

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.**

ORIGINAL APPLICATION NO. 932 OF 2023

DIST. : LATUR

- 1) Saraswarti d/o Keshavrao Makne,)
 - Age. 26 years, Occu. : Nil,)
 - R/o Matoshri Nivas,)
 - Sawarkar Chouk, Shellal Road,)
 - Udgir, Dist. Latur.)
- 2) Ku. Naina D/o Vrijendra Singh,)
 - Age. 30 years, Occu. : Nil,)
 - R/o C/o Matoshri Nivas,)
 - Sawarkar Chouk, Shellal Road,)
 - Udgir, Dist. Latur.)
 - At Present : 54, Gokibar Maidan,)
 - Phaltan, Tq. Phaltan,)
 - Dist. Satara.)..

APPLICANTS

V E R S U S

1. The State of Maharashtra,)
 - Through, the Secretary,)
 - Women & Child Development)
 - Division, New Administrative)
 - Building, 3rd Floor,)
 - Madam Kama Road,)
 - Hutatma Rajguru Chowk,)
 - Mantralaya, Mumbai 400 032.)
2. The Secretary,)
 - Department of Animal Husbandry,)
 - Madam Kama Road,)
 - Hutatma Rajguru Chowk,)
 - Nariman Point, Churchgate,)
 - Mumbai, Maharashtra – 400 032.)
3. Maharashtra Public Service)
 - Commission, Head Office : 5, 7 &)
 - 8th Floor, Kruprej,)
 - Telephone Nigam Building,)
 - Maharshi Kerve Marg, Kruprej,)
 - Mumbai – 400 021.)

Office of Correspondence :

The Secretary, Maharashtra Public)
 Service Commission,)
 Trishul Goldfield Building,)
 CBD, Belapur – 400 614)
 (Maharashtra)

4. Pratiksha Ramchandra Patil,)
 Age. 25 years, Occu. Nil,)
 R/o Udyog Aditya Apartment,)
 Aditya Nagar, Garkheda Prisar,)
 Chhatrapati Sambhajnagar.)
5. Snehal Sharadrao Motegaonkar,)
 Age. 26 years, Occu. Nil,)
 R/o Ganesh Nagar, Ring Road,)
 Ambajogai, Dist. Beed.)..

RESPONDENTS

APPEARANCE :- Shri S.G Nandedkar, learned Advocate for
 the applicants.

: Shri V.R. Bhumkar, learned Presenting
 Officer for the respondent authorities.

: Shri Avinash S. Deshmukh, learned
 counsel for respondent nos. 4 & 5

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

DATE : **10.05.2024**

O R A L - O R D E R

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

1. Heard Shri S.G. Nandedkar, learned counsel for the
 applicants, Shri V.R. Bhumkar, learned Presenting Officer for
 respondent authorities and Shri Avinash S. Deshmukh, learned
 counsel for respondent nos. 4 & 5.

2. Present applicants had applied for the post of Livestock Development Officer Grade-1 ("LDO" for short) from the Open category. Applicants possess the requisite qualification and eligibility for the post of LDO. Both the applicants successfully underwent selection process and their names were included in the merit list. It is the grievance of the applicants that the respondent no.3 Maharashtra Public Service Commission (MPSC) did not recommend their names for appointment on the ground that they did not submit the Non-Creamy Layer Certificate. It is the contention of the applicants that vide G.R. dated 04-05-2023 Government has waived the condition of furnishing Non-Creamy Layer Certificate so far as the candidates belonging to Open (Female) category are concerned. According to the applicants, though they are entitled to be given benefit of the said G.R., the same has been declined to them and though they have scored meritorious position have been denied appointment. In the circumstances, applicants have approached this Tribunal by filing the present O.A.

3. Initially, the only prayer made by the applicants was to revise merit list of the Open (Female) Candidates. During pendency of the O.A. the applicants sought amendment in the

O.A. so as to include the necessary pleadings pertaining to the G.R. dated 04-05-2023 and to add a prayer in that regard thereby seeking quashment of the said G.R. to the extent it restricts its benefit to the recruitment process carried out vide advertisement no.83/2021 and the process of recruitment carried out after declaration of the result of recruitment process vide advertisement no.83/2021.

4. Vide order dated 19-10-2023 while issuing notice in the present O.A. an interim order was passed by us directing the respondents to keep two posts of LDO vacant till filing of the affidavit in reply by them. The applicants as stated above belong to Open category and have secured 135.50 and 131.50 marks, respectively. Out of the advertised posts, 41 posts were reserved for Open (Female) candidates. According to the contentions raised by these applicants, they were liable to be selected against the seats reserved for Open Female candidates.

5. During pendency of O.A. two more M.As. were filed. M.A.No.79/2024 was filed seeking intervention in the O.A. claiming that they were the candidates who were selected against the seats reserved for Open (Female) candidates on the basis of marks secured by them in the written examination.

One applicant belongs to Economically Weaker Section (EWS) category whereas another belongs to Other Backward Class (OBC), however, having considered the marks scored by the said applicants, their selection was shown against the seats reserved for Open (Female) candidates.

6. In view of the interim order passed in the present matter, the State authorities decided to keep two posts of Open (Female) Candidates vacant. The applicants in M.A.No.79/2024 were last two candidates recommended against the Open (Female) seats. In the circumstances, though their names were finally recommended against Open (Female) seats the appointments were not issued in their favour. In the circumstances, the said applicants sought intervention in the present O.A. M.A. for intervention was allowed by this Tribunal and applicants therein came to be added as party respondent nos.4 and 5 in the O.A. Said applicants along with M.A. for intervention filed another M.A.No.80/2024 thereby praying for vacating the interim relief granted in the O.A. or to suitably modify the same so as to protect their interest. In the said M.A.No.80/2024 following order was passed by this Tribunal:

“(i) Respondent No.02 shall issue provisional appointment orders in favour of respondent no.4,

Pratiksha Ramchandra Patil and respondent no.5, Snehal Sharadrao Motegaonkar, without referring to any category, subject to decision of O.A., within a week from the date of this order.”

7. Respondent no. 01 filed his affidavit in reply and thereby opposed the contentions raised and prayers made in the O.A. It is contended that the applicants cannot seek the benefit of G.R. dated 04.05.2023. It is further contended that G.R. dated 04.05.2023 is unambiguous and it provides the benefit to the advertisements issued after 29.09.2022. That is the only material ground raised by the respondent while opposing the contentions raised in the O.A.

8. The respondent nos. 04 and 05 did not file any separate affidavit in reply in the O.A. and prayed for considering the averments raised by the applicants in M.A. nos. 79/2024 and 80/2024 to be their affidavit in reply in the present O.A.

9. Dr. S.G. Nandedkar, learned counsel appearing for the applicants submitted that the benefit of the G.R. dated 04.05.2023 must be made applicable to the applicants. Learned counsel further submitted that the provisions in the said G.R. restricting benefit of the said G.R. only to the recruitment process carried out vide advertisement No. 83/2021 and to the processes of recruitment of

which results are declared after 29.09.2022, was apparently discriminatory and violative of articles 16 of the Constitution of India. According to learned counsel to that extent G.R. dated 04.05.2023 is liable to be set aside. He, therefore, prayed accordingly. It was his further contention that once the aforesaid restriction is removed, G.R. dated 04.05.2023 would be applicable to the instant recruitment carried out vide advertisement no.12/2022. The learned counsel further submitted that the present applicants have undisputedly scored more number of marks than respondent nos. 04 and 05. In the circumstances, according to him, the applicants are entitled to be selected and recommended for the seats reserved for Open Female candidates. Learned counsel, therefore, prayed for allowing the Original Application and to grant the prayers made therein.

10. The learned Presenting Officer submitted that Government Resolution dated 04.05.2023 was made applicable to the recruitment process carried out vide advertisement no. 83/2021, as well as, to the process of recruitments the advertisements of which were published after 29.09.2022. The learned P.O. submits that the advertisement in the present matters was admittedly issued on 14.02.2022 and in the

circumstances the respondents have rightly declined the benefit of G.R. dated 04.05.2022 to the present applicants.

11. Shri Avinash S. Deshmukh, learned counsel appearing on behalf of respondent nos. 04 and 05, adopting the arguments advanced on behalf of the learned P.O. further submitted that the application as was filed by the applicants was in fact liable to be dismissed on the ground of non-joinder of necessary parties. Learned counsel submitted that though the Tribunal has allowed the intervention of respondent nos. 04 and 05 by allowing Misc. Application No. 79/2024 and, as such, the present candidates have been added as respondent nos. 04 and 05, the basic lacuna remains and for not joining respondent nos. 04 and 05, who are the necessary parties in the present proceedings, the Original Application filed by the applicants deserves to be dismissed on that ground alone. Learned counsel further submitted that the situation as on submitting the application for the subject post is concerned, the respondent nos. 04 and 05 were having better claim on the subject posts and though subsequently the requirement of submitting non-creamy layer certificate has been dispensed with, on the date of application the respondent nos. 04 and 05 must be held to have better claim. Learned counsel further

submitted that even otherwise respondent nos. 04 and 05 since have secured the highest merit amongst the candidates of reserved class to which they belong, even if their selection as Open candidates is not approved by the Tribunal, they would be shifted to their respective reserved category. Learned counsel further submitted that on the strength of the interim order passed by the Tribunal in M.A. No. 80/2024 in the present O.A., the respondent nos. 04 and 05 have been issued the appointment orders and they have been working since then. Learned counsel further submitted that in case the present O.A. is allowed, the further directions may be issued against the respondents to accommodate respondent nos. 04 and 05 against the seats reserved for their respective reserved class.

12. We have duly considered the submissions made on behalf of the applicants, the State authorities and the private respondents. We have also perused the documents produced on record by the parties.

13. The entire controversy revolves around clause 5 of the G.R. dated 04-05-2023. We deem it appropriate to reproduce hereinbelow the entire said G.R., which reads thus:

“शासन निर्णय :-

खुल्या प्रवर्गातील महिलांकरीता आरक्षित असलेल्या पदावरील निवडीकरीता खुल्या प्रवर्गातील महिला तसेच सर्व मागास प्रवर्गातील महिलांनी नॉन-क्रिमिलेअर प्रमाणपत्र सादर करण्याची अट मा. मंत्रिमंडळाच्या मान्यतेने या शासन निर्णयान्वये रद्द करण्यात येत आहे.

२. शासकीय, निमशासकीय व शासन अनुदानित संस्थांमधील सेवांमध्ये भरतीसाठी महिलांकरिता ३० टक्के जागा आरक्षित ठेवण्याबाबत शासन निर्णय दि. २५.५.२००१ निर्गमित करण्यात आला आहे. या शासन निर्णयामधील खालील तरतुदी रद्द करण्यात येत आहेत:-

१) (एक) आरक्षणाची व्याप्ती/अटी व शर्ती मधील अट क्रमांक-९ व अट क्रमांक-१०,

२) (दोन) प्रमाणपत्रे मधील संपूर्ण (अ) खुल्या प्रवर्गातील महिलांसाठी क्रिमिलेअरचे प्रमाणपत्र व त्याची तपासणी,

३) (दोन) प्रमाणपत्रे मधील (क) मागासवर्गीय उमेदवारांची खुल्या प्रवर्गातील महिलांच्या आरक्षित पदावर नियुक्ती झाल्यास त्याबाबतची प्रमाणपत्रे व त्याची तपासणी मधील (१) मधील (अ) येथील परिच्छेदातील "अशा महिला उमेदवारांकडून खुल्या प्रवर्गातील महिलांकरीता विहित केलेले क्रिमिलेअरचे प्रमाणपत्र देण्याची आवश्यकता राहणार नाही.", ही तरतूद,

४) (दोन) प्रमाणपत्रे मधील (क) मागासवर्गीय उमेदवारांची खुल्या प्रवर्गातील महिलांच्या आरक्षित पदावर नियुक्ती झाल्यास त्याबाबतची प्रमाणपत्रे व त्याची तपासणी मधील (१) मधील (ब).

३. खुल्या गटातील महिलांकरीता आरक्षित असलेल्या पदावर निवड झालेल्या महिलांच्या नॉन-क्रिमिलेअर प्रमाणपत्रांची तपासणी करण्याबाबत येणाऱ्या अडचणींचे निवारण करण्याच्या अनुषंगाने शासन निर्णय दि.२५.५.२००१ मध्ये आवश्यक तरतुदी करण्यासाठी शासन निर्णय दि.१५.१२.२०१७ निर्गमित करण्यात आला आहे. तसेच, या शासन निर्णयामधील तरतुदींबाबत येणाऱ्या अडचणींच्या अनुषंगाने स्पष्टीकरणात्मक सूचना शासन निर्णय दि.११.१.२०१९ अन्वये निर्गमित करण्यात आल्या आहेत. आता, खुल्या गटातील महिलांकरीता आरक्षित असलेल्या पदावरील निवडीकरीता नॉन-क्रिमिलेअर प्रमाणपत्र सादर करण्याची अट रद्द करण्यात आली असल्याने शासन निर्णय दि.१५.१२.२०१७ व शासन निर्णय दि.११.१.२०१९ या शासन निर्णयाद्वारे निरसित करण्यात येत आहेत.

४. अनुसूचित जाती व अनुसूचित जमाती वगळता अन्य मागास प्रवर्गातील महिलांकरीता आरक्षित असलेल्या पदावरील निवडीसाठी दावा करू इच्छीणा-या महिलांना त्या त्या मागास प्रवर्गासाठी इतर मागास व बहुजन कल्याण विभाग तसेच सामान्य प्रशासन विभागाकडून वेळोवेळी विहित करण्यात आल्याप्रमाणे नॉन-क्रिमिलेअर प्रमाणपत्र सादर करण्याबाबतच्या तरतुदी लागू राहतील.

५. महाराष्ट्र लोकसेवा आयोगामार्फत प्रसिध्द करण्यात आलेल्या जाहिरात क्र.८३/२०२१ अन्वये झालेल्या भरती प्रक्रियेस तसेच या भरती प्रक्रियेचा निकाल ज्या दिनांकास प्रसिध्द करण्यात आला, त्या दिनांकानंतर प्रसिध्द झालेल्या जाहिरातींअन्वये सुरू झालेल्या भरती प्रक्रियांना या शासन निर्णयातील तरतुदी लागू होतील.

६. सदर शासन निर्णय वैद्यकीय शिक्षण व औषधी द्रव्ये विभाग, इतर मागास व बहुजन कल्याण विभाग, सामान्य प्रशासन विभाग आणि विधी व न्याय विभाग यांच्या सहमतीने निर्गमित करण्यात येत आहे.

७. सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा सांकेतांक २०२३०५०४१७३०३२५२३० असा आहे. हा शासन निर्णय डिजीटल स्वाक्षरीने साक्षांकित करुन काढण्यात येत आहे.”

Perusal of clause 5 reveals that, the benefit of the said G.R. is restricted to the Female candidates who participated in the recruitment process conducted vide advertisement no.83/2021 and to the process of recruitment which started after 29-09-2022 i.e. the date on which the results of the recruitment process carried out vide advertisement no.83/2021 were declared. Clause 5 apparently appears discriminatory.

14. Article 16 of the Constitution provides that there shall be equality of opportunity for all citizens in matters related

to employment or appointment to any office under the State. Main object of Article 16 is to create Constitutional right to equality of opportunity in the employment in public office. The question of discrimination arises when by law or executive action a classification is made within such a class and two or more classes born out of such classification are treated unequally without any justifiable reason. The Hon'ble Supreme Court has held that, it is not permissible to create a class within a class.

15. Beneficiary of G.R. dated 04-05-2023 is a class of Females aspiring for appointments in the Government against seats reserved for Open Female category. Clause 5 of the said G.R. has created following three sub-classes into said broad class of "Females":

[1] of the female candidates who participated in the recruitment process carried out vide advertisement no.83/2021;

[2] of the female candidates who participated in the recruitment process which was commenced subsequent to the recruitment process vide advertisement no.83/2021 but the results of which were declared prior to 29-09-2022; and

[3] of the female candidates who participated in the recruitment process which started after 29-09-2022.

16. Clause 5 has extended the benefit of the said G.R. to the Female candidates falling in sub-class 1 and sub-class 3 and has deprived the Female candidates falling in the sub-class 2 from the said benefit. Present applicants are the Female candidates who fall in aforesaid sub-class 2. We see no rationale in creating classes within a class. Why the benefit of the said G.R. is restricted only to the aforesaid 2 classes and why it is denied to the Female candidates falling in sub-class 2, is not justified by the respondents.

17. Present recruitment process was commenced vide advertisement no.12/2022 issued on 14-02-2022. Thus, though the present recruitment process started after the recruitment process vide advertisement no.83/2021, the benefit of G.R. dated 04-05-2023 has not been given to the Female candidates who participated in the present recruitment process only for the reason that, the results of the present recruitment process were declared before the declaration of the results of the recruitment process vide advertisement no.83/2021. Clause 5 is thus discriminatory. It provides the benefit of the said G.R.

to one set of Females and denies to another set of Females without any justifiable reason. The restriction so imposed is against the Constitutional mandate enshrined under Article 16 of the Constitution. Such a clause, therefore, cannot be retained as it is and deserves to be suitably modified so that it would uniformly extend the benefit of the said G.R. to all the Females who participated in the recruitment process commenced after the recruitment process vide advertisement no.83/2021.

18. Respondent Nos. 4 & 5 have placed on record the list of the candidates published by the M.P.S.C. who were eligible for recommendation. As noted by us hereinbefore 41 seats were reserved for the Open Female candidates. Perusal of the list published by M.P.S.C. reveals that respondent No. 4 is recommended against Open Female seat 40 and respondent No. 5 is recommended against Open Female seat 41. It is not in dispute that respondent No. 4 belongs to EWS category, whereas respondent No. 5 is OBC candidate. Both were however, recommended against the Open Female Seats because of the marks scored by them. Respondent Nos. 4 & 5 each has scored 128.50 number of marks. Applicant No. 1 has scored 135.50 marks, whereas Applicant No. 2 has scored 131.50

marks. Admittedly, the applicants are Open Female candidates. Their names were not recommended on the ground that they did not submit the Non-Creamy-Layer Certificate. We have held both these applicants entitled for the benefit of Government Resolution dated 04.05.2023. We have, therefore, held entitled both these applicants for their selection against Open Female seats. Considering the marks scored by these applicants they are liable to be selected against Open Female 40 & 41 respectively. In view of the interim order passed by this Tribunal the respondents have kept 02 seats vacant, the applicants are entitled to be given appointment against the said seats meant for Open Female candidates.

19. It is a matter of record that respondent Nos. 4 & 5 were earlier recommended against the said Open Female seats. If the applicants are to be appointed against Open Female seats, obviously respondent Nos. 4 & 5 will have to be shifted from there. Though one of them belongs to EWS category and the other to OBC category, it is discernable that these candidates competed with the open category candidates. Thus, it can be reasonably inferred that these candidates must be toppers amongst the candidates of their respective category. Perusal of the list of recommended Open Female candidates demonstrates

that in EWS as well as OBC category, some of the candidates were more meritorious than respondent Nos. 4 & 5 and hence those candidates have been recommended against the Open Female seats at a higher position. For accommodating the applicants against Open Female seats, if at all 02 candidates are to be shifted they would be respondent Nos. 4 & 5. In view of the fact that more meritorious candidates in the respective categories, are already appointed against Open Female seats, respondent Nos. 4 & 5 may be the toppers amongst the candidates in their respective category and hence deserve to be appointed against the seats reserved for their respective categories. Still there would be an issue of 02 female candidates who if had been recommended against EWS and OBC female seats, on appointment of respondent Nos. 4 & 5 against the said seats probably would be required to vacate the said seats. The question would be how to accommodate them?

20. In an additional affidavit filed by respondent No. 5 the vacancy position has come on record. The affidavit reveals that 11 posts have remained unfilled. Out of the said 11 posts 02 posts were kept vacant as per the interim order passed by this Tribunal. Out of remaining 09 posts, 03 candidates who are named at Sr. Nos. 18, 50 & 185 belonging to Open, OBC

and NTC (Female) category respectively and who were recommended on the posts reserved for Open-General, Open-General and NTC (Female) categories respectively, did not remain present for document verification and hence appointment orders have not been issued in their favour. 06 candidates now remain. One candidate named at Sr. No. 285 in the list of eligible for recommendation namely Ranveer Asmita Uttamrao belonging to SC female locomotor disability category did not show interest in accepting the offer of appointment. Out of 05 remaining seats, 03 are earmarked for P.W.D. category and 02 for Orphan category. As stated on affidavit, no candidates have become available against the said seats.

21. Considering the vacancy position as aforesaid, it appears to us that 02 candidates who may require to be shifted from EWS and OBC category can very well be accommodated against any of the aforesaid unfilled seats, so that no injustice is caused to any of the candidates, who has already been joined.

22. For the reasons elaborated hereinabove the following order is passed: -

ORDER

[i] Clause 5 of the G.R. dated 04-05-2023 issued by Women and Child Development Department to the extent it restricts the

applicability of the said G.R. only to the extent of advertisement no.83/2021 issued by Maharashtra Public Service Commission and to the process of recruitments commenced after 29-09-2022, is held unconstitutional and hence set aside.

[ii] It is declared that the benefit of the G.R. shall be applicable to all recruitments commenced subsequent to advertisement no.83/2021.

[iii] Applicants are held entitled for the benefit of the G.R. dated 04-05-2023. Consequently, respondents are directed to issue appointment orders in favour of the applicants against the seats reserved for Open Female candidates within 6 weeks from the date of this order.

[iv] Respondent nos.4 and 5 have been appointed provisionally subject to outcome of the present O.A. Their appointments be confirmed against the seats in the categories to which they belong. Surplus female candidates be appropriately adjusted against the unfilled seats.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 10.05.2024