

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

**ORIGINAL APPLICATION NO.1062 of 2017
(Subject : Selection)**

DISTRICT : MUMBAI

1. Mr. Ganesh Amrutrao Palve)
R/of Room No.23, PG Boys Hostel,)
Bombay Veterinary College,)
Parel, Mumbai 12.)
2. Mr. Vaibhav Prakashrao Deshpande,)
C/o. Ram Chandra Kulkarni,)
Near Chapalgaonkar Complex,)
Dhondipura, Beed 431 122.)
3. Mr. Prasad Pradip Bhamare,)
R/of. 45, Sundar Nagar, Walwadi Shiwar,)
Deopur Dhule, Tal. Dhule,)
Dist. Dhule 424 002)
4. Mr. Shivkumar Ramrao Yankam,)
R/of. Room No.31, PG Boys Hostel,)
Bombay Veterinary College,)
Parel, Mumbai 400 012.)
5. Ms. Trupti Vinod Kulkarni,)
R/of. Room No.10, Girls Hostel,)
Bombay Veterinary College,)
Parel, Mumbai 400 012.)
6. Mr. Vishal Ramesh Ade,)
At Post : Kinhiraja, Tal : Malegaon,)
Dist : Washim : 444 503)
7. Mr. Mahesh Shriniwas Bhandurge,)
R/of Bhonja, Post Sonari, Tal : Paranda,)
Dist. Osmanabad 413 502)

8. Mr. Jishant Dalitkumar Nandeshwar)
 R/of Room No.11, PG Boys Hostel,)
 Nagpur Veterinary College,)
 Seminary Hills, Nagpur 440 006)
9. Mr. Prakash Narayanrao Ingle Patil,)
 R/of Vasant Nagar, Near Laxmi Computer,)
 Tal : Umardhed, Dist. Yavatmal 445 206)

...Applicants.

Versus

1. The State of Maharashtra)
 Through Department of Animal)
 Husbandry, Dairy & Fisheries,)
 Mantralaya, Mumbai 400 032.)
2. Maharashtra Public Service Commission,)
 Cooperage Telephone Exchange Building,)
 Maharishi Karve Road, Cooperage,)
 Mumbai 21)

.....Respondents.

Shri Aditya Bhagat, the learned Advocate i/b Shri M.V. Thorat, the learned Advocate for the Applicants.

Ms. S.P. Manchekar, the learned Chief Presenting Officer for Respondents.

CORAM : SHRI P.N. DIXIT, MEMBER(A)

DATE : 07.03.2019.

J U D G M E N T

1. Heard Shri Aditya Bhagat, the learned Advocate i/b Shri M.V. Thorat, the learned Advocate for the Applicants and Ms. S.P. Manchekar, the learned Chief Presenting Officer for Respondents.

2. Learned Advocate Shri Aditya Bhagat for the Applicants has made following prayer:-

“(b) This Hon’ble Tribunal may be pleased to call for record and proceedings in the case of Present Applicants, and this Hon’ble Tribunal may further be pleased to hold and declare the Applicant are entitled for being recommended/ appointed on the post of Livestock Development Office (Grade-A) as per the advertisement dated 26.04.2017 on the remaining 25 seats under the open general category.”

3. The matter was being discussed and debated by the Respondents No.1 and 2. Thereafter Respondent No.1 has vide letter dated 27.02.2019, marked as X1, intimated as follows. Paragraph 2 of the said letter reads as follows :-

“सध्यस्थितील पशुसंवर्धन विभागात पशुधन विकास अधिकारी (गट-अ) या संवर्गात ४२८ पदे रिक्त असून, सदर रिक्त पदे भरण्याबाबत लोक प्रतिनिधी, स्थानिक स्वराज्य संस्था यांचे मार्फत सातत्याने पाठपुरावा करण्यात येत तसेच पशुधन विकास अधिकारी(गट-अ) हे पद पशुपालक शेतक-यांच्या दैनंदिन जीवनाशी निगडित असून, त्यांचे उत्पन्न वाढविण्यासाठी सदर संवर्गातील रिक्त पदे भरणे आवश्यक आहे. सदर वस्तुस्थिती विचारात घेता, जाहिरात क्र. २४/२०१७ मधील अपंग प्रवर्गाकरिता आरक्षित असलेल्या ३३ पदांपैकी फक्त २ पात्र उमेदवार उपलब्ध झाल्याने आयोगामार्फत अमागास प्रवर्गातून रिक्त ठेवलेली २५ पदे ही खुल्या प्रवर्गातील उमेदवारांमधून भरण्याच्या अनुषंगाने खुल्या प्रवर्गातील २५ पात्र उमेदवारांची शिफारस शासनास तातडीने करावी ही विनंती.”

4. Respondent No.2 has vide their letter dated 06.03.2019, marked as X11, replied their communication. Paragraph No.2 of the said communication is as under :-

“२. आयोगाच्या दिनांक २१ सप्टेंबर, २०१८ च्या पत्रामध्ये विशद केल्याप्रमाणे २५ खुल्या प्रवर्गाची पदे अंतर्भूत करून पशुधन विकास अधिकारी, महाराष्ट्र पशुसंवर्धन सेवा, गट-अ, (जा.क्र.२४/२०१७) चा निकाल सुधारीत करून सुधारीत शिफारस यादीमुळे पूर्वी शिफारसपात्र ठरलेले परंतु सधारीत शिफारस यादीनुसार ना- शिफारसपात्र ठरू शकणा-या उमेदवारांस विहित पदांवर सामावून घेण्याची तयारी असल्यास आणि इतर काही निर्माण होवू शकणा-या संभाव्य समस्या / तक्रारीच्या निराकरणाबाबत शासनाकडून जबाबदारी घेण्यात येणार असल्यास २५ खुल्या प्रवर्गाची पदे अंतर्भूत करून संपूर्ण सुधारीत शिफारस यादी उपलब्ध करून देण्यास आयोगाची कोणतीही हरकत नाही. तरी प्रस्तुत प्रकरणाच्या सुनावणीवेळी सदर बाब मा. न्यायाधिकरणासमोर विशद करावी, ही विनंती.”

5. During the hearing today learned Advocate for the Applicant refers to the provisions in the, “Rights of Persons with Disabilities Act 2016”, copy whereof is from page 58 to page 75 of the paper book of O.A. Relevant provision of the same reads as under :-

“34. (1)

(2) *Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability.”*

6. The above provisions has been reiterated of the Government of India in their office memorandum dated 29.12.2005, page 76 of the O.A. The specific provision is at No.16(c), the same is as under :-

“(c) *In the subsequent recruitment year the ‘backlog reserved vacancy’ shall be treated as reserved for the category of disability for which it was kept reserved in the initial year of recruitment. However, if a suitable person with that disability is not available, it may be filled by interchange among the three categories of disabilities. In case no suitable person with disability is available for filing up the post in the subsequent year also, the employer may fill up the vacancy by appointment of a person other than a person with disability. If the vacancy is filled*

by a person with disability of the category for which it was reserved or by a person of other category of disability by inter se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation. But if the vacancy is filled by a person other than a person with disability in the subsequent recruitment year, reservation shall be carried forward for a further period upto two recruitment years whereafter the reservation shall lapse. In these two subsequent years, if situation so arises, the procedure for filling up the reserved vacancy shall be the same as followed in the first subsequent recruitment year.”

7. In the light of the above, Respondents No.1 and 2 are directed to implement within two months from today, the provisions as stated above in the Act as well as office memorandum from the Government of India and take suitable decision regarding prayer made by the applicant at prayer 10(b) which is quoted in foregoing paragraph No.2. Original Application is therefore disposed of without any costs.

Sd/-

(P.N. Dixit)
Member(A)

Prk