

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.159 OF 2017**

DISTRICT : SATARA

Smt. Sujata Sampat Mane,)
Age 38 years, occ. Advocate,)
R/at: Survey No.151/1, Sankalp Park, Flat No.4,)
Raviwar Peth, Satara)..Applicant

Versus

1. The State of Maharashtra,)
Through the Law & Judiciary Department,)
Mantralaya, Mumbai)

2. The Chairman/Secretary,)
Maharashtra Public Service Commission,)
Bank of India Building, 3rd floor,)
M.G. Road, Mumbai)..Respondents

Shri K.R. Jagdale – Advocate for the Applicant

Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Shri Justice A.H. Joshi, Chairman
Shri P.N. Dixit, Member (A)

RESERVED ON : 26th September, 2018

PRONOUNCED ON : 4th October, 2018

PER : Shri P.N. Dixit, Member (A)

J U D G M E N T

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. The Applicant has prayed to quash the impugned communication dated 15.1.2016 by Respondent no.2.

Admitted facts:

3. The Applicant appeared for selection for the post of Joint Charity Commissioner, State Services, Group 'A' in response to the advertisement dated 25.2.2013 by Respondent no.2. In the written examination the Applicant secured 63 marks out of 100 and was called for interview on 19.3.2014.

4. The Applicant secured 10 marks out of 25 in the interview.

5. After announcement of the results, in response to the representation made by Applicant, Respondent no.2 cancelled the selection of one Mr. Satbhai on 16.10.2014 and the Applicant was informed accordingly on 27.10.2014.

6. On 19.10.2015 Applicant submitted RTI and sought information about marks secured in written test and oral interview. On 1.11.2015 she was provided the list of marks by Respondent no.2. On 15.1.2016 Respondent no.2 informed that the Applicant is not recommended since she secured 10 marks in interview which is not more than 40% and also that period of one year has lapsed since the preparation of the waiting list (Exhibit G page 37).

7. The Applicant has based her arguments on the ground that:

- (a) *The advertisement did not mention that more than 40% marks are required in the viva voce (para 7.2 of the OA).*
- (b) *As the examination consisted of written and oral, marks obtained in the interview alone cannot be the basis for selection (para 7.3 of OA).*
- (c) *The Respondents should not deny her selection on the basis of lapsing of one year from the date of waiting list as it was the responsibility of the Government to fill up the post from the waiting list of the candidates. The selection of Mr. Satbhai was cancelled at the behest of Respondent no.2 and that post continues to be vacant even now.*
- (d) *As per para 3.10.3 of general instructions of Respondent no.2, the Applicant had secured 10 marks in the interview which is 40% of the total marks of interview and hence she is eligible (para 7.5).*
- (e) *The Respondent no.2 had taken decision in the month of August, 2014 that the candidate of the reserved category will not be recommended in the open category. Thus, in the present case Applicant is the only open category candidate and thus eligible (para 7.7).*

8. The affidavit in reply filed on behalf of the Respondent no.2 states as under:

“11(i) The allegation of the Applicant about the non indication of requirement of minimum 41% marks in the interview is totally baseless and is made perhaps due to ignorance of the rules of selection process which are available on the Commission’s website. In the advertisement it was clearly mentioned in para 9 that the candidates should read the ‘General Instructions to the candidates’ published on the Commission’s website. The

rule regarding the requirement of minimum 41% marks in the interview for getting considered for the recommendation has been provided specifically and clearly vide instruction no.3.10.3 in the 'General instructions to the candidates'. It may kindly be noted that the concerned rule of requirement of minimum 41% marks in the interview has been published on the website under the General Instructions to the candidates since September, 2010. Thus all the candidates are well aware of the said rule.

11(ii) Further it is to be noted that the Applicant was held eligibel for the interview as she had secured more than 50% marks required as per the syllabus of the said post and also qualified on the cut off marks fixed for the Open general category in the written examination.

15(i) The Applicant has secured 10 marks out of 25 marks in the interview which are below 41% of the total marks. However, in this respect it is submitted that for direct recruitment as per the standing order of the Commission dated 20th March, 2002 and Rule 7(II)(v) of the amended Rules of procedure of the Commission candidates securing below 41% marks in the interview are not considered by the Commission for recommendation. This rule has also been mentioned on the website of the Commission vide instruction 3.10.3 in the 'General instructions to the candidates'.

25. With reference to Ground 7.4, I say as follows: The contentions of this para are strongly denied. Candidates from the wait list can be recommended by the Commission only on getting the demand from the Government. Had the Government made such demand, then the Commission could have proceeded in this regard with due consideration to the rule 10(7) of the rules of Procedure of the Commission.

28. With reference to Ground 7.7, I say as follows: The contentions of this para are strongly denied. The Government had issued Circular No.SRV-1012/PK-16/12/16-A, dated 13.8.2014 clarifying the Government Resolution dated 16th March 1999 illustrating thereby to restrict the open horizontal reservation quota, purely for the open category candidates. The

said Government circular dated 13th August, 2014 provides guidelines for the method of applying the Horizontal Reservation in the recruitment process.

32. The Applicant cannot be recommended as she was not found eligible in the interview. The Commission has acted rightly as per the rules in this respect.”

(Quoted from pages 41-48 of OA)

Discussion and Findings:-

9. The Respondent no.2 has enclosed Exhibit R-3 at page 73 which reads as under:

“सरळसेवा प्रवेशाद्वारे (थेट मुलाखतीद्वारे) उमेदवारांची निवड करण्यासाठी आयोगाकडून घेतल्या जाणाऱ्या मुलाखतीमध्ये श्रेणी देण्याबाबतचे वा पूर्वीचे सर्व आदेश अधिक्रमित करून यापूढे उमेदवारांना मुलाखतीसाठी देण्यात येणाऱ्या एकूण १०० गुणांपैकी खालीलप्रमाणे गुण दर्शविण्याबाबतचा निर्णय आयोगाच्या दिनांक २ मार्च, २००२ रोजी झालेल्या बैठकीत घेण्यात आला आहे. त्यानुसार मुलाखतीचे गुण दर्शविण्यात यावेत.

(a)	Excellent	-	70 and above
(b)	Very Good	-	60 to 69
(c)	Good	-	50 to 59
(d)	Average	-	41 to 49
(e)	Below Average	-	40 and below

२. मुलाखतीत ४० व त्यापेक्षा कमी गुण मिळणाऱ्या कोणत्याही वर्गवारीतील उमेदवारांची शिफारस यापुढे केली जाणार नाही असा निर्णय आयोगाने घेतला आहे. त्यानुसार योग्य ती टिप मुलाखतप्रत्राच्या शेवटी नमूद करण्यात यावी.”

(Quoted from page 73 of OA)

10. Following the same, the Respondent no.2 has also published detailed instructions to the candidates with a mention about the same in the advertisement at Exhibit R-4 page 74. Page 82 specifically refers to the process of interview. Para 3.10.3 mentions as under:

“३.१०.३ मुलाखत १०० गुणांची असेल तसेच मुलाखतीमध्ये किमान ४०% पेक्षा जास्त गुण मिळविणा-या उमेदवाराचाच शिफारशीसाठी विचार करण्यात येईल.”

(Quoted from page 82 of OA)

11. The advertisement further states this in No.9 that these detailed instructions are available at its website (Exhibit A page 13).

12. The examination of the advertisement as well as the rules available at website by the Respondent no.2 have made it abundantly clear that the selection of the candidate would be on the basis of obtaining more than 40% marks in the interview. The Applicant was very well aware about the same even before appearing for the selection process.

13. The Applicant's candidature has been rejected by the Respondent no.2 as she did not obtain minimum qualifying marks and secured 10 out of 25 during the interview. If the Applicant had any objection to standing order No.1/2012 (page No.73, Exhibit R-3) prescribing bench mark, the Applicant was free to contest the same before the selection process and not after appearing for the same accepting the rules which were well known. Challenging the procedure laid down after the results; which are not suitable, cannot be considered permissible.

14. The communication by Respondent no.2 is within the prescribed advertised procedure and cannot be considered as arbitrary or illegal.

15. The OA is, therefore, devoid of any merit and hence dismissed without costs.

Sd/-
(P.N. Dixit)
Member (A)
4.10.2018

Sd/-
(A.H. Joshi, J.)
Chairman
4.10.2018

Dictation taken by: S.G. Jawalkar.