

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 950 OF 2024**

DISTRICT : PUNE

Pooja Prakash Patil,)
Occ-Tailor,)
R/at Flat No. 406, Building Moshi,)
Alandi Road, Pune 412 105.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
General Administration Dept,)
Mantralaya, Mumbai-32.)
2. The State of Maharashtra,)
Through the Secretary,)
Medical Education and Drugs)
Department, Mantralaya,)
Mumbai 400 032.)
3. The Commissioner of Medical)
Education and Ayush,)
4th floor, Government Dental)
College Building,)
St. Georges' Hospital Compound)
Near CSMT, Mumbai 400 001.)
4. The Directorate of Medical)
Education and Research,)
Directorate of Ayush and)

- Maharashtra Health Centre,)
4th floor, Government Dental)
College Building,)
St. Georges' Hospital Compound)
Near CSMT, Mumbai 400 001.)
5. Pankaj Shahaji Patil,)
9860581166)
Pankupatili1986@gmail.com)...**Respondents**

Shri S.S Dere, learned advocate through V.C a/w Ms Pooja Mankoji, learned counsel for the applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)
Shri A.M Kulkarni (Member) (A)

RESERVED ON : 24.01.2025
PRONOUNCED ON : 03.02.2025

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicant prays that the Respondent No. 2 be directed to consider the case of the Applicant to the post of Tailor from EWS category since the applicant is more meritorious than the other selected candidates. Respondent No. 5, though served is not present.

2. Pursuant to the advertisement dated 10.05.2023, the applicant applied for the post of Tailor from EWS category. Learned counsel has submitted that Respondent No. 2, conducted

the written examination on 14.6.2023 and result was declared on 8.9.2023. The applicant secured 108 marks in the Written Exam. Learned counsel has submitted that the applicant was called for document verification on 19.10.2023 and final merit list was published on 20.12.2023. The applicant reached the benchmark based on final merit list published by the Respondent on 20.12.2023, however, in view of clause 6.8 of the advertisement, the applicant's case was not considered by the Respondent as the applicant has not produced the EWS Certificate before the last cut-off date.

3. Learned counsel for the applicant relied on the order of this Tribunal dated 16.4.2024 in O.A 64/2024, P.P Dhuri & Ors Vs. The State of Maharashtra & Ors. Learned counsel has submitted that the applicant Ms Dhuri and others have appeared for the same examination. In view of the said order, learned counsel submits that there is no requirement of cut-off date, but the EWS Certificate of the Financial Year 2023-24 is required when the advertisement was published on 10.5.2024. Learned counsel has submitted that the name of the applicant has appeared in the revised merit list dated 7.10.2024. Learned counsel for the applicant has relied on the affidavit in reply dated 27.11.2024 of Rajeev Nivatkar, Commissioner, Medical Education and Research. Learned counsel has submitted that the only grievance is that the Department should take decision whether the persons who are already appointed on the basis of wrong interpretation of the Policy are to be removed or they are to be placed on supernumerary posts and the applicant should be given appointment. Learned counsel has submitted that same order dated 16.4.2024 passed in O.A 64/2024 is to be extended in favour of the present applicant on the basis of the decision of the Hon'ble Supreme Court in the case of **State of Uttar Pradesh & Ors Vs. Arvind Kumar Srivastava &**

Ors, (2014) 12 SCR 193. Learned counsel has submitted that the rule of equality under Article 16 of the Constitution of India is violated and also which is adopted when the appointments are not made as per the policy and the applicant in fact is eligible to be appointed as per the policy and so it is a case of wrong interpretation of the policy. Learned counsel has submitted that the Respondent-State has correctly interpreted the policy at the time of filing of the affidavit in reply. Learned counsel has produced copy of the revised select list dated 7.10.2024 and the name of the applicant is at Sr No. 22 and she stood at Merit no. 32 in Female EWS category and has secured 108 marks. In the revised select list, she is shown as eligible as per the decision of the Tribunal dated **16.4.2024 in O.A 64/2024, P.P Dhuri & Ors Vs The State of Maharashtra & Ors.** Learned counsel has submitted that the persons selected and appointed who are Sr. No. 28 and 30, Sandya S. Salunke and Pankaj S. Patil, (Respondent No. 5) secured 102 and 98 marks respectively.

4. Learned counsel for the applicant relied on the decision of the Hon'ble Supreme Court in the case of **Anmol Kumar Tiwari & Ors Vs. State of Jharkhand & Ors (2021) 5 SCC 424.**

5. Learned C.P.O has submitted that the select list was published on 20.12.2023 and the appointment order was issued on 3.1.2024. Learned C.P.O has submitted that the order dated 16.4.2024 in O.A 64/2024 relied on by the learned counsel for the applicant was passed after the select list was published and the appointment order was issued. Further the applicant has filed the present Original Application on 31.5.2024. Learned C.P.O has submitted that before filing of the Original Application, three persons are already appointed.

6. Learned C.P.O has submitted that in the order dated 16.4.2024 passed by this Tribunal in O.A 64/2024, P.P Dhuri & Ors Vs. State of Maharashtra & Ors, the same was implemented by giving appointment to Dhuri & Ors to the post of Staff Nurse, Pharmacists etc at the relevant time as some posts were available and the applicants in the said Original Application were accommodated and appointed. Learned C.P.O has submitted that it is not the case in the present matter. In the present case when the Original Application was filed on 31.5.2024, all the three posts of Tailor from EWS Category were filled up on 3.1.2024. On query, learned C.P.O has submitted that the revised select list was published on 7.10.2024 and the applicant stood at Sr. No. 32.

7. We have considered the order dated 16.4.2024 passed in O.A No 64/2024. Undoubtedly, in the process of selection in public employment merit should prevail. Similarly, no appointment can be given beyond the number of advertised post. In the case of Anmol Tiwari (supra), 1217 candidates were declared successful in the written examination and 382 candidates were selected against 384 vacancies. It was found that the select list was prepared wrongly by ignoring the merit of the candidates. So the unsuccessful candidates filed Writ Petition before the Hon'ble High Court of Jharkhand. The revised select list was prepared and services of 42 candidates were terminated. The Hon'ble High Court of Jharkhand took a view that those persons have served for considerable time and they have completed the training and they should be accommodated against existing anticipated or future vacancies and their appointment should be treated as fresh appointment as the Petitioners cannot be held responsible for the irregularities committed by the authorities in the process of selection. The view taken by the Hon'ble High Court about the

terminated candidates was upheld by the Hon'ble Supreme Court and they all were reinstated in service.

8. Admittedly, in the present case, the applicant had secured 108 marks and some candidates demonstrated by the learned counsel for the applicant has secured 98 and 102 marks. The Hon'ble Supreme Court has upheld the decision of the Hon'ble High Court in Anmol Kumar Tiwar's case that as it was not the fault of the persons who were already appointed. The intervenors in the case of Anmol Kumar Tiwari were not granted relief by the Hon'ble Supreme Court mainly on the ground that though they were meritorious no vacancies were available and intervenors had no claim beyond the available posts. Today, in the present case MPSC had made statement that no vacancy is available for the post of Tailor under EWS category as all the three posts of EWS female category are now filled up. The candidate who has secured lesser marks, i.e., 102 marks was appointed by order dated 3.1.2024. However, the important fact to be noted is that the Respondents have revised the select list on 7.10.2024 wherein the applicant was shown higher in merit so that she should have been easily appointed as a Tailor in EWS Category as third candidate. Once the revised select list is published in pursuance to the order of the Tribunal dated 16.4.2024 in O.A 64/2024, in respect of considering NCL Certificate, then it is mandatory for M.P.S.C to adhere to the revised select list. It is further noted that the applicant has filed this Original Application on 1.8.2024, much prior to the publication of the revised select list. The selection in public employment should be strictly on merit and there should not be any violation of Article 16 of the Constitution of India. Hence, we are of the view that the applicant has a good case and she is entitled to be appointed to the post of Tailor in EWS Category.

9. We are aware that Shri Pankaj Patil Respondent No. 5 was appointed earlier and is likely to lose the job. However, Respondent No. 5, had put in nearly one year service as on today and he was appointed for no fault on his part. Therefore, his appointment cannot be cancelled by terminating his services. On this point, we rely on the ratio laid down by the Hon'ble Supreme Court in the case of **Gaurav Pradhan & Ors Vs. State of Rajasthan & Ors, AIR 2017 SC (Supp) 810**, wherein the Hon'ble Supreme Court while dealing with such a situation has directed the Government to create supernumerary posts, if not accommodated; for the person who is appointed wrongly by the Government so he cannot be removed for no fault of him.

10. We give similar directions that the services of Respondent No. 5 is to be protected by adjusting him on the post if available otherwise supernumerary post is to be created.

11. In view of the above, following order is passed:-

ORDER

- (a) The Original Application is allowed.
- (b) The Respondent No. 2 is directed to appoint the applicant to the post of Tailor, in EWS category.
- (c) No order as to costs.

**Sd/-
(A.M Kulkarni)
Member (A)**

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

**Place : Mumbai
Date : 03.02.2025
Dictation taken by : A.K. Nair.**