

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 413/2015.

Dr. Vinita d/o Eknathrao Kathale,
(Dr.(Mrs.) Vinita Hrishikesh Belsare)
Aged about 38 years,
R/o Plot No.722, New Subhedar Layout,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Additional Chief Secretary,
Department of Medical Education and Drugs,
Gokuldas Tejpsal Rugnalaya Sankul Building,
9th floor, Lokmanya Tilak Road,
Mantralaya, Mumbai-440 001.
- 2) The Director of Medical Education & Research,
Govt. Dental College and Hospital Building,
St. Georges Hospital Compound,
Near CST, Mumbai-01.
- 3) The Member Secretary, Selection Committee,
Directorate of Medical Education & Research,
Govt. Dental College and Hospital Building,
St. Georges Hospital Compound,
Near CST, Mumbai-01.
- 4) Dr. Kedar Balwant Joshi,
Department of Biochemistry,
Govt. Medical College,
Ghati, Aurangabad.

Respondents

Shri Sachin Khandekar , Advocate for the applicant.
Smt. S.V. Kolhe, P.O. for respondents 1 to 3.
None for respondent No.4.

**Coram:- B. Majumdar, Vice Chairman and
S.S. Hingne, Member (J).**

Dated: - 5th July 2016.

ORDER

PER : MEMBER (J)

The applicant has filed the O.A. challenging the selection of Dr. Kedar B. Joshi (R/4) and sought the appointment as Associate Professor (Biochemistry).

2. Heard Shri Sachin Khandekar, Id. Counsel for the applicant and Smt. S.V. Kolhe, learned P.O. for respondent nos. 1 to 3. None for R-4. The O.A. is heard finally and decided at the admission stage with consent of Id. counsel for parties.

3. The applicant is working as Assistant Professor (Lecturer) in Govt. Medical College from 2007 with an intermittent technical breaks. The Selection Committee (R/3) issued an advertisement no.01/2015 dated 01/04/2015 (A-2,P-13) to fill up the posts of Associate Professors. The applicant submitted the application (A-3,P-20) for the post of Associate Professor (Biochemistry). The applicant belongs to OBC category and submitted the application from OBC category with stipulation that she applied from Open category also. As per the advertisement out of 9 posts two posts are reserved for Open (female) and three posts for OBC candidates.

4. Two posts were reserved for OBC category with one post of backlog. Thus three posts from OBC category were available. From the final list (P.30), it reveals that first three candidates from OBC category are Kanchan Mohod who secured 68 marks, Mujawar Akbar who secured 63 marks and Palandurkar who secured 62 marks, were recommended. The applicant's score is 61marks. Therefore, she can not get the place in the OBC (General) category.

5. According to the applicant, Dr. Kedar B. Joshi (R/4) is selected on the post reserved for Open (female) category as no female candidate was available. According to the applicant, she has applied from Open (female) category and therefore her candidature should have been considered for the post reserved for Open (female) but that is not done without any legal and valid reason.

6. The respondent no.2 has filed reply (P-32) and contended that no female candidates were available and hence one post was filled in by the Open male candidate, as per Circular dated 13-08-2014. It is also the case of respondents that the applicant belongs to OBC (female) category and secured less marks than the last selected candidate from the OBC category. The OBC (female) candidate cannot be selected against Open (female) post and hence

the applicant's case was not considered for Open category post and R/4 is appointed who has secured highest marks.

7. By and large the factual aspects are no longer in dispute. R/4 secured 75 marks, the applicant has secured 61 marks and Kanchan Mohod has secured 68 marks (A-7,P-30).

8. Respondent No.4 secured 75 marks. He is a male candidate. According to the respondents, no Open (Female) candidate was available. Hence, the said post was filled up by appointing male candidate from the same category. The applicant claims that she had applied from Open (Female) also and, therefore, she ought to have been considered for that post. The respondents relied upon the guidelines laid down in the circular dated 13.8.2014 (P.44). This circular says that while filling up of the post falling in the category of social reservation, candidate from that category can only be appointed. The applicant belongs to OBC category and had applied from OBC. Therefore, the respondents' stand that she cannot be considered from Open (Female) category, is based on guidelines laid down in the above circular.

9. The learned counsel for the applicant to get support to the case, has relied on the decision in case of **Kanchan Vishwanath Jagtap V/s Maharashtra Administrative Tribunal, Nagpur in W.P.No. 1925/2014 with 1930/2014 decided on**

16.12.2015. The learned P.O. submits that in the said case, the reservation for women in a particular vertical category was not available. However, two posts were reserved for women category only. The learned P.O. submitted that therefore the women from any other category were also considered, because the said two posts were not earmarked for any particular vertical reserved category.

10. In the case in hand, in the advertisement (Annexure A-2, P.13), two posts for Open (Female) category are reserved. As such, female candidates from that category only can be considered. Since no candidates were available from that category, post was filled up by appointing respondent No.4, a male candidate from that category who has scored highest marks. No fault can be found in respondents' action.

11. Viewed from any angle, applicant's case has no legs to stand. Consequently, applicant is not entitled for any relief as claimed. In effect, O.A. is dismissed with no order as to costs.

sd/-

(S.S.Hingne)
Member (J)

sd/-

(B.Majumdar)
Vice-Chairman