

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 933 OF 2011**

**DISTRICT : MUMBAI**

Mrs Madhuri Anil Pachghare )  
Working as Lecturer at R.A Poddar )  
Ayurvedic College & Hospital, )  
In the discipline Sanskrit Samhita )  
Sidhant. )  
Add for service of notice: )  
C/o: Pooja V. Thorat, )  
Advocate, High Court, 3/B, C & D, )  
2<sup>nd</sup> floor, 35 Ambalal Doshi Marg, )  
Fort, Mumbai 400 021. )...**Applicant**

**Versus**

1. The Secretary, )  
Maharashtra Public Service )  
Commission, Bank of India Bldg )  
3<sup>rd</sup> floor, M.G Road, )  
Hutatma Chowk, Fort, )  
Mumbai 400 001. )

2. The Secretary, )  
 State of Maharashtra, )  
 Through its Department of )  
 Women & Children Welfare )  
 Mantralaya, Mumbai. )
3. Mr Manoj Nimbalkar, )  
 Working as Asso. Professor, )  
 Sanskrit Samhita Dept. )  
 R.A Podar College, Worli. )
4. State of Maharashtra, )  
 Through Department of Medical )  
 Education & Drugs, )  
 Mantralaya, Mumbai 400 032. )...**Respondents**

Shri M.V Thorat, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents 1, 2 & 4.

Shri P.S Pathak, learned advocate for Respondent no. 3.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**Shri R.B. Malik (Member) (J)**

**DATE : 21.03.2015**

**PER : Shri Rajiv Agarwal (Vice-Chairman)**

**ORDER**

1. Heard Shri M.V Thorat, learned advocate for the Applicant, Shri A.J Chougule, learned Presenting

Officer for the Respondents 1, 2 & 4 and Shri P.S Pathak, learned advocate for Respondent no. 3.

2. This Original Application has been filed by the Applicant challenging the validity of G.R dated 25.5.2001, providing 30% reservation for Women. The Applicant claims that provision to ask for Non-Creamy Layer (NCL) Certificate from open merit category women is discriminatory and therefore violative of Article 14 of the Constitution of India. The Applicant is also seeking holding of fresh interviews by the Respondent no. 1 for the post of Associate Professor in Sanskrit Samhita Sidhant in Government Ayurvedic Colleges.

3. Learned Counsel for the Applicant argued that the Respondent no. 1 had issued advertisement on 8.12.2010, for recruitment to inter alia 2 posts of Associate Professors in Sanskrit Samhita Sidhant. One post was open, reserved horizontally for woman and one post was reserved for S.C candidate. One of these two posts was also reserved for handicapped person. Learned Counsel for the Applicant argued that one post cannot have two horizontal reservation, viz. for woman as well as for physically handicapped person. This will mean that the post in question is reserved for physically handicapped woman, which cannot be done. Learned Counsel for the Applicant argued that this is a fundamental defect in the advertisement, which cannot

be rectified. He further stated that G.R dated 25.5.2001 is regarding 30% reservation for women in Government posts. This reservation is horizontal and compartmentalized for each vertical reservation category like S.C/S.T/O.B.C etc. Vertical reservation for O.B.C requires that only those who belong to Non Creamy Layer can be considered from that category. No NCL provision is there, for S.C/S.T categories. Persons belonging to these categories are eligible for reservation without NCL Certificate. Similarly, open category (without any vertical reservation) also does not require any NCL Certificate. G.R dated 25.5.2001, however, requires that open category women have to produce NCL Certificate. Learned Counsel for the Applicant argued that this is discriminatory and violates Article 14 of the Constitution. This G.R is, therefore, liable to be declared ultra vires the Constitution. There cannot be discrimination in reservation for Women on the basis of income.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents no 1, 2 & 4 that the Applicant's claim that one post had three reservations is baseless. Out of two posts, one post was open, and it was reserved horizontally for woman. Another post was vertically reserved for S.C category. Learned P.O argued that reservation for physically handicapped person is post selection, meaning thereby that if a handicapped person is found eligible for selection, he is adjusted

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against the category to which he belongs. In the present case, the Respondent no. 3 was selected against open post as a handicapped person as no suitable woman from open category was found eligible. Learned Presenting Officer argued that G.R dated 25.5.2001 enunciates Government policy of providing 30% reservation for Women. This reservation is horizontal in nature and is compartmentalized. It also provides that reservation will be available to only those women who belongs to Non-Creamy Layer category (except for those categories like S.C/S.T where NCL is not required). Learned Presenting Officer argued that such provision of restricting reservation for women for those having NCL Certificate does not violate Constitutional mandate. State Government has taken a policy decision to provide benefit of reservation to women from economically backward sections of the Society, except for S.C and S.T category, who are exempted from this consideration. Learned Presenting Officer argued that the Applicant did not produce NCL Certificate, and was, therefore, not considered eligible to be selected from Open-Women category. As no suitable woman candidate was available, the post was treated as open post and the Respondent no. 3 was selected for the post from Physically handicapped category.

5. Learned Advocate Shri P.S Pathak, argued on behalf of the Respondent no. 3 that the Applicant has no

locus to file the present Original Application as she was not selected for the post for which she had applied. The Applicant had applied from open Women category, for which she has not considered as she did not have NCL Certificate. As no suitable candidate from open-women category was found, the post was treated as unreserved and the Respondent no. 3 was selected from Physically Handicapped category. Such reservation is post selection. As the Respondent no. 3 was found eligible to be selected for the post of Associate Professor, and he belongs to open category, he was adjusted against open category post.

6. We find that the Applicant has raised two issues, viz:

- (a) The requirement that a women candidate has to have NCL Certificate for being eligible to be considered for 30% posts reserved for women is discriminatory and is violative of Article 15 of the Constitution; and
- (b) The Applicant, should have been considered as an open candidate, and the same post could not be reserved for physically handicapped person.

We find that the reservation for women in employment is provided under Article 15(3) of the Constitution, which empowers the State to make special

provision for women and children. Reservation of posts in public employment in favour of women is held not arbitrary by Hon'ble Supreme Court in **RAJESH KUMAR GUPTA Vs. STATE OF UTTAR PRADESH, AIR 2005 SC 2540**. The case of the Applicant is that there cannot be any discrimination between rich women & poor women in the matter of employment. We had asked the Respondent no. 2, viz Department of Women & Child Welfare, Government of Maharashtra to file an affidavit in this Original Application. Two affidavits have been filed by the Respondent no. 2 on 22.1.2015 and 8.7.2015. It is disappointing to note that the Respondent no. 2 has not filed a clear affidavit justifying the said policy on the basis of Constitutional provision. It is merely stated that "the State Government has adopted and declared women policy in the year 2001 for empowerment of women in the State. The women who are economically backward has to be given preference and to be given an opportunity to survive, hence as per provisions laid down in G.R dated 25.5.2001, the limit of income was fixed up to 2 lakhs and as per G.R dated 13.1.2009, this limit was extended to 4.5 lakh to include more women".

7. The Government stand appears to be that only those women (except S.C/S.T) who belong to economically backward section are to be given benefit of reservation for 30% posts reserved for women. For this purpose the concept of 'Creamy Layer' applicable to

O.B.C category for vertical reservation has been adopted. The provision for restricting benefit of reservation to economically backward women appears to be reasonable and the challenge to G.R dated 25.5.2001 on the ground of discrimination has to be rejected. The classification is intelligible in this G.R.

8. Coming to the second issue, it is seen that the advertisement itself provided that if no suitable women candidate was available, the post was to be treated as unreserved. It is clear that no suitable women candidate, fulfilling conditions as per G.R dated 25.5.2001 was available. The post was, therefore, treated as unreserved. For reservation of physically handicapped persons, separate merit list has to be prepared. Any eligible person from physically handicapped category, if selected, has to be adjusted to vertical reservation category which he belongs. In the present case, once the post was unreserved, and the Respondent no. 3 was found eligible for selection, he had to be adjusted against open post. In case, hypothetically, if he belonged to S.C category, he would have been required to be adjusted against post from that category. In that case, the other post could be filled from open category. The claim of the Applicant that the open post could not have been reserved for physically handicapped person has no legal basis and has to be rejected.



9. The issue regarding eligibility of the Respondent no. 3 Shri Major Sharad Nimalkar was before the Nagpur Bench of this Tribunal in O.A no 126/2012, where he was the Respondent no. 5. It was held that as per G.R dated 19.10.2007, the handicapped person when selected is adjusted against the social reservation category to which he belongs. The selection of the Respondent no. 3 was held to be valid. The issue has already been decided by this Tribunal.

10. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

Sd/-  
**(R.B. Malik)**  
**Member (J)**

Sd/-  
**(Rajiv Agarwal)**  
**Vice-Chairman**

**Place : Mumbai**  
**Date : 21.03.2016**  
**Dictation taken by : A.K. Nair.**