

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.664 OF 2018

DISTRICT : KOLHAPUR

Ms. Amrita alias Priya Balaso Lohar,)
Age 30 years, occ. Housewife/Student,)
R/o Plot No.4, Dr. D.Y. Patil Colony, Gargoti,)
District Kolhapur 416 209)..Applicant

Versus

1. The Principal Secretary,)
The State of Maharashtra,)
Home Department, Mantralaya, Mumbai)
2. The Principal Secretary,)
The State of Maharashtra,)
General Administration Department,)
Mantralaya, Mumbai)
3. The Maharashtra Public Service Commission,)
Through its Secretary, Floor 5-8 Cooperage)
MTNL Building, M.K. Road, Mumbai 400001)
4. Shinde Meenal Vitthal,)
Grampanchayat Shejari, Khunte, Shivneri,)
Shinde Vasti, Shindewadi, Satara,)
Phaltan 415523)

5. Thorat Tejashree Jayantrao,)
At Post Korti, Karad, Satara 415109)
6. Shinde Maryuri Arun,)
At Post: Pimparad, Taluka Phaltan,Shindevasti,)
Satara 415523)
7. Pawar Laxmi Bhagwan,)
At Post : Asad, Sangali, Kadegaon 415403)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

RESERVED ON : 8th November, 2023

DATE : 14th December, 2023

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. The applicant challenges his non selection to the post of Police Sub Inspector (PSI) pursuant to advertisement dated 7.12.2016. The applicant belongs to NT-B category.

2. The MPSC had issued an advertisement No.54/2016 dated 7.12.2016 for filling up the post of PSI, having vacancies of total 750 posts. The applicant appeared for the Preliminary Examination, 2017 from NT-B category as well as Open category. There were 4 posts reserved for NT-B Female category for the post of PSI. The applicant appeared in the Preliminary Examination on 12.3.2017 and she cleared the same. The

applicant filled the Online Examination form for the Main Examination along with prescribed fees for the Open Female category as well as NT-B category.

3. The MPSC declared the results of the Main Examination on 12.9.2017 wherein the applicant was eligible for physical fitness test and oral interview for the post of PSI. Thereafter the MPSC declared the final result of the said examination. The applicant secured 189 marks and her name did not figure in the select list of candidates of PSI for the NT-B Female category. The cut-off marks for Open Female Category is 189 marks and cut-off marks for NT-B Female category is 198 marks.

4. Ld. Advocate for the applicant argued that the MPSC has not considered the claim of the candidates who have been selected on the NT-B Female seats from the Open category as those candidates have secured more marks than the candidates who have been selected from the Open Female category. The following is the list of candidates who have been selected from the NT-B category:

Sr. No.	Name of Candidate	Marks	Category
1	Gagilwad Chhaya Ananda	205	NT-(B) Female
2	Chambhare Shilpa Gurudas	204	NT-(B) Female
3	Manisha Giri	204	NT-(B) Female
4	Giri Sangita Namdev	198	NT-(B) Female

5. Ld. Advocate for the applicant contends that if the candidates who were selected on the NT-B seats are considered from the Open Female seats on the basis of their individual merit the applicant's claim for NT-B category seat can be considered on her own merit. He furnishes the list of candidates from NT-B category who would be eligible if the candidates

who are selected from the NT-B Female category would be considered for Open Female Category:

Sr. No.	Name of Candidate	Marks	Category
1	Gedam Priyanka Pralhadrao	193	NT-(B) Female
2	Salvi Diksha Dilip	190	NT-(B) Female
3	Jawale Kalyani Ambadas	189	NT-(B) Female
4	Lohar Amrita alias Priya Balaso	189	NT-(B) Female

6. He also states that if all the selected candidates from the NT-B Female category would have been considered for the Open Female seats on their individual merits then following 4 female candidates would be effected:

Sr. No.	Name of Candidate	Marks	Category
1	Shinde Mayuri Arun	189	Open Female
2	Shinde Meenal Vitthal	189	Open Female
3	Thorat Trjashree	189	Open Female
4	Pawar Laximi Bhagwan	189	Open Female

7. Ld. Advocate for the applicant further argued that it is a settled position of law that there is no separate category like General/Open Category and that the MPSC has failed to consider that the reservation under Article 16(4) of the Constitution of India does not operate like Communal Reservation. It is possible that some candidates belonging for example to the Scheduled Caste can be selected in the Open competition field on the basis of their own merit they would then not be counted against the quota reserved for SC but would be treated as Open candidates. He further pointed out that the MPSC has failed to consider the settled position of law that a candidate is entitled to compete for the

General category seat although he belong to any particular reserved category. He therefore prayed that claim of all the selected candidates from NT-B seats should be considered for Open Female seats on the basis of their merit for the post of PSI and they should consider the claim of the applicant from the NT-B Female category.

8. Ld. Advocate for the applicant relied on the following judgments:

(1) Bharat Sanchar Nigam Limited Vs. Sandeep Choudhary & Ors. 2022 LiveLaw (SC) 419 Civil Appeal No.8717/2015 decided by the Hon'ble Supreme Court on 28.4.2022.

(2) MPSC Vs. Rohini Subhash Sonwalkar & Anr. W.P. No.92 of 2019 decided by Hon'ble Bombay High Court on 10.1.2019 & 25.1.2019.

(3) Tarakeshwari Devakaran Tayade Vs. MPSC & Ors. OA No.1033 of 2015 decided by this Tribunal on 5.9.2022.

9. Per contra Ld. PO opposes the submissions made by the Ld. Advocate for the applicant. Ld. PO relied on the affidavit in reply dated 3.1.2023 filed by Bhalchandra Pandurang Mali, Under Secretary, MPSC. She pointed out that in view of the order dated 10.1.2019 of the Hon'ble High Court in W.P. No.92 of 2019 **MPSC Vs. Miss Rohini Subhash Sonwalkar** the final result of the examination was revised on 12.4.2019. The procedure for implementing the horizontal reservation in Open category was based on the Government circular issued by GAD dated 13.8.2014. According to the circular only candidates belonging to the Open (Non Reserved category) were to be considered in the Open category. This was interpreted to mean that female candidates belonging to any other social reservation category were not entitled for consideration for Open (Female) i.e. Open horizontal reservation category post. She further

pointed out that 4 candidates referred to by the applicant belonging to NT-B were not considered for Open (Female category) post as per the provisions of the Govt. Circular dated 13.8.2014.

10. Ld. PO further pointed out that the candidature of the applicant was duly considered for the post in Open (General), NT-B General and NT-B Female category. However, as the applicant did not score the necessary marks as required for the cutoff of the respective categories, she could not qualify in the PSI Main Examination, 2016. It was said that this selection procedure as per the provisions of the Govt. Circular dated 13.8.2014 was uniformly applied to all the candidates. Furthermore it was pointed out that the selection process has already been completed in 2019.

11. We have considered the submissions of both the sides. The main issue revolves around the policy of the Government regarding the application of horizontal reservation in the recruitment process. The main grievance of the applicant is related to the point that MPSC did not consider the claim of the candidates who have been selected in the NT-B Female category from the Open (Female) category although those candidates scored more marks than the candidates who have been selected from the Open Female category. In this connection it is important to look at Govt. circular dated 13.8.2014 which laid down the procedure for implementation of horizontal reservation in the recruitment process. We reproduce below clause (a) of the circular:

“(अ) प्रथम टप्पा - खुल्या प्रवर्गातून समांतर आरक्षणाची पदे भरताना, गुणवत्तेच्या निकषानुसार खुल्या प्रवर्गातील उमेदवारांची निवड यादी करावी (या ठिकाणी खुल्या प्रवर्गात गुणवत्तेच्या आधारावर मागासवर्गीय उमेदवारांचाही समावेश होईल). या यादीत समांतर आरक्षणांनुसार आवश्यक खुल्या प्रवर्गाच्या उमेदवारांची संख्या पर्याप्त असेल तर कोणताही प्रश्न उद्भवणार नाही आणि त्यानुसार पदे भरावीत. जर या यादीत समांतर आरक्षणांनुसार आवश्यक खुल्या प्रवर्गाच्या उमेदवारांची संख्या पर्याप्त नसेल तर खुल्या प्रवर्गासाठी

राखीव समांतर आरक्षणाची पदे भरण्याकरिता सदर यादीतील आवश्यक पर्याप्त संख्येइतके शेवटचे उमेदवार वगळून पात्र उमेदवारांपैकी केवळ खुल्या प्रवर्गाचेच आवश्यक पर्याप्त संख्येइतके उमेदवार घेणे आवश्यक आहे.”

12. In **MPSC Vs. Rohini Subhash Sonwalkar** & Anr. W.P. No.92 of 2019 the Hon'ble Bombay High Court has passed the following order on 25.1.2019:

“2. The Court has issued notice since the Court was prima facie of the view that the action of the respondent amounted to disobedience of the order passed by this Court in the case of Smt. Kanchan Vishwanath Jagtap Vs. Maharashtra Administrative Tribunal (Writ Petition No.1925/2014) decided on 16th December, 2015. In affidavit in reply, it is stated that it appears that two conflicting views have been taken by the Division Benches. One view is in the case of Kanchan Jagtap (supra) and another view is taken by the Aurangabad Bench of this Court in the case of Miss Rajaji Shaileshkumar Khobragade Vs. State of Maharashtra & Ors. (Writ Petition No.10103 of 2015) decided on 31st March, 2017. The learned Counsel further submits that an identical issue also arose for consideration before the Bench presided over by Shri Borde, J. in the case of Anil Shep Vs. State of Maharashtra (Writ Petition No.10396 of 2016), wherein both these conflicting views were brought to the notice of the Division Bench.

3. Taking into consideration these circumstances, we are satisfied that it cannot be said that the respondent-MPSC has acted in a contemptuous manner. In view of the conflicting views, the action as taken, cannot be said to be contemptuous in nature. In that view of the matter, Show Cause Notice is discharged.”

13. Moreover, it is to be noted that this recruitment process is already completed and although this OA was filed, no interim relief was granted. It is settled position of law that in case of horizontal reservation there is no separate category like General/Open and the candidates belonging to all categories irrespective of their caste, class or community or tribe can be selected in this Open category. However, in this case we have to take into account the fact that MPSC had carried out this recruitment process on the issue of horizontal reservation as per erstwhile circular dated 13.8.2014 which was in force at that time.

14. In **Saurav Yadav & Ors. Vs. State of Uttar Pradesh & Ors. (2021) 4 SCC 542**, the Hon'ble Supreme Court dealt with the issue of migration of reserved candidates to open category based on merit. It is held that, "subject to permissible reservations, either social (vertical) or special (horizontal), opportunities to public employment and selection of candidates must be based purely on merit. Any selection which results in candidates selected against Open/General category with less merit than other available candidates would be opposed to principles of equality. There can be special dispensation for reserved category candidates and it is possible that more meritorious "Open/General" category candidate may not get selected. But converse can never be true as that would be opposed to principles laid down by Supreme Court. Candidates belonging to vertical reservation categories are entitled to be selected in "Open/General" category on basis of their merit and in such circumstances their selection cannot be counted against their respective quota for vertical reservation." Similar view has been taken by the Hon'ble Bombay High Court, Bench at Aurangabad in W.P. No.4159 of 2018 **Charushila T. Chaudhari & Ors. Vs. The State of Maharashtra & Anr.** decided on 8.8.2019.

15. However, when this OA was filed on 18.2.2018, it was the duty of the applicant to press for interim relief or for conditional order of subject to outcome of this OA. No post was kept vacant. It is to be noted that now the recruitment process is over and there is no vacancy available. Moreover the applicant has raised objection regarding selection of 4 candidates belonging to NT-B Female category instead of Open Female post though they secured higher marks as per Open Female cutoff marks. The MPSC at that time was guided by the provisions contained in Circular dated 13.8.2014. Moreover, the candidature of the applicant was considered for the post in Open General, NT-B General and NT-B Female category but did not score sufficient marks for the respective cutoff for these categories. 4 candidates referred by the applicant were not considered for Open Female post.

16. Considering the above mentioned facts and the decision taken in *Rohini B. Sonwalkar* (supra), which is quoted above, refers to conflicting decision taken by two Benches of Hon'ble Bombay High Court, we are unable to grant any relief and hence we pass the following order.

17. Original Application is dismissed. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
14.12.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
14.12.2023

Dictation taken by: S.G. Jawalkar.