant is challenging the advertisement and recruitment process in which she voluntarily participated. It seems that as the applicant was not selected on one post available for OBC, she has filed this application. In our opinion, in view of the law laid down by the Hon'ble Apex Court, the applicant has no right after participating in the recruitment process to challenge the process on some grounds.

9. The learned P.O. has invited our attention to page no.36, it is a table disclosing the marks obtained by the respective candidates. In this chart name of the respondent no.4 is at sr.no.6 and he scored 82.75 marks in the written and oral examination. The applicant's name is at sr.no.17 and she scored 66.50 marks. Thus, it seems that considering the merit of the applicant and the respondent no.4, as the

respondent no.4 was found more meritorious than the applicant, therefore, he was appointed. In view of this, we do not see any merit in the contention that the applicant was more suitable candidate than the respondent no.4.

10. It is pointed out by the learned P.O. that the number of woman cooks in service was more than 30% of the total strength of the Cooks, consequently in the advertisement no post was reserved for the woman. It is pointed out that out of 83 posts of the Cook, 28 posts were occupied by the woman Cooks. In view of this, we do not see any merit in the O.A., therefore, the O.A. stands dismissed. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 06/12/2019.

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 06/12/2019.

Uploaded on : 06/12/2019.