

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.35 OF 2023

DISTRICT : SATARA

Shri Kuntinath Ramgonda Patil,)
Age 37 years, occ. Unemployed, R/o Patil Galli,)
Vasagade, Taluka Karveer, District Kolhapur)..Applicant

Versus

1. The State of Maharashtra,)
Through its Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400032)
2. The Principal Secretary,)
Revenue & Forest Department, Mantralaya,)
Mumbai 400032)
3. The District Collector, Satara)
4. Shri Netaji Anandrao Chechare,)
Age 49 years, occ. Nil, R/at Kasgowadi,)
Taluka Hatkanangale, District Kolhapur)..Respondents

Shri Hasan Khan holding for Shri S.T. Yaseen – Advocate for the Applicant
Smt. Archana B.K. – Presenting Officer for Respondents No.1 to 3
Shri L.S. Deshmukh – Advocate for Respondent No.4

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)
DATE : 19th March, 2024

J U D G M E N T

1. Ld. Advocate for the applicant prays for quashing and setting aside the provisional select list dated 27.12.2022 published by respondent no.3 as being illegal and arbitrary and seeks directions to respondent no.3 to issue appointment order in favour of the applicant on the post of Talathi reserved for Part-Time Graduate under SEBC category from the provisional waiting list dated 11.12.2020.

2. Ld. Advocate for the applicant states that advertisement was issued on 28.2.2019 for the post of Talathi. 11 posts were reserved for Economically Weaker Section (EWS) category in Satara for which the applicant applied. One post was reserved for Part-Time Graduate. Applicant applied under general EWS category. On 11.12.2020 provisional list of selected candidates along with waiting list was published. The applicant was at Sr. No.3 in the waiting list. GR dated 19.9.2013 was issued regarding procedure for giving reservation for Part Time Graduates. By this GR if the candidate for Part Time Graduate is not found then this being the horizontal reservation the vacancy should not be carried forward for the next recruitment. Ld. Advocate for the applicant submits that in the recruitment of 2020, one post of Part Time Graduate was reserved however no such candidate was found and therefore it was necessary for the respondents to fill up the vacancy from eligible regular candidate.

3. Ld. Advocate for the applicant relied on the GR dated 16.3.1999 on how the horizontal reservation can be given by maintaining vertical

reservation. However, the ratio laid down by the Hon'ble Supreme Court in Saurav Yadav Vs. State of U.P. & Ors. AIR 2021 SC 233 and Charushila Tukaram Choudhari Vs. The State of Maharashtra & Ors. AIR ONLINE 2019 BOM 764, the Hon'ble High Court gave different verdict and this GR dated 16.3.1999 cannot stand in view of the judgment in Saurav Yadav. Ld. Advocate for the applicant relied on the judgment and order dated 9.2.2024 passed by this Tribunal in OA No.1415/2023 Shri Samadhan P. Itape Vs. The State of Maharashtra & Ors. and submits that this Tribunal has directed that if Part Time Graduate is not available in particular category then it is necessary to appoint the next meritorious candidate in the same category and therefore he submits that candidates in Sr. No.1 & 2 in the waiting list have joined some other job and they have filed affidavit that they are not interested in joining the said post. Ld. Advocate for the applicant submits that applicant who is at Sr. No.3 in the waiting list is meritorious in EWS category. Ld. Advocate submits that right of the applicant accrued on 11.12.2020 when the provisional seniority list was published when the applicant was at Sr. no.3. However, appointments took place in October, 2022. OA is filed on 4.1.2023. By order dated 12.1.2023 we had directed as under:

“4. In view of this, respondent no.3-Collector, Satara to look into the matter and take decision as to whether nos.1 and 2 in the waiting list are interested in joining as per claim of the applicant and verify the claim of the applicant and inform the Tribunal accordingly.”

4. Ld. PO relied on affidavit in reply dated 29.3.2023 filed by Anita Shankar Deshmukh, Tahsildar (Revenue), Collector Office, Satara.

5. Respondent no.4 has filed reply dated 11.7.2023 stating that advertisement was issued on 28.2.2019 and provisional select list was published on 11.12.2020. As the matter is pending before the Hon'ble

Supreme Court the Government did not issue any order of appointment of the respondent no.4.

6. On 5.5.2021 the Hon'ble Supreme Court declared the SEBC Act as unconstitutional. On 31.5.2021 the Govt. came up with a policy decision that candidates belonging to SEBC were allowed to migrate to EWS and respondent no.4 has opted for EWS and thereafter the revised list was prepared of all the categories on 27.12.2022. In the revised list respondent no.4 being Part Time Graduate was selected from EWS category. Though he was selected he was not given appointment as the matter was pending. The Govt. did not act upon provisional list 11.12.2020 on account of stay of the Hon'ble Supreme Court and thereafter all the candidates who were SEBC were given choice and the respondent no.4 opted for EWS and he also sought horizontal reservation in Part Time Graduate. This was permissible migration of respondent no.4 due to change in the policy of the Govt. for SEBS reservation and the decision of the Hon'ble High Court in W.P. No.2722/2023 dated 22.12.2023.

7. Ld. Advocate for the respondent no.4 submits that respondent no.4 should be given appointment and there should not be any hurdle in the appointment of respondent no.4.

8. In view of this the applicant has lost his claim. Ld. Advocate for the applicant submits that applicant be adjusted in supernumerary post.

9. Under such circumstances the applicant cannot be given any supernumerary post.

10. For the aforesaid reasons the applicant is not entitled to any relief and the OA deserves to be dismissed. Hence, the OA is dismissed.

However, the respondent no.4 should be given appointment within four weeks from the date of uploading of the order and there should be no hurdle in his appointment. No order as to costs.

Sd/-
(Medha Gadgil)
Member (A)
19.3.2024

Sd/-
(Mridula Bhatkar, J.)
Chairperson
19.3.2024

Dictation taken by: S.G. Jawalkar.

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Uploaded on: 3.4.2024.