

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI, BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 312 OF 2015**

**DISTRICT :A'NAGAR**

Dr. Shivani d/o Vikesh Sachdeva. )  
Age:32 years; Occ.: Teaching in dentistry;) )  
R/o: 525/9/70, Staff Quarter, )  
PMT Campus, Rural Dental College Loni, )  
Tal.: Rahta, Dist. Ahmednagar. )...**Applicant**

**VERSUS**

1. The State of Maharashtra )  
(Through its Secretary )  
Public Health Department) )  
Mantralaya, Mumbai -32. )
2. The Director of Medical Education )  
And Research M.S., Mumbai. )
3. Maharashtra Public Service )  
Commission, MS Mumbai. )
4. Jyoti Moreshwar Wahane )  
Age:38 years; Occ.: Govt. Service; )  
R/o: C/o: Dept. of Plastic Surgery, )  
(Dentalwing) Government Medical )  
College, Nagpur. )
5. Palavi Abhimanyu Meshram )  
Age: 32 years, Occ.: Govt. Service )  
R/o: C/o: Dept. of Public Health )  
Dentistry, GDC & Hospital, )  
GMC Premises, Nagpur. )

6. Himani Swatantrakumar Gupta )  
 Age:31 years; Occ.: Private Service )  
 R/o: Assistant Professor, Mahatma )  
 Gandhi Dental College (MGM) Junction )  
 Of NH-4 & Sio- Panvel Express Way )  
 Sector – 1, Kamothe, Navi Mumbai. )
7. Principal Secretary, )  
 General Administration Department )  
 Mantralaya, MS Mumbai. )....**Respondents**

Miss. Pradnya Talekar, learned Advocate holding for Shri S.B. Talekar, learned Advocate for the Applicant.

Shri M.S. Mahajan, learned Chief Presenting Officer for the Respondent Nos. 1 to 3 & 7.

Shri A.S. Deshmukh, learned Advocate for the Respondent No.4.

Shri R.P. Adgaonkar, learned Advocate for the Respondent No.6.

None for the Respondent No.5.

**CORAM : Shri Rajiv Agarwal, Vice-Chairman**

**Shri B. P. Patil, Member (J)**

**DATE : 08.03.2017**

**PER : Shri Rajiv Agarwal, Vice-Chairman**

### **ORDER**

1. Heard Miss. Pradnya Talekar, learned Advocate holding for Shri S.B. Talekar, the learned Advocate for the Applicant, Shri M.S. Mahajan, learned Chief Presenting

Officer for the Respondent Nos. 1 to 3 & 7, Shri A.S. Deshmukh, learned Advocate for the Respondent No.4 and Shri R.P. Adgaonkar, learned Advocate for the Respondent No.6. None for the Respondent No.5.

2. The Applicant has filed this Original Application challenging the selection of the Respondent Nos.4 to 6 for the post of Assistant Professor in Periodontia, in Government Dental College in Maharashtra Medical Education and Research Service, Group B as per the result declared by the Respondent No.3 on 30.05.2015.

3. Learned Counsel for the Applicant argued that the Respondent No.3 has issued advertisement on 13.6.2014 for a total of 4 posts of Assistant Professors in Government Dental Colleges and Hospitals, Maharashtra Medical Education and Research, Group 'B'. One post each was reserved for S.C. and O.B.C. Out of 2 Open posts, one was horizontally reserved for Woman. The Applicant has applied for the post from Open category and was interviewed on 30.7.2014. The Respondent No.3 had published the list of non-eligible candidates, in which the Respondent No.6 was at Sr.No.18, as she did not meet the short listing criteria. However, the Respondent No.3 called 5 Open category candidates for interview on 11.5.2015, for the post which was reserved for Open-Woman category and the Respondent No.6 was also called for interview.

4. Learned Counsel for the Applicant stated that the Respondent No.3 has declared result of two vacancies, each from OBC and S.C. category. The Respondent No.5 is selected from S.C. category and another candidate from S.C. category viz. the Respondent No.4 has been shown selected from Open category. Learned Counsel for the Applicant argued that the Respondent No.4 should have been selected from S.C. category as she has obtained age-relaxation from that category and as per the decision of 5 Judges Bench of Hon'ble Supreme Court, in the Union of India Vs. Ramesh Ram & Others etc. in Civil Appeal Nos.4310-4311, reserved category candidates should be counted as part of reserved pool, if they have taken advantage of any relaxation on account of their vertical reservation category. This judgment is dated 7.5.2010 and by this decision relevant Rule 16(1) of U.P.S.C. Rules for conducting Civil Services Examination were upheld by Hon'ble Supreme Court. As such, the Respondent No.4 could not have been selected against Open category. If the Respondent No.4 is adjusted against S.C. category, the Applicant who had scored 58 marks, would be eligible to be selected from Open category.

5. Learned Presenting Officer (P.O.) argued on behalf of the Respondent Nos. 1 to 3 and 7 that the Respondent No.4 was selected from Open category though she is from S.C. category, as she has scored highest marks. There is no dispute about the person selected from O.B.C. category. The Applicant could not be selected for the other post from Open category, as she had scored less mark than the Respondent

No.6 who scored 60 marks, while the Applicant scored 58 marks. For the post reserved for S.C. category, the Respondent No.5 has been selected. Learned P.O. argued that as per then prevailing practice, the backward class candidates could avail age relaxation and compete for the Open category posts. The Respondent No.3 has decided to follow the rules of M.P.S.C. from a date after this selection process was over from 25.9.2014. As such, the Respondent No.5 was rightly selected from S.C. category and the Respondent No.4 is eligible to be selected from Open category. As no suitable Open-female was found, the Respondent No.3 called additional candidates, including the Respondent No.6, who was selected against Open-Female category. Learned P.O. stated that no interference from this Tribunal is required in this case.

6. Learned Advocate Shri A.S. Deshmukh argued on behalf of the Respondent No.4 that she had scored highest marks (63) in interview and in any case, she is eligible to be selected, even if the claim of the Applicant is accepted. The Respondent No.4 may be selected from either Open or from S.C. category.

7. Learned Advocate Shri R.P. Adgaonkar, argued for the Respondent No.6 that the Respondent No.3 has called additional candidates from Open (General) Category. The Applicant was called for interview and scored 60 marks. She was, therefore, selected from the post against Open-Female category. As the Applicant had scored less marks than the

Respondent No.6, she has no locus to challenge the Respondent no.6's selection.

8. By order dated 17.3.2016, this Tribunal has asked the Respondent No.3 to clarify the legal position in view of the 'Reannouncement' dated 25.9.2014. The Respondent No.3 had filed additional affidavit in reply on 28.6.2016. It is stated that:-

"The U.P.S.C. explained that if a reserve category candidate avails himself/herself of any of the relaxation or concessions, he is considered only for the reserve category posts. If he does not avail any concession or relaxation and also qualifies as per the general standards, then only he is considered for the Open category posts, as a meritorious reserve candidate. The minutes of this conference were circulated to all the Public Service Commissions for further necessary action. The Maharashtra Public Service Commission accordingly took a decision on 01/04/2014 likewise allowing only those reserve category candidates who do not avail themselves of any of the concessions/relaxation to compete for the open category posts. It may also be noted that even in the preamble of the Maharashtra Public Service Commission's Rules of Procedure, it is clearly mentioned that these Rules of Procedure were revised at the instance of the U.P.S.C., so as to have uniform pattern to the extent possible. Earlier the Maharashtra Public Service Commission had also sought clarification in this regard from the Union Public Service Commission. The response of the Union Public Service Commission was received vide their letter dated 13/08/2013 (Exh.A). The Union Public Service Commission had then informed that the reserve category candidates who avail concession in age, fee or number of attempts are not considered against the

Open category posts. Attention is also drawn to the office memorandum No.36011/1/98-Estt. (Res) dated 01/07/1998 issued by the Ministry of Personnel, Department of Personal and Training stating that when a relaxed standard is applied in selecting a reserve category candidate (for example in the age limit, experience, qualification, permitted number of chances, extended zone of consideration large than what is provided for general category candidates etc.) he is to be counted against a reserved vacancy. Such a candidate is deemed to be unavailable for consideration against unreserved vacancies. Copies of the letter of the Union Public Service Commission (U.P.S.C.) dated 13<sup>th</sup> August, 2013 and office Memorandum of the Government of India is attached herewith and marked as **Exhibit R-1** and **Exhibit R-2** respectively.”

The Respondent No.3 claims that decision to apply this criteria was taken on 1.4.2014. The present advertisement was taken on 13.6.2014 i.e. after the decision was taken by the Respondent No.3. The letter from U.P.S.C. (Exhibit R-1 at page no.111 of the Paper Book) is dated 13.8.2013 and it reads:-

“I am directed to refer to your letter No.1442(2)/2013 dated 6<sup>th</sup> July, 2013 on the subject mentioned above and to say that a reserve category of candidate who avails the concession or relaxation in age, fee or any eligibility criteria is not recommended against a general category post.”

Judgment of Hon'ble S.C. in **Union of India Vs. Ramesh Ram & Others etc.** is also appended with the Additional affidavit in reply. Five judges Bench of Hon'ble S.C. by judgment dtd 7.5.2010 has upheld Rule 16(1) of the

U.P.S.C. for holding Civil Services Examination. That Rule is reproduced below:-

“4.4) Rule 16 lays down the manner of selection, preparation of merit list and selection of candidates. The said rule is extracted below:

16(1) After interview, the candidates will be arranged by the Commission in the order merit as disclosed by the aggregate marks finally awarded to each candidate in the Main Examination. Thereafter, the Commission shall, for the purpose of recommending candidates against unreserved vacancies, fix a qualifying mark (hereinafter referred to as general qualifying standard) with reference to the number of unreserved vacancies to be filled up on the basis of the Main Examination. For the purpose of recommending Reserved Category candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes against reserved vacancies, the Commission may relax the general qualifying standard with reference to number of reserved vacancies to be filled up in each of these categories on the basis of the Main Examination:

Provided that the candidates belonging to the Scheduled Castes, Scheduled Tribes and the Other Backward Classes who have not availed themselves of any of the concessions or relaxation in the eligibility or the selection criteria, at any stage of the examination and who after taking into account the general qualifying standards are found fit for recommendation by the Commission shall not be recommended against the vacancies reserved for Scheduled Castes, Scheduled Tribes and the Other Backward Classes.”



This rule is upheld by Hon'ble S.C. in the aforesaid judgment and U.P.S.C. has not been recommending reserved category candidates for unreserved vacancies, if they have availed themselves of any relaxation at any stage. The Respondent No.3 was legally bound to apply the same criteria at least after the judgment of Hon'ble S.C. However, having taken a decision on 1.4.2014 to apply this criteria, the Respondent No.3 could not have applied a different criteria in the present O.A. Accordingly, the Respondent No.4 has to be adjusted against S.C. vacancy. The Respondent No.6 and the Applicant are eligible to be selected from Open vacancies. The Respondent No.6 in her affidavit in reply has admitted that she was called from Open (general) category. The Applicant also belongs to that category as she did not apply from NCL category. There is no controversy about the candidate selected from O.B.C. category. The necessary outcome is that selection of the Respondent No.5 has to be held as illegal and her selection will have to be quashed.

9. Having regard to the aforesaid facts and circumstances of the case, this O.A. is allowed partly. The Applicant has challenged selection of the Respondent Nos. 4 to 6. However, only the selection of the Respondent No.5 is quashed and set aside. The Applicant is held to be eligible for selection to the post of Assistant Professor/ Lecturer in Periodontia in Government Colleges & Hospitals, Maharashtra Medical Education and Research Service, Group 'B'. The Respondent No.3 is directed to recommend

accordingly within four weeks from the date of this order.  
There will be no order as to costs.

**(B.P. PATIL)**  
**MEMBER (J)**

**(RAJIV AGARWAL)**  
**(VICE-CHAIRMAN)**

**Date : 08.03.2017**

**Place : Aurangabad**

**Dictation taken by : SBA**

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