

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 282 OF 2013

DISTRICT : - BEED.

Sonam D/o. Gowardhan Tandale,

Age : 24 years, Occu. Nil,

R/o. Adarsh Nagar, Old Nagar Road,

Beed.

.. APPLICANT.

V E R S U S

1. The State of Maharashtra,

Through Secretary,

School Education and Sports Department,

Mantralaya, Mumbai-32. Copy served

on C.P.O. M.A.T. Bench Aurangabad.

**2. The Director of Sports and Youth
Services,**

Pune, District Pune.

3. The Joint Director of Health Services,

(Malaria & Fyleria), Pune-6.

4. The District Sports Officer,

Jalgaon, District Jalgaon.

5. The Chief Secretary,

The State of Maharashtra,

Mantralaya, Mumbai-32.

.. RESPONDENTS.

APPEARANCE : Shri J.S. Deshmukh, learned
Advocate for the Applicant.

: Smt. Sanjivani Deshmukh-Ghate –
learned Presenting Officer for the
respondents.

**CORAM : HON'BLE SHRI RAJIV AGARWAL,
VICE CHAIRMAN (A).**

AND

**: HON'BLE SHRI P.B. PATIL,
MEMBER (J)**

DATE : 15TH FEBRUARY, 2017.

ORAL ORDER

[Per : Hon'ble Shri Rajiv Agarwal, Vice Chairman (A)]

1. Heard Shri J.S. Deshmukh – learned Advocate for the applicant and Smt. Sanjivani Deshmukh-Ghate – learned Presenting Officer for the respondents.
2. This Original Application has been filed by the applicant, who claims that she is eligible to be appointed from Sports quota, as per Government Resolution dated 30th April, 2005. She has given an application on 23rd June, 2012 to the respondent No. 3 viz. the Joint Director

of Health Services, Pune, for appointment to the post of Lab Technician. However, no decision has been taken on that application.

3. The learned Presenting Officer argued that as per Government Resolution referred to above dated 30th April, 2005, 5% horizontal reservation is provided for Sports persons. Such Sports persons have to apply as and when any advertisement for filling up the posts is issued depending upon the qualification of the applicant/candidate. There is no provision by which a person can be directly appointed as Sports persons.

4. The learned Presenting Officer has placed reliance on the judgment passed by the Full Bench of Hon'ble High Court in the case of **Rajendra Pandurang Pagare & Anr. Vs. the State of Maharashtra & Ors. (Writ Petition No. 5266 of 2008)**. The Hon'ble High Court has observed while disposing the said Writ Petition No. 5266 of 2008 as under :-

“40. Now, let us consider whether it is necessary for publishing an advertisement, calling

applications from candidates belonging to project affected person, while filling up vacancies reserved for the said category. The Apex Court, in the case of **Excise Superintendent, Malkapatnam, Krishna District, A.P., Vs. K.B.N. Visweshwara Rao and others (1996 AIR SCW 3979)** has considered the requirement of calling applications by advertisement. It has been observed thus :

"Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair-play, justice and equal opportunity. It is common knowledge that many a candidate are unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate are deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority / establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning Departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate

Department or undertaking or establishment, should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news-bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates. "

41. No doubt, that under the Government Circulars, the Collectors are also required to sponsor the names of eligible candidates to the recruitment authority. However, since we have already held herein above, that the district-wise reservation is not permissible under the Constitution, the candidates from the other districts, who are project affected persons, would also be entitled to compete with the candidates who are sponsored by the Collector. In the absence of the advertisement, it will not be possible for them to get knowledge about recruitment process initiated in the areas beyond their district. We, therefore, find that in order to ensure the equality of opportunity which is guaranteed in the matter of employment under Article 16 of the Constitution, it would be necessary that the posts reserved for project affected persons are advertised so that all the

eligible candidates can submit their applications and get an opportunity to compete with others in their category.

42. We accordingly answer the issue referred to us, as under :

" That, the project affected persons cannot be appointed without advertising the posts ignoring their qualifications and merit."

5. The learned Presenting Officer further submits that the ratio laid down by the Hon'ble Bombay High Court Bench at Aurangabad in the in the case of Projected Affected Persons (W.P. No. 5266/2008) is applicable in the case of Sports Persons also, who are seeking appointment on the basis of horizontal reservation.

6. We are in full agreement with the submissions made by the learned Presenting Officer in this regard. The applicant may apply for appointment as and when advertisement is issued by any of the departments of the Government of Maharashtra, depending upon her qualification, eligibility and experience etc. No relief can be granted in her favour on the basis of her application,

which is dated 23rd June, 2012, a copy of which is placed on record at Exhibit 'D' (page-21 of the O.A.).

7. In view of the aforesaid submission made by the learned Presenting Officer and in view of the observations made by the Hon'ble Bombay High Court in the Writ Petition No. 5266/2008, the present Original Application stands dismissed with no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)

O.A.NO.282-2013(hdd)-2017(DB)