

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.118 OF 2016

WITH

ORIGINAL APPLICATION NO.119 OF 2016

WITH

ORIGINAL APPLICATION NO.126 OF 2016

DIST : SANGLI

ORIGINAL APPLICATION NO.118 OF 2016

WITH

ORIGINAL APPLICATION NO.119 OF 2016

Smt. Tejaswini Raghunath Galande,)
Vrundavan Colony, Dattamal,)
Opp. Tahsil Office, Tasgaon,)
Tal : Tasgaon, Dist. Sangli)

.... APPLICANT

VERSUS

The Chairman,)
Maharashtra Public Service Commission,)
5, 7 & 8 Floor, Cooperage Telephone,)
Corporation Building,)
N.K. Road, Cooperage, Mumbai 21)

....RESPONDENT

WITH

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ORIGINAL APPLICATION NO.126 OF 2016

Smt. Alka Pandharinath Avhad,)
 Age : 35 years, Occ : Service.)
 Indiranagar Vasahat No.2,)
 Lekhanagar, Old Cidco,)
 Nashik 422 009).... **Applicant**

VERSUS

1. Maharashtra Public Service Commission,)
 Through the Secretary,)
 5th floor, Kuprej Telephone Nigam)
 Building, M.K. Road, Kuprej,)
 Mumbai 400 021)
2. The Secretary,)
 Tribal Development Department,)
 Govt. of Maharashtra,)
 Mantralaya, Mumbai 400 032)

....Respondents

Shri S.S. Dere, learned Counsel for the Applicant in O.A.No.118 of 2016 and O.A.No.119 of 2016.

Shri C.T. Chandratre, learned Counsel for the Applicant in O.A.No.126 of 2016.

Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN
SHRI R.B. MALIK, MEMBER(J)

DATE : 09.03.2016

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

J U D G M E N T

1. Heard Shri S.S. Dere, learned Counsel for the Applicant in O.A.No.118 of 2016 and O.A.No.119 of 2016, Shri C.T. Chandratre, learned Counsel for the Applicant in O.A.No.126 of 2016 and Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

2. These Original Applications were heard together and are being disposed of by a common order as the issues to be decided are more or less identical.

3. Learned Counsel for the Applicant, Shri C.T. Chandratre in O.A.No.126 of 2016 argued that the Respondent No.1 viz. Maharashtra Public Service Commission had issued two advertisements dated 31.03.2015 and 17.03.2015 for appointment to the post of Assistant Commissioner, Group 'A' and Assistant Project Officer, Group 'B' respectively in the Tribal Development Department. Seven posts in Group 'A' were to be filled, out of which 5 were open, one for S.C. and one for O.B.C. In Group 'B' out of a total of 20 posts, 11 posts were open. 2 posts of S.C., 1 for S.T., 4 for O.B.C. and one each for VJ-A and N.T.-B categories were

reserved. The Applicant had applied for both Group 'A' and Group 'B' post. The Applicant is a woman and belongs to N.T.-C category. In her online application form, she had disclosed that she belongs to N.T.C. category and also has non-creamy layer certificate. However, in the relevant column, the Applicant had clearly stated that she would like to be considered from Open Category. She had also paid fee for open candidate. She appeared for screening test. However, she was not allowed to compete for the open-woman post. Learned Counsel for the Applicant argued that a woman who is not claiming reservation can apply for the post from Open-women category.

4. Learned Advocate Shri S.S. Dere in O.A.No.118 of 2016 and O.A.No.119 of 2016 argued that the Applicant is from N.T. (C) category and was eligible to be considered from Open - women category as no posts were reserved for N.T.(C) category. He argued that if there was no reservation for N.T.(C) category, the person from that category can apply for from Open category, including open-woman posts. He adopted the arguments of learned Advocate Shri C.T. Chandratre.

5. We find that the Applicants in O.A.No.118 of 2016 and O.A.No.119 of 2016 are claiming that she had in fact applied from open category and therefore, she was fully eligible to be considered from open-female category. The Applicant in O.A.No.126 of 2016 is claiming that she has to be

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considered from open-female category as no posts were reserved for N.T. (C) category.

6. This issue of vertical and horizontal reservation has been examined by Hon'ble Supreme Court in the case of **Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others : (2007) 8 SCC 785**. It is held by Hon'ble Supreme Court that :

“Social reservation in favour of S.C., S.T. and O.B.C. under Article 16(4) and vertical reservations, special reservations in favour of physically handicapped, women etc. under Articles 16(1) or 15(3) are ‘horizontal reservation’. Where a vertical reservation is made in favour of a Backward class under Article 16(4) the candidates belonging to such back-ward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for the respective backward class. Therefore, if the number of S.C. candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for S.C. candidates, it cannot be said that the reservation quota for S.C.s stood filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. But the said principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within social reservation for S.C.s the proper procedure is first to fill up the quota for S.C.s in order of merit and then find out the number of candidates among them who belong to special reservation group of ‘Scheduled Caste Women’.

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7. Horizontal reservation for women is prescribed by G.R. dated 25.05.2001, Clause (5) of the G.R. reads :

“ (५) महिला आरक्षण हे समांतर आरक्षण / विशेष आरक्षण असल्यामुळे ते आडवे आरक्षण आहे. समांतर आरक्षण हे कपीकृत आरक्षण असल्यामुळे पदे भरण्यापूर्वी, पदे निश्चित करताना तसेच भरतीची जाहिरात देताना त्या जाहिरातीत महिला आरक्षणानुसार येणा-या राखीव पदांची संख्या, सामाजिक आरक्षण/उभे आरक्षण यांच्या (जसे अ.जा., अ.ज., वि.जा. (अ), भ.ज.(ब), (क), (ड) वि. मा. प्र., इ.मा.व आणि खुलाप्रवर्ग) प्रत्येक वर्गामध्ये निर्देशित करावी.”

Clause (9) of this G.R. provides that for open women, horizontal reservation is provided only to those women, who belong to non-creamy layer section of the society. This reservation is provided under Article 15(3) of the constitution which reads :

“15(3) : Nothing in this article shall prevent the State from making any special provision for women and children.”

8. The State of Maharashtra has decided to reserve 30% of the posts for women. This reservation is horizontal and compartmentalized. G.R. dated 25.05.2001 in clause (7) provides that this horizontal reservation is not interchangeable among various vertical reservation categories. The argument that women belonging to backward classes can compete for the posts reserved horizontally from open category has been rejected by this Tribunal in a number of judgments. This reservation for women in compartmentalized and only open – women, who do not belong to creamy layer, are held eligible for reservation upto 30% of the open posts. If sufficient number of open-women candidates are not

available, the remaining vacancies are added to open vacancies and all can compete for the same regardless of Caste /Tribe status. A woman, who is not from open category, can compete for post reserved horizontally for women for her vertical reservation category, or as an open candidate.

9. In the present case, if there was no horizontal reservation for women, and as there is no vertical reservation for N.T. (C) category, N.T. (C) women candidates could complete only from open category. The argument that as no reservation was there for N.T. (C) category, N.T. (C) category women will be eligible to complete for posts reserved for open-women category cannot be accepted. If no posts were reserved for N.T. (C) candidates, both male and female N.T. (C) candidates would be required to compete for open posts. Just because some open-posts are reserved horizontally for women, the same principle will not apply. This is as per the judgment of Hon'ble Supreme Court in **Rajesh Kumar Daria's case (supra)**. Nature of horizontal reservation is different from that of vertical reservation. While all candidate can apply for open posts (not horizontally reserved), regardless of caste, the same principle does not apply to the posts which are reserved horizontally. Here even open category is considered as a separate vertical reservation category, and candidates from other vertical reservation category are not allowed to complete for such posts.

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10. In the present case, the Applicants are women and belong to N.T. (C) category. No post was vertically reserved for N.T.C. category. If there was no horizontal reservation for women in open category, the Applicants would have competed with open (male) candidates. Advertisement dated 17.03.2015 provides for the following horizontal reservation for woman viz.:

Open	:	4
S.C.	:	1
O.B.C.	:	1

There could not be any posts reserved for women N.T. (C) Category as no posts from N.T. (C) category itself were available. The Applicants claim that they had clearly indicated in their application form that they will to be considered from Open Category. The question in the application form was :

“Do you want yourself to be considered for the open category post as well ?”

Both the Applicants have answered in the affirmative and have also paid the fee for open candidate. The moot question is whether they are eligible to be considered for post reserved for ‘Open Women Category’. They have been considered for ‘Open Category’ posts, where they could not meet the eligibility criterion. Both the Applicants in their application form had indicated that they belong to N.T. (C) category. There may be woman from other categories like S.C.

and O.B.C. in O.A.No.126 of 2016, who could have indicated that they want to be considered for open category posts as well. They would be considered for S.C. woman (and O.B.C. woman) as well as Open -woman posts thus getting double benefits. This will confer undue advantage to these category women. It will also be against the letter and spirit of the G.R. dated 25.05.2001.

11. Let us consider the case of the candidate who belongs to S.C. category (no horizontal reservation). He will be entitled to be considered for S.C. posts and also for open posts (without horizontal reservation) provided he has not availed of any concession for S.C. candidates. He will have to declare that he is willing to be considered for open posts.

Now take the case of a candidate who belongs to S.C. category (with horizontal reservation for woman). She will be entitled to be considered from open category (without horizontal reservation), S.C. category (without horizontal reservation), and S.C.- woman category. However, if she is considered from S.C. category (without horizontal reservation), and if any post is reserved for S.C.-Women category, she will be adjusted against that post. If such a person makes a declaration that she is willing to be considered for open category, she will claim eligibility for Open-Woman post also, on the analogy of the claim of Women candidates from NT-C category. That claim is unsustainable in view of the judgment of Hon. Supreme Court in Dariya's case (supra). What cannot

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be allowed to S.C. Women candidates obviously, can also not be allowed to NT-C Women candidates. The claim of NT-C candidates cannot be allowed just because there is no horizontal reservation for Women N.T-C category, or if there is no reservation at all for NT-C category.

12. In our view, if a women candidate from S.C. or NT-C category wants to compete for Open-woman post, she has to forgo benefits of vertical reservation category to which she belongs. That, in the present circumstances is possible, only if she does not claim that she belongs to a particular vertical reservation category in the Application Form. The present column in the Applicant Form entitles a backward class candidate to be considered for open posts, without any horizontal reservation only and not for open posts with horizontal reservation. Any contrary view will confer underserved and undue advantage to candidates belonging to vertical reservation category for which no posts are reserved like NT-C category in the present case.

13. It was urged that the applicant mentioned her caste in the relevant column only because she after all was indisputably born in that community and that is something unalterable and lifelong. That does not mean that she must have applied also from that category. She was rightfully entitled to compete from open category.

As to the above contention we find that the conclusion drawn in the preceding paragraph are based entirely on Dhariya's case. In actual practice the issue may become a little vexed. But a proper application of the principles enunciated by Dhariya's case will provide a solution. It becomes necessary to try and reconcile the interests of various segments of the society bearing always in mind the scheme of the constitution. The authorities concerned may have to immediately consider making some alteration in the online form so as to avoid confusion. The Column of personal details and the claim from a particular vertical and/or horizontal category should be made unambiguous and explicitly clear. But having said that we are quite firmly of the view that in the present set of facts this aspect of the matter will not affect the conclusion that we are driving at.

14. We do not find that the Respondent can be faulted for rejecting the candidature of the Applicants for the open-women posts. These Original Applications are, therefore, dismissed with no order as to costs.

Sd/-
(R.B. MALIK)
MEMBER(J)

Sd/-
(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 09.03.2016
Typed by : PRK