

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 580/2015 (D.B.)

Ku. Shashwati D/o Chandrashekhar Borkar,
Alias Sau Shashwati W/o Vijay Modak,
Aged about 32 years, Occ. Service (Junior Engineer),
Resident of Flat No.102, Sai Shraddha Apartment,
Manish Nagar, Nagpur-440 015.

Applicant.

Versus

- 1) Maharashtra Public Service Commission,
5th, 7th & 8th floor, MTNL, Cooperage Building,
Maharshi Karve Road, Mumbai.
- 2) State of Maharashtra,
Department of General Administration,
through its Principal Secretary, Mantralaya, Mumbai-32.
- 3) Ku. Yogini Vitthal Pawar,
C/o Department of General Administration,
through its Principal Secretary,
Mantralaya, Mumbai-32.
- 4) Ku. Vrushali Shankarrao Labhe,
R/o G-2, Shakuntala Apartment,
Behind Revenue Colony, Ramnagar, Chandrapur.

Respondents.

S/Shri M.M. & A.M. Sudame, Advocates for the applicant.
Shri A.M. Ghogre, P.O. for respondent nos.1 &2.
None for respondent no.3.
Shri NitinBhishikar, Advocate for respondent no.4

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

Date of Reserving for Judgment : 8th March, 2022.

Date of Pronouncement of Judgment : 14th March, 2022.

JUDGMENT

Per : Member (J).

(Delivered on this 14th day of March, 2022)

Heard Shri M.M. Sudame, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for respondent nos.1&2. None for respondent nos.3&4.

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

The applicant is a qualified Engineer and obtained the Bachelor of Engineering Degree (Mechanical) in 1st Class from Rashtra Sant Tukdoji Maharaj, Nagpur University. The applicant being eligible for the post of Junior Engineer, selected and appointed in the Department of Water Resources, Government of Maharashtra and working in the said Department for last more than three years.

3. The respondent no.1 advertised 28 posts of Deputy Engineer (Mechanical), Group-A vide Advertisement No.58/2013, dated 30/08/2013. The applicant applied as a Scheduled Caste (S.C.) candidate and being a female candidate in response to the advertisement issued by respondent no.1. The applicant was found eligible after scrutiny of the application and verifying the documents placed with the application. She was called for interview vide letter dated 8/7/2014. The interviews for 28 posts of Deputy Engineer were held between 16th July to 23rd July,2015, but no result was declared till

January,2015. The respondent no.1 declared the result of the interviews after a gap of more than five months on 16/5/2015. The copy of the list of selected candidates is at Annex-A-7 and the copies of total candidates appeared in the interview and their marks etc. are at Annex-A-8.

4. The applicant being Scheduled Caste (S.C.) female candidate was placed at Sr.No.66, obtained 62 marks, but the female candidates at Sr.Nos.74 and 76 who have secured 53 and 52 marks respectively, were selected and appointed. Not only this, the respondent no.1 called the candidates failed in the earlier interviews appeared in response to some other advertisement on 3/1/2015 and those candidates were selected. The applicant made representation on 30/05/2015. In spite of receipt of said representation, no action is taken and therefore the entire selection is challenged in this O.A. The applicant prayed that the respondent / authority be directed to appoint her on the post of Deputy Engineer (Mechanical) with all consequential benefits. It is also prayed that appointment of respondent nos.3 and 4, who have secured less marks shall be cancelled.

5. The O.A. is replied by filing affidavit-in-reply by respondent no.1. It is submitted that the applicant had applied for the post of Deputy Engineer (Mechanical) from S.C. category. Online examination

was conducted on 1/3/2014 and its result was declared on 4/7/2014. Interviews were held between 16/7/2014 to 23/7/2014 and 3/1/2015. The final result of the interview and list of the recommended candidates was declared on 16/5/2015. The cut off line for calling the candidates from the Open, Open (Female), S.C. and S.C. (Female) categories were fixed at 66,30,48 and 12 marks respectively. The applicant had secured 38 marks in the written examination. In the final result after interview, the applicant secured total 62 marks, whereas, the respondent nos.3 and 4 secured 53 and 52 marks respectively. The respondent nos.3 and 4 are from Open category, whereas, the applicant is from S.C. category. The last candidate recommended from S.C. category has a total 86 marks, hence the applicant could not be considered for the S.C. category post. The last female candidate from Open category has secured 52 marks which are less than applicant, but as per the Govt. Circular dated 13/8/2014, only female Open category candidates are eligible for the Open female post and hence the applicant was not eligible for Open female nor for S.C. category post.

6. It is submitted that initially the applicant was found qualified for the interview from the Open female category and for S.C. female category but later, as per the Govt. Circular dated 13/8/2014 she could not be considered for the Open female category post and

hence she was not recommended by the Commission for Open female post. It is submitted that as per the Govt. Circular dated 13/8/2014, the applicant was not entitled for selection, hence the O.A. is liable to be dismissed.

7. Heard Shri M.M. Sudame, learned counsel for the applicant. He has pointed out the Govt. G.R. dated 13/8/2014 and submitted that as per the guidelines in the G.R. while filling the Open post, the list according to merits is to be prepared and thereafter the list of reserved category candidates is to be prepared. The applicant has secured total 62 marks, whereas, the respondent nos.3 and 4 have secured 53 and 52 marks respectively. Therefore, the name of the applicant should have been included in the merit list of Open category. The learned counsel for the applicant has submitted that this G.R. is wrongly interpreted by the respondent / authority.

8. The learned counsel for the applicant has pointed out the following Citations –

(i) *The Judgment of Hon'ble Bombay High Court in Writ Petition No.2002/2019, delivered on 4/3/2021 in case of **Lata Shyamrao Sangolkar Vs. State of Maharashtra & Ors.***

(ii) *The Judgment of Hon'ble Bombay High Court, Bench at Nagpur in case of **Kanchan Vishwanath Jagtap Vs. Maharashtra Administrative Tribunal & Ors., 2016 (1) Mh.L.J.,934.***

(iii) *The Judgment of Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.3290/2019, delivered on 28/7/2021 in case of **Seema d/o Sudhakar Munjewar (now Seema w/o Nikhil Badole) Vs. Maharashtra Public Service Commission, through its Chairman, Mumbai & Ano.***

(iv) *The Judgment of Hon'ble Bombay High Court, Bench at Nagpur in Writ Petition No.6326/2018, delivered on 14/10/2020 in case of **Shantabai Laxman Doiphode Vs. State of Mah. & Ors.***

(v) *The Judgment of Hon'ble Supreme Court in case of **Saurav Yadav & Ors. Vs. State of Uttar Pradesh & Ors.,(2021) 4 SCC, 542.***

9. Heard learned P.O. for respondent nos.1 and 2 Shri A.M. Ghogre. He has supported the action of respondent / authority. There is no dispute that the applicant belongs to S.C. category. She applied for the post of Deputy Engineer (Mechanical). As per the submission of respondent / authority, the last meritorious candidate in S.C. category obtained 86 marks and therefore the name of applicant who secured less marks, i.e., 62 marks in S.C. category rightly not considered.

10. In para nos.8,9 & 11 of the reply, the respondents / state have stated as follows –

“(8) *With reference to Para 4.3 & 4.3 (repeated) I say and submit that, . applicant had applied for the said post from the S.C. category. Online examination*

was conducted on 1/3/2014 and its result was declared on 4/7/2014. Interviews were held between 16/7/2014 to 23/7/2014 and 3/1/2015. The final result of the interview and list of the recommended candidates was declared on 16/5/2015. Copies of the said result and recommendation list are attached by the applicant to the original application and marked as Exhibit- A 7 & A8 respectively.

(9) *With reference to Para 4.4, I say and submit that, the cutoff line for calling the candidates from the Open, Open (F), SC and SC (F) categories were fixed at 66, 30, 48 and 12 marks respectively. Applicant had secured 38 marks in the written examination. The applicant as per the marks scored in the written examination was initially called for interview for the posts available for the SC (F) and OPEN (F) category. Meanwhile, the Government had issued Circular No.SRV-1012/PK-16/12/16-A, dated 13/08/2014 clarifying the Government Circular dated 16th March, 1999. The said Government Circular dated 13th August, 2014 provides guidelines for application of the Horizontal Reservation in the recruitment process and thereby directed everybody to restrict the open category horizontal reservation quota, purely for the open category candidates.*

As per The Govt. Circular dated 13th August, 2014 and as per the judgment and order passed by the Hon'ble Maharashtra Administrative Tribunal ' Mumbai in O.A. 437/2012 Archana Khambe and others vs State of Maharashtra, the Commission started implementing the Horizontal reservation policy. Accordingly, only open category candidates are considered eligible for the open female post and hence the applicant cannot be considered for the open female category post even if she got more marks than the open female cut off. For implementing the Government Circular dated 13/8/2014 the Commission had revised the original screening test result on 20/12/2014 and called additional 13

candidates of open category for the interview for the 5 posts of open female category.

In the final result after interview, the applicant secured a total of 62 marks whereas respondent number 3 and 4 secured 53 and 52 marks respectively. Respondent number 3 and 4 are from open category whereas the applicant is from S.C. category. The last candidate recommended from S.C. category has a total of 86 marks hence the applicant could not be considered for the S.C. category post. The last female candidate from open category has scored 52 marks which are less than applicant, but as per Government Circular dated 13/8/2014 only open category candidates are eligible for the open female post and hence petitioner was neither recommended for open female nor for S.C. category post. Copy of the Government Resolution dated 13th August, 2014 is attached herewith and marked as **Exhibit-R1**.

11. In short, the contention of the respondent / authority that the applicant applied in the S.C. category. The last candidate in the S.C. category secured 86 marks and the applicant secured only 62 marks, therefore, the applicant could not have been appointed in S.C. category on the post of Deputy Engineer (Mechanical).

12. It is contention of the respondent / authority that the respondent nos.3 and 4 have scored 53 and 52 marks respectively though less marks as compared to the applicant, but they are in Open category and therefore the respondent nos.3 and 4 are appointed on the said posts.

13. The applicant had secured more marks as compared to respondent nos.3 and 4 and therefore she should have been appointed on the said post. In the case of **Lata Shyamrao Sangolkar Vs. State of Maharashtra & Ors.**, the Hon'ble Bombay High Court has observed in Para-10 as under –

“10. Law is well settled that if a candidate belonging to a reserved category is entitled to be selected on the basis of his own merit, his selection cannot be counted against the quota reserved for the category for vertical reservation to which he belongs. The question as to whether such legal position would also apply to individuals selected on the basis of their own merit but belonging to reserved categories for which horizontal reservation has been provided, came up for consideration before the Supreme Court in **Saurav Yadav** (supra) and the question was answered in the affirmative.”

14. In the case of **Kanchan Vishwanath Jagtap Vs. Maharashtra Administrative Tribunal & Ors., 2016 (1) Mh.L.J.,934,** the Hon'ble Bombay High Court, Bench at Nagpur has held that *“Reservation for women-Selection to posts of Deputy Director of health services—Advertisement for six posts, out of which two posts were reserved for women category— No compartmentalised reservation - Petitioners-women belonged to reserved category - If Scheduled Castes candidates get selected in open competition on basis of their own merits, they will not be counted against quota reserved for Scheduled Castes - They will be treated as open*

competition candidates - Meritorious candidates in women category belonging to reserved category cannot be denied benefit of their meritorious position ----".

15. In the case of **Seema d/o Sudhakar Munjewar (now Seema w/o Nikhil Badole) Vs. Maharashtra Public Service Commission, through its Chairman, Mumbai & Ano.**, the Hon'ble Bombay High Court, Bench at Nagpur has observed in Para-6 as under –

*“(6) The decision in **Saurav Yadav and others (supra)** was considered by a co-ordinate Bench of this Court in **Lata Shyamrao Sangolkar Vs. State of Maharashtra and others, reported in 2021 (3) ABR 246**. The relevant paragraphs from such decision are quoted below :-*

“10. Law is well settled that if a candidate belonging to a reserved category is entitled to be selected on the basis of his own merit, his selection cannot be counted against the quota reserved for the category for vertical reservation to which he belongs. The question as to whether such legal position would also apply to individuals selected on the basis of their own merit but belonging to reserved categories for which horizontal reservation has been provided, came up for consideration before the Supreme Court in Saurav Yadav (supra) and the question was answered in the affirmative.

12. Today, we have heard Mr. Kumbhakoni. He has, in his usual fairness, submitted that the contents of the reply affidavit filed by the State does not reflect the correct position of law and that the petitioner had been illegally denied of appointment by not accommodating her in any of the 'unreserved' or 'open' category vacancies for women, regard being had to the fact that belonging to the OBC category and

securing more marks than the candidates who have been appointed securing lesser marks, i.e., the respondents 2 to 7, she ought to have been offered appointment in preference to them.”

16. In the case of **Shantabai Laxman Doiphode Vs. State of Maharashtra & Ors.**, the Hon'ble Bombay High Court, Bench at Nagpur held that *“Appointment of candidate for post of Assistant Binder in reserved category -- Candidate filled her application and elected to compete only for post reserved vertically for N.T.(D) candidates -- However, candidate claimed appointment for post reserved for Women in Open category -- such claim can be allowed - This is case wherein horizontal reservation for women candidates was provided in open category, which meant that it was available for all women candidates irrespective of social reservations-----”*.

17. The Hon'ble Supreme Court in the case of **Saurav Yadav & Ors. Vs. State of Uttar Pradesh & Ors.(2021) 4 SCC, 542**, held that *“Candidates belonging to vertical reservation categories are entitled to be selected in “Open or General” category on basis of their merits and in such circumstances their selections cannot be counted against their respective quota for vertical reservation”*.

It is further held that *“ subject to permissible reservations, either social (vertical) or special (horizontal), opportunities to public employment and selection of candidates must be based purely on*

merit—any selection which results in candidates being selected against Open/General category with less merit than other available candidates would be opposed to principles of equality—there can be special dispensation for reserved category candidates and it is possible that more meritorious “Open/General” category candidate may not get selected-----”

It is further observed that *“contention by respondent state that woman candidates who are entitled to benefit of social category reservations cannot fill open category vacancies, is rejected as that would result in woman candidates with less merit (in open category) being selected and those with more merit than such selected candidates (in social / vertical reservation category) being left out-- Doing so would result in communal reservation, where each social category is confined within extent of their reservation-- Open category is open to all, and only condition for candidate to be selected in it is merit, regardless whether reservation benefit of either type was available to him or her”.*

18. In the present case, the applicant though applied in S.C. category, but she has secured more marks as compared to respondent nos.3 and 4 (in open women category), therefore, she should have been appointed on merit. But the respondents/ authority have rejected her claim only on the ground that she applied in

reserved category and therefore she cannot claim the post of Open category.

19. In view of above the Judgment of Hon'ble Apex Court and the Judgments of Hon'ble High Court cited supra, it is clear that appointment should be on merit in Open category irrespective of the reservation / caste. The applicant has secured 62 marks, whereas, the respondent nos. 3 and 4 have secured 53 and 52 marks respectively, but the respondents / authority have not taken into consideration the merit of the applicant and wrongly appointed the respondent nos.3 and 4. The action of respondent / authority by not appointing the applicant, prima facie appears to be not proper.

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

ORDER

(i) The O.A. is allowed.

(ii) The respondent nos.1and 2 are directed to appoint the applicant on the post of Deputy Engineer (Mechanical) within a period of one month.

(iii) No order as to costs.

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

(Shree Bhagwan)
Vice-Chairman.

Dated :- 14/03/2022.

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 : 14/03/2022.

Uploaded on : 14/03/2022.