

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 255 OF 2021

DISTRICT : OSMANABAD

Ashvini Mohanrao Dudhbhate,
Age. 28 yrs, Occu. Nil,
R/o Abhijeet Niwas, Mahajan Plot,
Shivpuri road, Omerga,
Tq. Omerga, Dist. Osmanabad.

APPLICANT.

V E R S U S

- 1. Commissioner Health Services,**
8th Floor, Arogya Bhavan,
St. George's Hospital Compound,
P. D., Mello Road, Mumbai-400 001
- 2. The Director of Public Health,**
Directorate of Health Services,
New Central Building,
First Floor, Pune - 411 001.
- 3. Deputy Director of Health Services**
[Transport], 8, Kennedy Road,
Naidu Hospital Compound, Pune-1
- 4. Dnyaneshwar Ramhari Kogde,**
Age. Major, Occu. Service,
R/o A-p Pailpada,
Tq. Dist. Akola, Pin 444 102.
- 5. Rahul Pandit Jagtap,**
Age. Major, Occu. Service,
R/o Zilla Parishad Parbhani
[Health dept], Parbhani,
Tq. Dist. Parbhani,
Current address-Ballali Sagaj,
Post. Bhagur, Tq. Vaijapur,
Dist. Aurangabad.

.. RESPONDENTS

APPEARANCE : Shri C.V. Dharurkar, learned counsel for the
applicant.

: Shri Mahesh B. Bharaswadkar, learned Presenting
Officer for the respondent authorities.

: Shri M.B. Kolpe, learned counsel for respondent No. 4.

: Shri Avinash S. Deshmukh, learned counsel for respondent No. 5.

**CORAM : HON'BLE JUSTICE V.K. JADHAV, VICE CHAIRMAN
AND
: HON'BLE VINAY KARGAONKAR, MEMBER (A)**

Reserved on : 26.02.2025

Pronounced on : 04.03.2025

ORDER

[Per : Shri Vinay Kargaonkar, Member (A)]

1. Heard Shri C.V. Dharurkar, learned counsel for the applicant, Shri M.B. Bharaswadkar, learned Presenting Officer for respondent authorities, Shri K.B. Kolpe, learned counsel for respondent No. 4 and Shri Avinash S. Deshmukh, learned counsel for respondent No. 5.

2. Brief facts:

This Original Application has been filed by the Applicant who belongs to Nomadic Tribe (NT-C) category, challenging the appointment of Respondent No. 4 to a post reserved for the NT-C category as Technician HEMR under the Public Health Department. The Applicant, who holds a B.E. (Bio Med) degree from Solapur University with First Class Distinction and possesses a valid caste certificate, contends that Respondent No. 4, who also belongs to the NT-C category and topped the merit list, should have been appointed against an unreserved post under the EWS quota instead of the NT-C reserved post. The Applicant argues that merit-based vacancies filled

from among candidates belonging to reserved categories should be counted from the unreserved pool. The case arises from a recruitment process that began with an advertisement dated 22.02.2019 for 22 posts, which was subsequently modified by a notification dated 18.01.2021 reducing the posts to 9 due to policy decisions. The Applicant seeks to be appointed against the NT-C reserved post in place of Respondent No. 4, or alternatively, against any vacancy that may have arisen during the lengthy selection process.

3. Pleadings and Arguments by the Applicant

(i) The Applicant's case stems from an advertisement dated 22.02.2019, published by Respondent No. 3, for recruitment to various posts under the Public Health Department. The advertisement included 22 posts of Technician HEMR, with 2 posts reserved for the NT-C category. The Applicant applied for one of these posts on 14.03.2019 through the online portal.

(ii) Subsequently, on 18.01.2021, Respondent No. 2 issued a notification indicating that the State Government had granted permission to fill only 50% of the available vacancies in the health department. This notification also mentioned that due to a stay granted by the Hon'ble Supreme Court on social reservations from the S.E.B.C. category, the State General Administration Department had resolved to extend reservation benefits to the S.E.B.C. community from the E.W.S. quota instead. As a result, the roster point plan for the proposed recruitment was modified, reducing the total number of vacancies for the post of 'Technician H.E.M.R.' from 22 to 9, with only 1 post reserved for the NT-C category instead of the original 2.

(iii) On 28.02.2021, the Common Test was conducted, in which the Applicant's performance was satisfactory. The final results were declared on 19.04.2021, with one Dnyaneshwar Ramhari Kogde (Respondent No. 4) topping the list. Notably, Respondent No. 4 also belongs to the NT-C category. Document verification for selected candidates was scheduled for 22.04.2021, but the Applicant was not called for this process. Instead, Respondent No. 4 was called and subsequently issued an offer letter for appointment as 'Technician HEMR' against the post reserved for the NT-C category.

(iv) The Applicant contends that Respondent No. 4 ought to have been considered against a post from the unreserved/open category under the EWS quota, while Respondent No. 5 is currently appointed under the EWS quota. The Applicant argues that since the EWS category is to be reckoned as an 'Open' category, Respondent No. 4 should be appointed to the EWS post, Respondent No. 5's appointment should be canceled, and the Applicant should be appointed to the post reserved for the NT-C category.

(v) The Applicant's case is primarily based on Government Resolutions dated 09.04.1965 and 27.06.1974, issued by the State of Maharashtra General Administration Department. Paragraph 3 of the G.R. dated 27.06.1974 specifically states that merit-based vacancies filled from among candidates belonging to the S.C., S.T., and N.T. categories are to be counted from the pool for the unreserved (Open) category, while the remaining reserved posts must go to candidates belonging to the respective categories.

(vi) In light of these Government Resolutions, the Applicant argues that Respondent No. 4 should have been appointed to an unreserved post, not to a post reserved for the NT-C

category. By appointing Respondent No. 4 to the NT-C reserved post, the Applicant claims she has been deprived of appointment as 'Technician HEMR'.

(vii) Additionally, the Applicant argues that even if Respondent No. 4's appointment is considered fair and proper, there must have been several vacancies created during the significant gap between the date of the advertisement (19.02.2019) and the date of the examination (28.08.2021). The Applicant suggests that Respondents 1 to 3 could accommodate her on one of these posts that became vacant after the publication of the advertisement and before the conduct of the examination.

(viii) On 21.04.2021, the Applicant filed representations with Respondents 1 to 3 regarding the perceived injustice, but they failed to take cognizance of her grievance. Consequently, the Applicant has approached the Tribunal seeking redressal.

(ix) The Applicant further argues that the notification dated 18.01.2021 was erroneous insofar as the posts advertised were reduced to 9 from 22. Half of 22 posts would be 11, but Respondents 1 to 3 advertised only 9 posts. Even assuming these 9 posts were advertised correctly at the discretion of Respondents 1 to 3, not a single post was earmarked for the Open category. The Applicant contends that the reservations worked out by Respondents 1 to 3 violated the settled principle of law that caste/community-based reservations shall not exceed 50%, to the prejudice of the Open category.

(x) Lastly, the Applicant highlights the critical shortage of healthcare professionals across the state, particularly during the COVID-19 pandemic. Given these circumstances, the Applicant argues that the Government should consider

enhancing the number of vacancies to accommodate qualified candidates like the Applicant.

(xi) Based on these grounds, the Applicant seeks the following relief: (a) quashing of Respondent No. 4's appointment as 'Technician HEMR' against a post reserved for the NT-C category, and direction to Respondents 1 to 3 to accommodate Respondent No. 4 against the EWS post currently held by Respondent No. 5; (b) direction to Respondents 1 to 3 to appoint the Applicant as 'Technician HEMR' in place of Respondent No. 4, against the post reserved for the NT-C category; or alternatively, (c) direction to Respondents 1 to 3 to appoint the Applicant as Technician HEMR on any post lying vacant in the Select/Wait list published pursuant to the advertisements dated 22.09.2019 and 18.01.2021.

4. Respondents Nos. 1 to 3's Pleadings and Arguments

(a) Respondents 1 to 3, through their affidavit filed by Service Manager, Regional Workshop, Health (Transport), Aurangabad, categorically deny the Applicant's contention that Respondent No. 4 was wrongly placed against a post reserved for the NT-C category. They assert that these contentions are baseless and denied in toto.

(b) Respondents 1 to 3 acknowledge that by notification dated 18.01.2021, the available posts were reduced to 50%, and consequently, the total vacancies for the post of Technician HEMR were reduced from 22 to 9, with only 1 post reserved for the NT-C category instead of the original 2 and zero post for open category.

(c) They further admit that the examination was held on 28.02.2021, wherein the Applicant and other private

Respondents appeared, and Respondent No. 4, who belongs to the NT-C category, stood first in the examination.

(d) However, Respondents 1 to 3 firmly refute the Applicant's claim that Respondent No. 4 should have been appointed from the EWS category. They assert that Respondent No. 4 belongs to the NT-C category and did not apply from the EWS category; therefore, he cannot be given a posting or appointment from the EWS category as contended by the Applicant. As for Respondent No. 5, he had applied from the EWS category, and thus his claim was rightly considered from that category, and he was appointed to the post of Technician HEMR from the EWS category.

(e) Respondents 1 to 3 specifically deny the Applicant's assertion that the EWS category is to be reckoned as an Open category. They maintain that any person who has not applied from the EWS category cannot be appointed to a post reserved for the EWS category, as the post is reserved for a particular category and cannot be termed as open or unreserved.

(f) Respondents 1 to 3 acknowledge the validity of the Government Resolutions dated 09.04.1965 and 27.06.1974, which stipulate that candidates from reserved categories are to be considered on merit for unreserved (Open) category posts first, and only if they are not eligible for selection from the unreserved category should they be considered from their respective reserved categories. However, they emphasize that this principle cannot be applied in the present case because there was not a single post available for the unreserved/open category. Therefore, the Applicant's contention that Respondent No. 4 should have been considered and appointed from the unreserved category is incorrect.

(g) Regarding the gap between the date of the advertisement and the date of the examination, Respondents 1 to 3 maintain that as per the policy decision taken by the State Government, the posts were reduced to 50%, and therefore, there is no question of accommodating candidates beyond the advertised posts. Moreover, they note that the Applicant has not challenged the notification dated 18.01.2021, which reduced the number of posts, and therefore, she cannot now claim that posts are available despite not receiving an appointment.

(h) Respondents 1 to 3 admit that the Applicant filed an application dated 21.04.2021, but they assert that since the application was baseless and not worth consideration, they rightfully did not consider it.

(i) In conclusion, Respondents 1 to 3 argue that the Original Application filed by the Applicant is devoid of merit and should be dismissed with costs. They maintain that Respondent No. 4 applied from the NT-C category, does not belong to the EWS category, and therefore cannot be appointed from that category. Similarly, Respondent No. 5 applied from the EWS category and, being more meritorious than the Applicant, was rightly appointed from the EWS category. Therefore, they find no fault in these appointments and assert that the Applicant's stand is misconceived.

5. Respondent No. 4's Pleadings and Arguments

(a) Respondent No. 4, Dnyaneshwar Ramhari Kogde, denies the assertion that his appointment to the NT-C category post is wrong. He refutes the claim that he should be appointed from an unreserved post, arguing that this is incorrect and contrary to settled principles of law, as there was no post available for open competition. He emphasizes that posts made available to

the EWS category are not open competition posts, and therefore, he cannot be appointed as an EWS candidate.

(b) Respondent No. 4 does not dispute the contents of paragraphs 6.2 to 6.8 of the Original Application, as they are part of the record. He admits the contentions in paragraph 6.9 regarding the examination results and his position at the top of the merit list.

(c) However, he denies the contentions in paragraph 6.10, specifically refuting the claim that he ought to have been appointed from the EWS category. He argues that the Circular at Annexure A-7 cannot be considered, as it pertains to S.E.B.C. candidates being considered from the EWS category under certain conditions. Respondent No. 4 asserts that he applied from the NT(C) category, and there was no post reserved for open competition. Therefore, his selection and appointment are legal and proper.

(d) Respondent No. 4 concedes that candidates who have applied from reserved posts have the right to claim open competition posts on their own merit. However, he argues that this principle cannot be applied in the present case as there were no posts available for open competition.

(e) Respondent No. 4 reiterates that the Government Resolutions dated 09.04.1965 and 27.06.1974 cannot be applied as there were no posts available for open competition.

(f) He notes that the Applicant has specifically admitted in Ground B of the Original Application that no post was earmarked for open competition.

(g) Most importantly, Respondent No. 4 points out that he was appointed on 03.05.2021, vide outward No. 116 (II) Direct

Recruitment/Appointment Order/3502-08/2021 at Zilia Parishad, Washim. The Original Application was filed on 30.06.2021. Therefore, he contends that the Original Application is not maintainable as his appointment order was not challenged.

(h) In view of these facts and circumstances, Respondent No. 4 argues that the Original Application is liable to be dismissed with costs.

6. Respondent No. 5's Pleadings and Arguments

(i) Respondent No. 5, Rahul Pandit Jagtap, at the outset, asserts that there is absolutely no merit or substance in the Original Application, as it is sustained on the misconception that Respondent No. 4, who belongs to the NT-C category, can be shifted to the open category, thereby making way for the Applicant to occupy his post. Respondent No. 5 argues that this submission is absolutely unsustainable and untenable.

(ii) Respondent No. 5 highlights that a bare examination of the advertisement dated 22.02.2019 (Annex. A-4) and the Notification dated 18.01.2021 (Annex. A-6) shows that not a single post from the open category was advertised in the selection process initiated by Respondent No. 1. In other words, no posts from the open general category were to be filled in this selection process.

(iii) Regarding his own circumstances, Respondent No. 5 states that he belongs to the Maratha caste. He notes that it is common knowledge that the Government of Maharashtra introduced reservation in education and public employment for the "Socially and Economically Backward Class (SEBC)," which included the Maratha caste. In the advertisement for the post of Technician (HEMR), out of the total 22 posts, 2 posts were

reserved for the SEBC category. Therefore, he submitted his application form in response to the advertisement from the SEBC category for one of those two posts.

(iv) Respondent No. 5 further notes that during the selection process, the reservation provided by the Government of Maharashtra in favour of the SEBC category was stayed by the Hon'ble Apex Court on 09.09.2020. In response, on 23.12.2020, the State Cabinet decided to permit candidates who had applied from the SEBC category in various selection processes to opt either for the open category or for the EWS (Economically Weaker Section) category. This decision is already placed on record by the Applicant at page no. 46 of the Original Application.

(v) Following this decision, a notification was published on the Maha Arogya Portal asking SEBC candidates like Respondent No. 5 to take appropriate steps. In response, he opted for the EWS category by submitting the requisite EWS certificate. His option for the EWS category was accepted by the Maha Arogya Portal, and consequently, his category was updated from (old) SEBC to (new) EWS category, which was confirmed via email. He emphasizes that he opted for the EWS category not only because there was no post available for the "open-general" category in the advertisement, but also because his family's financial position qualified him for the EWS category, for which he secured a certificate from the competent authority.

(vi) Respondent No. 5 clarifies that as far as Respondent No. 4 is concerned, there was no question of him being able to opt for or be accommodated in the EWS category because he belongs to the reserved category of NT-C and had availed of this reservation while submitting his application. To support this,

Respondent No. 5 has annexed a copy of the application form submitted by Respondent No. 4 as ANNEXURE R-2. Additionally, to further support his argument that Respondent No. 4, being a candidate from the NT-C category, could not benefit from the EWS category or be accommodated on a post reserved for the EWS category.

(vii) In light of these submissions, and considering that the reservation provided for the SEBC category by the Government of Maharashtra was ultimately set aside by the Hon'ble Apex Court on 05.05.2021, Respondent No. 5 argues that the basic premise of the Applicant's case is untenable. He points out that the revised vacancy matrix for the post of Technician (HEMR) on page 43 of the Original Application shows that there was only one post earmarked for the EWS General category, which was given to him because he does not belong to any reserved category and falls under the "Economically Weaker Section" category, unlike Respondent No. 4, who, being from the reserved NT-C category, could not avail of the EWS category benefit.

(viii) Based on these submissions, Respondent No. 5 emphatically argues that there is absolutely no substance or merit in any of the contentions raised by the Applicant in the Original Application. He asserts that there was no question of Respondent No. 4 being accommodated or appointed to a post reserved for the EWS General category, much less was there a question of Respondent No. 5's appointment being canceled.

(ix) Therefore, Respondent No. 5 contends that the Original Application should be dismissed.

7. Reasoning and conclusions:

Having carefully considered the submissions made by the Applicant and all the Respondents, the documentary evidence placed on record, and the applicable legal provisions, this Tribunal is of the considered view that the Original Application deserves to be dismissed for the following reasons:

8. *On the Issue of Appointments of Respondent No. 4 and Respondent No. 5*

(i) The principal contention of the Applicant revolves around the appointment of Respondent No. 4 (Shri Dnyaneshwar Ramhari Kogde) against a post reserved for the NT-C category. The Applicant argues that Respondent No. 4 should have been appointed against a post from the unreserved/open category under the EWS quota, thereby making way for the Applicant to be appointed against the NT-C category post.

(ii) Upon careful examination of the entire record, this Tribunal finds that the advertisement dated 22.02.2019 and the subsequent notification dated 18.01.2021 make it abundantly clear that no post was earmarked for the open/unreserved category. This crucial fact has been admitted by the Applicant herself in her Original Application. In the absence of any open category post, the question of accommodating Respondent No. 4 against an open category post does not arise.

(iii) The Applicant has placed significant reliance on Government Resolutions dated 09.04.1965 and 27.06.1974, which provide that candidates from reserved categories are to be considered on merit for unreserved (Open) category posts first, and only if they are not eligible for selection from the unreserved category should they be considered from their

respective reserved categories. While this principle is well-established, it necessarily presupposes the existence of unreserved posts. In the present case, this principle cannot be invoked as there were no unreserved posts available.

(iv) It is pertinent to note that Respondent No. 4 had applied specifically from the NT-C category. He stood first in the merit list, as admitted by the Applicant. Having applied from the NT-C category and being at the top of the merit list, Respondent No. 4 was rightfully appointed against the sole post reserved for the NT-C category. There is no irregularity or illegality in this appointment.

(v) With respect to Respondent No. 5, the record shows that he originally belonged to the Maratha caste and had applied under the SEBC category. During the pendency of the selection process, the reservation for the SEBC category was stayed by the Hon'ble Supreme Court on 09.09.2020. Consequently, on 23.12.2020, the State Cabinet decided to permit candidates who had applied from the SEBC category to opt either for the open category or for the EWS category, provided they met the eligibility criteria for the same.

(vi) Respondent No. 5 opted for the EWS category and submitted the requisite EWS certificate dated 17.02.2021, which was duly accepted by the authorities. This change of category from SEBC to EWS was in accordance with the policy decision of the State Government and was legally permissible. Therefore, the appointment of Respondent No. 5 against the post reserved for the EWS category is legally valid and does not suffer from any infirmity.

9. On the Issue of EWS Category Posts Being Open Category Posts

(i) The Applicant's contention that posts reserved for the EWS category are to be treated as "open" category posts is fundamentally flawed and misconceived. The EWS reservation was introduced by the 103rd Constitutional Amendment, which added Articles 15(6) and 16(6) to the Constitution, providing for reservation for Economically Weaker Sections in admissions and public employment. While it provides reservation for economically weaker sections among the general category, it does not make EWS posts equivalent to open category posts.

(ii) The Government Resolutions and Circulars submitted by Respondent No. 5, particularly those dated 12.02.2019, 31.05.2021, and 28.07.2020, make it clear that candidates from reserved categories cannot be appointed against posts reserved for the EWS category. The EWS reservation is specifically for economically weaker sections among those who do not benefit from existing reservations for Scheduled Castes, Scheduled Tribes, and Other Backward Classes.

(iii) Therefore, Respondent No. 4, who belongs to the NT-C category (a reserved category), could not have been appointed against a post reserved for the EWS category, as contended by the Applicant. This argument is contrary to the established legal position and the specific government orders governing EWS reservation.

10. On the Issue of Reduction of Posts

a) The Applicant has argued that the reduction of posts from 22 to 9 through the notification dated 18.01.2021 was erroneous, and that half of 22 should have resulted in 11 posts, not 9. This contention is untenable for two reasons:

b) The decision to reduce the number of posts to be filled was a policy decision of the State Government, which is well within its administrative discretion. This Tribunal cannot substitute its judgment for that of the State Government in matters of policy.

c) The Applicant has not challenged the notification dated 18.01.2021 that reduced the number of posts. Having participated in the selection process after the issuance of this notification without any protest or challenge, the Applicant cannot now question the reduction of posts.

11. On the Issue of Maintainability of the Original Application

(i) It is significant to note, as pointed out by Respondent No. 4, that he was appointed on 03.05.2021 vide outward No. 116 (II) Direct Recruitment/Appointment Order/3502-08/2021 at Zilia Parishad, Washim. The Original Application was filed on 30.06.2021, without specifically challenging this appointment order. This omission renders the Original Application legally deficient and procedurally flawed.

(ii) Furthermore, the Applicant's alternative prayer seeking appointment against vacancies that might have arisen during the selection process is equally untenable. As correctly pointed out by Respondent No. 4, a fresh advertisement for the said posts was issued on 21.05.2021, thereby indicating that any new vacancies were being carried forward to the subsequent recruitment process. The Applicant was at liberty to participate in this new selection process.

12. On Compliance with Government Regulations, Rules, and Acts

(i) After thorough scrutiny of the entire record and the applicable legal provisions, this Tribunal finds no irregularity

or violation of any government regulations, rules, or acts in the appointment of Respondent No. 4 from the NT-C category or Respondent No. 5 from the EWS category. The selection and appointment process was conducted in strict conformity with the prevailing legal framework and government policies.

(ii) The appointment of Respondent No. 4 from the NT-C category was in accordance with the reservation roster, as he had applied from that category and stood first in the merit list. Similarly, the appointment of Respondent No. 5 from the EWS category, after his category was changed from SEBC following the Supreme Court's stay on SEBC reservation, was legally valid and procedurally correct.

(iii) The Applicant's reliance on Government Resolutions dated 09.04.1965 and 27.06.1974 is misplaced in the context of the present case, as these resolutions apply only when there are posts available in the open category, which is not the case here.

(iv) The principles of fair play, natural justice, and equal opportunity have been duly adhered to throughout the selection process. There is no evidence on record to suggest any arbitrariness, mala fide intent, or discrimination in the appointment of the respondents.

13. In light of the foregoing discussion and reasons, this Tribunal finds no merit in the Original Application. The appointment of Respondent No. 4 from the NT-C category and Respondent No. 5 from the EWS category is legally correct and does not suffer from any infirmity or irregularity.

14. Consequently, the Original Application is dismissed. In the circumstances of the case, the parties shall bear their own costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 04.03.2025

O.A.NO. 255-2021-DB-HDD-Appointment