

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO.813 OF 2022

B.E. KarcheApplicant
Vs.

The State of Maharashtra & Ors.Respondents.

CORAM : **Justice Mridula Bhatkar, Chairperson**
Ms. Medha Gadgil, Member-A

DATE : 10.01.2023

PER : **Ms. Medha Gadgil, Member-A**

SPEAKING TO MINUTES

1. This matter has been disposed of by this Tribunal on 09.01.2023. Today, the matter is taken on Board for 'Speaking to Minutes' in view of Praecipe dated 10.01.2023.

2. Learned Advocate submits that the Respondent could not be served with the copy of praecipe dated 10.01.2023 as he is at Aurangabad. He submits that learned C.P.O. has been served.

3. Learned C.P.O. submits to the orders of the Court.

4. In view of the prayer and reasoning praecipe dated 10.01.2023 for speaking to minutes of order dated 09.01.2023 is hereby allowed.

In paragraph No.8 instead of 'In view of the above, OA is dismissed' it be corrected as 'In view of the above, OA is disposed of'.

4. Hence, Praecipe dated 10.01.2023 stands disposed of.

Sd/-

(Medha Gadgil)
Member(A)

Sd/-

(Mridula Bhatkar, J.)
Chairperson

prk

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.813 OF 2022

DISTRICT : SATARA

Shri Balasaheb Eknath Karche,)
Age 49 years, occ. Nil, R/at Pimpri,)
Taluka Malshiras, District Solapur)..Applicant

Versus

1. The State of Maharashtra,)
Through its Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai 400032)
2. The Collector, Satara, District Satara)
3. Chaya Subhash Badiger,)
Age 50 years, occ. Housewife,)
R/at 4, Pawar Colony, Shahupuri, Satara)..Respondents

Shri L.S. Deshmukh – Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for Respondents No.1 & 2

Ms. Pratiksha C. Kale and

Shri V.S. Kadam – Advocate for Respondent No.3

CORAM : Smt. Justice Mridula Bhatkar, Chairperson

Smt. Medha Gadgil, Member (A)

RESERVED ON : 16th December, 2022

PRONOUNCED ON: 9th January, 2023

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard Shri L.S. Deshmukh, learned Advocate for the Applicant, Ms. S.P. Manchekar, learned Chief Presenting Officer for Respondents No.1 & 2 and Ms. Pratiksha C. Kale with Shri V.S. Kadam, learned Advocate for Respondent No.3.

2. In this case the applicant seeks direction for inclusion of his name in the final select list and for being appointed to the post of Talathi against the post meant for Part-time employee belonging to Other Backward Classes (OBC) by excluding Respondent No.3 from the select list.

3. Facts of the case. Pursuant to the advertisement dated 28.2.2019 issued by the District Collector, Satara for the post of Talathi, the applicant applied for the post meant for Part-time employee belonging to OBC category. In the written test conducted on 10.7.2019 the applicant secured 104 marks whereas respondent no.3 and another candidate secured 118 marks. Respondent no.3 and another candidate came to be selected against the category of Part-time employees belonging to OBC category and the applicant's name appeared at Sr. No.1 in the waiting list of the same category.

4. Ld. Advocate for the applicant in his written arguments has submitted that the applicant was eligible for appointment in the category of Part-time employee belonging to OBC category in place of respondent no.3 and another selected candidate who had failed to submit the Non-Creamy Layer Certificate in the stipulated time as mentioned in the advertisement. He further pointed out that as respondent no.3 failed to submit the Non-Creamy Layer Certificate, respondent no.3 was held to be ineligible for being appointed to the said post. He further submitted that as the two selected candidates from the said category were held to be not

eligible, respondent no.2 ought to have selected and appointed the candidates who are in the waiting list. He also pointed out that applicant has valid Non-Creamy Layer Certificate issued by the competent authority which was valid up to 31.3.2019 as stipulated in the advertisement.

5. Ld. Advocate for the applicant refers to the following judgments in support of his contention:

- (i) *Bedanga Talukdar Vs. Saifudaullah Khan & Ors. (2011) 2 SCC 85.*
- (ii) *Pranjali Bhalchandra Shirsat Vs. State of Maharashtra & Ors. 2016 SCC Online Bom 5307 : (2016) 6 AIR Bom R 303.*
- (iii) *Abhijit Yadaorao Thakre & Ors. Vs. The Chief General Manager (Human Resources) Maharashtra State Power General Co. Ltd. Mumbai & Ors. Writ Petition No.1348 of 2016 decided by the Hon'ble Bombay High Court, Bench at Nagpur on 7.9.2016.*
- (iv) *Ravi Balu Jadhao Vs. The Chairman, Maharashtra State Road Transport Corporation and Anr. W.P. No.870 of 2018 decided by the Hon'ble Bombay High Court, Bench at Nagpur on 24.7.2018.*
- (v) *Diksha Babanrao Shirsat Vs. State of Maharashtra & Ors. 2022 SCC OnLine Bom 518.*
- (vi) *Judgment and Order dated 22.4.2019 passed by the Aurangabad Bench of this Tribunal in OA No.813 of 2015 Priyanka Sandipan Bane Vs. The State of Maharashtra & Ors.*
- (vii) *Judgment and order dated 2.8.2022 passed by the Hon'ble High Court, Bench at Aurangabad in W.P. No.5294 of 2019 Supriya Vinayak Gawande Vs. The State of Maharashtra & Ors.*

6. In *Bedanga Talukdar Vs. Saifudaullah Khan & Ors. (2011) 2 SCC 85* (supra) it is held that:

“The selection process has to be conducted strictly in accordance with stipulated selection procedure which needs to be scrupulously maintained. There cannot be any relaxation in terms and conditions of advertisement unless such power is specifically reserved in relevant rules and/or in advertisement. Even where power of relaxation is or is not provided in relevant rules it must be mentioned in the advertisement. Such power, if exercised should be given due publicity to ensure that those candidates who become eligible due to relaxation are afforded equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication is contrary to mandate of equality in Articles 14 and 16 of the Constitution.”

7. We have already taken a decision regarding the eligibility of Respondent no.3 who is Applicant No.6 in OA No.701 of 2022 Sanjivani Abasaheb Karne & 5 Ors. Vs. The State of Maharashtra & Ors. We have rejected the prayer of the applicants in OA No.701/2022 because they have produced the Non-Creamy Layer Certificate after the cut-off date, which is not permissible.

8. In view of the above, OA is dismissed. The respondent no.2 is directed to take decision in the matter in accordance with the judgment given in OA No.701 of 2022 and examine the eligibility of the applicant.

Sd/-

(Medha Gadgil)
Member (A)
9.1.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
9.1.2023

Dictation taken by: S.G. Jawalkar.