

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 93 OF 2019

DIST. : AURANGABAD

Priyanka D/o Jitendra Janephalkar,)
Age. 29 years, occ. Service as a)
Assistant Engineer Grade-II,)
Maharashtra Jivan Pradhikaran,)
Govt. of Maharashtra,)
R/o Sambhaji Nagar Colony, Depo Road,)
Vaijapur, Dist. Aurangabad 423 701.)..

APPLICANT

V E R S U S

- 1) **The State of Maharashtra,)**
Through its Secretary,)
Public Works Department,)
Mantralaya, Mumbai.)
- 2) **Government of Maharashtra,)**
Through the Secretary,)
Water Resources Department,)
Mantralaya, Mumbai.)
- 3) **Government of Maharashtra,)**
Through the Secretary,)
Water Supply & Sanitation Department,))
Mantralaya, Mumbai.)
- 4) **The Maharashtra Public Service)**
Commission,)
Through its Chairman, having its)
Main Office 5th, 7th and 8th Floor,)
Cooperaj Telephone Exchange)
Building, Maharshi Karve Marg,)
Cooperaj, Mumbai 400 021.)..

RESPONDENTS

APPEARANCE :- Shri J.M. Murkute, Advocate for the
applicant.
: Smt. Deepali S. Deshpande, learned
Presenting Officer for the respondent
authorities.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar,
Member (A)

DATE : **12.09.2024**

ORAL ORDER

[Per :- Justice P.R. Bora, V.C.]

1. Heard Shri J.M. Murkute, learned counsel for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for respondent authorities.

2. The applicant had applied for the post of Assistant Executive Engineer (Civil), Grade-A and Assistant Engineer, Grade-A in pursuance of the advertisement no. 124/2013 dated 19.09.2013. The said advertisement was published to fill-up the vacant posts of the aforesaid category for following Departments:-

01. Public Works Department,
02. Water Resources Department,
03. Water Supply and Sanitation Department.

3. At the relevant time the applicant was serving in the Water Supply and Sanitation Department on the post of

Assistant Engineer, Grade-B. On the said post the applicant was selected in the recruitment carried out by the Maharashtra Public Service Commission (for short the Commission). The applicant claims to be belonging to Other Backward Class category. The applicant possesses qualification of B.E.(Civil) and M. Tech. (Civil). The qualifications as such were acquired by the applicant before joining in the Government service on the post of Assistant Engineer (Civil), Grade-B. The Commission had published the aforesaid advertisement for filling in several vacant posts in different cadres out of which, 91 posts were of Assistant Executive Engineer, Grade-A. From amongst the said 91 posts, 24 posts were reserved for Female candidates. Breakup of the said 24 posts was as follows:-

03 posts	-	for Scheduled Caste
02 Posts	-	for Scheduled Tribe
01 Post	-	for VJ-C
05 Posts	-	for O.B.C.
13 Posts	-	for Open Female

4. In the selection process the candidates were required to appear for preliminary examination, thereafter Main Written Examination and were also required to face the interview. The applicant successfully completed the entire selection process and scored 232 marks in total. As is revealing from the

pleadings, the different cut-off marks were provided for different categories. For O.B.C. (Female) candidates cut-off was of 269 marks, whereas for Open (Female) candidates it was 226. In the advertisement no such column was provided requiring the female candidate to mention whether she is claiming Female reservation.

5. As per the then prevailing GRs open female candidate, only were entitled to be appointed against the open seats. In the circumstances, though the applicant had received more meritorious position than some of the selected Open Female candidates, the applicant was not included in the list of selected Open Female candidates. For OBC (Female) candidates 05 seats were reserved. Since 05 OBC (Female) candidates scored more marks than the applicant, name of the applicant was not included in the list of selected O.B.C. Female candidates.

6. It is the grievance of the applicant that the selection of the candidates and more particularly of the candidates claiming horizontal reservation was done on the strength of Government Circular dated 13.08.2014. It is the case of the applicant that the Circular, which came to be issued after the selection process was started, could not have been applied to

the instant selection process. It is also the case of the applicant that even at the relevant time insofar as the candidates, may be Male or Female, the selection was liable to be made on the basis of merit alone. According to the applicant, if the said principle would have been applied, she was liable to be selected against the Open Female seat. It is the grievance of the applicant that last 02 Open Female candidates namely Rutuja Satish Jadhav and Dipali Babasaheb Patil have secured 231 and 226 marks respectively, whereas the present applicant had received 232 marks i.e. more marks than the last 02 candidates selected against Open Female seats.

7. In the circumstances, the applicant has filed the present Original Application seeking the following reliefs:-

“A) This Original Application may kindly be allowed.

B) The respondents No. 1 to 4 may kindly be directed to consider the applicant for selection and appointment from open-female category as per her merit to the post Assistant Executive Engineer (Civil) Grade-A Water Supply and Sanitation Department of Maharashtra State, in view of Government Resolution dated 19.12.2018 and in view of the order passed by Hon’ble High Court in W.P. No. 14073 of 2018.

C) The respondents no. 1 to 4 may kindly be directed to fill up the vacant posts of women open category by considering the applicant in relation to Government Resolution dated 19.12.2018 and in view of the order passed by Hon’ble High Court in W.P. No. 14073 of 2018.”

8. The contentions raised and prayers made in the Original Application are opposed by the respondents. Respondent no. 04 i.e. the Commission has only filed the affidavit in reply. The entire thrust of respondent no. 04 is on the Circular dated 13.08.2014, which was then made applicable. Sum and substance of the contentions raised in the affidavit in reply of respondent no. 04 i.e. the Commission is that the applicant being belonging to O.B.C. was eligible to compete only for the seats reserved for the said class. It is further contended that the applicant could not secure the seat reserved for O.B.C. (Female) candidates (total 05 seats), since she could not earn that meritorious position. As about the contention of the applicant that she was liable to be selected against Open Female seat, referring to Circular dated 13.08.2014 it has been stated that according to said Circular, the seats reserved by way of horizontal reservation were to be filled in from the candidates of that category, meaning thereby that though Backward Class candidate may have scored more marks than the Open Class candidate, he was not eligible to be appointed against the seats reserved for Open Category candidates.

9. Shri J.M.Murkute, learned Counsel appearing for the applicant submitted that, though the advertisement was issued for filling up 91 vacant posts of Assistant Executive Engineer Grade-A, MPSC recommended only 36 candidates and published the list of said candidates on 24-09-2015. Learned Counsel further submitted that in the said list of 36 candidates, 5 candidates were from Open Female category and 2 candidates from OBC Female category. Learned Counsel further submitted that a candidate in the said list by name Sarla Madhukar Dhoke was shown to be selected against the seat reserved for OBC Female category. Similarly, another candidate, namely, Smita Hiranman Pawar was also shown to be selected against the OBC Female category. Sarla Dhoke was shown to have scored 274 marks whereas Smita Pawar was shown to have secured 269 marks.

10. Learned Counsel further submitted that, Sarla Dhoke had filed the O.A. before the Nagpur Bench of the Maharashtra Administrative Tribunal bearing O.A.No.660/2015 raising a grievance that the MPSC has illegally denied her selection in Open category though she was more meritorious than some open category candidates. The Tribunal, however, dismissed the said O.A. vide order passed on 15-03-2019. Said

Sarla Dhoke challenged the order passed by the Tribunal before the Hon'ble Bombay High Court Bench at Nagpur by filing Writ Petition No.5721/2019. Learned Counsel pointed out that Division Bench of the Hon'ble High Court allowed the said Writ Petition vide order passed on 25-08-2021 and directed the MPSC to place the petitioner in the list of recommended candidates for appointment on the post of Assistant Executive Engineer (Civil) Group-A, Water Resources Department in Open category with all consequential benefits. Learned Counsel submitted that the grievance of the present applicant is identical with the grievance raised by the said petitioner. Learned Counsel submitted that, two candidates, namely, Rutuja Satish Jadhav and Deepali Babasaheb Patil in the list of recommended candidates declared by MPSC on 24-09-2015 though have secured less marks than the applicant were shown to be selected against the seats reserved for Open Female candidates. Learned Counsel submitted that having regard to the settled legal position, the applicant was liable to be selected against the Open Female seats on the basis of the marks scored by her. Learned Counsel pointed out that, in the advertisement no.62/2013, 13 posts were shown to be reserved for Open Female candidates, however, MPSC recommended the names of only 5 such candidates against the Open Female seats. Learned

Counsel pointed out that, candidates at Sr.No.33 and 34 did not join despite being recommended by MPSC. Learned Counsel submitted that, sufficient number of seats have therefore remained unfilled. Learned Counsel further submitted that, after the aforesaid advertisement no.62/2013 no advertisement was issued till filing of the O.A. by the present applicant. In the circumstances, according to the learned Counsel the applicant can be conveniently accommodated against the seat reserved for Open Female candidates on the basis of her merit. Learned Counsel has placed on record copy of the judgment in Writ Petition No.5721/2019.

11. Learned P.O. reiterated the stand taken by the respondents in the affidavit in reply filed by them. Learned P.O. submitted that selection process was carried out and the recommendations for filling up the seats reserved by way of horizontal reservation were filled in according to the provisions under the Government Circular dated 13-08-2014 which was then in vogue. Learned P.O. submitted that entire selection process was completed as per then Government policy and as such according to the learned P.O. the belated claim of the applicant does not deserve to be considered and is liable to be dismissed. Learned P.O. further pointed out that the

Commission had published various advertisements for the post in issue as per the Government requisitions in the year 2015, 2017 and 2018, final results of which have already been published. As such, according to the learned P.O. no relief as has been claimed by the applicant is liable to be granted in her favour. Learned P.O., therefore, prayed for dismissal of the O.A.

12. We have duly considered the submissions made on behalf of the applicants as well as the respondents. There appears no dispute that Circular dated 13-08-2014 was modified by the corrigendum issued on 19-12-2018. By issuing the aforesaid corrigendum, the State Government clarified that, if a candidate belonging to reserved category is entitled to be selected on the basis of his or her own merit against the seat reserved for Open category candidates, such candidate must be accommodated against the seat reserved for Open category candidates. Moreover, in view of the judgment of the Hon'ble Supreme Court in the case of **Sourav Yadav & Ors. V/s. State of U.P. & Ors. [(2021) 4 SCC 542]**, the law on the issue now stands settled. In the aforesaid matter, Hon'ble Apex Court has ruled that, while effecting horizontal reservation, reserved category candidate can also be considered on his own merit against the seats available for Open category candidates.

13. It is the matter of record that, the petitioner in Writ Petition No.5721/2019, namely, Sarla d/o. Madhukar Dhoke and the present applicant participated in the same recruitment process carried out vide advertisement no.62/2013. Said Sarla Dhoke had scored 274 marks and her name was recommended by MPSC against the seat reserved for OBC Female candidates. Said recommendation was challenged by Sarla Dhoke by filing O.A.No.660/2015 before the Maharashtra Administrative Tribunal Bench at Nagpur. It was the precise grievance of Sarla that MPSC has illegally denied her selection in Open category though she had secured more meritorious position than some of the Open category candidates. It was, therefore, prayed by her that, her selection shall be shown against the Open Female seat and not against the seat reserved for OBC Female candidate. Though her O.A. was dismissed by the Nagpur Bench of the Maharashtra Administrative Tribunal, Hon'ble Bombay High Court Bench at Nagpur allowed the Writ Petition filed by her against the order passed by the Tribunal.

14. In the order passed in Writ Petition No.5721/2019 the Hon'ble Division Bench has referred to and relied upon its earlier judgment in Writ Petition No.3290/2019 and have reproduced paragraph no.6 and 7 thereof in the order. We

deem it appropriate to reproduce the said paragraphs in the present order also, which read thus:

"6. The decision in Saurav Yadav and others (supra) was considered by a co-ordinate Bench of this Court in Lata Shyamrao Sangolkar Vs. State of Maharashtra and others, reported in 2021 (3) ABR 246. The relevant paragraphs from such decision are quoted below :-

"10. Law is well settled that if a candidate belonging to a reserved category is entitled to be selected on the basis of his own merit, his selection cannot be counted against the quota reserved for the category for vertical reservation to which he belongs. The question as to whether such legal position would also apply to individuals selected on the basis of their own merit but belonging to reserved categories for which horizontal reservation has been provided, came up for consideration before the Supreme Court in Saurav Yadav (supra) and the question was answered in the affirmative.

12. Today, we have heard Mr. Kumbhakoni. He has, in his usual fairness, submitted that the contents of the reply affidavit filed by the State does not reflect the correct position of law and that the petitioner had been illegally denied of appointment by not accommodating her in any of the 'unreserved' or 'open' category vacancies for women, regard being had to the fact that belonging to the OBC category and securing more marks than the candidates who have been appointed securing lesser marks, i.e., the respondents 2 to 7, she ought to have been offered appointment in preference to them."

7. The aforesaid extract would reveal the submissions advanced on behalf of the State by Mr. Kumbhakoni, learned Advocate General for the State of Maharashtra who had, in similar circumstances, submitted that candidates like the petitioner ought to be accommodated on posts where horizontal reservation applies, subject to merit."

15. Relying on the observations made and conclusions recorded as aforesaid in earlier Writ Petition the Hon'ble High Court has directed the Government to place the petitioner Sarla in the list of the recommended candidates dated 24-09-2015 for the appointment on the post of Assistant Executive Engineer (Civil) Group-A, Water Resources Department in Open category with all consequential benefits.

16. The present applicant has raised the same grievance that the MPSC recommended the less meritorious candidates than her against the Open Female seats. Applicant has undisputedly scored 232 marks. The candidates, namely, Rutuja Jadhav and Deepali Patil, both shown to be recommended against Open Female category have received 231 and 226 marks respectively. It is thus evident that, though the applicant was having more meritorious position than the aforesaid two candidates, she has not been recommended by MPSC and is thus deprived from the appointment on the post of Assistant Executive Engineer, Group-A. In view of the judgments rendered by the Hon'ble High Court in Writ Petition No.2390/2019 as well as in Writ Petition No.5721/2019 the applicant though belongs to OBC category is entitled to be appointed against the seats reserved for Open Female

candidates on the basis of her merit. We are, therefore, inclined to allow the present O.A.

17. Learned Counsel for the applicant has brought to our notice that the information obtained by the applicant under the Right to Information Act reveals that 21 posts of Assistant Executive Engineer Grade-I were vacant on 28-02-2024. In the result, following order is passed:

O R D E R

[i] Respondents are directed to consider the applicant for her appointment on the post of Assistant Executive Engineer (Civil), Grade-I in Water Supply and Sanitation Department against the seats reserved for Open Female category within 8 weeks from the date of this order.

[ii] The Original Application stands allowed in the aforesaid terms, however, without any order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 12.09.2024