

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 612 of 2017 (DB)

Swapnil S/o Bhaurao Salankar,
Aged about 31 years, Occ. Student,
R/o Block No. G-132, NIT Colony,
Near KDK College, Vyanketesh Nagar,
Nagpur-440 009.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Medical Education and Drugs Department,
Mantralaya, Mumbai-400 001.
- 2) The Directorate of Medical Education & Research,
CET CELL St. George's Hospital Compound,
Opp. Government Dental College Building,
near Chhatrapati Shivaji Terminus (CST),
Mumbai-400 001.
- 3) Rajendra S/o Wasudevrao Shendre,
Aged about 31 years,
Occ. Service (Artist),
At Government Medical College,
Chandrapur.

Respondents.

Shri P.S. Sahare, Advocate for the applicant.

Shri A.M. Ghogre, P.O. for respondent nos. 1 & 2.

Shri Saurabh Yerawar, Advocate for respondent no.3.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Date of Reserving for Judgment : 6th August, 2019.

Date of Pronouncement of Judgment : 8th August, 2019.

JUDGMENT

Per : Anand Karanjkar : Member (J).

(Delivered on this 8th day of August,2019)

Heard Shri P.S. Sahare, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for respondent nos. 1&2. None for respondent no. 3.

2. It is case of the applicant that on 17/11/2014 online advertisement was published by the respondent no.1 for filling the post of Technical and Paramedical Staff. In pursuance to the advertisement, online application was submitted by the applicant and he applied for the post Artist Group-A from the Open category. When advertisement was published no post was available for the OBC category, therefore, the applicant applied under the Open category. Thereafter there was a written examination and select list was prepared. In the select list name of the applicant was at sr.no.9.

3. It is grievance of the applicant that lateron vacancy occurred and posts were available to appoint OBC candidates. One letter was issued by the respondent no.2 and candidates were called for verification of their documents. The applicant submitted his objection that though he was at sr.no.9 in the select list, he was not

called for the documents verification. The applicant also contended that when first advertisement was published there was no seat available for the OBC candidate, therefore, he had applied under the Open category; consequently, he did not apply under OBC category. Thereafter the objection of the applicant was rejected by the respondents. It is submitted by the applicant that though the applicant secured more marks than the respondent no.3, but he was not appointed. It is submitted that when waiting list was prepared the respondent no.3 was not in the waiting list, but he was illegally appointed on the post and therefore the appointment of the respondent no.3 is illegal. It is submission of the applicant that appointment of the respondent no.3 be cancelled and the applicant be appointed on the post as he scored more marks than the respondent no.3.

4. The respondent nos. 1&2 have filed their reply which is at page no.96 and have justified their action. It is contention of the respondent nos.1&2 that when the applicant filled the form he has specifically mentioned that he was applying under the Open category and the applicant mentioned his caste as Open. It is contention of the respondents that in Form Annex-A-3 the applicant did not mention his caste that he was OBC candidate and therefore as the respondent no.3 was OBC candidate, he was selected and there is

no illegality in the selection. Thus it is submitted that there is no substance in the application and it is liable to be dismissed.

5. We have perused the advertisement. In the advertisement it was specifically shown that total three posts of the Artist were vacant, one post was for Open category and two posts were reserved for S.C. We have also perused the online application at Annex-A-3 submitted by the applicant. The relevant information is as under –

*“Constitutional Reservation (Caste Recognized in Maharashtra State): **Open***

*Name of Caste : **Open***

*Non-Creamy Layer Certificate : **No**”*

6. After reading this application Annex-A-3 submitted by the applicant, it seems that the applicant applied in Open category and he has mentioned Caste as “Open”. The applicant could have mentioned in the application his Caste and whether he was OBC, but it was not done. As per condition no.5.3 in the guidelines i.e. procedure for recruitment to Technical and Paramedical posts Class-II, the candidate desirous of claiming the constitutional and / or specified reservation must have claimed the same in the original online application form, failing which the claim will not be entertained subsequently.

7. As per the condition no.5.3 it was necessary for the applicant to mention his Caste in the online application and whether

he was belonging to OBC, but the applicant avoided to do so. It is contention of the applicant that when the advertisement was published, there was no post available for OBC, therefore, he applied under the Open quota. In this regard we would like to point out that had applicant mentioned his caste in the online application, then also the respondents were bound to consider him as candidate of Open category though he was belonging to OBC category. Secondly, the applicant has specifically mentioned that he was not possessing non creamy layer certificate. As per Annex-A-3 clause-6 it was cleared that a candidate belonging to creamy layer amongst the categories C to J must note that the provision of reservation is not applicable to him/ her. A candidate claiming benefit of reservation under the categories C to J above, will be required to produce non creamy layer certificate as specified in the G.R. No.CBC/10/2008/ pra. kra. 697/Mavak/ dated 3/1/2009. It is pertinent to note that the OBC category was covered under clauses C to J, therefore it was must for the applicant to mention in the online application form that he was possessing non creamy layer certificate. After considering this aspect of the matter, it seems that the applicant specifically mentioned in his application that he was not OBC candidate. As the applicant did not mention in his online application that he was of OBC (caste) and he mentioned that he was not holding non creamy layer certificate, therefore, apparently it does not lie in the mouth of the applicant, that

there is a illegality committed by the respondent in selecting the respondent no.3.

8. In view of these circumstances, we do not see any merit in this application. Hence, the O.A. is dismissed. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 08/08/2019.

*dnk

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 13/08/2019.

Uploaded on : 13/08/2019.