

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 529 OF 2017

DISTRICT : BEED

Shri Ashok Dnyanoba Dhakne,)
Residing at Wadgaon Dhok,)
Post-Madhalmohi, Tal-Georai,)
Dist-Beed 431 127.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Chief Secretary,)
Mantralaya, Mumbai 400 032.)
2. Principal Secretary,)
Social Justice & Welfare Department)
Mantralaya, Mumbai 400 032.)
3. Commissioner,)
Commissionerate of Social Welfare,)
3, Church Road, Maharashtra State,))
Pune 411 001.)...**Respondents**

Smt Punam Mahajan, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Justice A.H Joshi (Chairman)

RESERVED ON : 19.09.2017

PRONOUNCED ON : 28.09.2017

ORDER

1. Heard Smt Punam Mahajan, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. Present Original Application pertains to the jurisdiction of the Division Bench of this Tribunal. With the consent of both sides, present Original Application is taken up for final hearing, by Chairman, sitting singly.

3. Applicant's claim is as follows:-

- (a) Applicant had applied for appointment to the post of Assistant Teacher, Standard 9th and 10th Primary School for the subject : Science. Applicant had applied for selection in unreserved seat/ Open category for the

reservation of project affected persons, though he belongs to NT(D) category.

- (b) The Respondent No. 3 published the temporary merit list for the said post. The name of the applicant is at Serial No. 26.
- (c) Respondent No. 3 published the temporary selection list in which application is held ineligible as the post is for Open Project Affected category and the applicant is originally from NT-D category.
- (d) As per the temporary select list, it is shows that candidate is not available from Project Affected Open Category.
- (e) Applicant again submitted representations to the Respondent No. 3 raising objection to declinment for appointing the applicant, and claiming an appointment.
- (f) The Respondent no. 3 informed the applicant the reason for which the applicant's candidature was rejected.

4. This Original Application is opposed by the Government. The impugned communication is sought to be justified with averments which read as follows:-

- “(8) I say that after considering various decisions of Hon. High Court, Hon. Supreme Court and Hon’ble Maharashtra Administrative Tribunal, Government issued G.R dated 16.3.1999, regarding procedure to be followed for filling up post by way of Horizontal Reservation.
- (9) I say that as per para 4, 5 & 6 of the said G.R dated 16.3.1999, Horizontal Reservation is compartmentalized (कपीकृत) Reservation, and it is part of Social Reservation. The Horizontal Reservation of one Social Category cannot be transferred to other category, so that concern category can get definite benefit of the Horizontal Reservation.
- (10) I say that in the present case, the Applicant belonged to NT(D) category and incidentally he was PAP.
- (11) I say that the Applicant is claiming reservation of PAP reserved for Open Category. As per above G.R dated 16.3.1999, the post of General PAP being Horizontal category could have been filled from General PAP category only. The applicant being PAP from NT(D) category was not entitled to claim reservation from open category.
- (12) I say that the G.R dated 13.8.2014 has further given guideline and explanation to G.R dated 16.3.1999 in which it is clarified that posts reserved for Horizontal Reservation of open

category have to be filled from open category only.

- (13) I say that as such the applicant from NT(D) PAP category was not considered for open PAP category. I say that to the extent of implementation of Horizontal Reservation, candidates belonging to other category, who have applied in open category cannot be considered for open category PAP Reservation, (Horizontal Reservation as provided in G.R dated 16.3.1999).
- (14) I say that vide letter dated 2.8.2017, this respondent had sought opinion of General Administration Department, Mantralaya on limited issue, whether the applicant belonging to NT(D) Project Affected Person can be accommodated in Open PAP category. Copy of letter dated 2.8.2017 is annexed herewith and marked as Exhibit R-4.
- (15) The General Administration Department, vide letter dated 10.8.2017 has reiterated provisions of Government Resolution dated 16.3.1999 and 13.8.2014 and informed that the recruitment procedure adopted by this respondent in respect of Assistant Teacher is in consonance with the policy of Horizontal Reservation of the State Government. Copy of letter dated 10.8.2017 is annexed herewith and marked as Exh. R-5.”

(Quoted from page 40 of the Paper Book).

- 5. Learned Advocate for the applicant has urged that:-

- (a) Applicant's candidature is rejected by relying on the principles as are laid down in the circular issued by the Government of Maharashtra through the General Administration Department, which is dated 13.8.2014, copy whereof is placed on record by the Government as Exh. R-3 to its affidavit which is at pages 56 & 57 of the Paper Book.
- (b) The interpretation of said circular of Government of Maharashtra has attained finality and it is no more open for debate in view of the judgment of Division Bench of High Court of Bombay, bench at Aurangabad in Writ Petition No. 11574/2016, Vinod K. Rathod & another Vs. Maharashtra State Electricity Generation Company Ltd.
- (c) Hence the impugned rejection deserves to be set aside with further mandatory order to treat that the applicant is eligible to be considered as an open category project affected person.

6. Learned Presenting Officer has relied on various judgments namely:-

- (i) ANIL KUMAR GUPTA Vs. STATE OF UTTAR PRADESH & ORS : 1995 SCC (5) 173.

- (ii) RAJESH KUMAR DARIA Vs. RAJASTHAN PUBLIC SERVICE COMMISSION & ORS : AIR 2007 SC 3127.
- (iii) STATE OF MAHARASHTRA Vs. IRFAN MUSTAFA SHAIKH & ORS : WRIT PETITION NO 272 OF 2010.
- (iv) Miss RJANI S. KHOBRADE @ Mrs RAJANI S. SHELKE Vs. STATE OF MAHARASHTRA & ORS : WRIT PETITION NO. 10103 OF 2015.
- (v) Decision of M.A.T, Mumbai Bench dated 11.4.2011 in O.A 924/2010. (Ms KIRTI D. WAGH Vs. THE COMMISSIONER OF POLICE & ANR).
- (vi) Decision of M.A.T, Mumbai Bench dated 29.8.2016 in O.A No 502/2015 (Shri YVRAJ V. POUL Vs. STATE OF MAHARASHTRA & ORS).
- (vii) Decision of M.A.T, Mumbai Bench dated 2.4.2014 in O.A No. 437/2012 (Kum ARCHANA S. KHAMBE & ORS Vs. STATE OF MAHARASHTRA & ORS).

7. Advocate for the applicant as well learned Presenting Officer has strenuously argued to canvas respective submissions, though learned Presenting Officer is not able to show that the interpretation of Government Circular dated 13.8.2014 as done by Hon'ble High Court of Bombay Bench at Aurangabad is overruled or that it is set aside.

8. It is seen on reading the judgment in case of Vinod K. Rathod & Ors Vs. Maharashtra State Electricity Generation Company Ltd., that the construction of the

Government of Maharashtra's Circular dated 13.8.2014 was sole subject matter.

9. The Division Bench of Hon'ble High Court has ruled as to what is the meaning, interpretation and construction of the language employed in the said Circular.

10. The Hon'ble Division Bench has recorded in Vinod Rathod's case supra as follows:-

"7. It is well settled that a candidate is entitled to compete for the General Category seat although he belongs to any particular reserved category. He may get selected on proving his merit. Even otherwise, a candidate from reserved category can claim seat from General Category on the basis of his merit. Even in the Circular dated 13.8.2014, it has been specifically mentioned in clause (A) that while filling up the posts from horizontal reservation from General category, firstly the selection of candidate should be made on the basis of merit from amongst all the candidates including the backward category candidates."

(Quoted from the judgment in Vinod Rathod & another Vs. Maharashtra Electricity Generation Company, W.P No. 11574/2016 of Aurangabad Bench of High Court of Bombay).

11. It is vivid that ruling on the construction and meaning of circular issued by Government of Maharashtra dated 13.8.2014, as laid down in Vinod Rathod's case does not leave or admit any room for any

further debate or plurality of views. Said judgment is a judgment in rem and has to be followed as a binding precedent.

12. This Tribunal has perused the judgment relied upon by the learned Presenting Officer. The question as to interpretation of Government Circular/decision dated 13.8.2014 had not fallen for consideration in any of the cases relied upon by the State. The said question was neither involved/argued deliberated and adjudicated in the precedent relied upon by the State.

13. Now in the present case, State has debated on the question of interpretation or construction and dictate contained in the circular issued by Government of Maharashtra in circular dated 13.8.2014, which is the subject matter of present Original Application and the law does not leave any room for any further debate. On the other hand, the meaning/interpretation and construction of said Government decision dated 13.8.2014 has been expressly ruled by Hon'ble Bombay High Court in aforesaid case of Vinod Rathod supra.

14. In the background of foregoing discussion, it transpires that the judgment of Hon'ble High Court in case of Vinod Rathod supra has to be followed as a binding precedent.

15. Hence present Original Application is allowed in terms of prayer paragraph 9(a) & 9(b), which read as follows:-

“9(a) That this Hon’ble Tribunal be pleased to quash and set aside the order dated 25.5.2017 and declared the applicant as eligible for the post of Assistant Teacher, Standard 9th and 10th Primary School Science Subject from open category–Projected Affected (Horizontal Reservation).

(b) That this Hon’ble Tribunal be pleased to direct the Respondent No. 3 to consider the applicant for appointment against the post earmarked for open category – Project Affected within a period of one month from the date of the order of this Hon’ble Tribunal.”

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

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

Place : Mumbai

Date : 28.09.2017

Dictation taken by : A.K. Nair.