

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.334/2021, 55/2023
AND 42/2023**

DISTRICT:- PARBHANI

O.A.NO.334/2021

Miss. Madhuri D/o. Bhagwan Panzade,
Age:-25 years, Occu.:- Unemployed,
Address: C/o: Mr. Bhagwan M. Panzade,
Ganpati Chowk, Raghunath Nagar, Jintur Road,
Parbhani, Tq. and Dist. Parbhani. **...APPLICANT**

V E R S U S

1. The state of Maharashtra
Through Principal Secretary,
Public Health Department,
Government of Maharashtra,
Mantralaya, Mumbai.
2. The Deputy Director, Health Services,
Latur Circle, Latur. Address : Latur MIDC,
Tq. And Dist. Latur-413531
3. Miss. Ashwini Rohidas Rode
Age-26 Years, Occ.- Not known,
Address:- Shivaji Nagar, TPS Road, Parli Vaijnath,
Tq Parli Vaijnath, Dist Beed. **...RESPONDENTS**

O.A.NO.55/2023

Miss. Madhuri D/o. Bhagwan Panzade,
Age:- 26 years, Occu.:- Unemployed,
Address: C/o: Mr. Bhgwan M. Panzade,
Ganpati Chowk, Raghunath Nagar, Jintur Road,
Parbhani, Tq. and Dist. Parbhani. **...APPLICANT**

V E R S U S

1. The state of Maharashtra
Through Principal Secretary,
Public Health Department,
Government of Maharashtra, G.T.Hospital, B-Wing,
10th floor, Mantralaya, Mumbai.
Address : Public Health Department,
Director of Health Services, 8th Floor,
Arogya Bhavan, Saint George Hospital Compound,
P. D. Mello Road, Mumbai-1.

2. The Deputy Director, Health Services,
Latur Circle, Latur. Address: Latur MIDC,
Tq. And Dist. Latur-413531.

3. Medical/ Officer/ Superintendent,
Sub District Hospital (SDH), Georai.
Address:- Sub-district Hospital Georai,
Main Road, Tq. Georai, Dist. Beed,
Maharashtra 431127.

...RESPONDENTS

O.A.NO.42/2023

Ashwini D/o Rohidas Rode,
Age 27 years, Occ. Education,
R/o Shivaji Nagar, TPS Road, Parali Vaijnath,
Tal.Parali (V), District Beed.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Principal Secretary,
Public Health Department,
G.T. Hospital Compound,
10th Floor, Fort, Mumbai - 32.

2. The Deputy Director, Health Services,
Latur Division, Latur, Latur MIDC,
Tal. & Dist. Latur - 413531.

3. Madhuri D/o Bhagwan Panzade,
Age 25 years, Occ. Unemployed,
R/o. C/o. Mr. Bhagwan M. Panzade,
Ganpati Chowk, Raghunath Nagar, Jintur Road,
Parbhani, Tal. & District Parbhani.

...RESPONDENTS

APPEARANCE : Shri J.K.Bansod, Counsel for sole
Applicant in O.A.334/21 & 55/23.
: Shri S.B.Solanke, Counsel for
Applicant in O.A.42/23.
: Shri V.R.Bhumkar, Presenting
Officer for respondent authorities.

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

**Reserved on : 02-04-2024
Pronounced on : 30-04-2024**

O R D E R
(PER: JUSTICE SHRI P. R. BORA, V.C.)

1. Heard Shri J.K.Bansod, learned Counsel for sole Applicant in O.A.334/21 & 55/23 (Respondent no.3 in O.A.42/23), Shri S.B.Solanke, Counsel for Applicant in O.A.42/23 (Respondent no.3 in O.A.334/21) and Shri V.R.Bhumkar, learned Presenting Officer for the respondent authorities in all these matters.

2. All these matters are arising out of recruitment process of 2018 carried out by the Public Health Department of the State of Maharashtra vide advertisement published on 22-02-2019. O.A.No.334/2021 and O.A.No.55/2023 both are filed by one and the same candidate i.e. Ms. Madhuri D/o. Bhagwan Panzade, who is

respondent no.3 in O.A.No.42/2023, whereas O.A.No.42/2023 is filed by one Ms. Ashwini Rohidas Rode, who is respondent no.3 in O.A.334/2021. For convenience, applicants are hereinafter referred to by their first name i.e. Madhuri and Ashwini.

3. Public Health Department of the State initiated recruitment process of 2018 by issuing advertisement on 22-02-2019 by inviting applications for about 15 different posts. Applicants in these O.As. had applied for the post of Pharmacist/Pharmacy Officer. Total 34 posts were advertised of the Pharmacy Officer. Out of which nine were unreserved, six were reserved for Scheduled Caste (SC), one for Scheduled Tribe (ST), one for Vimukt Jati (A) [VJ(A)], one for Nomadic Tribe-B [NT-B], one for Special Backward Class (SBC), six for Other Backward Class (OBC), five for Socially and Economically Backward Class (SEBC) and three for Economically Weaker Section (EWS). Both the applicants belong to SC category. Madhuri, however, had not claimed reservation meant for Female Candidate (Women). Ashwini had claimed reservation for Women and thus she was contesting from SC Female category. Both applicants possess the requisite qualification as well as experience as prescribed in the advertisement. Both the applicants are

registered with Maharashtra State Pharmacy Council as registered Pharmacists.

4. In the year 2020 respondent no.1 issued a proclamation thereby informing that only 50% of the advertised posts shall be filled in. Accordingly, a modified list of posts to be filled in was published by respondent no.2. Online examination was conducted for all the posts including that of Pharmacists on 28-02-2021. The result of the said examination and the merit list was published on 19-04-2021. Madhuri secured 142 marks and stood 34th in the rank whereas Ashwini received 138 marks. On 22-04-2021, respondent no.2 notified general select list consisting names of 17 candidates selected for the post of Pharmacy Officer. Said list consists name of Ashwini at Sr.No.17. Ashwini secured 53rd rank in the merit list.

5. It is the grievance of Madhuri that respondent no.2 while selecting candidates for the post of Pharmacy Officer on the establishment of respondent no.2 acted against the procedure established by law and high-handedly selected Ashwini for the post without considering the order of merit. Madhuri, therefore, made a representation on the same day i.e. 22-04-2021 thereby

making complaint that less meritorious candidate has been selected superseding the claim of the applicant. Madhuri was orally informed by the officers of respondent no.2 that merit list was final and same cannot be cancelled or modified. Madhuri, therefore, has approached this Tribunal by filing O.A.No.334/2021 praying for quashment of general selection list notified on 22-04-2021 for the post of Pharmacy Officer declared by respondent no.2. Applicant has also prayed directing respondent no.2 to publish/notify a fresh general selection list for the post of Pharmacy Officer in accordance with advertisement dated 22-02-2019. Applicant has prayed for direction against respondent no.2 to issue appointment order in her favour for the post of Pharmacy Officer reserved for SC Female category.

6. During the pendency of O.A.No.334/2021, respondent no.2 issued a call letter to Madhuri and she was required to remain present for documents verification on 24-11-2022. Accordingly, Madhuri remained present and the documents were verified by respondent no.2. On 25-11-2022 respondent no.2 issued an appointment order in favour of Madhuri thereby appointing her on the post of Pharmacy Officer on the establishment of Sub District

Hospital, Georai, District Beed. When Madhuri applied for the post of Pharmacy Officer, she was working as Pharmacist in the Government Hospital at Parbhani. It is her contention that, as per order dated 25-11-2022, she was peremptorily directed to resign from the previous service/job. Accordingly, on 28-11-2022 Madhuri resigned from her earlier job/service. She was working on the said post from 17-07-2020. On 29-11-2022, Madhuri reported at Sub District Hospital, Georai, District Beed at her posting as Pharmacy Officer and submitted her joining report. It is further contended by Madhuri that, to her utter surprise, on 20-12-2022 respondents issued an order of even date and thereby cancelled her appointment. On 02-01-2023, Madhuri made a representation to respondent no.2 and requested to re-issue order of appointment. Since her request was not considered by respondent no.2, Madhuri approached this Tribunal and filed another O.A.No.55/2023 praying for quashment of the order of cancellation of her appointment. Madhuri has further prayed that, her appointment may be restored and service benefits be paid to her from 30-11-2022.

7. Ashwini has filed O.A.No.42/2023. It is the contention of Ashwini that, since she belongs to SC

category and is having educational qualification and other eligibility, she had applied for the post of Pharmacy Officer for the seats reserved for SC Female category. It is her further contention that though Madhuri (respondent no.3 in O.A.No.42/2023) belongs to SC category and has scored more marks than her, as because she did not claim the reservation against the seat reserved for SC Female or even Open Female, Madhuri was not liable to be selected for the seat reserved for SC Female category. It is the further contention of Ashwini that in the category of SC Female, since she has scored highest marks i.e. 138, she alone is liable to be selected as SC Female candidate. Ashwini has, therefore, prayed for appointment order in her favour.

8. After having considered the pleadings of the parties and the documents on record, following questions arise for our consideration;

(i) Who can be held entitled for selection against the seat reserved for SC Female, Madhuri or Ashwini ?, and

(ii) What order ?

9. There is no dispute that while filling in the online application form, Madhuri did not claim the benefit of Female reservation. Against the said column, Madhuri

has recorded an answer as “Not Applicable”, whereas in her application, applicant Ashwini has filled the information against the said column as “Applicable”, meaning thereby that she is claiming Female reservation. Madhuri and Ashwini both belong to SC category. Undisputedly, Madhuri has secured more marks than Ashwini. Madhuri has received 142 marks whereas Ashwini has scored 138 marks. Initially, the number of posts advertised were 34, however, subsequently reduced to 22 under the orders of the Government. While advertising 34 seats, 9 out of them were meant for open candidate. Break-up of the said 9 seats is as under:

- * Open General-5
- * Open Ex-sericeman-1
- * Open Female-2
- * Open Part Time Employee-1

Similarly, 6 out of 34 posts were reserved for SC candidates. Break-up of said 6 seats is as under:

- * SC General-2
- * SC Ex-serviceman-1
- * SC Female-2
- * SC Part Time Employee-1

10. After the seats were reduced, only one seat remained for SC Female. In the select list published, Ashwini was shown to have been selected against the SC Female seat. Since Madhuri's name was not there in the list of selected candidates, though she belongs to SC and had received 142 marks i.e. more than the marks secured by Ashwini, Madhuri had filed O.A.No.334/2021. In fact, there was no interim order in O.A.No.334/2021. Despite that, respondents did not issue order of appointment in favour of Ashwini. On the contrary, during the pendency of the O.A.No.334/2021 respondent no.2 issued order of appointment in favour of Madhuri on 25-11-2022. However, few days thereafter i.e. on 20-12-2022 respondent no.2 cancelled appointment of said Madhuri. Said cancellation gave rise for filing O.A.No.55/2023 by Madhuri. As noted by us hereinabove, prior to that, Ashwini had approached the Tribunal by filing O.A.No.42/2023 seeking appointment in her favour. Respondents have taken a plea that since Madhuri did not claim reservation, meant for Female, she was not considered for her selection against the seats reserved for Female.

11. Ashwini has admittedly claimed the benefit of Female reservation and, more particularly, the seat reserved for SC Female candidate. It is the contention raised on behalf of applicant Madhuri that though she had tried to avail the option for Female candidate from the drop down menu, for the said option there was an automatic system which selected the choice as "Not Applicable". It is the contention of Madhuri that, said choice was erroneous in case of Female candidates. It is her further contention that options ought to have been only two; yes or no. The contention as has been raised by Madhuri that when she tried to select the choice for Female reservation from the drop down menu, the online system automatically selected choice as "Not Applicable", is unacceptable. Ashwini has also filed on record copy of the online application submitted by her. In her form, against the column, "do you want to avail benefit of Female reservation", she has recorded answer as "Applicable". It is, thus, evident that, the system was not automatically generating the option of "Not Applicable" as has been contended by applicant Madhuri. It can be therefore reasonably inferred that, applicant Madhuri was not intending to avail benefit of reservation meant for the Female candidates.

12. Madhuri has, now, come out with some excuses but she has failed to substantiate her contentions. On the contrary, that has been proved to be incorrect in view of the application form submitted on record of another Applicant/respondent i.e. Ashwini. When Madhuri did not claim the reservation meant for Female candidates, possibility and chance of her selection on merit was only against the Open General seats or SC General seats. In the list of selected candidates, the candidates who are selected to fill in the unreserved seats i.e. Open (General) and SC (General) have scored more marks than Madhuri. It is, thus, evident that against any of the said seats she could not have been selected. Ashwini has been selected against SC Female seat and that was the only post for SC Female. As stated above, Madhuri could not have claimed the said seat as she did not claim reservation from Female category in the online application form. Selection of Ashwini against SC Female seat, therefore, appears to be in accordance with the seats as are shown in the advertisement and also in consonance with the terms and conditions incorporated in the advertisement.

13. In view of the facts and circumstances as above, it does not appear to us that the respondents have

committed any error in preparing the merit list and in not giving the appointment to Madhuri against the seat reserved for SC (Female). As per terms of the advertisement Ashwini is entitled to be appointed against the seat reserved for SC. (Female) candidate. Her name was rightly included in the list of 17 candidates who were recommended for their appointment.

14. The next question would be what order can be passed? In so far as Ashwini is concerned, she has established her claim against the seat reserved for SC (Female) whereas Madhuri, who also belongs to SC category, despite scoring more number of marks than Ashwini, would be out of the race and cannot be appointed against Open (General) or SC (General) seat.

15. It is the matter of record that respondent no.2 had issued the order of appointment in favour of Madhuri on 25-11-2022 (in the order the date has been wrongly written as 25-11-2021) on the post of Pharmacy Officer (Group-C) as Sub-District Hospital, Georai, Dist. Beed. As per clause no.21 in the said appointment order, the candidate in whose favour the appointment order is issued,

if is in service in Government of Semi-Government department or in any other office, was under an obligation to resign the said post and provide the relieving report at the time of joining the present post.

16. At the relevant time, Madhuri was serving as Pharmacist in the District Hospital at Parbhani on contract basis. Madhuri has placed on record the appointment order dated 17-07-2020 in that regard. Madhuri prayed the authorities concerned to relieve her so that she can join the new post. Accordingly, she was relived on 28-11-2022 and she joined her new post that of Pharmacy Officer at Sub-District Hospital at Georai, Dist. Beed on 28-11-2022. However, vide order dated 20-12-2022, respondent no.2 cancelled the appointment of Madhuri. Since then she is out of job.

17. Learned Counsel for Madhuri submitted that Madhuri left the earlier job to join the present assignment and within few days thereafter her new assignment has been cancelled. It has been argued that the services of Madhuri have been illegally terminated by respondent no.2. It is alleged that before termination, the applicant was not

given any opportunity of hearing, even a show cause notice was not issued. According to the learned Counsel, the services of the applicant (Madhuri) have been terminated without following the principles of natural justice, and hence, he has prayed for reinstatement of Madhuri with all consequential benefits.

18. It is true that, appointment of Madhuri has been cancelled by respondents without giving her any notice of show cause or an opportunity of hearing. It is, thus, evident that, principles of natural justice have been violated. To give an opportunity of show cause is the minimum requirement of the principles of natural justice and even that has also not been fulfilled. However, fact remains that, Madhuri was not entitled for her selection and appointment against the seat reserved for SC (Female). We have elaborately discussed the reasons therefore hereinbefore. It, however, cannot be lost sight of that only because firstly the appointment order was issued in favour of Madhuri and the said appointment order was containing a clause making it obligatory on part of Madhuri to resign her earlier job where she was working, that Madhuri resigned the said post and thereafter joined the post of

Pharmacy Officer. The present situation is that, Madhuri is now without any job. Had she been not appointed by respondent no.2, there was no reason for her to resign her erstwhile post. In the recruitment process for the post of Pharmacy Officer, Madhuri has scored 142 marks and if the list of selected candidates is perused, at least 4 candidates are selected who have received less marks than her.

19. In the facts and circumstances as above, we feel that equity lies in favour of Madhuri. Even after the decision was taken to reduce the number of posts which were initially advertised, respondents have decided to fill in total 22 posts. It is undisputed that, out of the said 22 posts, the eligible candidates did become available to fill only 17 posts. Five posts are still vacant which were reserved for SC Ex-serviceman, OBC Ex-Serviceman, Open Ex-Serviceman, EWS Part Time Employee and Open Part Time Employee. It appears to us that, Madhuri can be accommodated against the post reserved for SC Ex-Serviceman by following the procedure therefor, which would meet the ends of justice.

20. For the reasons elaborated as above, following order is passed:

O R D E R

[i] Respondents shall issue order of appointment in favour of Ashwini Rohidas Rode against the seat reserved for SC (Female) within 4 weeks from the date of this order.

[ii] Prayers of Applicant Madhuri Bhagwan Panzade in O.A.No.334/2021 and 55/2023 stand rejected. However, respondents shall endeavor to accommodate Madhuri Bhagwan Panzade against the unfilled seat reserved for SC Ex-Serviceman candidate by following due procedure therefor. Respondents shall complete such exercise within 12 weeks from the date of this order.

[iii] Original Applications stand allowed in the aforesaid terms.

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

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 30-04-2024.