

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 148/2020 (D.B.)

Ku. Madhuri Ramesh Shende,
Aged about 28 years, Occ. Nil, R/o Nimkhede,
Tah. Mauda, Dist. Nagpur- 441 106.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Agriculture, Mantralaya,
Mumbai-32.
- 2) The Divisional Joint Director of Agriculture,
Nagpur Division, Nagpur, A-Wing, Administrative Building,
No.2, 7th floor, Civil Lines, Nagpur.

Respondents.

S/Shri Bharat Kulkarni, S. Pande, Advocates for the applicant.
Shri A.P. Potnis, P.O. for respondents.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Justice M.G. Giratkar,
Member (J).**

Date of Reserving for Judgment : 7th March, 2022.

Date of Pronouncement of Judgment : 10th March, 2022.

JUDGMENT

Per : Member (J).

(Delivered on this 10th day of March, 2022)

Heard Shri Bharat Kulkarni, learned counsel for the
applicant and Shri A.P. Potnis, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The respondents had issued an advertisement on 2/2/2018 for the post of Krishi Sevak on the fixed pay for direct recruitment. The applicant applied online in the column “category of the candidate” the applicant had mentioned as ‘General’. The applicant had received Hall Ticket of the Krishi Sevak examination in the ‘Open (General) category’. The applicant appeared in the examination. The name of the applicant in the merit list published by the respondents is at sr.no.1046 and the category of the applicant is shown in the said merit list as “General”.

3. After the publication of merit list, the applicant was called by the respondent no.2 alongwith papers for documents verification. After verification of the documents, the applicant received the communication dated 21/12/2019 by respondent no.2, whereby the candidature of applicant in the category of Open (Female) came to be rejected. The applicant belongs to OBC category had applied in Open (Female) category, she had passed the test in Open category, but the respondent no.2 after the verification of the documents, observed that since she belongs to OBC category, she cannot be appointed on the post reserved for Open (Female) category and held that she would not fall in Open category. It is submitted that the applicant secured more marks and therefore on merit she should have

been appointed, but she is denied the appointment only on the ground she belongs to reserved category, i.e., OBC. Hence, this O.A. is filed for direction to the respondents.

4. The O.A. is replied by the respondent no.2. It is submitted that as per the Govt. G.R. dated 13/8/2014 only woman belongs to Open category can be considered for equal reservation for Open woman category. It is submitted that on 19/1/2018, the Commissioner of Agriculture has issued Circular directing Department to consider only Open category woman's for equal reservation under category of 'Open Woman'. Therefore, rejecting the candidature of the applicant is legal and proper. Hence, the O.A. is liable to be dismissed.

5. Heard Shri Bharat Kulkarni, learned counsel for the applicant. He has pointed out the Judgment of Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No. 6326/2018 in case of **Smt. Shantabai Laxman Doiphode Vs. State of Maharashtra & Ors.**, decided on 14/10/2020. The learned counsel for the applicant has pointed out the Judgment of Hon'ble Supreme Court in case of **Saurav Yadav & Ors. Vs. State of Uttar Pradesh & Ors., (2021) 4 SCC,542.**

6. Heard learned P.O. Shri A.P. Potnis. There is no dispute that the applicant has secured more marks. She was called for interview, but appointment is denied only on the ground that she

belongs to OBC, i.e., reserved category and therefore she cannot be appointed in Open category. There is no dispute that 29 posts of Krishi Sevak were reserved for Open (Female) category. The applicant applied in the said category. She has secured 125.89 marks. She was called for documents verification. Her name is at Sr.No.4 in the said list (P-33). After verification of documents, the respondents informed her by the impugned communication that for the post she claimed was reserved for Open (female) category, whereas, she belongs to OBC category. Therefore, she is not entitled for appointment.

7. It appears that the respondent / authority has not properly considered the Govt. G.R. dated 13/8/2014. The Clause A of the said G.R reads as under –

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8. The Hon'ble Bombay High Court, Bench at Nagpur in case of **Smt. Shantabai Laxman Doiphode Vs. State of Maharashtra & Ors.** has held that "the petitioner applied in the Open category though she belongs to reserved category, she should have been appointed on merit in Open category and her claim should not have been denied only because she belongs to reserved category. Therefore, direction was given to appoint the Petitioner".

9. In the case of **Saurav Yadav & Ors. Vs. State of Uttar Pradesh & Ors., (2021) 4 SCC,542**, the Hon'ble Supreme Court has held that "Candidates belonging to vertical reservation categories are entitled to be selected in "Open or General" category on basis of their merit and in such circumstances their selection cannot be counted against their respective quota for vertical reservation. Further held, contention that after vertical reservations are provided for, at stage of

accommodating candidates for effecting horizontal reservation, reserved categories candidates can only be adjusted against their categories and not against "Open or General" category is rejected since while making adjustment for horizontal reservation in "Open or General" category seats, less meritorious candidates may be selected as in instant case, which is impermissible."

10. It is held by the Hon'ble Supreme Court in case of **Saurav Yadav & Ors. Vs. State of Uttar Pradesh & Ors.,(cited supra)** that "contention by the respondents state that woman candidates who are entitled to benefit of social category reservation cannot fill open category vacancies is rejected as that would result in woman candidates with less merit (in the open category) being selected, and those with more merit than such selected candidates, (in the social/vertical reservation category) being left out .. doing so would result in communal reservation, where each social category is confined within extent of their reservations, thus negating merit.. the open category is open to all, and the only condition for a candidate to be selected in it's merit, regardless whether reservation benefit of either type was available to him or her."

11. In the cited Judgments, it is clear that in Open category there should not be any denial on the ground that candidate belongs to reserved category. If the candidate secured more marks,

then he or she is entitled to be appointed irrespective of the caste. The appointment should be on merit in Open category.

12. There is no dispute that the applicant secured more marks as compared to other candidates, she was at Sr.No.4 in the list (P-33). She was called for documents verification. After verification of documents, the respondents informed her that she belongs to OBC category and therefore she is not entitled for appointment in the Open (Female) category. It is pertinent to note that the applicant applied for the post of Krishi Sevak in Open (Female) category, she has secured more marks and she was called for documents verification. This itself shows that the applicant is entitled for appointment as she is in the merit list.

13. The action on the part of the respondents to deny the appointment of applicant only on the ground that she belongs to OBC category and she cannot claim in Open (Female) category appears to be illegal.

14. In that view of the matter, we pass the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned communication dated 21/12/2019 issued by respondent no.2, rejecting the candidature of applicant in 'Khula

Mahila / Open (Female)' category for the post of Agricultural Assistant is hereby quashed and set aside.

(iii) The respondent no.2 is directed to appoint the applicant on the said post within a period of one month from the date of receipt of this order.

(iv) No order as to costs.

(Justice M.G. Giratkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 10/03/2022.

Dnk

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 : 10/03/2022.

Uploaded on : 10/03/2022.*