

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.997/2018(D.B.)

Yugamini D/o Babarao Chavan,
Age 30 yrs, R/o The Greater Kailash Nagar,
Mahadeo Khor, Amravati-444 606.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principle Secretary,
Higher & Technical Education Department,
Mantralaya, Mumbai, 32.
- 2) The Secretary,
Maharashtra Public Service Commission,
7 & 8 floor, Kuprej Telephone Nigam Building,
Maharshi Karve Marge Kuprej, MUMBAI 400 021.

Respondents

Shri B.Kulkarni, Ld. Counsel for the applicant.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

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

Dated:- 12th September, 2024.

JUDGMENT

Judgment is reserved on 04th September, 2024.

Judgment is pronounced on 12th September, 2024.

Per : Member (A).

Heard Shri B.Kulkarni, learned counsel for the applicant and Shri V.A.Kulkarni, learned P.O. for the respondents.

2. The applicant in this O.A. is challenging the list of recommended candidates by MPSC dated 3.2.2017. The applicant claims that the MPSC has not prepared this list according to the merit, for selection from open female category. The applicant is claiming that she was entitled to be selected and posted as Assistant Professor in Instrumentation Engineering. As per the advertisement dated 3.4.2014, total 12 posts were advertised in Instrumentation Engineering. Out of 7 posts for open category, two posts were reserved for Open Female. The applicant has secured 58 marks in interview. The MPSC has recommended names of 7 candidates for posting, in which two Open Female candidates having 57 marks have been recommended, ignoring the applicant who had secured 58 marks. The applicant has submitted that she was interviewed in SC/Open category and secured more marks than the recommended candidates in Open Female. As per the verdict of Constitution Bench of Hon'ble Supreme Court in **Indra Sawhney Vs Union of India and others (reported in 1992 supp (3) SCC)**, the MPSC has not prepared list correctly.

3. Respondent no. 2, the MPSC has submitted reply on

22.2.2019. The material portion of the reply is as follows:

Applicant has secured 82.5% of marks in the Master's degree. The applicant is from S.C category and she fulfills the shortlisting criteria applied for the SC category (75.8%), open female category (78.8%) as well as open general category (82.2%). But as per rules she was considered to be called for the interview only for the open general and SC categories post. She cannot be considered for open female category post as per the provisions contained in the then existing Government Circular dated 13/8/2014 which was in vogue. She was interviewed on 15/10/2015. She got 58 marks in the interview. Cut off fixed for recommendation from open general category post is 60 marks. Hence the applicant cannot be recommended for the open general post. And considering the provisions laid down in the then Government circular dated 13/8/2014, she cannot be recommended for the open female category post even though she got more marks than the open female cut off.

4. In the Rejoinder submitted on 7.8.2023, the applicant has stated that she had applied in Open Category and interview was also taken in Open Category. That time no any objection was raised that the applicant is SC Category and applied in Open Category. Candidates of any category can apply in Open Category on merit. Thus to exclude the applicant's name from recommendation for appointment by MPSC to Government is illegal and bad in law. The applicant has submitted that the Hon'ble Supreme Court of India, in case of **Saurav Yadav and ors. Vs. State of Uttar Pradesh and ors. (2021) 4 SSC 542** declared that-

open is Open Category for all. Reliance is placed on the Judgment, the MAT Nagpur Bench decided the O.A. No. 148 of 2020 (DB) on 10.3.2022. The applicant has pointed out some more Judgments in support of her argument. The Applicant has also submitted an additional affidavit on 11.1.2024 as follows:

It is submitted that the MPSC in his letter of selection dated 03/02/2017 at Annexure A-1 at page no. 13 mentioned category before the name of the applicant SC/Open. In fact SC/Open is not the category. Either it may be SC or Open. It is basically made mistake by the MPSC in showing category of the applicant in the impugned letter of selection. SC is the vertical reservation and the Open is the category open for all or Open female. Hence it cannot be mingled in together is illegal.

It is further submitted that the applicant caste is mentioned as SC in MPSC profile detail which was already created on mahaonline portal. But she cannot applied for SC reservation as there was no option given to compete from open category. The category was determined by the MPSC after interview of all the applicants and all the document verification. Also at the time of interview, no caste documents were verified as interview was completely taken for open general category. In the prescribed form, there was no category shown under which the candidates are applied. It is decided by MPSC after interview. It was further submitted that applicant interview was taken in the Open general category and SC. The same is admitted by the MPSC in their reply at Para X.4 page 43 of reply.

5. In the Pursis dated 25.1.2024, the applicant has submitted two documents: (a) The GR dated 19.12.2018 cancelling the Circular

Dated 13.8.2014. (b) Online application of the applicant dated 10.9.2015. It is worth noting that, in the application of the applicant, the Caste/Category is shown as SC and answer to the question, do you belong to Non-Creamy layer is - No.

6. The Female Reservation policy at that time was explained in the Circular Dated 13.8.2014. The Circular in para 2 mentions various Court Judgments which had become basis for this Circular. The para 3(अ) of this Circular is as follows:

(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."

The procedure suggested in this Clause can be explained as follows:-

In the first step, an initial select list of all the Open Category candidates based on merit needs to be prepared. Here, the Open Category also includes candidates from reserved category, if included in this list on merit basis. There is no problem if this initial

list includes sufficient number of candidates as required by the horizontal reservation policy. If this condition is not satisfied, then it is required to select **only Open Category** candidates by excluding the same number of candidates in the end of the initial select list. This meant that, when you go further down in the merit list, to get candidates to fulfill shortfall in the horizontal reservation quota, the reserved category candidates are not to be considered.

This policy was subsequently changed by the Government vide G.R. dated 19.12.2018. In this G.R., the phrase '**only Open Category**' was deleted. With this modification, the Open Category became 'open for all' even while filling the horizontal quota requirements, if sufficient numbers of such candidates are not available in the initial merit list. However, at the time of this interview, the 2014 Circular was applicable and the selection seems to have been done accordingly. The candidate caste has been shown as SC and she was found to be ineligible for getting benefit of horizontal reservation policy (female reservation), due to the '**only Open Category**' phrase in the G.R. dated 13.8.2014. The M.P.S.C. is bound by the recruitment policies declared by Government and all the recruitments during the period between the two G.Rs., i.e. between the years 2014 to 2018, must have followed the GR dated 13.8.2014. It is mentioned in the G.R.

dated 19.12.2018, that the earlier Circular dated 13.8.2014 was quashed by the Tribunal on 16.8.2018. However, this decision is not given retrospective effect and it is clearly mentioned in the clarification dated 19.12.2018, that it will be applicable from the date of the G.R.. Hence, we do not find merit in this O.A.. Therefore, we proceed to pass the following order-

ORDER

1. The O.A. is hereby dismissed.
2. No order as to costs.

(Nitin Gadre)
Member(A)

(Justice M.G.Giratkar)
Vice Chairman

Dated – 12/09/2024
rsm.

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 : 12/09/2024.
and pronounced on