

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 619 / 2015 (D.B.)**

Dr. Varsha D/o Balkrishna Nagdeve,  
(now married Dr. Varsha Shashir Wanjare),  
Aged about 44 Yrs., Occupation : Service,  
R/o Plot No. 221, Kukde Layout, Rameshwari  
Road, Nagpur:- 440 027.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of Medical Education & Drugs,  
Mantralaya, Mumbai- 32,
- 2) The Director of Medical Education and Research,  
Government Dental College and Hospital Building,  
4<sup>th</sup> Floor, St. Georges Hospital Compound,  
Near CST, Mumbai.
- 3) Maharashtra Public Service Commission,  
Cooperage Telephone Exchange Building,  
5<sup>th</sup>, 7<sup>th</sup> & 8<sup>th</sup> Floor, Maharshi Karve Road,  
Cooperage, Mumbai-400 021.
- 4) Dr. Deepali Madhukar Kulkarni,  
Occ. Service, C/o Dean, Department of Microbiology,  
Swami Ramanand Tirtha, Rural Medical College,  
Ambejogai, Distt. Beed.

**Respondents**

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**Shri N.R.Saboo, the Id. Advocate for the applicant.**

**Shri H.K.Pande, the Id. P.O. for the respondent nos. 1 to 3.**

**Shri A.Chawre, the Id. counsel for the respondent no. 4.**

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**Coram :-** Hon'ble Shri Shree Bhagwan, Vice Chairman.  
Hon'ble Shri A.D.Karanjkar, Member (J).

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**JUDGMENT**

**PER : MEMBER (J)**

**Judgment is reserved on 02<sup>nd</sup> August 2019.**

**Judgment is pronounced on 14<sup>th</sup> August 2019.**

Heard Shri N.R.Saboo, Id. counsel for the applicant, Shri H.K.Pande, Id. P.O. for the respondent nos. 1 to 3 and Shri A.Chawre, the Id. counsel for the respondent no. 4.

2. The facts of the case are as below –

That the respondent no.3 MPSC has published advertisement no.169/2014, dated 3<sup>rd</sup> July,2014 for filling the post of Associate Professor in Microbiology. As per this advertisement 5 posts were available for Open, 2 posts for Open (female) and 1 post Open (Sport). The applicant is serving as lecturer in Government Medical College, Nagpur since 2001.The applicant was eligible for the post of Associate Professor in Microbiology, therefore, she applied for the post.

3. In response to above advertisement the applicant filled form for the said post and paid fee Rs.315/- as SC female candidate (P-82). The respondent No.4 also applied for the same post. It is contention of the applicant that the respondent No.3 published merit list dt/19-9-2015, in the merit list the applicant was placed at sr. No.9 and the respondent No.4 at sr. No.10, both had scored equal marks, but considering all credentials of the applicant she was placed above the respondent No.4.

4. The MPSC could not get open female candidates to fill 2 posts and 1 post reserved for open (sport). The MPSC published result on 9<sup>th</sup> September,2015 (P-47). 5 candidates were recommended from merit to fill 5 open posts and one Mr. Pankaj Arunrao Joshi who scored 54 was recommended to fill one post reserved fort Open (female). It is case of the applicant that as no open female candidate were available to fill the two posts reserved for open (female), therefore, these two posts were required to be filled by appointing open general candidate as per the merit. It is case of the applicant that without considering this aspect the respondent No.3 recommended name of the respondent No.4 though she was not holding NCL certificate. It is contended that this action of the respondent No.3 is in violation of law. The contentions of the learned counsel for the applicant is that as the applicant was above in ranking than the respondent no.4, so applicant's name should have been recommended by the MPSC in place of respondent no.4

5. The learned counsel for the applicant has placed reliance on the judgment in case of *Tejaswini Galande v Chairman MPSC : 2019 SCC Online Bom 248*, judgment in *O.A. No.321/2015 Dr. Bharatsing Deorao Rathod v State of Maharashtra and others decided on 7-4-2016*, *O.A. No.529/2017 Ashok Dnanoba Dhakne v The State of Maharashtra decided on 28-9-2017* and judgment in *W.P. No.10396/2016*. It is contention of the applicant that as per the legal position laid down the above judgments the action of the respondent No.3 is illegal, it be set aside and name of the applicant be recommended.

6. It is contention of the respondents that on the basis of the circulars issued by the government in year 1999 and circular dt/ 13 August 2014, two posts reserved for open (female) by horizontal reservation would go to only to the candidates who are not backward. It is submitted that on the basis of these circulars it is specifically contended by the respondents that as the applicant applied under S.C. category; therefore, she can be considered in S.C. general, S.C. (female) and open general categories, but she can't be considered for posts reserved for open (female) category.

7. In order to consider the merits of the submissions advanced by both sides we have gone through the judgments on which reliance is placed by the applicant. The learned P.O. has placed reliance on the judgment in case of *Mrs. Madhura Subodh Chavan v The State of Maharashtra and others O.A. No.172/2017 decided on 14-6-2019 by M.A.T. Mumbai bench*. This O.A. was decided on the basis of the law laid down in *W.P. No. 10103 OF 2015 Rajani Shaileshkumar Khobragade ... vs The State Of Maharashtra And decided on 31 March, 2017*. In case of *Rajani Khobragade* the vires of circular dtd. 13 August 2014 was challenged and the challenge was turned down by the Hon'ble High Court after examining all judgments in the field. The observations made in para 25, 26 and 27 are very important, which are as under.

*"25. In a case of Smt. Kanchan Vishwanath Jagtap Vs. Maharashtra Administrative Tribunal and another in Writ Petition No. 1925 of 2014 with other connected writ petitions decided on 16th December, 2015, this Court was dealing with a case of general reservation and not compartmentalized reservation. In the said case the Court was dealing with the matter, wherein there was general reservation of women and not compartmentalized reservation. In a case of Asha D/o Ramnath Gholap Vs. The President District*

*Selection Committee, Beed in Writ Petition No. 3929 of 2015 decided on 30th March, 2016, the Division Bench of this Court was concerned with the reservation for woman as a whole and not compartmentalized reservation for 32 wp 10103.15 women. This Court held that, a female candidate from the reserved category having more marks can claim her right for the post meant for female from open.*

26. *The circular assailed before this Court is based on the observation of the Apex Court in a case of Anil Kumar Gupta and others Vs. State of U. P. and others referred to supra. The circular dated 13.08.2014 is in fact explanation to circular dated 16.03.1999. It deals with three stages. One of the clause in the said circular which is in vernacular language reads as under :*

*v) iFke Vlik % [kY; k i Dxlznu I ekarj vkj {k.kkph i nsHkjrkuk} xqkoRrB; k fud"kkud kj [kY; k i Dxlzhy menokjkph fuoM ; knh djkoh (; k fBdk.kh [kY; k i Dxlzr xqkoRrB; k vk/kkjkoj ekxkl oxh; menokjkph I ekos'k gkby) - ; k ; knhr I ekarj vkj {k.kkud kj vko' ; d [kY; k i Dxlz; k menokjkph I ; k i ; klr vl sy rj dkskrkgh i z u mnHko.kkj ukgh vkf.k R; kud kj i nsHkjkoR- tj ; k ; knhr I ekarj vkj {k.kkud kj vko' ; d [kY; k i Dxlz; k menokjkph I ; k i ; klr ul sy rj [kY; k i Dxlz kbh jk [kko I ekarj vkj {k.kkph i nsHkj. ; kdjhrk I nj ; knhrhy vko' ; d i ; klr I ; brds'koVpsmenokj oxGuu ik= menokjka sdh doG [kY; k i Dxlzpp vko' ; d i ; klr I ; brds'menokj ?ksksvko' ; d vkg*

The aforesaid circular is in tune with the judgment of the Apex Court in a case of Anil Kumar Gupta and others Vs. State of U. P. and others referred to supra and cannot be said to 33 wp 10103.15 be illegal.

27. Considering the above, the challenge to judgment of the Tribunal impugned in the present petition, so also the circular dated 13.08.2014 fails. The writ petition is dismissed, however, with no order as to costs."

8. It seems that the judgment in case of *Rajani Shaileshkumar Khobragade ... vs The State Of Maharashtra* was not brought to the notice of the Hon'ble High Court when case of *Tejaswini Galande* was decided, similarly the circular dt/13 August 2014 was not brought to the notice. In case of *Rajani Shaileshkumar Khobragade ... vs The State Of Maharashtra* the Hon'ble Division Bench examined the constitutional validity of the circular dt/13 August 2014 in view of the legal position explained in case of *Anil Kumar Gupta & others v State of U.P. (1995)5 SCC 173*, therefore, the situation before us is governed

by the circular Dt/13-August 2014 which is held valid and binding. Secondly in case of Tejaswini Galande in para 10 the Hon'ble High Court has observed that

*"However, the facts in the present case are totally different. In the present case, there is no compartmentalize reservation. Out of the six posts available, two are reserved for women. No doubt that it would have been more appropriate that in the light of the observations of Their Lordships in the case of Anil Kumar Gupta v State of U.P. reported in (1995)5 SCC 173, the State ought to have provided reservation for women in particular vertical reservation category. However that has not been done. In the advertisement two posts are reserved for women category."*

9. After considering the facts of the case in hand as per the advertisement 5 posts were for open category + 2 posts for open (female) and 1 post for open (sport), therefore, this is a case of compartmentalized reservation, therefore, it is governed by the ratio in case of *Rajani Shaileshkumar Khobragade ... vs The State Of Maharashtra*.

10. In this situation, we are of the firm view that though the applicant was considered as Open General candidate, but it would not change her original status which was SC, consequently the applicant cannot claim the seat reserved by horizontal reservation for open female or open sport candidate. In view of this discussion, we do not see any merit in the present matter. Hence, the following order –

**ORDER**

The O.A. stands dismissed. No order as to costs.

**(Shri A.D.Karanjkar)**  
**Member (J)**

**(Shri Shree Bhagwan)**  
**Vice Chairman**

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

Name of Steno : Akhilesh P. Srivastava.

Court Name : Court of Hon'ble Vice Chairman & Hon'ble Member (J).

Judgment signed on : 14/08/2019.  
and pronounced on

Uploaded on : 15/08/2019.

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