IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.896 OF 2022

Sujata Supneakar ....Applicant
Vs.
M.P.S.C. & Ors. ....Respondents.

Mr. Kranti L.C., learned Advocate for the Applicant.

Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar, Chairperson

DATE : 02.05.2023

SPEAKING TO MINUTES

1. This matter has been disposed of by this Tribunal on 26.04.2023. Today, the matter is taken on Board for 'Speaking to Minutes' in view of Praecipe dated 02.05.2023.

2. In judgment dated 26.04.2023 in paragraph 7,

> "8. Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order of the Tribunal is hereby quashed and set aside. The respondent no.2-M.P.S.C. is directed to recommend the name of the petitioner for the post of Assistant Professor in Computer Engineering meant for O.B.C. (Women). In the circumstances of the case, there would be no order as to costs."

Is to be replaced by

> "7. Even on the basis of the submissions made on behalf of the respondents, the petitioner would be entitled to the appointment on the post of Assistant Professor meant for O.B.C. (Women). It would be again necessary to specify the vacancies that were advertised:-

Category	Total Posts	Reserved for Women
OPEN	6	2
O.B.C.	2	1
V.J.	1	-
N.T.(B)	1	-
S.C.	2	1

It would now be necessary to consider the marks obtained by some of the women candidates whose names were placed in the list of all the selected candidates.

Number in order of Merit	NAME	Marks Obtained	Category
9	Sujata Supnekar	99	NT (B)
19	Sangita Nemade	85	O.B.C.
20	Rekha Sahare	84	S.C.
21	Nayana Borase	84	S.C.
24	Sneha Farkade (Petitioner)	83	O.B.C.

Since two posts are earmarked for Open (Women), by considering the law laid down by the Hon'ble Supreme Court in the judgments in the case of *Anil Kumar Gupta* Versus *State of Uttar* Pradesh, reported in **1995 (4) Scale 573** and *Rajesh Kumar Daria Versus Rajasthan Public Service Commission & Others*, reported in **AIR 2007 SC 3127(1)**, Ms Sujata Supnekar and Sangita Nemade would be entitled to the appointment on the two posts meant for Open (Women) category as they have secured the first and second highest marks from amongst all the women candidates, irrespective of the category from which they applied. Rekha Sahare had applied from S.C. category and since one post out of the two posts meant for the S.C. category was reserved for women, Rekha Sahare was entitled to appointment on the post meant for S.C. (Women). Nayana Borase had also applied from S.C. category and since Rekha Sahare needs to be appointed on the post meant for S.C. (Women), Nayana Borase would not be entitled to the post meant for the S.C.(Women) category as some male candidates that have applied from the S.C. category, have secured much more marks than Nayan Borase. Since the posts meant for S.C. (Women) was one and the same would go to Rekha Sahare, Nayana Borase would not be entitled to be appointed. Sneha Farkade, the petitioner herein, had secured the fifth highest marks from amongst all the women candidates and she had applied from the O.B.C. category. Since Sangita Nemade had secured the second highest marks from amongst all the women candidates and two posts were meant for Open (Women), Sangita Nemade would be entitled to the appointment on the post meant for Open (Women) and Sneha Farkade, the petitioner herein, who has secured 83 marks and had applied from O.B.C. category would be entitled to the appointment on the post meant for O.B.C. (Women). Since the reservation for women is a horizontal reservation, there is no question of tinkering with the said reservation when it comes to the appointment to two women from Open (Women) category. The two women who secure the highest number of marks from the list of all women candidates would be entitled to appointment on the post meant for Open (Women) by applying the law laid down in *Rajesh Kumar Daria* (Supra) and the earlier judgments including the judgments in the case of *R.K. Sabharwal Versus State of Punjab* reported in **AIR 1995 SC 1371** and *Indra Sawhney Versus Union of India* reported in **1992 Supp(3) SCC 217**, etc. After the two women who secure the highest number of marks from amongst all the women candidates are considered for appointment on the two posts for Open (Women), then it would not be permissible for the respondent no.2-Commission to tinker with the other vertical reservation posts that are advertised. Hence, Rekha Sahare

who has not secured either the first highest or the second highest marks would be entitled only for appointment on the post meant for S.C. (Women) and no other post. Same will be the position in the case of Nayana Boarase who had applied from the S.C. category. It would not be permissible, after filling up the vacancies in the posts meant for Open (Women) to interchange the reservation meant for the S.C., S.T., O.B.C., etc. that is, the vertical reservation. Sangita Nemade who had applied as an O.B.C. candidate, would be entitled to appointment on the post meant for Open (Women) as she has secured the second highest marks from amongst all the women candidates and since the petitioner had applied from O.B.C. category, she would be entitled to be appointed on the post meant for O.B.C. (Women), that remained to be filled as Sangita Nemade was entitled to appointment on the post meant for the Open (Women), having secured the second highest marks. The Tribunal, however, did not consider this aspect of the matter while dismissing the original application filed by the petitioner. Even if we apply the law laid down in the case of Rajesh Kumar Daria (Supra), the position would be that the petitioner would be entitled to appointment on the post meant for O.B.C. (Women). It is well settled that even where a vertical reservation is made in favour of a specific backward class, the backward class candidate would still be entitled to compete for the non-reserved or open post, with the result that any of the women or men, who had applied from any social reservation like S.C., S.T. or O.B.C. would be entitled to be considered for the posts meant for the Open category as per the available vacancies, in view of the law laid down by the Hon'ble Supreme Court in the case of *R.K. Sabharwal* (Supra), *Inder Sawhney* (Supra) and the other relevant judgments that are rendered by the Hon'ble Supreme Court from time to time. We are not inclined to accept the submission made on behalf of the M.P.S.C. that none of the aforesaid five women candidates namely Sujata Supnekar, Sangita Nemade, Rekha Sahare, Nayana Borase and Sneha Farkade were entitled to be appointed on the two posts means for Open (Women) as they had applied for the posts meant for specific backward classes, though they had secured the highest marks from all women candidates. Accepting the submission would result in non-consideration of these women for open posts, despite their superior merit, only because they belong to the backward classes. In the judgment in the case of *Rajesh Kumar Daria* (Supra), the Hon'ble Supreme Court has laid down that if ten posts are reserved for the scheduled castes and out of ten posts three are reserved for the women, it would be necessary to prepare the list of all the persons belonging to the scheduled castes, both male and female, and then consider whether three women are included in the list of first ten scheduled castes candidates in order of merit and if the names of three women from the scheduled castes find place in the list of ten candidates, further process in the matter of appointing women from the S.C. category would not be necessary. In the circumstances of the case, as we have narrated hereinabove and on the basis of two charts pointing out the number of vacancies advertised by the respondent no.2-M.P.S.C. and the number of marks secured by the women candidates and the reservations provided for women, we find that the Tribunal was not justified in dismissing the original application filed by the petitioner."

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

4. In view of the prayer and reasoning praecipe dated 02.05.2023 for speaking to minutes of order dated 26.04.2023 is hereby allowed.

5. Hence, Praecipe dated 02.05.2023 stands disposed of.

Sd/-

(Mridula Bhatkar, J.)
Chairperson

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IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.896 OF 2022

DISTRICT : SANGLI

Sujata Supneakar)
Nee Sujata Patil)
Gajanan Colony, Mali Plot,)
Old Kupwada Road,)
Sangli 416 416) **..... Applicant**

Versus

1. Maharashtra Public Service)
Commission, Through its)
Secretary, M.T.N.L. 5th, 7th, 8th)
floor, Maharshi Karve Road,)
Cooperage, Mumbai 400 021)

2. State of Maharashtra,)
Through the Principal Secretary,)
Higher and Technical Education,)
Mantralaya, Madam Cama Road,)
Hutatma Rajguru Square, Nariman)
Point, Mumbai 400 032)

3. Shetty Nikata Ravindra,)
Assistant Professor, IT Department,)
Government College of Engineering)
Karad, Satara 415 124) **....Respondents.**

Mr. Kranti L.C., learned Advocate for the Applicant.

Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Ms. Medha Gadgil (Member) (A)

DATE : **26.04.2023.**

J U D G M E N T

1. Applicant prays for direction to quash and set aside the Government order dated 07.06.2022 qua Respondent No.3, Shetty Nikata Ravindra working as Assistant Professor, IT Department. Applicant further prays to direct the Respondent No.1, Maharashtra Public Service Commission, Mumbai to recommend her name to the post of Assistant Professor in Computer Engineering meant for Women (Open) and to direct Respondent No.2, Principal Secretary, Higher and Technical Education to appoint her on the post of Assistant Professor in Computer Engineering.

2. Learned Advocate for the Applicant has submitted that pursuant to advertisement dated 03.04.2014 the Applicant had applied for the post of Assistant Professor in Computer Engineer. These are the posts of Assistant Professor in four Government Colleges of Engineering. The select list was published on 26.02.2016. One Sneha Gajananrao Farkade had filed O.A.No.219/2016 before M.A.T. Bench Nagpur challenging select list dated 02.12.2015 issued by Respondent No.2, M.P.S.C. for selection to the post of Assistant Professor in Government Engineering College on the ground that for open female post, females belonging to reserved category are not eligible to be considered. The said O.A. was dismissed by order dated 25.04.2017. The said order of M.A.T. Nagpur Bench dated 25.04.2017 was challenged before the Hon'ble

Bombay High Court, Nagpur Bench in Writ Petition No.2670/2017, Sneha Gajananrao Farkade Versus State of Maharashtra & Ors. on the ground that the most meritorious candidate (woman) has not been short listed. This decision was taken on the basis of the circular dated 13.08.2014. By judgment dated 11.09.2017, the Hon'ble Bombay High Court, Nagpur Bench observed that the present applicant in this O.A. Sujata Supneakar ought to have been selected. Applicant, Sujata Supneakar would be entitled to appointment on the post meant for open woman category as she has secured the highest marks amongst all women candidates. This judgment was challenged by the M.P.S.C. before the Hon'ble Supreme Court. By order 07.12.2021 passed in Special Leave Appeal (C) Nos.36927/2017, the Hon'ble Supreme Court dismissed the Special Leave Appeal. Thereafter, the Respondent issued impugned order dated 07.06.2022 wherein they did not change the select list. Learned Advocate has submitted that Respondent No.3, Shetty Nikata Ravindra was appointed in the category of women (open) whereas the applicant Sujata Supneakar should have been given appointment.

3. Learned Advocate for the applicant has submitted that the Hon'ble High Court went through an elaborate exercise and draw the select list which should have been followed by the M.P.S.C. The two questions raised herein are,

(i) Is there any vacant post available as on today ?

or

(ii) Whether the applicant is dislodging Respondent No.3 who is already appointed to the post of Assistant Professor Information Technology ?

4. Learned Advocate has submitted that Respondent No.3 has already joined on the post of Assistant Professor Information Technology and the post of Computer Engineer women (open) is still vacant in view of the stay given by the Tribunal by order dated 08.09.2022. Paragraph 5 of the Tribunal order dated 08.09.2022 reads as under,

> "5. In view of the above facts and circumstances, we stay the operation of the impugned order dated 7.6.2022 qua Respondent no.3."

5. Learned Advocate has submitted that in the light of findings of the Hon'ble High Court, Applicant Sujata Supneakar is the most meritorious women candidate and she should have been appointed on the said post. Learned Advocate has submitted that there is no delay in view of the fact that she is challenging the order dated 07.06.2022. Learned Advocate for the Applicant has submitted that in view of the fact that nobody is going to be dislodged.

6. Learned P.O. for the Respondents opposes the O.A. on the basis of affidavit-in-reply dated 17.04.2023 filed on behalf of Respondent No.1, Mr. Sanjay Tukaram Sherkar, Under Secretary in the office of Secretary, M.P.S.C. She has further submitted that there is delay in filing of O.A. by the Applicant as he is challenging the revised select list of the year 2017 in the year 2022. Learned P.O. on instructions submits that the post of Assistant Professor Computer Engineer is vacant.

7. In view of the fact that the applicant is meritorious candidate and as per the observance and findings by Hon'ble High Court in the case of Sneha Gajananrao Farkade (supra) that,

"8. Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order of the Tribunal is hereby quashed and set aside. The respondent no.2-M.P.S.C. is directed to recommend the name of the petitioner for the post of Assistant Professor in Computer Engineering meant for O.B.C. (Women). In the circumstances of the case, there would be no order as to costs."

8. In view of the above, we pass the following order :

(i) O.A. stands allowed.

(ii) M.P.S.C. is directed to recommend the name of Sujata Supneakar to the post of Assistant Professor in Computer Engineering, Women (Open) category.

(iii) The State to follow the procedure and take further steps in accordance with law.

(iii) The said process is to be completed within a period of three weeks from the date of this order.

SD/- SD/-

(Medha Gadgil) Member(A) **(Mridula Bhatkar, J.) Chairperson**

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