

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.147 OF 2016

DISTRICT:- NANDED

Kiran d/o. Kishor Pawankar,
Age : 23 years, Occ. Student,
R/o. Dwarkamal, Gokul Nagar,
Kinwat Road, Bhokar,
Tq. & Dist. Nanded.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through Principal Secretary,
Department of Sales Tax,
Mantralaya, Mumbai.
2. The State of Maharashtra,
Through Commissioner of Sales Tax,
3rd Floor, H Wing, Sales Tax Department,
Mazgaon, Mumbai.
3. Maharashtra Public Service Commission,
Through Secretary,
Bank of India Building, 3rd Floor,
Mahatma Gandhi Road,
Hutatma Chowk, Mumbai.

...RESPONDENTS

APPEARANCE : Shri M.R.Deshmukh, Advocate for
the Applicant.
: Shri B.S.Deokar, Presenting
Officer for the respondents.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI BIJAY KUMAR, MEMBER (A)**

Decided on : 07-09-2022

O R A L O R D E R
(PER: JUSTICE SHRI P. R. BORA)

1. Heard Shri M.R.Deshmukh, learned Counsel for the applicant and Shri B.S.Deokar, learned Presenting Officer appearing for the respondents.

2. The issue raised in the present O.A. is no more res-integra. It is the grievance of the applicant in the present O.A. that she received more marks i.e. more meritorious position than the last selected Open Female candidate, she was not considered for appointment to the said post from the said category.

3. On 13-11-2014, advertisement was issued for filling up 700 posts of Tax Assistants. In response to the said advertisement, applicant applied from the OBC (Women) category. Applicant claimed herself to be belonging to the said category. While filling in the application form, applicant had exercised an option for to be considered even from Open category and has accordingly paid the examination fees prescribed for the Open category candidates. In the examination held, applicant received 138 marks out 200, however, she was neither included in the list of selected candidates for the category of OBC

Female nor in the list of selected candidates from Open Female category. It is the grievance of the applicant that when she had exercised the option to be considered even from Open category and when she has secured more meritorious position than the last selected Open Female candidate, respondent no.3 Maharashtra Public Service Commission (MPSC) must have recommended the name of the applicant from the Open Female category. Learned Counsel submits that the applicant in the circumstances, preferred the present O.A. in the year 2016. This Tribunal passed an interim order making the appointments subject to outcome of the present O.A. Learned Counsel for the applicant submitted that in view of the legal position settled in view of the judgment of the Hon'ble Apex Court in the case of **Saurav Yadav & Ors. Vs. State of Uttar Pradesh & Ors., (2021) 4 SCC 542**, the present O.A. deserves to be allowed.

4. Learned P.O. has though opposed the submissions as are advanced by the applicant has not disputed that after the judgment delivered by the Hon'ble Apex Court in the case of **Saurav Yadav** (cited supra), legal position now stands settled that the reserved category candidate can migrate to the Open category on the basis of his or her

individual merit. In view of the legal position settled by the Hon'ble Apex Court in the aforesaid judgment and in view of the fact that this Tribunal thereafter had taken similar view in couple of matters, we do not see any impediment in allowing the present O.A. in view of the facts which have come on record.

5. It is not in dispute that the applicant though belongs to OBC category and though she has filled in an application for her selection from that category, she had also exercised an option to be considered from Open category. It is also not in dispute that the applicant had remitted the examination fees prescribed for the Open category candidates and not the concessional fees as prescribed to the OBC Female candidates. It is further not in dispute that the last selected Open candidate has secured 120 marks. In fact, applicant must have made the said candidate as respondent in the present matter as necessary party. The learned Counsel for the applicant though did not dispute the legal position and accepted that the said candidate must have been added as party respondent, he further submitted that none of the selected Open Female candidates is party in the present O.A. since the applicant is not seeking quashment of the appointment granted in

favour of any of the said candidates and is claiming the relief on the basis of the present situation i.e. of having vacant posts available and only on that count the prayer made by the applicant in the present O.A. cannot be kept out of consideration.

6. Learned Counsel pointed out that in the information sought by the applicant under Right to Information Act which has been placed on record by the applicant along with her additional affidavit in rejoinder discloses that there are still 17 posts vacant in the Open Female category and there are total 91 posts vacant out of the posts which were advertised in the year 2014. Learned Counsel further pointed out that since in the year 2016 only this court had passed an interim order to the effect that appointments made in pursuance of the select list in the recruitment process of 2014, the said appointments will be subject to outcome of the present O.A. Having regard to the facts as aforesaid, it appears to us that the applicant has certainly made out a case for allowing the O.A.

7. In view of the above discussion, following order is passed:

ORDER

(i) Respondent no.3 MPSC is directed to recommend the name of the present applicant to respondent no.2 for her appointment on the post of Tax Assistant within 4 weeks from the date of this order.

(ii) Respondent no.2 shall issue the order of appointment within 4 weeks thereafter on the vacant post earmarked for Open Female candidate

(iii) O.A. stands allowed in the aforesaid terms without any order as to costs.

(BIJAY KUMAR)
MEMBER (A)

(JUSTICE P.R. BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 7th September, 2022