

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 721 OF 2023

DISTRICT :- JALGAON

Rahul Shivaji Salunkhe,)
Age - 39 years, Oce. Service as a)
Agriculture Assistant,)
Presently working at Taluka Agri. Office,))
Chopda, Dist. Jalgaon,)
R/o Plot No. 17, Mahalaxmi Nagar,)
Near Pankaj Bus Stop. Yaval Road,)
Chopda, Tq. Chopda, Dist. Jalgaon.) .. **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through Principal Secretary,)
Agriculture Department,)
Mantralaya, Mumbai-32.)
2. **The Commissioner (Agriculture),**)
Commissioner Office of Agricultural,)
Maharashtra State,)
Pune Krushi Ayuktalay, 2nd Floor,)
Central Building, Shivaji Nagar,)
Pune-411001.)
3. **Divisional Joint Director of Agriculture,)**)
Nashik Division, Nashik,)
Next to Old Mahasul Office, Nashik Road)
Nashik.)
4. **Pramodsing s/o Umedsing Rajpur,**)
Age- 35 years, Occu. Service as a)
Agriculture Supervisor,)
Presently working at Taluka Agri Office,))
Akarni, Dhatgaon, Dist. Nandurbar,)
R/o- Taluka Agriculture Office, Akarni,)
Post Dhadgaon, Tq. Akrani,)
Dist. Nandurbar.)

5. **Nitin Pratap Mahajan,**)
 Age- Major, Occu. Service as a)
 Agriculture Supervisor,)
 Presently working at Taluka Agri Office,)
 Bodwad, Dist. Jalgaon,)
 R/o-Taluka Agriculture Office, Bodwad,))
 Tq. Bodwad, Dist. Jalgaon.)
6. **Chatur Sudam Shinde,**)
 Age- Major, Occu. Service as a)
 Agriculture Supervisor,)
 Presently working at Sub Divisional)
 Agri Office, Shahada, Dist. Dhule,)
 R/o Sub Divisional Agri Office,)
 Shahada, Dist. Dhule.) **..RESPONDENTS**

APPEARANCE : Shri Sudhir Chavan, learned counsel
 holding for Shri Vaibhav U. Pawar,
 learned counsel for the applicant.

: Shri V.G. Pingle, learned Presenting
 Officer for the respondent authorities.

: None appears for respondent nos. 04 to
 06

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

DATE : 08.08.2024

ORAL ORDER

(Per : Justice Shri P.R. Bora, Vice Chairman)

Heard Shri Sudhir Chavan, learned counsel holding
 for Shri Vaibhav U. Pawar, learned counsel for the applicant
 and Shri V.R. Bhumkar, learned Presenting Officer for the

respondent authorities. None appears for respondent nos. 04 to 06.

2. The present applicant applied for promotion to the post of Agriculture Supervisor from amongst the cadre of Agriculture Assistants. Total 96 posts were to be filled in for which the advertisement was issued on 13.01.2023 by respondent no. 03. The applicant applied for the said post and succeeded in the written examination, which was held on 03.04.2023 result of which was declared on 20.04.2023. Name of the applicant was included in the list of the candidates to be recommended for appointment. In the meanwhile the Government issued a communication, thereby directing the respondent no. 03 to implement the policy of the Government of giving 4% reservation to Divyang candidates. In view of the aforesaid communication the applicant could not be recommended for the reason that 4% posts were directed to be kept reserved for Divyang candidates.

3. It is the grievance of the applicant that when advertisement was published, no such reservation was prescribed. Even when the written examination was held and results were declared at that time also there were no such instructions. It is the further contention of the applicant that

since the advertisement was published and process was commenced, the respondents could not have incorporated any new terms and conditions in the said advertisement, which may prejudicially affect the interest of the candidates, who have applied for the said post. Learned counsel submits that in the written examination the applicant secured 104 marks. It is the further contention of the applicant that he has not been selected on the subject post only for the reason that in view of the communication impugned in the present Original Application, the Divyang candidates have been appointed though they have secured less marks than the applicant. Learned counsel submitted that the changes were made when process of promotion was on the verge of completion. Learned counsel pointed out that the G.R. dated 20.4.2023 on the basis of which the modification has been caused in the list of the recommended candidates was to be implemented retrospectively. Learned counsel, therefore, prayed for allowing the present O.A.

4. The contentions so raised by the applicant in his Original Application and the prayers made therein are opposed by the respondents. Learned Presenting Officer submitted that the G.R. dated 20.04.2023 was directed to be made applicable

to all pending processes also and accordingly the provisions in the said G.R. were implemented. Learned P.O. invited our attention to clause in the advertisement, which demonstrates that the appointing authority may cause change in the nature of examination, date of examination, as well as, can increase or decrease the number of posts advertised. According to the learned P.O., invoking said power, 4% reservation is given by the Government vide G.R. dated 20.04.2023 and accordingly necessary changes were made in the final list of recommended candidates. Learned P.O. submitted that having regard to the said fact, no error has been committed by the respondents. He, therefore, prayed for dismissal of the Original Application.

5. The only issue which falls for our consideration in the present matter is whether the respondents could have applied the G.R. dated 20.04.2023 retrospectively. The G.R. dated 20.04.2023 specifically states that the provisions made under it would apply from the date on which it has been issued i.e. on 20.04.2024 onwards. No other meaning can be attributed to the said clause except that the provisions thereunder would apply to the selection process, which would be commenced thereafter i.e. after 20.04.2024. We have, therefore, no hesitation in arriving at the conclusion that the

G.R. dated 20.04.2024 could not have been made applicable to the present selection process, which admittedly had commenced in January, 2023 and by 20th April, 2024 the result of written examination held for the said selection, was also declared.

6. The recruitment process was carried out for filling up 96 posts as we have noted hereinabove. The respondents, however, have filled in only 94 posts. One post is kept vacant for non-availability of Divyang candidate and said backlog is resolved to be carried forward to the next recruitment, whereas the other post is kept unfilled as the departmental enquiry is being conducted against the selected candidate. As is revealing from the pleadings and the documents on record, in order to comply with the G.R. dated 20.04.2023, the respondents earmarked 04 posts out of 96 for Divyang candidates. The respondent nos. 04 to 06 are the candidates, who fall in the category of Divyang candidates and have been appointed against the seats reserved for Divyang candidates.

7. It is the case of the applicant that though the applicant is holding the rank as 97 in the general merit list, whereas the respondent nos. 04, 05 and 06 are respectively holding the ranks 129, 138 and 170 respectively, the applicant has not been selected for the reason that the respondents have

resolved to implement the G.R. dated 20.04.2023. It is evident that had G.R. dated 20.04.2023 not implemented, it was the applicant and not the respondent nos. 04 to 06, who could have secured the order of appointment on the basis of his ranking in order of merit. The applicant has alleged that because of wrong interpretation of G.R. dated 20.04.2023 by the respondents that he has been deprived from his selection.

8. There appears substance in the contentions so raised on behalf of the applicants. The decision of the Government to provide 4% reservation for Divyang candidates cannot be opposed since the said decision has been taken after due deliberations and in larger interest. However, the said decision could not have been made applicable to the recruitment processes which had commenced prior to issuance of the said G.R. Clause 17 of the said G.R. provides that the provisions thereunder would be applicable from the date of its issuance i.e. 20.04.2023 onwards. By the said date the present recruitment process was almost completed. The respondents, therefore, could not have made applicable the provisions under the said G.R. for the present recruitment process.

9. Learned counsel for the applicant fairly submitted that though in the O.A. the applicant has prayed for setting

aside the selection of respondent nos. 04 to 06, he is not pressing the said relief provided sole applicant is accommodated against 01 seat, which is kept vacant by the respondents because of non-availability of Divyang candidate. As noted by us hereinabove, it is undisputed that the applicant has scored more marks than respondent nos. 04 to 06. As is revealing from the list of selected candidates, the respondent nos. 04, 05 and 06 are the last 03 candidates in the list of selected candidates at Sr. Nos. 93, 94 and 95 respectively and the last seat i.e. 96th seat is kept unfilled for Divyang candidate. The applicant stands at sr. no. 97 in the merit list and his score is 104 marks. It is thus evident that for the post kept unfilled for Divyang candidate, the applicant was liable to be certainly selected. We reiterate that G.R. dated 20.4.2023 was to be prospectively implemented and could not have been made applicable to the instant recruitment process. As such, the respondent authorities could not have selected respondent nos. 04 to 06, who have secured less marks than the applicant. However, as we have noted hereinabove, the applicant has not pressed his prayer for setting aside the appointments of said respondents. It is his only contention that last post, which is kept unfilled for non-availability of Divyang candidate, shall be allotted to him. The vacancy position is placed on record by the

learned P.O., which confirms that 01 post is kept unfilled for Divyang candidate. In the circumstances, there appears no impediment in directing the respondents to appoint the applicant against the said seat, as the applicant is entitled to get the said seat on his own merit.

10. For the reasons elaborated above, the following order is passed:-

ORDER

- (i) The respondents shall consider the applicant for his appointment against the seat kept unfilled out of 96 posts advertised and if otherwise there is no impediment for his appointment, issue the appointment order in favour of the applicant within 08 weeks from the date of this order.
- (ii) The Original Application is allowed in the aforesaid terms, however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 08.08.2024