

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

**ORIGINAL APPLICATION NO.172 OF 2017
[Subject : Appointment (Sports Category)]**

Mrs. Madhura Subodh Chawan,)
@ Ms. Manisha Bhimrao Mhatre,)
R/at. F3, New Natraj C.H.S., Peston Sagar,)
Road No.6, Chembur, Mumbai 89.) **Applicant**

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Food & Drugs Department,)
Department, Mantralaya, Mumbai)
2. The Chairman/ Secretary,)
Maharashtra Public Service Commission,)
Bank of India Building, 3rd floor,)
Fort, Mumbai 1.)
3. Smt. Sangita Chandrakant Deshpande,)
Analytical Chemist,)
Office at Plot No.341, Food & Drugs)
Administration, Drugs Control Laboratory,)
Opp. RBI, Bandra Kurla Complex,)
Bandra (E), Mumbai 51.) **Respondents**

Shri K.R. Jagdale, learned Advocate for the Applicant.

Smt. Archana B.K., learned Presenting Officer for the Respondents No.1 & 2.

Shri B.A. Bandiwadekar, learned Advocate for the Respondent No.3.

CORAM : **SHRI P.N. DIXIT, VICE-CHAIRMAN(A)**
SHRI A.D. KARANJKAR, MEMBER(J)

RESERVED ON : **11.06.2019**

PRONOUNCED ON : **14.06.2019**

PER : **SHRI A.D. KARANJKAR, MEMBER(J)**

J U D G M E N T

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant, Smt. Archana B.K., learned Presenting Officer for the Respondents No.1 & 2 and Shri B.A. Bandiwadekar, learned Advocate for the Respondent No.3.

2. Substantial question involved in this O.A. is whether the person who applied for the post, in pursuance of the Advertisement published by the Maharashtra Public Service Commission (M.P.S.C.) in Open Backward Class (OBC) category, can claim the posts reserved for Open Female and Open Sports Category. We have heard submissions on behalf of the Applicant and on behalf of the Respondents at length.

3. The admitted position is that the Advertisement No.88 of 2015 was published by the Respondent No.2 (M.P.S.C.) for filing 10 posts of Scientific Officer, Group B on the establishment of Food and Drugs Department. The 2 posts were reserved for OBC and there was further horizontal reservation, one post was reserved for OBC female. Similarly, 4 posts were available for the category Open General and there was horizontal reservation, one post for open female and one post for open sports. It is contention of the Applicant that the result of the examination was declared and Applicant secured 64 marks and Respondent No.3 scored 53 marks, but Respondent No.2 recommended the name of Respondent No.3 to fill the post reserved for Open Sports category. It is submission of the Applicant that when she submitted her application, she mentioned the category OBC and also mentioned that she was not belonging to non creamy layer. It is submission of the Applicant that she was considered as Open General candidate, and therefore as she scored more marks than Respondent No.3 she was entitled to be recommended against the posts available for Open Sport candidates as the candidate was not available.

4. It is submission of the Applicant that the action of the Respondent No.2 recommending the name of Respondent No.3 has violated the law laid down by the Hon'ble High Court in case of **Smt. Kanchan Vishwanath Jagtap and Ors. Versus Maharashtra Administrative Tribunal & Ors., Writ Petition NO.1925 with Writ Petition No.1930 of 2014, decided on 16.12.2015.** So also it is contrary to the decision rendered by the Hon'ble Division Bench of Bombay High Court at Aurangabad in case of **Asha D/o. Ramnath Gholap Versus The Present, District Session Committee & 4 Ors. Writ Petition No.3929 of 2015 decided on 30.03.2016.**

5. We have heard the rival submissions on behalf of the Applicant and Respondents. It is contention of the Respondents that so far as judgments on which reliance is placed by the Applicant are concerned these judgments are not applicable to the present situation. After reading the judgment in case of **Smt. Kanchan Vishwanath Jagtap (supra)** it appears that on page 5 in paragraph No.10 it is specifically mentioned that, ***“However, the facts in the present case are totally different. In the present case, there is no compartmentalized reservation.”*** Similarly, in case of **Miss. Rajani D/o. Shaileshkumar Khobragade Versus The State of Maharashtra & 55 Ors. Writ Petition No.10103 of 2015 decided on 31.03.2017** by Hon'ble Division Bench of Bombay High Court at Aurangabad in paragraph No.25 it is candidly explained what was the ratio in case of **Smt. Kanchan Vishwanath Jagtap (supra)** and in case of **Asha D/o. Ramnath Gholap (supra)**. In paragraph No.25 of the judgment of **Miss. Rajani D/o. Shaileshkumar Khobragade (supra)** the Hon'ble Division Bench of Bombay High Court at Aurangabad it is observed as under :-

“In case of **Smt. Kanchana Vishwanath Jagtap Vs. Maharashtra Administrative Tribunal and another in Writ Petition No.1925 of 2014** with other connected writ petitions decided on 16th December, 2015, this Court was dealing with a case of general reservation and not compartmentalized reservation. In the said case the Court was dealing with the matter, wherein there was general reservation of women and not compartmentalized reservation. In a case of **Asha D/o. Ramnath Gholap Vs. The President District Selection Committee, Beed in Writ**

Petition No.3929 of 2015 decided on 30th March, 2016, the Division Bench of this Court was concerned with the reservation for woman as a whole and not compartmentalized reservation for women. This Court held that, a female candidate from the reserved category having more marks can claim her right for the post meant for female from open.”

6. In the above situation, we have to examine the issue involved in the case. In the light of the law laid down by Hon’ble Division Bench it must be accepted that circular dated 13.08.2014 was issued as a result of judgment delivered by Hon’ble Apex Court in case of **Anil Kumar Gupta and Ors. Vs. State of U.P. And Ors – (1995) 5 SCC 173** and after reading this circular it made clear that only open candidates be considered when the posts reserved for horizontal reservation are to be filled, therefore in view of this settled legal position, we have to consider the case of the Applicant whether she was entitled for the appointment as Open candidate. On perusal of the application submitted by the Applicant which is at page No.14, it appears that the Applicant mentioned her category as OBC. Even as per birth, the applicant is belonging to caste which is included in OBC category. Merely because the Applicant was not belonging to non creamy layer, therefore, she was considered as Open General candidates, but this will not include the applicant in open catagary.

7. In this situation, we are of the firm view that though the Applicant was considered as Open General candidate, but it would not change her original status which was OBC, consequently the Applicant cannot claim the seat reserved by horizontal reservation for open female or open sports candidate. In view of this discussion, we do not see any merit in the present matter. Hence, following order :-

ORDER

Original Application stands dismissed. No order as to costs.

Sd/-

(A.D. Karanjkar)
Member(J)

Sd/-

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

*prk

