

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 423/2021(D.B.)

Smt Roshani Bihari Janbandhu,
Age 34 years Occupation- Nil,
R/o. C/o-Pritam. C.Nandeshwar. Flat No.f-5,
Shanti Apartment, Sarswati Vihar, Beltarodi Road.
Rama Nagar, Nagpur-440027.

Applicant.

Versus

- 1) Government of Maharashtra,
Through Secretary, Ministry of Agriculture,
Secretariat, Mumbai.
- 2) Divisional Joint Director of Agriculture,
Nagpur Division Nagpur,
Administrative Building no.2.
A-Wing 7th Floor Civil Lines,
Nagpur. 440001.

Respondents

Shri Tejas Rahul, Ld. Counsel for the applicant.
Shri A.P.Potnis, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Shree Bhagwan, Vice-Chairman and
Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 15th July 2022.

JUDGMENT**Per :Member (I).****Judgment is reserved on 11th July, 2022.****Judgment is pronounced on 15th July, 2022.**

Heard Shri Tejas Rahul, learned counsel for the applicant and Shri A.P.Potnis, learned P.O. for the respondents.

2. Case of the applicant is as follows.

In response to the advertisement dated 28.12.2015 (Annexure A-1) the applicant who belongs to the category of Scheduled Caste (F) applied for the post of Krushi Sewak in the respondent department. In qualifying test she secured 94 marks (Annexure A-2). There were 66 vacancies in Open category out of which 20 were earmarked for candidates belonging to Open (F) category by way of Horizontal reservation. As against 66 vacancies for Open category select list of 57 candidates (Annexure A-3) was published which included 20 female candidates belonging to Open category. In this select list candidates at Sr.Nos.51, 52 & 53 had secured 92 marks and candidates at Sr.Nos.55 & 56 had secured 91 marks. These five candidates belong to Open (F) category. The applicant was not selected though she had secured more marks than candidates at Sr.Nos.51, 52, 53, 55 & 56 only because she belongs to the category of

Scheduled Caste (F). This anomalous situation arose because of G.R. dated 13.08.2014. This G.R. has since been amended by G.R. dated 19.12.2018 (Annexure A-4). In view of the amended G.R. select list (Annexure A-3) ought to have been rectified so as to bring it in tune with the same. Instead of rectifying this select list the respondents proceeded to issue advertisement dated 03.01.2019. Examination was held pursuant thereto and select list (Annexure A-5) is published. Depriving the applicant of her crystalized right to get appointed to the post by virtue of securing higher marks is clearly opposed to settled legal position. On coming to know about this injustice the applicant approached respondent no.2. She was orally assured that select list (Annexure A-3) would be duly rectified. However, this was not done. From March, 2020 there was Covid-19 Pandemic. Legality of G.R. dated 13.08.2014 was challenged and pending adjudication before MAT. After exclusion of this period it can be seen that instant application is well within limitation. Hence, this application for following reliefs-

- (i) to quash and set aside the open selection list of Krushi Sewak, 2015-16 (Annexure A-3)***
- (ii) to issue direction to the respondent to modify the open selection list and include the name of applicant in the open selection list of Krushi Sewak 2015-16***

after the serial number 50, and issue appointment order accordingly.

3. Reply of respondents 1 and 2 is at pp.36 to 39. They have averred as follows-

- 1) Those who were aggrieved by the selection list of 2015-2016 had approached the Hon'ble High Court and Hon'ble Maharashtra Administrative Tribunal at that time. The applicant was not party to any of the litigation, nor the applicant has forwarded any representation or request to the Respondents showing her objection to the selection list 2015-2016. Therefore, it is crystal clear that the applicant has accepted the select list of 2015-2016 without any objection.*
- 2) The selection list of 2015-2016 was approved by the Hon'ble Maharashtra Administrative Tribunal, Mumbai while deciding O.A. No.134, 318 and 485 of 2017 vide its order dated 10.08.2017.*
- 3) Circular dated 13.08.2014 was applicable to the selection list of 2015-2016. The selection list of 2015-2016 was prepared according to said circular and rules prevailing at that time. The said circular was modified by Government on 19.12.2018. Till 19.12.2018 the selection procedure for 2015-2016 was over and therefore, the said modified circular could not be applied to it, retrospectively. In the*

said circular, it is specifically mentioned that, the modified circular shall come into force after its publication date. Therefore there arises no question of applying modified circular dated 19.12.2018 retrospectively.

4. Annexure R-1 is copy of common judgment dated 10.08.2017 passed by Principal Bench of MAT in O.A.Nos.134, 358 & 485/2017. In these O.As. G.R. dated 17.03.2017 cancelling the entire selection process was quashed and set aside.

5. It was submitted by learned Advocate Shri Tejas Rahul for the applicant that in view of ratio laid down in "*Saurav Yadav and Others Vs. State of Uttar Pradesh & Others (Judgment dated 18.12.2020 delivered by Full Bench of Hon'ble Supreme Court in SLP (Civil) No. 23223/2018 & Other connected matters)*" the applicant ought to have been selected on merit in preference to less meritorious candidates from Open (F) category. In this case it is held-

Thus, all the meritorious candidates, whether belonging to the reserved category or unreserved category, will be covered by the category, irrespective of their caste, community or tribe where merit alone will be taken into account, while implementing

vertical reservation as well as horizontal reservation within the same.

Any selection which results in candidates getting selected against Open/General category with less merit than the other available candidates will certainly be opposed to principles of equality. There can be special dispensation when it comes to candidates being considered against seats or quota meant for reserved categories and in theory it is possible that a more meritorious candidate coming from Open/General category may not get selected. But the converse can never be true and will be opposed to the very basic principles which have all the while been accepted by this Court. Any view or process of interpretation which will lead to incongruity as highlighted earlier, must be rejected.

The filling up of the unfilled horizontal reservation by the candidates from the respective vertical reservation is in accordance with the policy of the Government and the same cannot be faulted with."

In view of these clear decisions, it is too late in the day for the respondent state to contend that women candidates who are entitled to benefit of social category reservations, cannot fill open category vacancies. The said view is starkly exposed as misconceived, because it would result in such women candidates with less merit (in the open category) being selected, and those with more merit than such

selected candidates, (in the social/vertical reservation category) being left out of selection.

I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid "slots", where a candidate's merit, which otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence would be, if the state's argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. The open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him.

Aforequoted observations support contention of the applicant that she ought to have been selected on the strength of her merit alone notwithstanding the fact that she belongs to Scheduled Caste (F) category.

6. However, question of limitation will have to be considered. Instant original application is filed 07.06.2021. In this application the applicant is challenging selection list for the year 2015-2016. For the first time the applicant raised objection to said list by making

representation dated 17.05.2021 (Annexure A-6) to respondent no.2. She did not join the applicants who had approached this Tribunal in the aforementioned batch of original applications. In this batch common judgment was delivered on 10.08.2017. By this common judgment validity of selection process of 2015-2016 was upheld and G.R. dated 17.03.2017 which was issued cancelling this selection process was quashed and set aside.

7. Though the applicant has attempted to show that this O.A. is within limitation since period of Covid-19 Pandemic as well as the period during which validity of G.R. dated 13.08.2014 was pending adjudication before this Tribunal and Bombay High Court will have to be excluded for counting limitation, we find no merit in this submission. The period of limitation of one year had expired long before onset of Covid-19 Pandemic. Clearly there are laches on the part of the applicant and the O.A. is barred by limitation prescribed in Section 21 of the Administration Tribunals Act.

8. There is one more hurdle in the way of the applicant i.e. non-joinder of necessary parties. It is her contention that candidates at Sr.Nos.51, 52, 53, 55 & 56 in select list (Annexure A-3) were less meritorious than her. This being one of the contentions these candidates ought to have been impleaded as party respondents.

9. Thus, both the above referred flaws viz limitation and non-joinder of necessary parties shall be fatal. For these reasons, application is dismissed with no order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated – 15/07/2022

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

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman &
Court of Hon'ble Member (J) .
Judgment signed on : 15/07/2022.
and pronounced on
Uploaded on : 15/07/2022.