

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 759 of 2023**  
**WITH CIVIL APPLICATION No.422 of 2023 (D.B.)**

Vaishali Mahadeo Bucche,  
aged about 31 years, Occupation: Service (Security Inspector),  
R/o C/o Nitin Bucche, Beghar road, Sherki lay out, Bhamti,  
Tah. Ballarpur, Dist. Chandarpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through it's Principle Secretary, Industry, Energy & Labour  
Department, Mantralaya, Mumbai-32.
- 2) The Secretary,  
Maharashtra Public Service Commission,  
Kuprej Telephone Nigam Building,  
Maharishi Karve Marge, Mumbai 01

**Respondents.**

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**Shri S.N. Gaikwad, Advocate for the applicant.**  
**Shri M.I. Khan, learned P.O. for respondents.**

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**Coram :- Hon'ble Shri Justice M.G. Giratkar,  
Vice Chairman.**

**Dated :- 05/09/2023.**

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**J U D G M E N T**

Heard Shri S.N. Gaikwad, learned counsel for the applicant  
and Shri M.I. Khan, learned P.O. for the respondents.

2. The regular Division Bench is not available. The Hon'ble  
Chairperson, M.A.T., Principal Bench, Mumbai issued Circular  
No.MAT/MUM/JUD/469/2023,dated 24/04/2023. As per the direction of  
Hon'ble Chairperson, if both the parties have consented for final disposal,  
then regular matter pending before the Division Bench can be disposed off

finally. The matter is heard and decided finally with the consent of learned counsel for both the parties.

3. The case of the applicant in short is as under –

The applicant applied for the post of Assistant Director, Industrial Security and Health (Group-B) as per the advertisement dated 25/02/2022. The applicant applied for the said post in Open (General) Category. As per the advertisement, 45 posts are to be filled from different categories. 6 posts are reserved for S.C. category, 3 posts are reserved for S.T. category, 2 posts are reserved for V.J. (A) category, 1 post is reserved for N.T. (B) category, 2 posts are reserved for N.T. (C) category, 1 post is reserved for N.T. (D) category, 1 post is reserved for S.B.C. category, 5 posts are reserved for EWS category, 9 posts are reserved for O.B.C. category and 15 posts are reserved for Open category. Out of 15 posts, 5 posts are reserved for Open (female) reserved category, 1 post is reserved for sport category and 9 posts are for Open (General) category. The applicant could not secure cut off marks in Open (General) category, therefore, the applicant is seeking that she should be appointed in Open (female) reserved category.

4. As per the submission of the applicant, she has secured cut off marks of 107.50 and therefore she may be appointed for the said post. The applicant applied for the post in Open (General) Category. The applicant is not eligible to be posted in Open (General) Category, therefore, she is claiming that she should be posted in Open (female) reserved category.

5. During the course of submission, the learned counsel for applicant Shri S.N. Gaikwad has pointed out the Government G.R. dated 04/05/2023. As per this G.R., production of Non-creamy-layer Certificate is not necessary for Open (female) category.

6. The learned counsel for the applicant has submitted that in view of this G.R., the applicant is entitled to be considered in Open (female) reserved category.

7. Heard Shri M.I. Khan, learned P.O. for the respondents. He has pointed out the order passed by this Tribunal in O.A.No.874/2023, dated 22/08/2023. The learned P.O. has submitted that the applicant has applied in Open (General) Category and therefore she cannot claim that she should be appointed in Open (female) reserved category. He has pointed out the Judgment of Hon'ble Supreme Court in the case of **Saurav Yadav and others Vs. State of Uttar Pradesh and others (2021) 4 SCC,542.**

8. The advertisement is very clear. The copy of advertisement is placed on record. As per the Clause no.5.4 of the advertisement, there is a condition to produce Non-creamy-layer Certificate. In the form submitted by the applicant, she has applied in Open (General) Category. She has specifically stated that she does not belong to Non-creamy-layer category. It is a condition in the form itself that if she is not in Non-creamy-layer category, she will not be considered for female reservation. It is also in the form that she will not be considered for reserved category post, if she do

not have Non-creamy-layer certificate. Admittedly, the applicant is not having Non-creamy-layer certificate. The G.R. pointed out by the side of applicant is very clear. It is applicable to the Open category and not the reserved category. As per the advertisement, the Open category is different and the reserved category for Open (female) is different. The applicant is claiming that she should be considered in Open (female) reserved category.

9. The Hon'ble Supreme Court in the case of **Saurav Yadav and others Vs. State of Uttar Pradesh and others** (cited supra) has held that the candidate who applied in open category cannot claim in reserved category, but the candidate who applied in reserved category, on the basis of merit he can claim in open category. If the candidate in reserved category obtained more marks than the candidate of open category, then he/she should be appointed in Open category as per the merit, but open category candidate cannot claim on the basis of merit to be appointed in a reserved category. The applicant has applied in Open (General) Category. Now she cannot claim that she should be appointed in reserved category.

10. As per the submission of the applicant, she has secured 107.50 marks, i.e., more than cut off marks of Open (female) reserved category. Therefore, it is clear that one of the candidates may likely to be affected, if the prayer of applicant is allowed. In such situation, it was the duty of the applicant to make some of the candidates as a party/

respondents so that they should be heard before passing any order against them.

11. The Hon'ble Supreme Court in the case of **Jose Dhanapaul Vs. Thomas and Others (1996) 3 SCC,587** has held that "Cancellation of the appointment of a person by the State Administrative Tribunal in a proceeding in which that person was not impleaded as a party, held, amounted to grave error of law. The persons, who will be affected by the order, are necessary party. The Hon'ble Supreme Court in the case of **J.S. Yadav Vs. State of Uttar Pradesh and Ano. (2011) 6 SCC,570** has held that *"in service jurisprudence if an unsuccessful candidate challenges selection process, he is bound to implead at least some of successful candidates in representative capacity-- in case, services of a person are terminated and another person is appointed at his place, in order to get relief, person appointed at his place is the necessary party for even if petitioner-plaintiff succeeds, it may not be possible for court to issue direction to accommodate petitioner without removing person who filled up the post manned/ sought by petitioner- plaintiff."*

12. In the present matter, some of the candidates / one of the candidates, is likely to be affected if the prayer of the applicant is allowed, then in such situation that affected person is a necessary party in this O.A. Without hearing likely to be affected persons, this Tribunal cannot pass any order in view of the abovesaid decision of the Hon'ble Supreme Court.

13. In view of the Judgment of the Hon'ble Supreme Court in the case of ***Saurav Yadav and others Vs. State of Uttar Pradesh and others*** (*cited supra*), the open category person cannot claim that she should be appointed in reserved category. The Hon'ble Supreme Court in the said Judgment has held that as per merit, the reserved category candidate can claim the post in Open category. Open category is to be filled according to merit and after filling the post of open category as per the merit, then thereafter reserved category are to be filled. The applicant has applied in Open (General ) category and therefore she cannot claim that she should be appointed in the reserved category. Moreover, the applicant has not made affected candidates as a party respondents in this O.A. Hence, the following order—

**ORDER**

(i) The O.A. is dismissed.

(ii) The C.A. is also dismissed.

(iii) No order as to costs.

**Dated** :- 05/09/2023.

dnk.

**(Justice M.G. Giratkar)**  
**Vice Chairman.**

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 Vice Chairman.

Judgment signed on : 05/09/2023.\*