

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.779 OF 2015**

**DISTRICT : MUMBAI**

Smt. Tanvi Anil Shinde, )  
Age : 51 years, Occ : As Clerk in the )  
Office of, the State Central Library, )  
Maharashtra State, )  
Mumbai. )  
R/o. Flat No.05, Krishna Milan C.H.S., )  
Tadwadi, Opp. South Post Office, )  
Ambernath (E), District : Thane )

**.... APPLICANT**

**VERSUS**

1. The State of Maharashtra, )  
Through Addl. Chief Secretary, )  
Higher & Technical Education, )  
Mantralaya, Mumbai 400 032 )
2. The Director of Library, )  
[Maharashtra State], )  
Town Hall, Mumbai 400 023 )

**....RESPONDENTS**

Shri J.N. Kamble, learned Counsel for the Applicant.

Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

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

DATE : 11.03.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

### **J U D G M E N T**

1. Heard Shri J.N. Kamble, learned Counsel for the Applicant and Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 21.11.2009 rejecting the request of the Applicant for grant of promotion to the post of Senior Clerk from 1998 on the basis that she belonged to S.C. category by virtue of marrying a person belonging to that category.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Clerk-typist on 17.11.1994 by the Respondent No.2 on the recommendations of the Maharashtra Subordinate Service Selection Board. The Applicant was selected from Scheduled Caste (S.C. Category) as she had married a person belonging to that category. She had submitted a scheduled caste certificate dated 13.06.1990 issued by the Executive Magistrate, Ulhasnagar as she was married to Shri Anil P. Shinde who belongs to that category. Learned Counsel for the Applicant contended that she was

eligible to be promoted to the post of Senior Clerk in the Staff Promotion Committee held on 06.10.1997. In this meeting names of three candidates from S.C. Category were recommended, including that of Shri R.B. Lokhande, who refused promotion. Another person Shri S.B. Gajare, who was promoted, also sought reversion and by order dated 20.11.1998, he was reverted. The Applicant was next in line for promotion, but orders were never issued. The post was kept vacant till 2000 and by order dated 19.12.2000, the Respondent No.2 informed the Applicant that she was not eligible for promotion, as she did not belong to S.C. Category only by virtue of marriage as per G.R. dated 07.05.1999.

4. Learned Counsel for the Applicant argued that the Applicant was found fit for promotion in the Staff Promotion Committee on 06.10.1997. Persons senior to her from S.C. Category refused promotion / sought reversion after promotion. She was eligible to be promoted as Senior Clerk from S.C. Category on or after 20.11.1998 when Shri Gajare was reverted to the post of Junior Clerk. She cannot be denied promotion on the basis of G.R. dated 07.05.1999. Learned Counsel for the Applicant argued that impugned order dated 21.11.2009 may be quashed and set aside and the Applicant be granted promotion from 20.11.1998 as Senior Clerk from S.C. Category.

5. Learned Chief Presenting Officer (C.P.O.) argued on behalf of the Respondents that the Applicant is already

promoted as Senior Clerk on 21.07.2014. The Applicant was informed by the Respondent No.2 on 19.12.2000 that she was not eligible to be promoted from S.C. Category as she did not belong to that category and her S.C. status due to her marriage to a person belonging to that category has been cancelled by G.R. dated 07.05.1999. However, the Applicant has been making repeated representations and her representation dated 28.10.2009 has been rejected by letter dated 21.11.2009. Learned C.P.O. contended that G.R. dated 07.05.1999 has been issued as Hon'ble Supreme Court in the case of **Valsamma Paul Vs. Cochin University in CSR /1996/SC dated 04.01.1996**, has held that a person cannot be transplanted in a backward caste by adoption, marriage or conversion. Such a person is not eligible for reservation under Article 15(4) or 16(4) of the constitution. Learned C.P.O. argued that the Applicant did not belong to S.C. Category and was not eligible for reservation from that Category. The judgment of Hon'ble Supreme Court was delivered on 04.01.1996, so there was no question of promoting her from that Category in 1998. The fact that G.R. dated 09.05.1999 has cancelled earlier G.R's extending benefit of reservation to persons married to backward caste persons, will not mean that such benefits could be extended before the date of issuance of G.R. dated 09.05.1999, after the judgment of Hon'ble Supreme Court dated 04.01.1996 in Valsamma Case (Supra).

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6. We find that the Applicant is seeking promotion to the post of Senior Clerk from 1998 as a S.C. candidate as she was at Serial No.3 to fill vacancy in that category when Departmental Promotion Committee held its meeting on 06.10.1997. She could not be promoted till 20.11.1998, as persons above her in the select list were offered promotion. One of them declined the promotion and the next sought reversion after he was promoted. Reversion order was issued on 20.11.1998. The facts regarding caste status of the Applicant are undisputed. She admittedly belongs to 'Maratha' Caste which is not a backward caste. She is married to a person belonging to S.C. category and she was issued a S.C. caste certificate on 13.06.1990 by the Executive Magistrate, Ulhasnagar. The Applicant entered Government service on the basis of this Certificate. By G.R. dated 07.05.1999, earlier G.R's extending benefits of reservation to those who married persons belonging to Backward classes were cancelled. This G.R. reads :

*“अलिकडेच मा. सर्वोच्च न्यायालयाने वलसम्मा पाऊल विरुद्ध कोचीन युनिव्हर्सिटी सीएसआर १९९६ एस.सी. या याचिकेमध्ये दिनांक ४.१.१९९६ रोजी दिलेली निर्णय खालीलप्रमाणे आहे :-*

*A Candidate Who had the advantageous start in life being born in forward caste and had march of advantageous life but is transplanted in backward caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) or 16(4) as the case may be. Acquisition of the status of Scheduled Caste etc. By voluntary mobility in to*

*these categories would play fraud on the Constitution and would frustrate the benign Constitutional policy under Article 15(4) and 16(4) of the Constitution. The recognition of the Candidate by the member of backward class would not be relevant for the purpose of his entitlement to the reservation under Article 16(4)."*

7. It is clear that the judgment of Hon'ble Supreme Court, is dated 04.01.1996. It will have applications in the cases, where such benefits was extended against the constitutional scheme. One thing is clear. After the date of judgment i.e. 04.01.1996, no person can be extended benefit of reservation only by virtue of marriage to a person belonging to backward caste. The Applicant's sole claim in this O.A. appears to be that she should have been promoted as Senior Clerk on or immediate after orders dated 20.11.1998 were issued reverting Shri S.B. Gajre as Junior Clerk on his own request. It is indeed possible that the Applicant could have been promoted as Senior Clerk before the G.R. dated 07.05.1999 was issued, if the Respondents were ignorant of the judgment of Hon'ble Supreme Court dated 04.01.1996. However, for some reasons, which are not clear at this length of time, she was not promoted. After the G.R. dated 07.05.1999 was issued, it was not legally permissible for the Respondents to promote the Applicant by giving her benefit of reservation, which she is not entitled. By her own admission (para 6.8. of the O.A.) the Applicant was asked by letter dated 21.10.2000 whether she was willing to work at Amravati. This letter is said to be enclosed as Exhibit 'F'. However, it is seen that

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Exhibit 'E' is at page 29 to 30 A and on page 31 is Exhibit 'G'. The Exhibit 'F' said to be letter of the Respondent No.2 dated 21.10.2000 is not on record. However, from Exhibit 'G' it appears that the Applicant had shown her willingness to go to Amravati, if she was promoted as Senior Clerk. However, by order dated 19.12.2000 (Exhibit 'H' on page 32) the Applicant was informed that she was not entitled for benefits of reservation. The Applicant has not placed any representation between 20.11.1998 and 07.05.1999 seeking promotion as Senior Clerk. Once the Government Resolution dated 07.05.1999 was issued, there was no question of granting promotion to the Applicant on the basis of her S.C. certificate by virtue of her marriage to a backward class person.

8. The Applicant is clearly not entitled to be given any benefit as a person belonging to S.C. Category in view of the judgment of Hon'ble Supreme Court dated 04.01.1996 in Valsamma's Case (Supra). This O.A. is misconceived and is dismissed with no order as to costs.

Sd/-

**(R.B. MALIK)**  
**MEMBER(J)**

Sd/-

**(RAJIV AGARWAL)**  
**VICE-CHAIRMAN**

Place : Mumbai  
Date : 11.03.2016  
Typed by : PRK