

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.1136/2023(D.B.)

Dr. Rajendra Ramchandra Chaudhari,
Aged about: 44 years,
Occupation: Associates Professor,
Mechanical Engineering Department,
Government Engineering College,
Nagpur R/O Mihan Punarvasan Colony,
Khapari Nagpur 441 108.

Applicant.

Versus

- 1) Maharashtra Public Service Commission,
through its Secretary,
Bank of India Building, 3rd Floor, M.G. Road,
Huttatama Chowk, Mumbai-400 023.

- 2) The State of Maharashtra,
through its Principal Secretary,
Higher and Technical Education Department,
4th Floor, Mantralaya, Mumbai - 400 032.

Respondents

Shri V.A.Kothale, Ld. Counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman &
Hon'ble Shri Nitin Gadre, Member (A).

Dated:- 26th September, 2024.

JUDGMENT

Judgment is reserved on 23rd September, 2024.

Judgment is pronounced on 26th September, 2024.

Per : Member (A).

Heard Shri V.A.Kothale, learned counsel for the applicant and Shri S.A.Sainis, learned P.O. for the respondents.

2. The Applicant had filed this original application on 18.12.2019 to rectify the merit list declared by the Respondent No. 1, the M.P.S.C. on 10.11.2015. The Applicant had also filed a C.A. for condonation of delay. This Tribunal had rejected the C.A. for condonation of delay on the ground that the life of merit list was for 1 year, but Applicant approached this Tribunal after 6 years and this delay cannot be condoned. On that ground, both the C.A and the O.A. were dismissed by this Tribunal as per order dated 05.02.2021. The Applicant approached the Hon'ble High Court, Nagpur Bench. In the Writ Petition No. 1507/2021, the observations of Hon'ble High Court in para 5 of the Order dated 18.08.2023 are as follows:

3. In para-5, the Hon'ble Bombay High Court, Bench at Nagpur has observed as under—

“5) We find that the learned Member of the Tribunal proceeded to dismiss the application on the ground that the life of the merit list was for only one year. There is a distinction between the merit list and the reserve list. The grievance of the petitioner is with regard to the placement of candidates in the merit list. The petitioner is not concerned with the reserve list maintained by the respondents in that regard. Since the petitioner is aggrieved by the manner in which the merit list has been prepared, it would

not be correct to state that such grievance cannot be considered on the ground that life of the reserve list has lapsed. We, therefore, find that the petitioner's request for condoning the delay and entertaining the proceedings on merits has not been considered in the right perspective. The petitioner was not liable to be non-suited on the ground that the life of the merit list was only for one year."

Based on these observations, this Tribunal passed an Order to condone the delay on 13.10.2023 in CA No. 493/2019.

3. The applicant had filed this application on 18.12.19. The application in brief is follows:

The Respondent No.1, the M.P.S.C. issued an advertisement on 04.01.2014 to fill the posts of Professors in Government Engineering Colleges. The Respondent No.1 prepared an erroneous select list by placing scorer of higher marks in reserved category and scorer of less marks in open category. The candidate scoring 59 marks is shown in OBC category whereas candidates scoring 57 and 53 marks is in open category. The Applicant had given representation to the Respondent No.1 on 17.12.2018 for rectification of the merit list. However, the Respondent No.1 refused to make rectification. As per the applicant, the facts of the case and grounds for argument in brief are as follows:

There were eight posts to be filled of Professors in Mechanical Engineering, as per the Advertisement. In the select list, the respondent MPSC has shown candidates scoring 64, 57 and 53

marks in open category whereas candidates who have secured 59 and 52 marks are placed in OBC category. The candidate wise marks and the merit list of 8 candidates declared by M.P.S.C. on 10.11.2015, is shown in the table below:

Merit No.	Name of Candidates	Category	Category for which candidates have to be considered		Recommendation	Marks obtained in personal interview	Interview Number
1	Kulkarni Govind Narayan	Open	Open/Against Open [F]	High	Open-1	64	4
2	Sable Mahendra Janardan	OBC	Against OBC [F] only.	Low	Against OBC [F]	59	13
3	Khond Mohan Pandurang	OBC (NCL-No.)	Open	High	Open-2	57	6
4	Shrivastava Ramakant	Open	Against Open [F] only.	Low	Against Open [F]	53	7
5	Mahalle Ashish Manohar	OBC	OBC/ Against OBC [F]	Low	OBC	52	14
6	Chaudhari Rajendra Ramchandra	OBC	Against OBC[F]	Low	No Post Available	48	15
7	Ingole Sanjay Bhanudasrao	OBC	OBC/Against OBC[F]	Low	No Post Available	45	8
8	Nandgaonkar Milankumar Ramakant	Open	Against Open [F]	Low	No Post Available	42	11

4. The Applicant in his application has claimed that that this is a violation of legal principle. The material portion is as follows:

In view of above said merit adjudged by respondent No.1 it is a case of violation of legal principle that irrespective of caste merit is to be decided first with respect to available candidates from Open

category and thereafter reservation criteria is to be considered. So from above table it is clear that the candidate Janardan Mahendra Sable scored 59 marks and instead of showing his placement in Open category his name is recommended for O.B.C. Female category erroneously. So right to getting appointment in O.B.C. Category to the applicant who is at serial No.6 in the order of merit is encroached open. So applicant has made out a good case for making rectification of the order of merit proposed in the representation vide Annexure-A-2 by way of Table shown in Annexure-A-6 reproduced as below :-

RECTIFIED MERIT LIST

Merit No.	Name of candidates	Category	Remarks	Total marks secured in personal interview.
01	Kulkarni Govind Narayan	Open	Open-1	64
02	Sable Mahendra Janardan	OBC	Open-2	59
03	Khond Mohan Pandurang	OBC (NCL No.)	Open-3	57
04	Shrivastava Ramakant	Open	Open-F	53
05	Mahalle Ashish Manohar	OBC	OBC-1	52
06	Chaudhari Rajendra Ramchandra	OBC	OBC-F	48

5. The Respondent No. 2 has filed reply on 08.07.2024. The relevant portion of the reply is as below:

9] It is further submitted that various activities under selection process such as - issuing advertisement, conducting screening tests, short-listing of candidates for interview, conducting interviews and recommending the selected candidates to the Government is the sole responsibility of the Respondent No.1 Maharashtra Public Service Commission (MPSC). Therefore, Respondent No.2 does not have any role in the selection process.

6. The Respondent No.1, M.P.S.C. has not filed any reply. The Applicant has filed a Pursis on 23.09.2023. He has submitted the circulars dated 13.08.2024 and 19.12.2018 along with this Pursis.

7. Based on the above discussion and available documents the facts of the case can be listed as below:

The Advertisement 11/2014 was published by the MPSC on 04.01.2014 to fill total 8 vacancies of Professor, Mechanical Engineering in various Government Engineering Colleges. Out of these 8 vacancies, 4 vacancies were for open category (3+1 for female), 1 for SC category, 1 for ST category and 2 for OBC category (1+1 for female). It is clearly mentioned in this Advertisement that the reserved seats for female candidates will be made available, if there are female candidates in the merit list. The merit list of 8 candidates was declared on 10.09.2015 which is as per the table in the para 3 above. There are no female candidates or SC and ST candidates in the merit list. The name of the applicant is at the position no.6 in this merit list. Even though the merit list has 8 candidates, the Respondent No.1, the M.P.S.C. recommended names of only five candidates. The select list of 5 candidates is as given below.

गुणवत्ता क्रमांक	उमेदवाराचे नाव	वर्गवारी	शेरा
1	Kulkarni Govind Narayan	Open	Open-1
2	Sable Mahendra Janardan	OBC	Against OBC(F)
3	Khond Mohan Pandurang	OBC (NCL-No)	Open - 2
4	Shrivastava Ramakant	Open	Against Open(F)
5	Mahalle Ashish Manohar	OBC	OBC

8. The procedure for reservation scheme is mentioned in the Circular dated 13.08.2014. The relevant portion of this Circular is as follows:

शासन परिपत्रक :-

शासन परिपत्रक, सामान्य प्रशासन विभाग, क्रमांक एसआरही १०९७/प्र.क्र.३१/९८/१६-अ. दिनांक १६ मार्च, १९९९ मधील परिच्छेद ५ मध्ये विहित करण्यांत आलेल्या कार्यपद्धतीमध्ये मार्गदर्शनार्थ स्पष्टीकरणाचा समावेश करण्यांत येत असून सुधारित परि.५ खालीलप्रमाणे आहे. शासन सेवेत सरळसेवेने नियुक्ती करताना समांतर आरक्षण कार्यान्वित करण्यासाठी सदर सुधारित कार्यपद्धती अनुसरण्यात यावी :-

(अ) प्रथम टप्पा :- खुल्या प्रवर्गातून समांतर आरक्षणाची पदे भरताना, गुणवत्तेच्या निकषानुसार खुल्या प्रवर्गातील उमेदवारांची निवड यादी करावी (या ठिकाणी खुल्या प्रवर्गात गुणवत्तेच्या आधारावर मागासवर्गीय उमेदवारांचाही समावेश होईल). या यादीत समांतर आरक्षणानुसार आवश्यक खुल्या प्रवर्गाच्या उमेदवारांची संख्या पर्याप्त असेल तर कोणताही प्रश्न उद्भवणार नाही आणि त्यानुसार पदे भरावीत. जर या यादीत समांतर आरक्षणानुसार आवश्यक खुल्या प्रवर्गाच्या उमेदवारांची संख्या पर्याप्त नसेल तर खुल्या प्रवर्गासाठी राखीव समांतर आरक्षणाची पदे भरण्याकरिता सदर यादीतील आवश्यक पर्याप्त संख्येइतके शेवटचे उमेदवार वगळून पात्र उमेदवारांपैकी केवळ खुल्या प्रवर्गाचेच आवश्यक पर्याप्त संख्येइतके उमेदवार घेणे आवश्यक आहे."

9. As mentioned earlier, there were no female or SC/ST candidates in the merit list. It is clear from the Circulars that the

select list of open candidates shall also include the reserved category candidates, if they are found eligible on merit. As there are no female candidates, the question of horizontal female reservation doesn't arise in this select list. These meritorious reserved category candidates will have to be considered against the open category seats and additional reserved category candidates will have to be considered to fill the reservation quota. There are 4 seats for open category and therefore the first four candidates in the merit list (rank nos.1, 2, 3 and 4) should have been recommended against the 4 open category seats. As 2 vacancies for OBC category are available, the next two OBC category candidates in the merit list (rank nos.5 and 6) should have been recommended against these posts. Two OBC candidates were available in the merit list. Hence, total 6 candidates should have been recommended in the select list instead of five as given in Para 7 of this order. Therefore the Applicant who is at the sixth position in the merit list, should have been recommended and the corrected select list should be as in the table given in Para 4 of this order. It is obvious that M.P.S.C., the Respondent No.1 has committed a mistake in preparation of the select list. The applicant cannot be punished for this mistake and his delay in filing this

Application has been already condoned by this Tribunal. Hence, we pass the following order.

ORDER

1. The O.A. is allowed.
2. The M.P.S.C. should correct the select list and make revised recommendations to the Government in the next two months.
3. The Government should give the applicant appointment against the post reserved for OBC, as mentioned in the Advertisement dated 04.01.2014, if it is still vacant or any other presently vacant post if the Applicant is otherwise found eligible as per the Advertisement criteria.
4. This process should be completed in the next four months from the date of this order. However, if the applicant is given appointment, he will not be entitled for any arrears etc..
5. No order as to costs.

(Nitin Gadre)
Member(A)

Dated – 26/09/2024
rsm.

(Justice M.G.Giratkar)
Vice Chairman

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde.
Court Name : Court of Hon'ble Vice Chairman
& Hon'ble Member (A).
Judgment signed on : 26/09/2024.
and pronounced on