MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 807/2015 (D.B.)

Dr. (Ms.) Kanak Subhash Rehpade,
Now Dr. (Mrs.) Kanak Sameer Wanwey,
Age 26 Yrs., Occupation:-Housewife and R/o
C/o Sameer Jagdish Wanwey, Plot No. 65A,
Rahtekar Wadi, Behind Lokanchi Shala,
Tulsibagh, Nagpur

Applicant.

Versus

1) State of Maharashtra
through its Secretary,
Department of Agriculture & Animal Husbandry,
Dairy & Fishery Development,
Secretariat, Bombay-400 032.

2) Maharashtra Public Service Commission
Having its Head Office at 5, 7 & 8 Floor,
Cooprej Telephone Exchange Building,
Maharshi Karve Road, Cooprej, Bombay
400021 and also having its office at Bank of
India Building, 3rd Floor, Mahatma Gandhi Marg,
Hutatma Square, Fort, Bombay 400 001 through
its Chairman/ Secretary.

Respondents

Shri S.Borkar, the ld. Advocate for the applicant.

Shri V.A.Kulkarni, the ld. P.O. for the respondents.

Coram :- **Hon'ble Shri Shree Bhagwan, Member (A) &**

Hon'ble Shri A.D.Karanjkar, Member (J).

Dated :- 14/12/2018.

JUDGMENT **PER : MEMBER (A)**

(Delivered on this 14th day of December, 2018)

Heard Shri S.Borkar, the ld. counsel for the applicant and Shri V.A.Kulkarni, the ld. P.O. for the Respondents.

2. In this O.A., the applicant is “Kunbi” by caste which is recognized as OBC. She completed her 4½ yrs. Bachelor’s degree in Veterinary College, Maharashtra Animal & Fishery Sciences University, Nagpur – MAFSU}. She got admission for her Master’s degree at College of Veterinary Science and Animal Husbandry {Nanaji Deshmukh Veterinay Science University, Jabalpur- Madhya Pradesh} and completed the same during academic session 2012-2014.

3. Maharashtra Public Service Commission published advertisement no. 35/2014 to fill the various posts and vacancies were shown in following tables which is at P.B., Pg. No. 35 (Annexure-A-3):-

,d.A inl[;k		vjk[Aho	vu-tkrh	vu-tekrh	fo-tk-¼v½	HA-t-¼c½	HA-t-¼M½	b-ek-o-
,d.A in 372	lolk/Akj.A	172	21	15+25	7+4	3	1	5
	efgyk*	79	10	7	3	1	—	2
	[AGkM	13	2	1	1	—	—	—
	,d.A	264	33	48	15	4	1	7
	fodykx	,d.A 372 inkidh 50 in fodykxklkBh vkjf{Ar ¼25 in Jo.A ‘ADrhrhy nk”A o 25 in pyuoyu fo”;d fodykxrk fdok enpk v/Akxok;klkBh vkjf{Ar½ fodykx menokj miyC/A u >kY;kl fodykxklkBh vkjf{Ar vlyyh in [AY;k ioxke/Aufjdr Bo.;kr ;rhy-						

*miyC/A vlY;kl efgyklkBh vkjf{Ar ✓ miyC/A vlY;kl [AGkMlkBh vkjf{Ar vu’A”Akp in

4. The applicant's submitted her application online and it is at P.B., Pg. No. 62. The applicant applied for the post of Live Stock Development Officer, Maharashtra Animal Husbandry Services, Group-A. In the online application form applicant has furnished following information:-

A. In Gender Column - Female.

B. In Category Column - Open.

C. Do you belong to Non-Creamylayer Column – No

D. Exam fees paid Column -Rs. 265/-(prescribed for open category)

The cut-off marks for various categories given by M.P.S.C. is at P.B., Pg. No. 46 (Annexure-A-7):-

MAHARASHTRA PUBLIC SERVICE COMMISSION
LIVE STOCK DEVELOPMENT OFFICER (ADVT. NO. 35/2014)
RECOMMENDATION CUT OFF

CATEGORY	SUB CATEGORY	CUT OFF MARKS
OPEN	GENERAL	115
	FEMALE	51
	SPORTS	--
	AGAINST FEMALE/ SPORTS	108
SC	GENERAL	97
	FEMALE	96
	SPORTS	--
	AGAINST SPORTS	97

ST	GENERAL	104
	FEMALE	41
	SPORTS	--
	AGAINST FEMALE/ SPORTS	61
DT (A)	GENERAL	86
	FEMALE	59
	SPORTS	--
	AGAINST FEMALE/ SPORTS	81
NT (B)	GENERAL	86
	FEMALE	96
NT (D)	GENERAL	114
OBC	GENERAL	113
	FEMALE	108
PH	HEARING IMPAIRMENT	47
	LOCOMOTER DISABILITY OR CEREBRAL PALSY	69

5. In O.A. the applicant has sought relief in para 8 (Pg. No. 13):-

"1. Quash and set aside the decision-act of respondent no. 2 on 19/03/2015 as regard applicant in not recommending her name for post of Livestock Development Officer, Maharashtra Animal Husbandry Service, Group-A from open category

(female-subcategory) in pursuant to advertisement number 35/2014 of 05.02.2014 and allow the Original Application.

2. After setting aside the decision of 19.03.2015 as regard applicant, direct respondent no. 2 to recommend and include her name in recommended list of Livestock Development Officer, Maharashtra Animal Husbandry Service, Group-A from open category (female-subcategory) in pursuant to advertisement number 35/2014 of 05.02.2014 and grant all consequential benefits arising there from.

3. Any other relief deemed fit in facts and circumstances of the case."

6. Applicant has also sought interim relief para no. 9 (Pg. No. 14):-

"1. Direct respondent no. 2 to keep one post of Livestock Development Officer, Maharashtra Animal Husbandry Service, Group-A from open category (female-subcategory) vacant pursuant to advertisement number 35/2014 of 05/02/2014 during pendency of Original Application.

2. Grant ad-interim relief in terms of prayer clause 1.

7. The matter was heard in detailed on 06/12/2018 and it was closed for orders.

8. Based on the facts mentioned in O.A., the ld. Counsel claims that his applicant should have been considered under open female category and as it is not done, therefore, injustice is caused to her. In this regard, the legal position is explained in case of **Ms. Rajani D/o Shailesh Kumar Khobragade Vs. State of Maharashtra & 55 Ors, Judgment delivered on 31/03/2017.**

9. The Hon'ble High Court of Bombay bench at Aurangabad in writ petition no. 10103/2015 in **Ms. Rajani D/o Shailesh Kumar Khobragade Vs. State of Maharashtra & 55 Ors, Judgment delivered on 31/03/2017;** In para no. 26 has observed:-

"The circular assailed before this Court is based on the observation of the Apex Court in a case of **Anil Kumar Gupta & Ors. Vs. State of U.P. & Ors.** referred to supra. The circular No. **,lvkjkgh 1012@i-d-16@ 12@16&v] 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:-

¼v½ iFke VIik & [AY;k ioxkru lekrj vkj{A.Akph in HAjrkuk] x.AoRrP;k fud"Akulkj [AY;k ioxkrhy menokjkph fuoM ;knh djkoh ¼;k fBdk.Ah [AY;k ioxkr x.AoRrP;k vk/Akjkoj ekxkloxh; menokjkpkgh leko'A gkby½ ;k ;knhr lekrj vkj{A.Akulkj vko';d [AY;k ioxkP;k menokjkph l[;k i;kIr vly rj dk.Arkgh i'u mnHAo.Akj ukgh vkf.AR;kulkj in HAjkohr- tj ;k ;knhr lekrj vj{A.Akulkj vko';d [AY;k ioxkP;k menokjkph l[;k i;kIr uly rj [AY;k ioxklkBh jk[Aho lekrj vkj{A.Akph in HAj.;kdjhrk lnj ;knhrhy vko';d i;kIr l[;brd 'AoVp menokj oxGu ik= menokjkidh doG [AY;k ioxkpp vko';d i;kIr l[;brd menokj ?A.A vko';d vkg-

10. While delivering Judgment in O.A.No. 944, 945, 220 of 2017, MAT Bench at Aurangabad, the following observations have been made in para no. 13, 14, 15 & 16:-

"13. It was further observed that while filling the post horizontally reserved category the candidate from that particular category only needs to be taken into consideration and, therefore, the writ petition of the State of Maharashtra was dismissed.

14. The said decision of the Hon'ble High Court was challenged by the State of Maharashtra in the Hon'ble the Supreme Court by way of Special Leave Petition (Civil) no. 15802/2011. The decision was rendered by the Hon'ble Supreme Court on 27/09/2011 in the said S.L.P. As there was delay of 173 days in filing the said S.L.P., application for condonation of delay was also filed. Hon'ble Supreme Court observed that the said delay is not satisfactorily explained, however, on merit of the case, the following observations were made:-

"Even on merits, we are satisfied that the reasons assigned by the Tribunal for issuing a direction for appointment of respondent no. 1 were legally correct and the High Court did not commit any error by declining to interfere with the Tribunal's order.

The Special Leave Petition is, accordingly, dismissed on the ground of delay and also on merits. "

*15. Since the case of **Irfan Mustafa Shaikh** (supra) was regarding compartmentalized horizontal reservation meant for Home Guards as in the present maters we are dealing with the compartmentalized horizontal reservation for women category, both in Open category, the said principle as has been ratified by Hon'ble Supreme Court would be applicable.*

16. The applicants in O.A.No.944 & 945/2017 belong to socially reserved category. They could not have been selected in Open Horizontal Category had they disclosed their caste in the application form. They cannot be allowed to get the benefit indirectly in view of the ratio of Irfan Mustafa Shaikh (supra)."

11. We have perused application of applicant at P.B., Pg. No. 62, the following facts are mentioned:-

A. In Gender Column - Female.

B. In Category Column - Open.

C. Do you belong to Non-Creamylayer Column – No

D. Exam fees paid Column -Rs. 265/-(prescribed for open category)

12. In pursuance of the Judgment of the Hon'ble Apex Court, the Govt. Of Maharashtra has issued Circular No. ,l vkj0gh 1012@i-d-16@12@16&v] fnukd 13-08-2014-

In view of policy decision taken in Circular No. ,l vkj0gh 1012@i-d-16@12@16&v] fnukd 13-08-2014, in open female category a candidate requires following three criteria to be included:-

1. The candidate should be Female.
2. The candidate should be from Open Female Category.
3. The candidate should have Non-creamylayer Certificate.

13. As per the applicant's application on P.B., Pg NO. 62 admittedly Non-Creamylayer Certificate has not been submitted to the M.P.S.C.

14. So, the contentions raised by applicant are contrary to the Judgment of Hon'ble Apex Court in case of **Anil Kumar Gupta Vs. State of U.P. reported in (1995) 5 SCC 173 and against the G.R. No. , l vkj0gh 1012@i-d-16@ 12@16&v] 13/08/2014.**

15. In view of the circumstances discussed above, we are not inclined to grant any relief as mentioned in para nos. 8 & 9 of the O.A. In view of this, the O.A. requires to be dismissed at this stage only. Hence the following order:-

ORDER

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

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

(Shree Bhagwan)
Member (A)

Dated :- 14/12/2018.

aps.