

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATIONS 1007, 1052, 1056, 1057 & 1070/2017**

DISTRICT : SATARA

1. ORIGINAL APPLICATION NO. 1007 OF 2017

Mrs Ashwini Narayan Kale,)
R/o: At Post Pingale, Gondawale (Bk),)
Tal-Mann, Dist-Satara.)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Chief Secretary,)
General Administration Department,))
Mantralaya, Mumbai 400 032.)
2. The Principal Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
3. The Maharashtra Public Service)
Commission, [through its Secretary])
Bank of India Bldg, 3rd floor,)
M.G Road, Fort – 32.)...**Respondents**

2. ORIGINAL APPLICATION NO. 1052 OF 2017

Smt Rupali Deelip Gosavi,)
R/o: At Post Wasumbae, Datta Colony,)
Lane No. 4, Tal-Tasgaon,)
Dist-Sangli.)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Chief Secretary,)
General Administration Department,))
Mantralaya, Mumbai 400 032.)
2. The Principal Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
3. The Maharashtra Public Service)
Commission, [through its Secretary])
Bank of India Bldg, 3rd floor,)
M.G Road, Fort – 32.)...**Respondents**

3. ORIGINAL APPLICATION NO. 1056 OF 2017

- Ms Sunita Sharat Munde)
R/o: At Post Raimoha,)
Tal – Shirur [Kasari],)
Dist-Beed)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Chief Secretary,)
General Administration Department,))
Mantralaya, Mumbai 400 032.)
2. The Principal Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
3. The Maharashtra Public Service)
Commission, [through its Secretary])
Bank of India Bldg, 3rd floor,)
M.G Road, Fort – 32.)...**Respondents**

4. ORIGINAL APPLICATION NO. 1057 OF 2017

Ms Janabai Jankar Ramchandra)
 R/o: At Post Velapur,)
 Tal – Malshirus,)
 Dist-Solapur)...**Applicant**

Versus

1. The State of Maharashtra)
 Through its Chief Secretary,)
 General Administration Department,))
 Mantralaya, Mumbai 400 032.)
2. The Principal Secretary,)
 Home Department, Mantralaya,)
 Mumbai 400 032.)
3. The Maharashtra Public Service)
 Commission, [through its Secretary])
 Bank of India Bldg, 3rd floor,)
 M.G Road, Fort – 32.)...**Respondents**

5. ORIGINAL APPLICATION NO. 1070 OF 2017

Ms Archana Radhakisan Avhad)
 R/o: At Post Dapur,)
 Tal – Sinnar)
 Dist-Nasik)...**Applicant**

Versus

1. The State of Maharashtra)
 Through its Chief Secretary,)
 General Administration Department,))
 Mantralaya, Mumbai 400 032.)

2. The Principal Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
3. The Maharashtra Public Service)
Commission, [through its Secretary])
Bank of India Bldg, 3rd floor,)
M.G Road, Fort – 32.)...**Respondents**

Ms Ashlesha Raut, holding for Shri S. Talekar learned advocate for the Applicant in O.A nos 1007, 1056 & 1057/2017.

Shri D.V Taishete, learned advocate for applicant in O.A 1052/2017

Shri Chetan Nagare, learned advocate for applicant in O.A 1070/2017.

Ms Swati Manchekar, learned Chief Presenting Officer with Smt Kranti S.Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Justice A.H Joshi (Chairman)

DATE : 29.11.2017

ORDER

1. Heard Ms Ashlesha Raut, holding for Shri S. Talekar learned advocate for the Applicant in O.A nos 1007, 1056 & 1057/2017, Shri D.V Taishete, learned advocate for applicant in O.A 1052/2017, Shri Chetan Nagare, learned advocate for applicant in O.A 1070/2017 and Ms Swati Manchekar, learned Chief Presenting Officer with Smt Kranti S.Gaikwad, learned Presenting Officer for the Respondents.

2. Cases proceed on the following admitted background:-

- (a) Applicants belong to NT-B, NT-C and NT-D categories for whom reservations are provided.
- (b) All the applicants claim that they have applied for the post of P.S.I by declaring that they do not wish to claim any benefit on account of their status that they belong to any particular caste/tribe.
- (c) At the time of applying, they have paid the fees as applicable to open category candidates and did not avail any concession on the ground that they belong to any particular caste/tribe.
- (d) Applicants have successfully cleared preliminary written examination for eligibility for admission to viva-voce for appointment to the post of Police Sub-Inspector from open merit category.
- (e) Applicants were not permitted to participate in the viva-voce as open merit category candidates.

3. Viva-voce of all eligible open merit category candidates is over.

4. Reasons put forward by M.P.S.C while declaring applicants' candidature for viva-voce as disclosed from record which is common to all applicants reads as follows:-

“शासनाच्या दि.१३ ऑगस्ट, २०१४ रोजीच्या शासन परिपत्रकात संदर्भित केलेले न्यायनिर्णय/आदेश व त्याअनुषंगाने शासन परिपत्रकातील तरतुदीनुसार समांतर आरक्षण हे कप्पीकृत आरक्षण असल्याने अन्य वर्गवारीतील उमेदवारांचा विचार अराखीव प्रवर्गांतर्गत समांतर आरक्षणाच्या आरक्षित पदांवर करता येत नाही. आपला मूळ प्रवर्ग भ.ज.(ब) असल्यामुळे आपला विचार अमागास (महिला) वर्गवारीसाठी करता येत नाही. आपला अराखीव (सर्वसाधारण) पदांसाठी विचार करण्यात आला असता, अराखीव (सर्वसाधारण) करिता विहित केलेल्या अर्हतामानावर आपण अर्हताप्राप्त ठरत नाही. त्यामुळे आपणांस मुलाखतीच्या वेळी अपात्र ठरविण्यात आले आहे. आपण प्रस्तुत पदासाठी अपात्र ठरत आहात, याची कृपया नोंद घ्यावी.”

(Quoted from page No. 69, Exhibi M-1 of paper book of O.A No. 1052/2017)

5. Applicants' claim can be referred by quoting the pleadings contained in one of the Original Applications, the O.A No. 1007/2017, which reads as follows:-

“19. The applicant submits that the applicant did not claim any benefit as belonging to NT-C category. Moreover, hardly any post was reserved for NT-C category and that too for women category. Once the applicant opts for General Category, she has to be considered from General Category and not from the reserved category to which she belongs to.

20. The applicant submits that she never claimed reservation from NT(C) category for the purpose of State Services-2016. The Applicant, therefore, cannot be denied an opportunity to attend the interview and subsequent appointment from open category particularly when she has not claimed appointment from any reserved category, more particularly NT-C category, nor the posts of Police Sub-Inspector are reserved for NT(C) category.

21. The Applicant submits that Indian society cannot be divided into caste and religion so as to avoid further disintegration. The very goal of the Constitution of India is to promote unity and integrity of India. If unity and integrity of India is to be promoted and preserved, the Indian polity cannot be divided on the basis of castes and religions by the State.

22. The Applicant submits that almost under similar circumstances the Hon'ble Bombay High Court has held in the case of Asha Ramnath Gholap Vs. President, District Selection Committee/Collector, Beed and others in Writ Petition no. 3929/2015 decided on 30.3.2016 as well as in the case of Kanchan Vishwanath Jagtap vs. Maharashtra Administrative Tribunal, Nagpur and others in Writ Petition No. 1925/2014 and No. 1930/2014 decided on 16.12.2015 that female candidates from open category can claim her right for the post reserved for female from open category.

23. The Applicant has verified from the official website of the Hon'ble Supreme Court that the judgments in both these cases delivered by the Hon'ble High Court are not stayed or interfered with by the Hon'ble Supreme Court. The copies of judgments and orders in Writ Petition No. 3929/2015 decided on 30.3.2016 and in Writ Petition No. 1925 and

1930/2014 decided on 16.1.2015, are annexed herewith and marked at Annexure 'K' and 'L' respectively.”
(Quoted from pages 8 to 10 of O.A no. 1007/2017).

6. Applicants have placed reliance on reported judgments as follows:-

- (i) Judgment of Hon'ble High Court of Bombay in Asha R. Gholap Vs. The President, District Selection Committee/Collector, Beed & Ors, (2016) 3 AIR Bom R 376.
- (ii) Judgment of Hon'ble High Court of Bombay, Nagpur Bench in Kanchan V. Jagtap Vs. Maharashtra Administrative Tribunal, Nagpur & Ors, 2016(1) Mh.L.J 935.
- (iii) Judgment of Hon'ble High Court of Judicature at Bombay, bench at Aurangabad, Anil P. Shep Vs. State of Maharashtra & Ors, W.P no 10396/2016.

7. State has neither supported nor opposed this O.A.

8. M.P.S.C who has to contest present O.As, has come up with plea that adverse judgments of Hon'ble High Court of Bombay relied on by applicants have been challenged by filing SLP and reversal of the adverse judgment is to be awaited, and hence M.P.S.C desires to stick up to its stance and has decided to oppose present Original Applications.

9. This Tribunal has already taken view while deciding O.A 529/2017, Shri Ashok D. Dhakne Vs. State of Maharashtra & Ors by judgment dated 28.9.2017, by following two judgments of Hon'ble High Court of Bombay, Bench at Aurangabad in Anil P. Shep Vs. State of Maharashtra & Ors, (W.P no. 10396/2016) and Vinod K. Rathod & one another Vs. Maharashtra State Electricity Generation Co. Ltd (W.P no. 11574/2016), that the candidate belonging to reserved category has a right of consideration while considering the seats of all types which are not reserved and are

open merit contest vacancies, and this right includes right to be considered even in horizontal reservation or special reservation.

10. Hence by following the same view which is already taken and by following the precedents relied in said judgments, present Original Applications deserve to be allowed.

11. In the background of the fact that interviews are already completed by M.P.S.C it was called to state as to whether M.P.S.C would volunteer to hold applicants' interview without prejudice to its stance.

12. M.P.S.C has declined to hold the interview on the ground that the judgments of Hon'ble High Court are carried by M.P.S.C before the Hon'ble Supreme Court and hence M.P.S.C cannot volunteer to hold the interview, however, if directions are given, without prejudice to M.P.S.C's right and claim as agitated in the Special Leave Petition pending before the Hon'ble Supreme Court, M.P.S.C may carry out the orders as may be passed.

13. Hence, following order is passed:-

- (a) Original Applications are allowed and decision of M.P.S.C to refuse to entertain applicants' candidature against unreserved-open merit vacancy of horizontal reservation is declared to be erroneous being violative of Articles 14 & 16 of Constitution of India, and contrary to reported judgments of Bombay High Court, referred to in para no. 5 of this judgment.
- (b) M.P.S.C is directed to hold oral interviews of the applicants and ascertain Applicants' competitive merit in open merit

horizontal reservation and declare the inter-se merit of the candidates in open merit horizontal reservation category.

- (c) However, the actual selection and recommendation of merit, if any, would be subject to outcome of Special Leave Petition, which M.P.S.C claims that it has preferred.
- (d) In case M.P.S.C has actually sent the final selection list of candidates, the Respondent-State is directed to keep vacant the seats against the category for which applicants have applied.

14. In the facts and circumstances of the case, parties are directed to bear their own costs.

Sd/-
(A.H Joshi, J.)
Chairman

Place : Mumbai
Date : 29.11.2017
Dictation taken by : A.K. Nair.