

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.1276 OF 2020
WITH
MISCELLANEOUS APPLICATION NO.285 OF 2020
(Aurangabad Bench)**

Akash Shekhar Patil)
R/at. C/o. Ulhas S. Marathe, 1,)
Shrihari Vihar, Pruthviraj Nagar)
Near Gadiya Vihar, Shahnoorwadi,)
Aurangabad) **... Applicant**

Versus

1. The State of Maharashtra)
Through Principal Secretary,)
Sales Tax Department,)
(Now Goods & Services Tax Department)
Mantralaya, Mumbai 32)
2. State of Maharashtra,)
Through Principal Secretary,)
General Administration Department,)
Mantralaya, Mumbai 32)
3. Maharashtra Public Service Commission)
Through its Secretary, 5th, 7th, 8th floor)
Cooperage Telephone Exchange Building)
Maharshi Karve Road, Cooperage,)
Mumbai 400 021)

4. The Joint Commissioner,)
Goods & Services Tax Bhavan,)
Office of Special State Tax Commissioner,))
3rd floor, H Wing, Mazgaon,)
Mumbai 400 010) **... Respondents**

Shri S.D. Munde, learned Advocate for the Applicant.

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

CORAM : Justice Mridula Bhatkar, Chairperson
Shri P.N. Dixit, Vice-Chairman

DATE : 10.03.2021.

PER : Justice Mridula Bhatkar, Chairperson

J U D G M E N T

1. Heard Shri S.D. Munde, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. The Applicant aspires to be Tax Assistant challenges the impugned order dated 08.01.2019 issued by Respondent No.4 and prays that he should be appointed for the post of Tax Assistant who had appeared for the post of Tax Assistant Main Examination 2017 from the open category (open sports person category).

3. The learned Counsel submits that the Respondent No.4 Maharashtra Public Service Commission (MPSC) has published the Advertisement No.71 of 2017 dated 24.10.2017 for the post of Tax Assistant. The applicant claims horizontal reservation in Open sports category.

4. The learned Counsel submits that Applicant has not availed any kind of benefit of relaxation such as age, chances (opportunity) and relaxation in marks as well as in payment of examination fees. He submits that the cut off marks secured by the applicant is 244 and MPSC has also recommended his name for the post of Tax Assistant. The MPSC has already prepared the list dated 21.04.2018 and he was given the appointment letter 31.05.2018. The Applicant, in fact, in the month of June appeared before Goods and Services Tax Department (GST) authority for verification of the document. However they did not allow him to join on the ground that he belongs to reserved category and therefore he is declared unfit and ineligible. The learned Counsel further points out that the Joint Commissioner State tax has communicated this rejection by letter dated 08.01.2019 which is the subject matter in this O.A.

5. The learned C.P.O. submits that the action taken by the Joint Commissioner GST was consistent as the Government Resolution (G.R.) dated 13.08.2014 states that the migration in horizontal reservation is not permissible.

6. We would like to point out specifically that the decision is not correct and contrary to the legal position especially the ratio laid down by the Bombay High Court Aurangabad Bench in ***Charushila Tukaram Chaudhari and Ors. Versus State of Maharashtra and Ors. Writ Petition No.4159 of 2018 decided on 08.08.2019***, wherein the migration in horizontal reservation is allowed. We further place reliance on the judgment of the ***Saurav Yadav & Ors Versus State of Uttar Pradesh & Ors, reported in (2019) 14 SCC 692***, wherein the Hon'ble Supreme Court has clarified the position of law in respect of migration in horizontal reservation.

7. In view of this, the order dated 08.01.2019 is hereby struck down and as per the recommendation letter the applicant is to be considered. Respondent No.4 is hereby directed to give appointment to the present applicant. The whole procedure is to be completed within 3 weeks from the date of this order. Hence, O.A. is disposed off.

8. M.A.No.285/2020 is filed for seeking condonation of delay. For the reasons mentioned in the M.A., the same is allowed.

Sd/-
(P.N Dixit)
Vice-Chairman (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

prk