

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 62 of 2010 (D.B.)**

Archana Shivcharan Bhaisare,
Aged about 40 years,
Occupation : Nil,
R/o C/o Madan Bajirao Chaudhari,
At Shahar Ward, Post Adyal, Tahsil Paoni,
District Bhandara.

Applicant.

Versus

- 1) The State of Maharashtra,
through the Secretary (Relief and Rehabilitation),
Revenue & Forest Department,
Mantralaya, Mumbai-400 032.
- 2) The Collector, Bhandara.
- 3) Dy. Director of Land Records,
Nagpur Region, Nagpur.

Respondents.

Shri S.V. Bhutada, Advocate for the applicant.

Shri A.M. Khadatkar, learned P.O. for the respondents.

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

JUDGMENT

PER : Member (A).

(Delivered on this 28th day of August,2018)

Heard Ms. Bhutada, learned counsel holding for Shri S.V. Bhutada, learned counsel for the applicant and Shri A.M .Khadatkar, learned P.O. for the respondents.

2. The applicant Archana Shivcharan Bhaisare is a Project Affected Person (PAP). She is a member of family which was affected on account of Salewada lake project in which their land admeasuring 0.59 hectare out of Survey no.176/6 was acquired. Her name was duly included in the list of PAPs maintained by the office of the respondent no.2, i.e., the Collector, Bhandara. The applicant belongs to Scheduled Caste (SC) category. She is educated upto B.Ed. and she has also passed MS-CIT examination. She is conversant with English and Marathi typing. She has also some experience of teaching.

3. The applicant submits that the respondent no.1 has issued a Circular dated 18th July,2008 (Annex-A-3,P-22) whereby the mode of making appointment from the category of PAPs has been prescribed. The respondent no.3, i.e., the Dy. Director of Land Records, Nagpur wrote a letter dated 17th July,2008 to the respondent no.2, i.e., the Collector, Bhandara in connection with filling up posts in his Department in Group-C and Group-D category. Similarly, the respondent no.3 wrote another letter dated 30th July,2008 addressed to the respondent no.2 informing about

issuance of advertisement to fill up the post of Clerks, Typists and Peons. By the said letter, the respondent no.3 appears to have called for a list of eligible and suitable candidates from amongst the PAPs since some of the posts were reserved for such category. The office of respondent no.2 wrote to the respondent on 6th August,2008 and thereby the respondent no.2 sent the names of the candidates of PAP category. A fresh list was submitted to the respondent no.3 by the respondent no.2 on 12th September,2008. The selection process qua the list submitted by the respondent no.2 was put on hold by the respondent no.3 for a period of about 6 months. The respondent no.3 thereafter appears to have written a letter dated 7th February,2009 to the respondent no.2. In response thereto, according to the applicant she was selected, but she did not receive any appointment order for considerable period. Being aggrieved on the part of the respondents not issuing appointment order in her favour, she approached to this Tribunal by filing this O.A. She prayed that the respondents be directed to issue appointment order for the post of Clerk under the Project Affected Persons (PAP) category in her favour w.e.f. February 2009 along with all consequential benefits including seniority, back wages etc.

4. The respondent nos.1 and 3 by filing reply-affidavit justified the decision taken by the respondents and submitted that the applicant's agriculture land was acquired for "Salewada Tank" by

authorised acquiring body and further that the applicant's name was included in the District Project Affected list which was prepared by the District Collector Bhandara and project affected certificate was also issued to the applicant from the competent authority. It is submitted that for direct recruitment in the department the applications were invited for 271 vacant posts in Class-II Clerk-cum-Surveyor cadre in Nagpur Region, among those 22 posts were reserved for project affected candidates. All those posts to be recruited as per guidelines mentioned in G.R. No.1008/pra.kra.28/08/(part-2)/16-A, Mantralaya, Mumbai, dated 18/07/2008 (Annex-R-1). According to the Project Affected candidate list was invited from all district collectors and concerned rehabilitation officers respectively then this Department prepared a regional consolidate projected affected candidates list as per Annex-R-2. In this connection it is submitted that the District Rehabilitation Officer has status on district level and the office of respondent no.3 having regional status. Hence the division office maintains the category wise reservation divisionally and therefore regional project affected candidates consolidate list was prepared by the department in the consolidate list the applicant has first position as a senior most and as per the regional project affected gradation list 22 candidates were selected including the applicant as per Annex-R-3. The said list was sent to the higher authority by the office of respondent no.3 for getting necessary administrative approval and

ideal guidelines by letter dated 23/09/2009 (Annex-R-4) and therefore the higher authority, i.e., the Settlement Commissioner and Director of record (MS),Pune also sent their own proposal to respondent no.1 by letter dated 12/01/2009 with reference to the letter dated 23/09/2009 issued by respondent no.3. But in the meanwhile unfortunately the Hon'ble High Court (Full Bench) of Judicature at Bombay Bench at Aurangabad decided their verdict on 9/7/2009 and accordingly issued general guidelines with connection to appointment of project affect candidates that the "Appointment of project affected candidates cannot be executed without conducting competitive examinations and service entrance qualifying test also for the sake of their meritorious position". As per the decision of Hon'ble High Court, the Government issued a G.R. No.1009/pra.kra.202/09/16-A, Mantralaya, Mumbai, dated 27th October,2009 (Annex-A-6,P-45) and revoked their Circular dated 18/07/2008. Therefore the applicant is not liable to be appointed on the said post and hence there is no substance and merit in the O.A. and the same is liable to be rejected.

5. The respondent no.2 also justified the decision taken by the respondents by filing reply-affidavit and submitted that the G.R. dated 18/07/2008 referred in the O.A. has already been superseded by another G.R. dated 27/10/2009 issued by the Government of Maharashtra in view of the latest Judgment of Hon'ble High Court, Bench at Aurangabad in Writ Petition No.7472/2007 and therefore

since the G.R. dated 18/07/2008 about appointment of project affected persons has already been superseded vide G.R. dated 27/10/2009, a reference to such outdated G.R. dated 18/07/2008 is irrelevant and therefore there is no substance and merit in the present O.A. and hence it is liable to be dismissed.

6. The learned P.O. has also placed reliance on the Judgment reported in the case of **Rajendra Pandurang Pagare & Ano. Vs. State of Maharashtra & Ors., 2009 (4) Mh.L.J.,961** in which it is held that the post reserved for project affected persons must be advertised to enable all the eligible candidates from that category to submit application to compete with others in their category and they cannot be appointed without advertising the posts ignoring their qualifications and merit.

7. We have perused the various documents placed on record, we have also gone through the arguments putforth by the learned counsel for the applicant and the learned P.O. It is material to note that though the applicant's name was included in the district project affected persons' list and she was selected without taken any examination or interview as per the guidelines of G.R. dated 18/07/2008 under reserved category for project affected persons, but in the meantime the Hon'ble High Court (Full Bench) Bench at Aurangabad has passed order on 09/07/2009 and issued general

guidelines regarding project affected persons category that the appointment of project affected candidates cannot execute without conducting competitive examinations and service entrance qualifying test also for the sake of their meritorious position and therefore as per the guidelines of Hon'ble High Court the Government has issued another G.R. dated 27/10/2009 and earlier G.R. dated 18/07/2008 has been superseded and therefore the applicant cannot claim for appointment as per earlier G.R. dated 18/07/2008. Under such circumstances, we find no illegality on the part of the respondents. In view of the aforesaid discussion, we find that there is no merits in the O.A. Hence, the following order :-

ORDER

The O.A. stands dismissed with no order as to costs.

**(Shree Bhagwan)
Member(A).**

**(J.D. Kulkarni)
Vice-Chairman (J).**

Dated :- 28/08/2018.

dnk.