

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1120 OF 2018

DISTRICT : NASHIK

Smt. Savita Nivrutti Salve @ Savita Pravin)
Dethe, Age : 39 Yrs., Occu.: Education,)
R/o. Jaidatta Survey No.882/3/45,)
Vaibhav Colony, Rajeev Nagar,)
Mumbai Agra Road, Nashik.)...**Applicant**

Versus

1. The Secretary.)
Maharashtra Public Service)
Commission, Floor 5-8, Cooperej)
Telephone Exchange Building,)
Maharshi Karve Road, Cooperej,)
Mumbai – 400 021.)
2. The State of Maharashtra.)
Through Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
3. The State of Maharashtra.)
Through Addl. Chief Secretary,)
General Administration Department,)
Mantralaya, Mumbai – 400 032.)
4. Swati Khusalrao Jogdand.)
C/o. Jadhav D.D.G. 001, B-2,)
Yogidham, Murbad Road,)
Kalyan (W), Thane.)...**Respondents**

Mr. Sandip S. Dere, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents 1 to 3.

Mr. Arvind V. Bandiwadekar, Advocate for Respondent No.4.

CORAM : **SHRI A.P. KURHEKAR, MEMBER-J**
SMT. MEDHA GADGIL, MEMBER-A

DATE : **13.08.2021**

PER : **SHRI A.P. KURHEKAR, MEMBER-J**

JUDGMENT

1. In this second round of litigation, after her failure to get any relief in O.A.No.207/2012 dismissed on 27.07.2015, the Applicant has again filed this new O.A. challenging the selection of Respondent No.4 on the post of Deputy Superintendent, Central Prison and further sought direction for her appointment in place of Respondent No.4 on the said post invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this O.A. are as under :-

The Respondent No.1 – Maharashtra Public Service Commission issued advertisement on 15.04.2009 inviting applications for the post of Deputy Superintendent of Central Prisons. As per the said Advertisement, five posts were for Open Category (including 2 for Open Female Category) and one each was reserved for SC, ST, NT(C), OBC and OBC(F). The Applicant as well as Respondent No.4 belongs to SC Category. They both appeared in the process. However, the Applicant was not selected. Since MPSC has received so many applications, it decided to adopt different short-listing criteria, one for SC Category and other for Open Category. For SC Category, MPSC decided to apply short-listing criteria of a degree of at least II Class at Bachelor Degree level and 1st Class Degree in Post-Graduation viz. Sociology, Penology, Criminology, Delinquency or Correctional Administration. Whereas, for Open Female Category, the criteria adopted was Degree of II Class at Bachelor's level as well as Masters' level. The Applicant has 2nd Class Masters' Degree from Sociology, and therefore, she did not qualify criteria

decided by MPSC for SC Category. Therefore, the candidature of the Applicant was considered for Open Female Category, but was not selected from Open Female Category. Whereas, Respondent No.4 was selected from Open Female Category. At the end of selection process in view of recommendation made by MPSC, the Government issued appointment order dated 01.03.2012 in favour of Respondent No.4 and accordingly, she joined on the said post.

3. The Applicant had, therefore, filed O.A.No.270/2012 challenging the selection of Respondent No.4 (who was Respondent No.10 in O.A.No.270/2012). The Tribunal dismissed O.A. on merit by order dated 27.07.2015. The Review Application No.31/2015 filed against the order was also dismissed on 14.06.2016. Thereafter, the Applicant had preferred Writ Petition No.5303/2017 which she withdrew with liberty to adopt appropriate proceedings as per order of Hon'ble High Court dated 9th July, 2018.

4. It appears that during the pendency of Writ Petition No.5303/2017, an enquiry was initiated by Government against Respondent No.4 for furnishing false Certificate/information suppressing that she has three children and thereby committed breach of Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 (hereinafter referred to as 'Small Family Rules of 2005' for brevity. That seems to be the reason for withdrawing Writ Petition with liberty to adopt appropriate proceedings.

5. It is on the above background, the Applicant has filed this O.A. on 18.02.2018 claiming following reliefs :-

- (a) This Hon'ble Tribunal be pleased to quash and set aside the selection of Respondent No.4, as per select list dated 19.10.2011 for the post of Deputy Jail Superintendent.

- (b) After setting aside the selection of the Respondent No.4 that, this Hon'ble Tribunal shall direct Respondent Nos.1 and 2 to select the Applicant for the post of Superintendent – District Prison/Dy. Superintendent - Central Prison, Group-B reserved for S.C. Category by virtue of advertisement no.101/2009.
- (c) That this Hon'ble Tribunal pleased be direct the Respondents 1 to 3 to initiate appropriate proceedings against the Respondent No.4 for playing fraud in the selection process as per report sent by Dy. Superintendent, Prison, West Division, Pune.

6. Another development taken place during the pendency of this O.A. is that the Government completed inquiry against Respondent No.4 and dismissed her from service by order dated 26th April, 2021 with the finding that while applying for the post, she has suppressed material information and thereby committed breach of 'Small Family Rules of 2005'. The charge held proved in D.E. and consequently, she came to be dismissed from service. In view of development, the learned Advocate for the Applicant deleted Prayers a) and (c) of Prayer Clauses. The Applicant now, therefore, prayed for direction to Respondent Nos.1 to 3 to select and appoint her on the post of Superintendent, Central Prison (Group 'B'), which was reserved for SC Category in terms of Advertisement dated 15.04.2009 and now fallen vacant in view of dismissal of Respondent No.4 from service.

7. Shri S.S. Dere, learned Advocate for the Applicant sought to invite my attention to the observation and findings recorded by the Tribunal while deciding O.A.No.270/2012 and pointed out that the Tribunal had accepted Applicant's contention that Respondent No.4 ought not to have been selected from Open Category and her selection was untenable. He has pinpointed that the Tribunal directed that Respondent No.4 be

adjusted on the post reserved for S.C. Candidate. On the basis of this observation, the learned Advocate for the Applicant contends that now since Respondent No.4 is dismissed from service, consequently, Applicant's claim for selection from SC Category being next to Respondent No.4 got revived and now it relate back to the selection process. He, therefore, submits that the said post from SC Category being now fallen vacant, it needs to be offered to the Applicant.

8. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer submits that since Applicant's O.A.No.270/2012 was dismissed on merit and the said Judgment having attained finality, now she cannot claim said post only because of subsequent development of dismissal of Respondent No.4 in D.E. She has further pointed out that Respondent No.4 was more meritorious, and therefore, rightly selected and appointed. She further submits that since process is already completed in 2012, now it cannot be reopened.

9. Shri A.V. Bandiwadekar, learned Advocate for Respondent No.4 supported the submission advanced by the learned CPO and has also raised the issue of *res-judicata* contending that since O.A.No.270/2012 was dismissed on merit and the said Judgment had attained finality, now selection process initiated in 2009 having already attained finality, the Applicant's claim is totally untenable. As regard dismissal of Respondent No.4 from service, he submits that Respondent No.4 had already challenged her dismissal by filing separate O.A. in Tribunal.

10. In view of submissions advanced at the Bar, the issue posed for consideration is whether Applicant can claim the post and direction can be given to select the Applicant in selection process of 2009 from the Category of SC in view of subsequent development of dismissal of Respondent No.4 from service.

11. Here, before going further, it would be apposite to reproduce relevant Paragraphs from the Judgment of Tribunal in O.A.No.270/2012, which are as under :-

“6. The two important issues arise in the present Original Application viz (i) whether the short listing criteria fixed by the Respondent no. 1 was reasonable, and (ii) whether a S.C (female) candidate could be considered for appointment against open (female) post. Hon’ble Supreme Court has decided in RAJESH KUMAR DARIA Vs. RAJASTHAN PUBLIC SERVICE COMMISSION & OTHERS : (2007) 8 SCC 785, that horizontally reserved posts from a particular vertical reservation category can be filled from that vertical reservation category only. A horizontally reserved post for a particular vertical reservation category cannot be transferred to any other vertical reservation category. For horizontal reservation ‘Open’ is also treated as a vertical reservation category, an open post which is horizontally reserved cannot be filled by a candidate from any vertical reservation category. The decision of the Respondent no. 1 to consider the Applicant for the post reserved for open (female) category was in violation of law as laid down by Hon. Supreme Court.

8. In the present case, there is no dispute that the Applicant had applied for the post from S.C category and she was entitled to be considered for appointment from that category. As per the advertisement, para 8.1, the following short listing criteria was to be applied by the Respondent no. 1, viz:-

“8.1 The Commission at its discretion may short list the applicants for interview based on reasonable criteria, i.e. experience and/or higher qualification etc. OR may conduct written objective type (questions) screening test to short list candidates for interview. The syllabus and medium of question paper and other details for the test shall be displayed on Commission’s website.”

From this, it is clear that the Commission could prescribe reasonable short listing criteria, which was clarified as (higher) experience or higher qualification. For the S.C post the following criteria was actually prescribed:

“(A) For S.C category

(1) As per the clause 5.1 in the advertisement a Bachelor’s degree in at least second class in arts, science, commerce, law or agriculture of a recognized University or Institution.

AND

(2) A post graduate degree in first class in any one of the following subjects from a recognized University or Institution:-

(a) Sociology, (b) Penology, (c) Criminology,
(d) Delinquency (e) Correctional Administration”.

9. As regards the recruitment rules for the post of Superintendent District Prison, Class-II, the Applicant has placed on record relevant

extract from the Prison Manual at P. 20 D of the Paper Book. The qualification for the post of Superintendent, District Prison for appointment by nomination is a Bachelor's degree in at least the second class and a post graduate degree or diploma in the subject mentioned in (2) of the short listing criteria. The Respondent no. 1 has fixed the short listing criteria modifying the requirement of post graduate degree of any class to the Degree in first class. The question is whether a Post graduate degree in first class is a higher qualification than a post graduate degree in pass class. The obvious answer is No. A first class degree may be a better qualification than a pass class degree, but it cannot be called a higher qualification. The criterion fixed by M.P.S.C is obviously in contravention of the short listing criterion provided in the advertisement dated 15.4.2009. As the Applicant had a Post Graduate degree in one of the subjects mentioned in the recruitment rules, she could not have been denied consideration from S.C category. As the Applicant had applied from S.C category, we are restricting our observation regarding short listing criterion for that category only. If the Respondent no. 1 wanted the criterion to be higher marks, that should have been mentioned in the advertisement. Once it was mentioned in the advertisement that the short listing criteria will be based on higher qualification, it was not open for the Respondent no. 1 to say that the short listing criteria will be based on higher marks.

10. The total number of posts which were to be filled and which were actually filled are as follows:-

Sr No	Category	Vacancies	Filled
1.	Open	3	3 [2 open + 1 NT(B)]
2.	Open (Female)	2	2 [1 open + 1 SC(F)]
3.	S.C	1	Not filled
4.	S.T	1	1 (S.T)
5.	NT(C)	1	1 [NT (C)]
6.	OBC	1	1 (OBC)
7.	OBC(F)	1	1 [OBC (F)]

It is clear that for open (female) category, the Respondent no. 1 has selected SC (F) candidate which is impermissible as per judgment of Hon. Supreme Court in RAJESH KUMAR DARIA's case (supra). As Smt Jogdand (Respondent no. 10) who belongs to S.C (female) category was selected from open (female) category, prima facie, her selection is untenable. She has BA second class and MA second class and was apparently not considered from S.C category as she did not fulfil the short listing criteria as fixed by the Respondent no. 1 for S.C category. Both the Respondent no. 10 and the Applicant have same qualifications. Both are from SC(F) category. Admittedly, the Respondent no. 10 scored 50 marks out of 100 in interview, as against 45 marks out of 100 scored by the Applicant, she is more meritorious than the Applicant. The Applicant, can therefore, not succeed, if the Respondent no. 10 is adjusted against S.C vacancy. It appears that both the Applicant and the Respondent no. 10 were considered for selection against open (female)

category, where the Respondent no. 10 was placed 2nd, while the Applicant was placed at 4th place.

11. For S.C category, 6 persons were called for interview. However, none of them could cross the threshold of obtaining 40% marks in interview and were, therefore, not found suitable. The Respondent no. 10 scored 50% marks and is, therefore, eligible to be considered for appointment. In the present case, in our opinion, ends of justice will be served if the Respondent no. 10 is adjusted against the vacancy reserved for S.C, which was not filled. We do not want to unsettle the settled position in regard to the Respondent no. 10.

12. The Applicant, even if she is considered for S.C category, was not the most meritorious candidate from amongst the candidates from S.C category, who were short listed and interviewed. She, therefore, has no case to seek any reliefs. The Original Application is, therefore, dismissed with no order as to costs.”

12. Thus, what transpires from the order of Tribunal in O.A.No.270/2012 that the Tribunal did not approve the direction of MPSC for applying different short-listing criteria and selection of Respondent No.4 from Open Female Category found *prima-facie* unacceptable. However, having found that Respondent No.4 had scored 50 marks (which was above the cut-off marks) and eligible for appointment while upholding the appointment of Respondent No.4, all that Tribunal opined that “In our opinion, ends of justice would be served, if the Respondent No.10 is adjusted against the vacancy reserved for SC Candidate which was not filled. We do not want to unsettle the settled position with regard to Respondent No.10.

13. However, material to note that the O.A. was dismissed having found that even if the candidature of the Applicant is considered for SC Category, she was not the most meritorious candidate against the candidates who were shortlisted and interviewed. The Applicant had secured 45 marks out of 100 which was less than Respondent No.4. This clinched the matter in favour of Respondent No.4. The Tribunal, therefore, held that the Applicant has no case to seek any relief and accordingly dismissed the O.A.

14. As stated above, this fresh O.A. is filed in view of subsequent development viz. dismissal of Respondent No.4 from service. It is on the basis of this subsequent development, the Applicant wants to push her claim to relate back to the selection process of 2009. Indisputably, the Respondent No.4 was appointed by order dated 01.03.2012 and she worked till the date of dismissal by order dated 26.04.2021. As such, she worked for almost 9 years and now the Applicant wants to be selected on the said post, which in our considered opinion, is totally impermissible in law.

15. Indisputably, the Applicant's claim for the post advertised on 15.04.2009 was examined by the Tribunal and on merit, she was found not entitled to the said post since Respondent No.4 was more meritorious candidate. This being the position, the recruitment process initiated by Advertisement dated 15.04.2009 had come to an end and appointments done in pursuance of the said process had attained finality. The decision rendered by the Tribunal in O.A.No.1120/2018 dismissing the claim of the Applicant for selection has also attained finality. The Review filed against the said order was dismissed and Writ Petition was also withdrawn. In other words, there is finality to the issue already raised in O.A.No.270/2012 and principle of *res-judicata* is clearly attracted. The issue which was directly in issue in earlier round of litigation to which Respondent No.2 was also party as Respondent No.10. Since matter is issue is already adjudicated on merit and had attained finality, the principle of *res-judicata* embodied in Section 11 of CPC is clearly attracted.

16. True, the Tribunal opined that the ends of justice will be served, if the Respondent No.4 adjusted against the vacancy reserved for SC Candidate. However, remember to note that Respondent No.4 was already appointed by order dated 01.03.2012 from Open Female Category much earlier than the decision in O.A.No.270/2012. Apart, as specifically noted by the Tribunal, the Applicant was not the most

meritorious candidate, and therefore, even considering her candidature from SC Category, she was found not entitled to the appointment. If this is so, the question of re-agitating the same issue taking advantage of the dismissal of Respondent No.4 does not survive. Indeed, the Respondent No.4 had already challenged her dismissal by taking appropriate legal steps. Apart, since recruitment process of 2009 had already come to an end, if any post falls vacant from that selection process, it is required to be filled in by advertising the post afresh. Suffice to say, it is a matter of *fait-accompli*.

17. The Applicant is trying to take the benefit of dismissal of Respondent No.4 from service which is subsequent event. This is nothing but an attempt to revive the claim which is already adjudicated and had attained the finality. The dismissal of Respondent No.4 will not accrue fresh cause of action in favour of Applicant.

18. In O.A, the Applicant has filed the copies of order passed by the Tribunal in **O.A.343/2014 (Ravindra R. Bhavsar Vs. State of Maharashtra) decided on 08.03.2017** to show that relaxation of provisions contained in "Small Family Rules of 2005" is not permissible. Here, there is no question of relaxation since Respondent No.4 is already dismissed from service. The reference was also made to the **O.A.No.725/2016 (Shyam C. Kotkar Vs. State of Maharashtra) decided on 15.01.2018**. It pertains to the appointment for the post of Police Patil, and therefore, it has absolutely no relevance with the matter in issue. Lastly, reference was also made to the decision of Hon'ble Allahabad High Court in the matter of **U.K. Public Service Commission Vs. State of U.P.) decided on 8th March, 2007**. In that matter, the controversy involved around the interpretation/effect of order dated 31.01.1994 and the right of appointment of candidate whose name find place in the waiting list. Here, there is no question of any such waiting list, since all the posts were filled-in and recruitment process had come to an end in 2012 itself. Similarly, the decision of Hon'ble Supreme

Court in **Civil Appeal No.11360-11363 of 2018 (Dinesh Kumar Kashyap & Ors. Vs. South East Central Railway & Ors.) decided on 27th November, 2018** and decision of Hon'ble High Court in **Writ Petition No.1274/2015 (Mahadev Pawar Vs. State of Maharashtra) decided on 01.02.2016** are misplaced since it does not pertain to the issue or controversy which has raised in the present O.A. Indeed, during the course of argument, no reference was made about these authorities probably realizing that those are not of any assistance to the Applicant in the present context. Be that as it may, in our considered opinion, the claim of Applicant holds no water.

19. The totality of aforesaid discussion leads us to conclude that the claim of the Applicant is devoid of merit and O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-
(MEDHA GADGIL)
Member-A

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 13.08.2021
Dictation taken by :
S.K. Wamanse.

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