

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.695/2017. (D.B.)

Geeta Ganeshrao Rathod,
Aged about 36 years,
Occ-Household,
R/o Ujwal Nagar, Daryapur Road,
Akot, Distt. Akola.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Food and Civil Supplies,
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Amravati.
3. The Assistant Commissioner (Supply),
Office of the Divisional Commissioner,
Amravati.
4. Ku. Pallavi d/o Suresh Sote,
Aged about 31 years,
Occ-Household,
R/o Amravati, Distt. Amravati.
5. Ku. Prachi d/o Prataprao Thakur,
Aged about 27 years,
Occ-Household,
R/o Amravati, Distt. Amravati

Respondents

Shri S.C. Deshmukh, the Ld. counsel for the applicant.
Shri V.A. Kulkarni, the Ld. P.O. for respondent Nos. 1 to 3.
None appeared for respondent Nos. 4 and 5.

Coram:-Shri J.D. Kulkarni, Vice-Chairman (J)
and
Shri Shree Bhagwan, Member (A)

JUDGMENT

(Delivered on this 6th day of July 2018.)

Per:-Vice-Chairman (J)

Heard Shri S.C. Deshmukh, the learned counsel for the applicant and Shri V.A. Kulkarni, the learned P.O. for respondent Nos. 1 to 3. None appeared for respondent Nos. 4 and 5.

2. The applicant is claiming that the selection of respondent Nos. 4 and 5 in the category of Open (Women General) as per list published on 8.9.2017 for the post of Supply Inspector be quashed and set aside and it be declared that the applicant is entitled to the said post on the basis of marks obtained by her in written examination. In response to the advertisement dated 25.5.2017 (Annexure A-1), the applicant and respondent Nos. 4 and 5 applied for the post of supply Inspector and participated in the process of recruitment. In all 37 posts were advertised. Out of which, 5 posts were reserved for Open category and 5 for Open (General) category. The prescribed fee for Open category was Rs. 300/- whereas that of reserved category, it was Rs. 150/-. According to the applicant, in the application form, there was no column for

separate category of Women. The posts of for Open (General) category and Women category were common and, therefore, candidates for the post of Open (General) category and Open (Women) category were to be considered for both the posts.

3. Written examination was conducted on 23.7.2017 and the applicant secured 143.50 marks out of 200. Select and wait list was published by respondent Nos. 2 and 3 on 8.9.2017. But the applicant's name neither appeared in the select list nor in the wait list. The last candidate is shown in the select list of Open (General) securing 160 marks whereas the respondent No.4 secured 173 marks and, therefore, the respondent No.4 should have been selected in Open (General) category. But her name appeared in Women (General) category at Sr.No.1.

4. The applicant and respondent No.5 secured equal marks i.e. 143.05. As per the G.R. dated 27.6.2008, clause-6, educational qualification of the candidates acquiring equal marks is to be the same. The applicant is B.A., B.Ed., whereas that of respondent No.5 is having less qualification. The applicant is elder than respondent No.5 and, therefore, on both these counts, the applicant should have been preferred. But it was not done so. The respondent No.4 who has secured 173 marks, should have found

place in place of one Ganesh Tangde and said post should have been made available from Open (Women) category and, therefore, the applicant should have been selected.

5. Respondent Nos. 2 and 3 have defended the selection of private respondents. It is submitted that event though, the applicant has paid the amount of Rs.300/- towards fees, she has applied from V.J. (A) category. The applicant, therefore, did not apply from Open category. It is stated that the G.R. dated 26.7.2008 is not applicable, as the said G.R. states about the procedure to be followed, in case the candidates secured equal marks. The said G.R. has been replaced by the G.R. dated 5.10.2015 and the G.R. dated 5.10.2015 makes it clear that while appointing a person having equal marks, preference has to be given to a candidate who is senior in age and a candidate who is having higher qualification on the date of making application. Had the applicant applied from Open category, she should have not submitted the certificate a Non-Creamy Layer (NCL). On the contrary, the applicant has applied in V.J. category and in that case, NCL certificate was essential.

6. It is further stated by the respondents that, the applicant would have been considered from Open category, if she would have got equal marks like first 18 candidates appointed in

Open category, though, she belongs to VJ category. As per the provisions of clause 3 (a) of the G.R. dated 13.8.2014, one Ku. Pallavi Sote and Ku. Dhanvarsha Harne are two women candidates who have secured more marks than the applicant and, therefore, their names cannot be included in the first 18 candidates. Respondent No.5 was considered, though she belongs to other caste, she applied from Open category.

7. The applicant filed rejoinder affidavit also and reiterated her claim.

8. As per advertisement dated 25.3.2017, specific reservations were made for categories mentioned in the advertisement. Out of 37 posts, 18 posts were reserved for Open and 5 posts were reserved for Women candidates. We have perused the application form submitted by the applicant. A copy of the said application form is at page Nos. 22 and 23. There is a specific column as regards caste category details of the applicant. It is material to note that, the applicant has specifically stated that she belongs to DT (A) / VJ (A) category and her sub-caste is Banjara. Thus *prima facie*, it seems that the applicant applied from the said category of DT (A) / VJ (A) for the post. Final select list as well as wait list is at page Nos. 31 to 36 of the O.A. (both inclusive). From

the said list, it seems that the last candidate in Open (General) category has secured 160 marks whereas the last candidate on the wait list of Open (General) category secured 150.5 marks. Admittedly, the applicant has secured 143.5 marks. Thus, the applicant's name could not find place either in Open (General) category of select list or wait list.

9. So far as Open (Female) candidates are concerned, the last candidate who is in select list has secured 143.5 marks i.e. respondent No.5 Ku. Prachi Thakur. Admittedly, Ku. Prachi Thakur has applied from Open category and not from reserved category. So far as the category of VJ(A) is concerned, one Shri Gauravsingh Jivansingh Rajput has been shown to be a selected candidate from the said category and he has secured 157.5 marks whereas there are two candidates on the wait list of VJ(A) category and second candidate of the said wait list has secured 155 marks. Thus, admittedly on the wait list as well as select list of VJ (A) candidates have secured more marks than the applicant and that seems to be the reason that the applicant's name neither appeared on the wait list or in the select list from Open (General) category or from Open (Female) category or VJ (A) category.

10. The learned counsel for the applicant submits that the respondent No.5 who is in the select list at Sr. No.5 from Open (General) category, has secured 143.5 marks which is equal to the applicant and, therefore, the applicant should have been preferred against her as most qualified than her and is more in age. Though, the applicant is claiming to be B.A., B.Ed., her application form shows her qualification as B.A. only. Even otherwise the G.R. as claimed by the applicant giving preference to the candidates having more qualification and who is senior in age, will not be applicable to the present case, since the applicant has not applied from Open (Female) category.

11. So far as the applicant's claim that one Open (Female) category candidate Ku. Pallavi Sote who has secured 173 marks, should have been taken in Open (General) category is concerned, it will be clear that the said argument will not help the applicant, since the candidates of wait list in Open category are '4' in number and all these 4 persons have secured more marks than the applicant and, therefore, even if it is accepted as true that Ku. Pallavi Sote (R.5) should have been considered from Open (General) category, the applicant could not be accommodated in place of respondent No.5, since she has not applied from Open category.

12. The learned counsel for the applicant has placed reliance on the judgment in W.P. No. 2670/2017 delivered by the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur in case of **Sneha Gajanan Farkade V/s State of Maharashtra and others delivered on 11.9.2017.** Facts of the said case, however, are not applicable to the present set of facts. A person belonging to a particular caste can apply for a particular caste as well as from Open category. But that Open category means Open (General). Open (Female) category itself is an independent category and, therefore, it is a case of compartmental reservation. As already stated, the applicant has applied from VJ (A) category. She will be eligible for Open (General) category, provided she competes from Open (General) category. But she cannot claim from Open (Female) reservation, as Open (Female) is an independent category. The applicant, in the present case has applied from VJ (A) category and a candidate from VJ (A) category, who is selected has secured 157.5 marks, whereas two candidates from VJ (A) category who are on wait list in VJ (A) category have secured 156.5 marks and 155 marks respectively which is far more than that obtained by the applicant i.e. 143.5 marks. Similarly, the last selected candidate from Open category has secured 160 marks and other four candidates who are

on the wait list in Open category have secured 158.5, 157.5, 157.5 and 157.5 marks respectively. The applicant, therefore, cannot be considered from Open (General) category as well as from Open (Female) category. Had she secured more marks than the marks obtained by Open (General) candidates, she should have been considered. We are, therefore, satisfied that there is no merit in this O.A. Hence, we proceed to pass the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

(Shree Bhagwan)
Member (A)

(J.D.Kulkarni)
Vice-Chairman(J)

Dt. 6.7.2018.

pdg

