

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.177/2024
WITH
MISCELLANEOUS APPLICATION NO.229/2024**

**DISTRICTS:- AURANGABAD,
OSMANABAD, JALGAON &
JALNA**

1. Gajendra Rangnath Vasmatkar,
Age: 38 years, Occ.: Service as L.S.S. on
contract basis in the office of Assistant L.D.O.
Chitegaon, Taluka Paithan, Dist. Aurangabad.
R/o House No. 17, Taksheela Nagar,
Jatwada Road, Harsool, Aurangabad.

2. Dr. Smt. Vandana d/o Sheshrao Hanmante,
Age: 37 years, Occ.: Service as Q.C. Officer on
contract basis, R/o. Santosh Kacharu Sonawane,
House No.4/6, N-11, Navnath Nagar, HUDCO,
Aurangabad.

3. Sachin Rajkumar Kulal,
Age: 26 years, Occ.: Nil - Authorised For Artificial
Insemination, R/o Shakuntala Road, Mantha Road,
Beside Minakshi Hospital, Rushi Niwas, Jalna.

4. Rahul Vitthal Bhoi,
Age: 33 years, Occ.: Service,
R/o At-Shirsode, Post Bahadarpur,
Taluka Parola, District Jalgaon.

5. Smt. Shilpa Shivdas Kamble,
Age: 36 years, Occ.: Unemployed,
Earlier worked on contract basis,
R/o Limboni Baag, Shivaji Nagar,
Tambri Vibhag, Osmanabad.

6. Shri. Abhijeet Laxman Kale,
Age: 26 years, Occ.: Service on Contract Basis,
R/o Limboni, Post: Pimparkhed,
Taluka Ghansawangi, Dist. Jalna.

...APPLICANTS

V E R S U S

1. The Commissioner of Agriculture,
Maharashtra State, Central Building,
Camp, Pune 411 001.

2. The State of Maharashtra,
Through its Principal Secretary,
Agriculture, Animal Husbandry,
Dairy Development and Fisheries Department,
Mantralaya, Mumbai-400 032.

3. Institute of Banking Personnel Selection,
Institute of Banking Personnel Selection,
House, 90 Feet D.P. Road, Near Thakur
Polytechnic, Off Western Express Highway,
Kandiwali (East), Mumbai 400 101.

...RESPONDENTS

APPEARANCE : Shri Ajay Deshpande, Advocate for
Applicant.

: Shri M.S.Mahajan, Special Counsel
for the respondents.

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

Date : 05-07-2024

O R A L O R D E R

1. Heard Shri Ajay Deshpande, learned Counsel for
the Applicant and Shri M.S.Mahajan, learned Special
Counsel for the respondent authorities.

2. Present applicants had applied for the post of
Live Stock Supervisor in pursuance of the advertisement
dated 26-05-2023 issued by the Respondent no.1. It is the

grievance of these applicants that, they have applied for the subject post claiming reservation from their respective categories i.e. persons who belong to SC category, he or she has applied from the said category, claiming the said reservation. However, the applicants are not considered for their recommendation on the ground that they did not submit any document evidencing that, they have worked Part Time in any Government Office and satisfied the criteria prescribed for the said Graduate Part Time Employees in terms of G.R. dated 07-03-2023. It is the further contention of these applicants that, had they been considered from their respective category, they were likely to be selected since they have scored more marks than the last selected candidate in the said category.

3. Learned Counsel appearing for the applicants has submitted necessary information in the tabular format which we deem it appropriate to reproduce as it is hereinbelow:

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Sr. No.	Name	Applied Category	Mark of Candidate	Cut-off	Writing submitted to authorities
1	Abhijeet Laxman Kale	EWS	140	EWS General = 130	6.12.2023
2	Sachin Rajkumar Kulal	NT-B	128	NT-B=122	12.12.2023

3	Rahul Vitthal Bhoi	NT-B	124	NT-B=122	12.12.2023
4	Vandana Sheshrao Hanmante	SC	118	SC General = 132 SC W.R.=116	14.12.2023
5	Shilpa Shivdas Kamble	SC	116	SC General=132 SC WR=116	14.12.2023
6	Gajendra Rangnath Vasmatar	SC	122	SC General =132	Not Submitted

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4. At the beginning of the arguments learned Counsel for applicants brought to the notice of Tribunal that first 3 candidates in the aforesaid chart have the strong case for their immediate selection since they have scored more number of marks than the last candidate selected in their respective categories. In so far as the remaining three candidates in chart are considered, it has been stated that in the event some candidates from the said category do not join or for any other reasons the post remains unfilled, chances of their selection are also bright.

5. Learned Counsel appearing for the applicants submitted that in the application form, there is a column which requires a candidate to fill in the information, “*are you Part Time Government Employee?*”. Learned Counsel submitted that since all of the applicants were working in the Government, may be temporarily on contract basis, there was no other option for them than recording answer

against the said column in the 'affirmative'. Learned Counsel pointed out that, had they recorded answer in negative they would have been said guilty of not providing true and correct information disentitling them from their selection on that count.

6. Learned Counsel further pointed out that, in the entire application form it is nowhere provided that, candidate shall expressly state, whether he desires to avail the benefit for the part time Government employees. Learned Counsel referring to another application form which was also for the selection of the said post but the recruitment was carried out by Zilla Parishad wherein a specific clause is incorporated like this:

“Are you wish to availing the reservation of a part time employee/ आपण अंशकालीन कर्मचारी आरक्षणाचा लाभ घेऊ इच्छित आहात का?”

In view of the aforesaid clause in the advertisement, there was no confusion in the minds of the candidates applying for the said post and accordingly they have correctly filled the information in the said column. Shilpa Shivdas Kamble, who is one of the applicants in the present O.A. has applied for the post of Zilla Parishad also and has

recorded the answer to the said question in the said form in 'Negative'. It is her contention that in the present application also, she was never willing to avail the benefit of the reservation provided for the Part Time Government Employee. Learned Counsel submitted that, because of the mistake committed by the respondents, the present applicants have been unnecessarily made to suffer who are otherwise liable to be selected, at least three of them surely, and remaining three hopeful for their selection. Learned Counsel submitted that, in the circumstances, respondents need to be directed to consider candidature of these applicants from their respective categories through which they have applied not from the category of Part Time Employees.

7. Respondents have opposed the contentions raised in the O.A. and the prayers made therein. Shri M.S.Mahajan, learned Special Counsel representing the respondent authorities, vehemently submitted that the select list was published in the month of September, 2023 wherein the category of these candidates was specifically mentioned but none of these six applicants made any grievance about the same. Learned Special Counsel submitted that, only after having failed in getting selected

that these candidates have approached this Tribunal. According to the learned Special Counsel, this ground alone is sufficient to reject their request.

8. It is, further contended that in the advertisement it was specifically mentioned that the seats reserved for Part Time Employees will be governed by the G.R. dated 27-10-2009. Learned Special Counsel further argued that the applicants were fully aware that if they have answered the question in the relevant column to the effect that, "*whether you are part time employee*", in affirmative, they will be considered from that category only. According to the learned Special Counsel, there is no confusion or ambiguity in the application form. It is further contended that these applicants were since initial stage i.e. since the date of filing of their application, were claiming for their selection in the category of Part Time Employees only and after having failed in proving the eligibility for the said reservation that such application is filed. He has, therefore, prayed for rejecting this application.

9. We have considered the submissions made on behalf of the learned Counsel appearing for the applicants and the learned Special Counsel appearing for the State

authorities. We have also perused the documents placed on record. The clause in the application form assumes some importance in deciding the controversy arisen in the matter. Said clause we have reproduced hereinabove. It only requires the candidate to submit information whether he is a Part Time Employee or not. Said clause, read as it is, cannot be interpreted to mean that answer as "Yes" recorded against the said column would disentitle the candidate from claiming his selection against the seats reserved for socially backward class to which he belongs.

10. There appears substance in the contention raised on behalf of the applicants that when they are working as Part Time Employees in the Government or some Government organization, it was not open for them to fill the information against the aforesaid column as "No" or else possibility of their rejection on the ground that they have not filled in the correct information was writ large.

11. Contention of the Respondents that the applicants were initially intending to claim reservation from the category of Part Time Employees and now they have taken a different stand, is difficult to be accepted for the reason that none of the candidates was expected to take a

risk by claiming the reservation under the said category, knowing fully well that he does not have necessary certificates with him which he/she may be required to produce. Unless he/she produces the same, may not be considered from the said category.

12. It has come on record that, for the same post of 'Livestock Supervisor', Zilla Parishad also conducted the recruitment process. The application form in the said recruitment contains a specific clause 'Do you wish to avail the benefit of reservation provided for Part-Time Employees?' Had there been such a clause in the application form of the present recruitment and had the applicants answered it in positive, it could have been certainly said that the applicants did claim the benefit of reservation meant for 'Part Time Employees' and in such case had the applicants failed in submitting the requisite certificate, it could have been said that the applicants are rightly held ineligible to be recommended against the seats reserved for 'Part Time Employees'.

13. In the instant recruitment the clause in the application requires the candidate to state, 'whether he is a Part Time Government Employee?' and not to state whether

he intends to avail the benefit of reservation provided for the 'Part Time Employees?' It is significant to note that, one of the applicants in the present matter, namely, Shilpa Shivdas Kamble had applied for the post of Livestock Supervisor in pursuance of the advertisement issued by Zilla Parishad. Copy of her application is filed on record of the present O.A. It evinces that, applicant Shilpa Kamble has recorded the answer against the clause, 'Are you wish to availing reservation of a Part Time Employee' as "No". Copy of the application form submitted by Shilpa Kamble in the recruitment process initiated by respondent no.1 is also placed on record. In the said application, she has against the clause, 'Are you Part Time Employee' has recorded answer as "Yes". It is thus evident that, though applicant Shilpa Kamble is not intending to take the benefit of reservation provided for Part Time Employee, she was compelled to record her answer as "Yes" in the present recruitment process carried out by respondent no.1, since the clause only requires candidate to say whether he is a Part Time Employee. All other applicants have also under the similar circumstances recorded answer to the aforesaid question as "Yes". However, it cannot be interpreted to mean or no such inference can be drawn that the

applicants were/are claiming the benefit of reservation provided for the Part Time Government Employees.

14. Entire confusion has been created because of the ambiguous or incomplete question incorporated in the application form. It is not understood when Zilla Parishad in its recruitment process can appropriately word the aforesaid clause, why respondent no.1 has not followed the said path. According to us, applicants cannot be blamed for answering the aforesaid clause in affirmative. We reiterate that, only on that count, it cannot be said that the applicants did claim the benefit of reservation meant for Part Time Employees.

15. Learned Special Counsel Shri Mahajan has emphasized that, the grievance made by the applicants that, they did not apply from the category of Part Time Employees is afterthought or else they would have immediately raised their objection when in the list published on 09-09-2023, the applicants were mentioned to have been selected against the Part Time Employees category. Though it is a fact that, applicants did not immediately raise a grievance in writing, as has been submitted by the learned Counsel appearing for the

applicants, oral grievance was raised by all these applicants after they came to know about the said fact. The objection as has been raised by the learned Special Counsel has not much impressed us for the reason that merely because the applicants did not raise grievance immediately, does not mean that, their contention is false.

16. Applicant Abhijeet Kale who claims reservation against EWS category and has accordingly filled the application form has scored 140 marks whereas the last selected EWS candidate has scored 130 marks. Thus, it is not the case that after having failed to secure the seat against the Part Time Employee that, the said applicant is now claiming seat in the EWS category. It is quite clear that the said candidate has already secured a quite higher position in merit in so far as the EWS category is concerned. Same is about the applicant no.2 and 3. Both these candidates belong to NT-B category and they have secured more marks than the last selected candidate in the NT-B category. In the circumstances, it appears to us that the applicants have certainly made out a case for considering their candidature from their respective social reservation category and not from the category of Part Time Employees.

17. During the course of arguments, it was brought to our notice that appointment orders are issued, however, postings are not given or the candidates to whom the appointment orders are issued have not yet joined on their respective postings. We clarify that, there would be a very small reshuffle if the present applicants are directed to be considered against their respective social reservations. Moreover, as has been clarified by the learned Counsel for the applicant at the commencement of his arguments itself, the applicant no.6 Abhijeet Laxman Kale, applicant no.3 Sachin Rajkumar Kulal and applicant no.4 Rahul Vitthal Bhoi are having definite chance of their selection since they have secured more marks than last selected candidate in their social reservation category whereas the remaining applicants are hopeful that in case any candidate from their category does not join, they may get a chance of their selection.

18. For the reasons discussed above, we deem it appropriate to allow the present application in the following terms:

[i] Respondents are directed to consider the candidature of the applicants in the present

application from their respective social category, or as per the category in which they fall in the vertical reservation category and place all these candidates at their respective places in order of merit and then prepare a fresh list of selected candidates and accordingly complete the selection process.

[ii] The entire process is to be carried out by the respondents as expeditiously as possible for the reason that the selection process has commenced sometime in 2023.

[iii] O.A. stands allowed in the aforesaid terms.

[iv] Accordingly, M.A. also stands disposed of.

[v] There shall be no order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 05-07-2024.