

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 463 OF 2013**

DISTRICT: - LATUR.

**Shri Digambar S/o Madhukarrao Pandit,**

Age-38 years, Occ. : Private Service

R/o : Sambhaji Nagar, near Rawale

Industry, Khadgaon Road, Latur

Tq. District Latur.

.. APPLICANT.

**V E R S U S**

**1] The State of Maharashtra,**  
Through the Secretary  
Tribal Development Department,  
Mantralaya, Mumbai (Maharashtra).

**2] The Secretary,**  
Maharashtra Public Service Commission  
Bank of India Building, 3<sup>rd</sup> floor,  
Mahatma Gandhi Road,  
Hutatma Chowk,  
Mumbai-400001. .. RESPONDENTS.

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**APPEARANCE** : Shri. P.R. Tandale, ld. Advocate for the  
applicant.

: Mrs. Deepali S. Deshpande – learned  
Presenting Officer for the respondents.

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**CORAM** : **JUSTICE M.T. JOSHI, VICE CHAIRMAN**  
**AND**

: **ATUL RAJ CHADHA, MEMBER (A)**

**DATE** : **12<sup>TH</sup> DECEMBER, 2018.**

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**O R A L O R D E R**

**[Per : Justice M.T. Joshi, Vice Chairman]**

1. Heard Shri P.R. Tandale, learned Advocate for the  
applicant and Mrs. Deepali S. Deshpande, learned Presenting  
Officer for the respondents.

2. The present applicant is claiming appointment to the post of Senior Research Officer with respondent No. 1 from the category of physically challenged candidates in Open category. The present applicant belongs to OBC category.

3. The advertisement for filling up the post of Senior Research Officer was issued by the respondent No. 2, the Maharashtra Public Service Commission, a copy of which is placed on record at Exhibit 'A', page-10. Below the table of category-wise details it is written that 1 post is for blind / low vision. However, sub-para 2.4 of the said advertisement would show that the post was reserved from open category for (a) Blindness or Low vision; (b) Hearing Handicapped; and (c) Locomotors Disability or cerebral palsy, by declaring that the candidate from these physically challenged categories would be eligible to apply for the said post.

4. The list of recommended candidates forwarded by respondent No. 2 to respondent No. 1 (Exhibit 'D', page-18) and more particularly the Note put thereunder would

show that as no candidate from Low vision category was available, one post was kept vacant by the respondent No. 2.

5. The claim of the present applicant is that he applied to the post from the Open category though he belongs to the OBC from the physically challenged category as he suffers from D-TL Kyphoscoliosis with Right L.E. Monoparieris. At page-24 one certificate issued from Government Medical College & General Hospital, Latur is produced, which would show that percentage of disability of the present applicant is 55%.

6. Learned Advocate for the applicant submits that since the applicant suffers from Locomotors Disability as required by the advertisement, he ought to have been considered for the said post. The affidavit in reply however, would show that even the candidature of the present applicant was not accepted, as he is not from Low vision category.

7. In the affidavit in reply dated 31.07.2018 at paragraph No. 5, respondent No. 2 has made the following averments : -

*“5. I say and submit that the physically challenged person with the type of disability other than the blind or low vision was also eligible to apply for the said post but the post was reserved only for the physically challenged persons with disability of blindness or low vision only. Hence, the applicant with locomotors disability cannot stake a claim on the post reserved for those with blind or low vision.*

8. These averments are against each other. Section 36 of the Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995, reads as under: -

*“36. Where in any recruitment year any vacancy under Section 33, cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled by*

*interchange among the three categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability.*

*Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the three categories with the prior approval of the appropriate Government.”*

9. It appears that in view of non-availability of low vision / blind candidate, the same was already carried forward by the State in view of the statement made in the advertisement that physically challenged persons from other categories were also eligible to apply.

10. In the circumstances, respondent No. 2 ought to have taken the steps for calling communication from respondent No. 1 – State to find out as to whether the process of carry forward had already taken place as it appears probably taken place

11. The affidavit in reply merely shows that as no candidate from low vision category was available, the post is kept vacant. In the circumstances, following order: -

**ORDER**

(i) The present Original Application is partly allowed and disposed of without any order as to costs.

(ii) The respondent No. 2, M.P.S.C. is directed to seek further clarification within 4 weeks from the respondent No. 1 as to whether the advertisement was issued after carrying exercise of provisions of Section 36 of the Persons With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995 i.e. of carrying forward and thereafter interchangeability of the post.

(iii) The respondent No. 1 shall reply the same within 4 weeks from the date of receipt of the communication from the respondent No. 2.

(iv) In the circumstances, if respondent No. 1's answer is in affirmative then respondent No. 2 is directed to carry further process as detailed supra, considering the candidature of physically challenged candidates in 3 categories, as detailed in the

advertisement and take steps for selection as per the advertisement and intimate the present applicant the result of the same by RPAD.

(v) The aforesaid steps be completed within a period of 6 months from the date of this order.

**MEMBER (A)**

**VICE CHAIRMAN**

**PLACE : AURANGABAD.**

**DATE : 12<sup>TH</sup> DECEMBER, 2018.**

O.A.NO.463-2013(DB-Selection-Appointment)-HDD-2018