

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 555 OF 2020

DISTRICT : RAIGAD

Dilip Namdev Lohkare)	
Occ-Service,)	
R/o : At Post Dashmigaon,)	
Tal-Washi, Dist-Osmanabad.)	...Applicant

Versus

1.	The State of Maharashtra)	
	Through its Principal Secretary,)	
	Revenue & Forest Department,)	
	Mantralaya, Mumbai 400 032.)	
2.	The District Collector,)	
	Raigad, and President of the)	
	District Selection Committee,)	
	Raigad.)	...Respondents

Ms Madhvi Ayyappan, i/b Shri S.B Talekar, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)

RESERVED ON : 28.06.2024

PRONOUNCED ON : 01.08.2024

J U D G M E N T

1. The applicant prays that the impugned communication dated 23.6.2020 issued by Respondent No. 2 cancelling the selection of the applicant pursuant to the final select list for the post of Talathi, Raigad. Further the applicant prays that the Respondent No. 2, be directed to appoint the applicant on the post of Talathi, Raigad pursuant to the final select list dated 7.12.2019.

2. Learned counsel has submitted that the Government of Maharashtra introduced a policy thereby giving preference to candidates who have worked as Part-Time Graduates in the Government establishments for appointment to Group-C posts vide G.R dated 19.3.1998. Thereafter from time to time to secure the interest of such Part-Time Graduate employees the Government of Maharashtra introduced 10% horizontal reservation for such candidates for appointment to Group-C posts vide G.R dated 27.10.2009. Learned counsel has submitted that the applicant worked as a Part-Time Teacher (Diploma) for a period of 3 years from 1.10.1997 to 20.8.2001. The applicant is therefore eligible to claim the benefit of G.R dated 19.3.1998.

3. Learned counsel for the applicant submits that in the meanwhile the District Selection Committee, Raigad, issued advertisement to fill up 51 posts of Talathi on 28.2.2019. Out of 51 posts, 3 posts came to be reserved for Part-Time Diploma Holders. Learned counsel submitted that the applicant applied for the said post of Talathi on 16.3.2019 from S.C category and at the same time claimed reservation of 10% Part Time Diploma Holder. Learned counsel has submitted that the applicant appeared in the Written Examination and he secured 106 marks out 200 marks and his name appeared at Sr. No. 127 in the Combined Merit List

published on 30.9.2019. The applicant was called for document verification on 10.10.2019. Learned counsel submits that after due verification of documents and on the basis of performance in the written examination, the applicant came to be included at Sr. No. 2 in the final select list in respect of candidates seeking 10% reservation of Part Time Diploma Holders from SC category. Learned counsel has submitted that although his name appeared in the final merit list, the Respondents did not issue the appointment order of the applicant. The applicant thereafter preferred a representation to the Respondent No. 2, requesting to issue the appointment order pursuant to the selection on 9.1.2020. The Respondent No. 2, vide communication dated 23.6.2020 informed the applicant that he is held ineligible for appointment to the post of Talathi for the 10% reservation meant for Part Time Diploma Holders, as he has already availed the said benefit while procuring appointment to the post of Conductor-Junior on the establishment of Maharashtra State Road Transport Corporation in the year 2013. The Respondent no. 2 while holding the applicant ineligible for appointment to the post of Talathi for the 10% reservation meant for Part Time Diploma Holders, relied on Government letter dated 26.8.2010 which provided 10% reservation can be availed only once. Learned counsel has submitted that the Respondent No. 2 was wrong in applying the instructions contained in Government letter dated 26.8.2010 to the applicant as he was never appointed on a permanent post nor was he employed in Government or semi-Government services. Learned counsel further submitted that the right of the applicant to claim 10% reservation flows from the G.R dated 27.10.2009 wherein 10% horizontal reservation to the Part Time Diploma Holder is provided by way of direct recruitment. Learned counsel submits that the perusal of G.R dated 27.10.2009 and subsequent modifications thereto makes it clear that the purpose of providing

10% reservation was to ensure that such part time employees are provided with regular and permanent employment that too in Government and Semi-Government services. Learned counsel has submitted that at no point of time the applicant was appointed to a permanent post that too on a Government or semi-Government employment at any point of time. Learned counsel has further submitted that the appointment on the post of Conductor -Junior in the establishment of Maharashtra State Road Transport Corporation was on contractual basis that too on 'as and when required' basis. Learned counsel has further submitted that the very purpose of granting the benefit of reservation to such Part-Time Graduate employees was to compensate their period of services spent on ad hoc posts in Government establishment by providing them an opportunity to secure permanent employment in Government service. Learned counsel has submitted that the applicant could not have been considered to have exhausted the benefit of 10% reservation under the G.R dated 27.10.2009 merely because he was appointed on ad hoc basis on some other establishment under the category of Part Time employees. Learned counsel has further submitted that employment with Maharashtra State Road Transport Corporation cannot be considered as Government or semi-Government service as Maharashtra State Road Transport Corporation is an autonomous body. Learned counsel has further submitted that even the G.R dated 27.10.2009 providing 10% reservation did not specify that the said reservation can be availed only once. Learned counsel submitted that the Respondent No. 2 could not have held that applicant ineligible for being appointed as Talathi by relying on the Government letter dated 26.8.2010 by giving a total go bye to the subsequent provisions of the Government Resolution. Learned counsel has further submitted that several other Part-Time Graduates who were earlier engaged by the MSRTC were

subsequently appointed in Government service under the 10% reservation for Part Time Graduates. Learned counsel submitted that one Mr Sunil M. Waghmare who was initially appointed on the establishment of MSRTC by availing of 10% reservation, subsequently came to be appointed on the post of 'Patkari' in the establishment of Irrigation and Water Conservation Department, Patbandhare Vibhaug, Pandharpur. Similarly, one Mr Uttam S. Kulkarni, was appointed on the establishment of MSRTC from the 10% quota, was subsequently appointed under the 10% quota for Part Time Graduates to the post of Clerk in the office of District Deputy Registrar, Osmanabad. One Mr Balasaheb P. Kulkarni, who was working in the Health Department of Zilla Parishad, Osmanabad is currently working on the post of Sajja Talathi, Tal-Jamkhed under the 10% reservation for Part Time Graduates. Learned counsel further submitted that the impugned order suffers from total non-application of mind. Learned counsel submitted that the rights conferred by G.R dated 27.10.2009 which is the policy decision of the Government cannot be narrowed down by way of an administrative letter, which does not even satisfy the requirement of subordinate legislation. Learned counsel has further submitted that the Respondent No. 2 did not give an opportunity of hearing to the applicant before cancelling his selection, despite the fact that the impugned order had been passed almost after a period of 6 months. Learned counsel relied on the G.R dated 19.9.2013 and submitted that had the Government wanted to put the restriction of giving the benefits, the Government could have accordingly modified the said G.R in respect of Part Time Graduate employees. Learned counsel has further submitted that the applicant is claiming age relaxation for appointment to the post of Talathi. Learned counsel submitted that persons who are working in MSRTC, which is not a Government organization, the employees are allowed to apply for

Government jobs under the Part Time Graduate employees category.

4. In support of her contentions, learned counsel for the applicant relied on the following case laws:-

- (i) Judgment of the Punjab & Haryana High Court in Bhulla Singh & Anr Vs. State of Punjab & Ors, 2007 (2) ILR, Punjab and Haryana 410.
- (ii) Judgment of Karnataka High Court in Chandrappa E.T & Anr Vs. State of Karnataka and Anr, (2013) 2 Kant LJ 70(DB).

5. Learned C.P.O has submitted that no stay is granted by this Tribunal and nor any order that any appointment made to the post of Talathi will be subject to the outcome of the present Original Application. Learned C.P.O has further submitted that in between candidate Mr D.N Suryawanshi, who has also secured 106 marks from Part Time Graduate category was appointed. Further the recruitment for the post of Talathi of the year 2023 was also over. Learned C.P.O submitted that under horizontal reservation for Women and Sports category, there is no bar or restrictions for those categories to avail of the benefit only once. So far as Ex-servicemen are concerned, if they take the benefit and get the job and is regularized, then the Ex-servicemen cannot take the benefit of the reservation for subsequent job as per extant policy of the Government. Learned C.P.O submitted that G.A.D has sent letter dated 26.8.2010 addressed to the Collector, Satara putting the restriction informing that Part-Time Graduate employees if he is appointed in Government service, then he cannot avail of the benefits of Part Time Graduate employee, which is a horizontal reservation to get other job. It is also informed that this reservation is only to support such people economically. Learned C.P.O

submits that there is no post vacant and both the candidates have joined as Talathi.

6. In the case of **Bhulla Singh & Anr (supra)**, the Hon'ble Punjab & Haryana High Court observed as under:-

14. No judgment taking a view contrary to what has been taken in the above referred judgments has been cited by learned counsel appearing for the respondents. On a bare perusal of Rule 4 of the Rules, where the reservation for the Ex-servicemen is provided, it is evident that in condition of entitlement for reservation, there is no such condition that an Ex-serviceman can avail of the benefit of reservation only once in his life- time against the direct recruitment. It is only in ease of wife or the dependent children of the Ex-servicemen, that while providing for reservation to them, the conditions are put in terms that he or she is not already in service and that he or she will be eligible to avail the benefit of recruitment against the reserved vacancy only. one in lifetime. These two conditions are nowhere in the case of the Ex-servicemen in case they are themselves applicants and seeking claim to the posts. After the discharge from Armed Forces in case an Ex-serviceman takes a job which according to him may not be in terms of his status and qualifications, with a view to make his both ends to meet, such an Ex-serviceman cannot possibly be debarred from applying on a newly advertised post which may be higher in status and rank and for which he is fully qualified. Such an interpretation sought to be made by the respondents to the Rules, is neither borne out from the language of the Rules nor the same has any nexus with the object to be achieved.

15. Accordingly, for the reasons recorded above and applying the dictum of law laid down by this Court consistently in the aforementioned cases, the writ petition is allowed. As in terms of the interim order passed by this Court, the petitioners had already been given appointment and they had joined as Inspectors of Police already their appointment shall be treated as regular from the date of their initial appointments.”

7. In the case of **Chandrappa E.T (Supra)**, the Karnataka High Court observed as under:-

“Therefore, having regard to the well-settled law laid down by the Division Bench of the Punjab and Haryana High Court in Dr. Jagmohan Singh's case, following the Full Bench decision in Harbhajan Singh's case, the decision of the Larger Bench of the Tribunal in Application No. 600 of 2010 coupled with the communication dated 10th December, 2010 issued by the Competent Authority clarifying the position, we are of the considered opinion that the concession given to the Ex-servicemen, under the statute cannot be taken away from them unless and until such concessions are withdrawn or modified or cancelled by the Competent Authority of the Department, following due procedures. Merely by issuing a communication (in the instant case, communication dated 2nd February, 2006), the benefit/concession given to Ex- servicemen cannot be taken away nor the same is sustainable. Therefore, we are of the considered view that, at any stretch of imagination, the impugned order passed by Tribunal dated 1st January, 2009 insofar as it relates to Application Nos. 1415 and 1416 of 2007, the Notification dated 25th September, 2006, bearing-No. 18/Nemakathi/2006-07 challenged in the said Applications and also the communication dated 2nd February, 2006, bearing No. O.E./90/Po.Si.Si.Aa/2005 cannot be sustained and are all liable to be set aside. Further, one more aspect to be borne in mind is that, after realizing the mistake committed by the Competent Authority of the respondent Department, in issuing the communication dated 2nd February 2006, on the basis of the Notification dated 25th September, appointment to any higher post for the second time.

8. In this matter, all facts are admitted and the only disputed point is whether the Ex-servicemen can avail of the concession/benefits given to him repetitively though have availed of earlier. It is an admitted fact that the applicant is an Ex-servicemen and there is reservation of the post of Talathi for Part Time Graduate in Ex-servicemen category. The applicant has worked as a Part Time Teacher in Diploma for 3 years from 1.10.1997 to 20.8.2001, by availing of the benefits as Part Time Graduate in the category of Ex-servicemen. Then the applicant took up a job as a Conductor-Junior in MSRTC in the year 2013. For the post of Talathi the applicant has applied on 16.3.2019 in

S.C category by claiming reservation of 10% as a Part Time Diploma Holder. The applicant's name appeared in the merit list which was published on 30.9.2019 and the select list was published on 9.1.2020. The Respondents did not issue him the appointment order and he was informed by letter dated 26.8.2010 that the reservation of 10% can be availed of only once. The submissions of the learned counsel for the applicant that the applicant was never appointed permanently, and therefore, he is eligible to avail of the benefits of 10% reservation in Part Time Graduate category for Ex-servicemen is not correct.

9. We have considered the ratio laid down in the case of **Bhulla Singh & Anr (supra)**, where the Hon'ble Punjab & Haryana High Court was dealing with Rule 4 of the Punjab Recruitment of Ex-servicemen Rules, 1982 and has observed that there is no condition that Ex-servicemen cannot avail of the benefits of reservation more than one time in his life time against the direct recruitment. Therefore, the Ex-servicemen cannot be debarred from applying for the new advertised post which may be higher in status and rank if he is fully qualified in the said category of Ex-servicemen.

10. In the case of **Chandrappa E.T (Supra)**, the Hon'ble High Court of Karnataka held that the concession given to the Ex-servicemen under dispute cannot be taken away from them unless and until such concessions are withdrawn, modified or cancelled by the competent authority.

11. The ratio laid down in the above two cases cannot be attracted to the facts of the present case, especially for the reason that the category of the reservation, though it is for Ex-servicemen, it is in the category of Part-Time Graduate. Thus, the reservation

does not only speak about a particular reservation claimed is not under a particular class of Ex-servicemen, but also in particular status of Part Time Graduate.

12. We make it clear that any concession given to Ex-servicemen may be claimed at different stages or more than one time and that can be available. However, Ex-servicemen in the present case claims reservation in a category of Part Time Graduate. This reservation is available to the candidates who are Graduate and work Part Time and not a Full Timer. If a candidate is appointed temporarily on regular basis as a Full Timer, he loses his status as a Part Time employee. To be Full Time or Part Time is a status of that particular employment. Once you are appointed Full Timer or status is changed, you may be Ex-servicemen, you are ceased to claim the status which you did not have and you may claim reservation only in the category of Ex-servicemen. On this ground, we don't find any substance in the submissions of the learned counsel for the applicant. The applicant has worked as Junior Conductor in M.S.R.T.C as a Full Timer from 2013 to 2019 and therefore he cannot be treated as a Part Time Graduate which he was earlier prior to his appointment in 2013.

13. In view of the above, we find no substance in the Original Application and the same is accordingly dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 01.08.2024
Dictation taken by : A.K. Nair.