

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT NAGPUR

ORIGINAL APPLICATION NO. 270 OF 2018

DISTRICT : - YEVATMAL

Smt. Dipali Tukaram Basole,

Aged about 34 years,

Occu. Nil, r/o c/o Sandip

Dagwar, Gedam Nagar,

Near Old Mane Hospital,

Yevatmal.

.. APPLICANT.

V E R S U S

1) **The State of Maharashtra,**

Through its Secretary,

General Administration Department,

Mantralaya, Mumbai-32.

2) **Maharashtra Public Service Commission,**

Through its Secretary, Office at : 5, 7 & 8

Floor, Cooperage Telephone Corporation

Building, Maharshi Karve Road,

Coperage, Mumbai – 400021.

.. RESPONDENTS.

APPEARANCE : Shri A.S. Deshpande, learned counsel for the
applicant

: Shri M.I. Khan, learned Presenting Officer for
the respondents.

CORAM : **Hon'ble SHRI SHREE BHAGWAN,**
VICE CHAIRMAN
AND
Hon'ble SHRI A.D. KARANJKAR,
MEMBER (J)

RESERVED ON : 14TH OCTOBER, 2019.

PRONOUNCED ON : 18TH OCTOBER, 2019.

J U D G E M E N T

[PER : SHRI A.D. KARANJKAR, MEMBER (J)]

Respondent No. 2 published an advertisement No. 61/2015 on 18.06.2015 on its website to fill up total 68 posts of Lecturers in District Institute of Education and Training, Maharashtra Education Service, Group-B, (Teachers Training Branch). Out of 68 posts, which were for Open Category, 20 posts were reserved for Open Category (Female).

2. The applicant has filed her application form submitting that she was not claiming benefit of her OBC caste and she was competing as Open Category candidate. The applicant applied under Open Category (Female).

3. The applicant appeared for the examination and in written examination she scored 98 marks, but when the list of the qualified candidates for the personal interview was seen by the applicant she noticed that her roll number was not mentioned in the list. Therefore, she made request to the respondent No. 2 to include her name, considering the marks scored by her. As no heed paid by the

respondent No. 2 to the request of the applicant, consequently Writ Petition No. 4915/2016 was filed by the applicant before the Hon'ble High Court of Judicature at Bombay Bench at Nagpur. The Hon'ble High Court passed an order in the said Writ Petition and directed the respondent No. 2 to permit the applicant to appear in the personal interview in the category reserved for Open (Female).

4. It is the grievance of the applicant that after interview the respondents selected 20 candidates for filling the posts reserved for Open (Female) Category and the last candidate had scored 115 marks. It is claimed by the applicant that 5 candidates did not join the service and the posts were vacant, consequently, the respondents selected 4 candidates from the waiting list. It is the contention of the applicant that 3 candidates are recommended by the respondent No. 2, who had scored only 113 marks and the 4th candidate scored 112 marks, but though the applicant had scored 114 marks her name was not recommended.

5. It is submitted by the applicant that as she filed the application form mentioning that she was applying as Open (Female) Category candidate, it was specifically mentioned in the application form that she was not claiming benefits, which were available to her caste,

therefore, the respondents were bound to consider the applicant as per her merit, but it was not done.

6. It is the contention of the learned Presenting Officer for the respondents that as per Circular dated 13th August, 2014 as the applicant belongs to OBC Category, therefore, as per the decisions in the case of **MISS RAJANI D/O SHAILESHKUMAR KHOBRADE @ MRS. RAJANI W/O SANJAY SHELKE VS. STATE OF MAHARASHTRA AND OTHERS [W.P. NO. 10103 of 2015)** decided by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad on 31st March, 2017 and judgment in **Writ Petition No. 272/2010 [THE STATE OF MAHARASHTRA VS. IRFAN S/O MUSTAFA SHAIKH & OTHERS]** decided by the Hon'ble High Court of Judicature of Bombay bench at Aurangabad on 15th November, 2010, the applicant had no right to claim post reserved for Open (Female) Category candidate. Learned Presenting Officer has submitted that after examining the legal position, the respondent No. 2 has rightly not recommended the name of the applicant for the post reserved for Open (Female) Category candidate. According to the respondents, there is no illegality committed by them and, therefore, the present Original Application is liable to be dismissed.

7. We have perused the online application form submitted by the applicant. It is true that in the column of caste category it was mentioned by the applicant that she belongs to OBC Category and she was possessing Non-creamy Layer Certificate, but the applicant paid the fees as Open (Female) candidate. On the basis of this, it is the contention of the respondent No. 2 that the applicant applied in OBC Category and, therefore, the applicant is not entitled to claim post reserved for Open (Female) Category. In order to examine the correctness, it is necessary to read entire application form submitted by the applicant. On second page of the online application from the applicant replied specific questions. The material questions are as under: -

- 1) Do you wish to avail facilities available for Backward Class Candidate ?,

Answer is 'No'

- 2) Do you want yourself to be considered for the open category post, as well ?

Answer is 'Yes'.

8. After reading the above fact, it is clear that the applicant, when she submitted online application, specifically gave up protection of her caste and it was specifically mentioned by her that she should be considered for the Open (Female) Category post. It seems that the

respondent No. 2 did not consider the material aspect. In this regard, we would like to point out that the law laid down in the case of the State of Maharashtra VS. Irfan S/o Mustafa Shaikh & Others and **Miss Rajani D/o Shaileshkumar Khobragade @ Mrs. Rajani W/o Sanjay Shelke VS. State of Maharashtra and others (Supra)**, is of no help to the respondents, for the reason that in those cases the facts were altogether different. In those cases candidates applied for the post under reserved category and when they were not successful they claimed the post, which were reserved for the special category viz. horizontal reservation and, therefore, it was held that they were not entitled to claim any relief in view of the Circular dated 13th August, 2014.

9. Learned counsel for the applicant invited our attention to the judgment delivered by the Hon'ble High court of Judicature at Bombay Bench at Aurangabad in case of **SANGITA GOPAL CHAUDHARI VS. THE STATE OF MAHARASHTRA AND OTHERS [W.P. NO. 8481/2018 & Group] on 26th April, 2019**. In paragraph No. 8 of the said judgment, it is observed by the Hon'ble High Court as under: -

"8. In the present matters, the petitioners are not claiming benefit of reservation. They have applied for the post as candidates of open category. They have not sought the benefit of reservation. They had only

mentioned that they belong to a particular caste but had applied considering that they want to compete from open woman category. They have also paid the fees as is required to be paid by the candidates from open category. In light of that it was not permissible for the respondents to contend that the petitioners have applied from reserved category.”

10. The law laid down in the case of Sangita Gopal Chaudhari (Supra) is squarely applicable to the case before us. In this case also the applicant specifically informed in the online application that she was not claiming facilities available to the Backward Class and specifically it was mentioned by her that she shall be considered in the Open Category. In view of this we are compelled to say that the action of the respondent No. 2 not recommending the name of the applicant is illegal.

11. Page No. 78 is the result sheet. It is shown by the applicant that her name was at Sr. No. 248 and she scored 114 marks. Similarly, the applicant has shown that the candidates at Sr. Nos. 252, 253 & 254 scored 113 marks each and candidate at Sr. No. 255 scored 112 marks. The applicant has filed information given by the Government of Maharashtra, Annexure Á-13', page-98 of paper book of O.A. On page-100 names of Smt. Jyoti Kailas Rajput, Smt. Ranitai Shivajiral Patil, Smt. Madhuri Muniraj Dalal & Smt. Sulpha Maruti Gavade, are

mentioned. It seems that these candidates were recommended for the appointment by respondent No. 2 and, their names were in the waiting list. It appears that though these candidates scored less marks than the applicant their names were recommended and, therefore, we accept the submission of the applicant that the action of the respondent No. 2 not recommending her name for the appointment is illegal.

12. In view of the discussion in foregoing paragraphs, the present Original Application stands allowed in terms of prayer clause (ii) , which reads as under: -

“(ii) Command the respondent No. 2 – MPSC to include the name of the petitioner in the Selection List dated 09.08.2016 for the post of MPSC Lecturer, District Institute of Education and Training, Maharashtra Education Service, Group-B, (Teachers Training Branch).”

The respondents are directed to comply this order within a period of three months from the date of this order.

There shall be no order as to costs.

(A.D. KARANJKAR)
MEMBER (J).

(SHREE BHAGWAN)
VICE CHAIRMAN

PLACE : NAGPUR
DATE : 18TH OCTOBER, 2019-10-18
O.A.270 of 2018 DB-HDD