

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 581 of 2023 (D.B.)

Minal Samadhan Tangade,
Aged about 21 years, Occu. Nil,
R/o.Valmiki Nagar, Masrul,
Tah. and District - Buldhana.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Home Department, Mantralaya, Mumbai - 32.
- 2) Director General of Police (Training and Special Squad),
Maharashtra State, Mumbai.
- 3) Superintendent of Police Akola, District – Akola.

Respondents.

Shri R.D. Karode, U.V. Bhosle, Advs. for the applicant.

Shri S.A. Sainis, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman and
Hon'ble Mrs. Medha Gadgil,
Member (A).**

Date of Reserving for Judgment : 14th March,2024.

Date of Pronouncement of Judgment : 23rd April,2024.

JUDGMENT

(Delivered on this 23rd day of April,2024)

(The matter is heard through Video Conference)

Heard Shri U.V. Bhosle, learned counsel for applicant and

Shri S.A. Sainis, learned P.O. for respondents.

2. The case of the applicant in short as under –

Respondent no.2 in consultation with respondent no.1 has published the advertisement for recruitment of Police Constable (Driver) on 05/11/2022. In pursuant to the advertisement, the applicant has applied in the prescribed format online as well as offline for the post of Police Constable (Driver). The applicant has applied from Open category.

3. The applicant was called for written test and physical test by the respondents which were held on 05/01/2023 and 26/03/2023, respectively. The applicant has successfully cleared the written test and physical test. It is submitted that in the call letter issued for physical test it is stated that those women candidates who are willing to take benefit of reservation, has to submit specification as given in format "F".

4. On 12/04/2023, respondent no.3 has published the list of selected candidates and the waiting list. On 19/05/2023, respondent no.3 has sent the candidates for medical test in which the name of applicant is at Sr.No.1. On 25/05/2023, respondent no.3 issued appointment order to 21 candidates. The name of applicant is not in the list of candidates who are appointed. She has requested respondent no.3 to give reasons as to why she is not appointed. Respondent no.3 orally informed that she failed to submit Non Creamy

Layer Certificate. Thereafter, the applicant has preferred the representations on 30/05/2023 and 31/05/2023 and requested to exempt her from submitting Non Creamy Layer Certificate as per the G.R. dated 04/05/2023. The applicant is possessing the Non Creamy Layer Certificate dated 02/01/2021 which is valid upto 31/03/2023, but it was not considered. It is submitted that as per the G.R. dated 04/05/2023, it is not necessary to submit Non Creamy Layer Certificate to the Open (female) candidates.

5. It is submitted that the applicant though belonging to any of the Caste either Maratha or Kunbi, but she has applied from General / Open category, therefore, communication dated 03/07/2023 issued by respondent no.3 is non application of mind. The G.R. dated 04/05/2023 given exemption to the applicant from submitting Non Creamy Layer Certificate. Hence, the applicant approached to this Tribunal for the following reliefs –

“ (10) (i) hold that demand of the non creamy layer certificate at the stage of medical test is unreasonable and therefore direct the respondents to consider the candidature of the applicant for the further stage of recruitment;

ii) direct the respondents to appoint the applicant on the post of Police Constable Driver, in the interest of justice;

ii-a) quash and set aside the communication dated 03/07/2023 issued by respondent no.3 (Annexure-A11).

(11) (i) by way of interim relief, direct the respondents to consider the candidature of the applicant for the further stage of recruitment, in the interest of justice;

ii) direct the respondents to keep one post vacant of Police Constable Driver, during the pendency and subject to decision of the present application;

iii) grant ad-interim relief in terms of prayer clause (i) and (ii) above.”

6. The reply is filed and denied the claim of applicant. The interim relief was not granted by this Tribunal as per order dated 19/06/2023.

7. The O.A. was heard finally on 14/03/2024 on Video Conferencing.

8. As per the submission of learned counsel for applicant, the applicant has applied in the Open (female) category. There was no need to submit Non Creamy Layer Certificate. He has pointed out the form submitted by her in which she has specifically stated that she applied in Open (female) category (social reservation category). She has inadvertently stated that she did not belong to Non Creamy Layer category. The learned counsel for applicant has submitted that inadvertently the applicant has filled the form, but even it is accepted, then also she need not to submit Non Creamy Layer Certificate as per the G.R. dated 04/05/2023.

9. The learned counsel for applicant has pointed out the interim order passed by the Division Bench of M.A.T., Bench at Aurangabad in O.A.St.No.2083/2023, dated 19/10/2023 and the

Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.393/2016, decided on 22/01/2016. The learned counsel for applicant has submitted that for the Open (female) category there was no need to submit Non Creamy Layer Certificate. The impugned communication shows that she was not appointed only because she had not submitted Non Creamy Layer Certificate therefore prayed to quash the impugned communication dated 03/07/2023.

10. The learned P.O. has submitted that the applicant applied in Open category. The applicant got very less marks in Open category, therefore, she could not be appointed. The respondents have followed the decision of the Hon'ble Supreme Court in the case of **Saurav Yadav and others Vs. State of Uttar Pradesh and others (2021) 4 SCC,542**. He has pointed out the order passed by this Tribunal in O.A.No.874/2023, dated 22/08/2023. The learned counsel for applicant has submitted that some women who applied in reserved category were having more marks, therefore, according to the Judgment of the Hon'ble Supreme Court in the case of **Saurav Yadav and others Vs. State of Uttar Pradesh and others (cited supra)**, they were selected in Open category. The applicant got only 88 marks. The last candidate in the Open (female) category secured 89 marks, therefore, the applicant cannot claim the reservation in Open

11. The learned P.O. has submitted that the Non Creamy Layer Certificate produced by the applicant is doubtful. In her school record, her caste is mentioned as 'Kunbi' whereas in Non Creamy Layer Certificate her caste is mentioned as 'Maratha'. Therefore, the applicant cannot claim that she should be appointed in Open (female) category. Hence, the O.A. is liable to be dismissed.

12. The respondents have issued advertisement dated 05/11/2022 for the appointment of the post of Police Constable (Driver). Total 39 posts were advertised. Following Chart shows the reservation / social (horizontal) reservation –

	अ.जा	अ.ज	वि.जा.अ	प.ज.ब	प.ज.क	प.ज.ड	विमाप्र	इमाव	इडन्यूस	खला	एकुण
एकुण	5	3	1	1	1	1	0	8	5	14	39
कम्पौकृत आरक्षण											
सर्वसाधारण	2	2	1	1	1	1	0	5	2	4	19
महिला	2	1	0	0	0	0	0	2	2	4	11
खळाडु	0	0	0	0	0	0	0	0	0	0	1
प्रकल्पग्रस्त	0	0	0	0	0	0	0	0	0	1	1
भुकेपग्रस्त	0	0	0	0	0	0	0	0	0	0	0
माजी सैनिक	1	0	0	0	0	0	0	1	1	2	5
अंशकालीन पदवीधर	0	0	0	0	0	0	0	0	0	1	1
पोलीस पाल्य	0	0	0	0	0	0	0	0	0	0	0
गृहरक्षक दल	0	0	0	0	0	0	0	0	0	1	1
अनाथ							निरंक				

13. Total 11 posts were reserved for women category. Out of that 2 posts were reserved for S.T. category, 1 post for S.C. category, 2 posts reserved for OBC category, 2 posts reserved for EWS category and 4 posts were reserved for Open category. All these 11 posts were reserved for women category.

14. As per the marks sheet filed on record by the applicant, it is clear that following women category candidates obtained the respective marks.

Sr. No.	Name	Category	Obtained marks
1.	Sakhubai K. Khaire	EWS	123
2.	Snehal A. Umale	SC	114
3.	Kalpana L. Wagh	EWS	105
4.	Bhagyashri V. Pagade	SC	100
5.	Varsha R. Pathade	SC	74
6.	Puja M. Gawli	OBC	95
7.	Kanchan H. Dhombre	OBC	88
8.	Manisha D. Agashe	EWS	89
9.	Rakhi V. Kamalakar	EWS	83
10.	Minal S. Tangade	Open	88
11.	Pooja D. Sable	OBC	73
12.	Ashvini S. Thakare	OBC	65

15. The appointment order dated 25/05/2023 (Annex-A-6) is reproduced below –

अ. क्र.	चेस्ट क्र.	उमेदवाराचे नांव	पुरुष / महीला	बक्कल क्रमांक	नियुक्ती प्रवर्ग
१.	१०००	अक्षय पुरुषोत्तम गावंडे	पुरुष	१२१३	ईमाव (खुला प्रवर्ग)
२.	१२१३	परमेश्वर तुळशीराम राठोड	पुरुष	१२१७	विजा-अ (खुला प्रवर्ग)
३.	१८३१	कु. कल्पना लक्ष्मण वाघ	महीला	१२१९	खुला प्रवर्ग (महीला आरक्षण)
४.	१८३२	भाग्यश्री विनायक पगडे	महीला	१२२३	खुला प्रवर्ग (महीला आरक्षण)
५.	१८३६	कु. पुजा मारोती गवळी	महीला	१२३१	खुला प्रवर्ग (महीला आरक्षण)
६.	१८०१	कु. मनिषा दत्ताराव आगाशे	महीला	१२४४	खुला प्रवर्ग (महीला आरक्षण)
७.	११०३	दत्तात्रय शुखलराव सुरनार	पुरुष	१२४५	प्रकल्पग्रस्त (खुला प्रवर्ग)
८.	१८५४	सुरेश विठ्ठलराव माकोडे	पुरुष	१२४९	खुला प्रवर्ग (माजी सैनिक)
९.	१८४७	अमोल रमेश शिरसाट	पुरुष	१२५३	खुला प्रवर्ग (माजीसैनिक)
१०.	४७८	उमेश विनोद वाकोडे	पुरुष	१२६२	अ. जाती
११.	१९८४	आशिष हिम्मत तायडे	पुरुष	१२६६	अ.जाती
१२.	१८०७	कु. वर्षा रंगनाथ पठाडे	महीला	१२६८	अ.जाती (महीला आरक्षण)
१३.	१८४१	अनिल रामचंद्र सोनोने	पुरुष	१२७६	अ.जा. (माजी सैनिक)
१४.	१०३१	रवि प्रकाश शिंदे	पुरुष	१२७९	अ. जमाती
१५.	५१८	सिध्दार्थ सुरेश कोहचाडे	पुरुष	१२८१	अ.जमाती
१६.	१०१३	रामेश्वर शालीग्राम गव्हाळे	पुरुष	१२८४	भ.ज.- क
१७.	१२८१	गणेश रघुनाथ कांदे	पुरुष	१२८५	भ.ज.- ड
१८.	१८३४	कु.कांचन हरिभाउ ढोंबळे	महीला	१२८६	इमाव (महीला आरक्षण)
१९.	१२६७	सोमनाथ विष्णु फुके	पुरुष	१२९०	इडब्ल्युएस
२०.	१८२७	कु. राखी विजय कमलाकर	महीला	१२९९	इडब्ल्युएस (महीला आरक्षण)
२१.	१८६०	नवनाथ बाळासाहेब यादव	पुरुष	१३०४	इडब्ल्युएस (माजी सैनिक)

16. The last candidate EWS (f) category obtained 83 marks and one Varsha Pathade S.C. (f) category obtained 74 marks.

17. Four Open (f) category posts were to be filled. As per the Judgment of the Hon'ble Supreme Court, the reserved category candidates on the basis of their merits can be shifted in Open category. Kalpana L. Wagh, obtained 105 marks, Bhagyashri V. Pagade obtained 100 marks, Puja Gawali obtained 95 marks and Manisha Agashe obtained 89 marks from reserved category.

18. As per the marks obtained by these women, they were treated in Open category according to their merits. It is perfectly legal as per the Judgment of the Hon'ble Supreme Court in the case of **Saurav Yadav and others Vs. State of Uttar Pradesh and others** (*cited supra*). Though those candidates were applied in other category like EWS, SC etc., but according to their merits they are treated in Open category. The form of applicant was accepted in Open (female) category. Even the obstacle of filing Non Creamy Layer Certificate is not taken into consideration, then also the applicant not competed in Open category. She has secured only 88 marks. The last Open (female) category candidate appointed by the respondents, has obtained 89 marks. The applicant has obtained only 88 marks in Open (female) category. Therefore, she cannot say that she is not appointed in the Open (female) category.

19. It is clear from the G.R. dated 04/05/2023 that Open (female) candidates and other backward (female) candidates are not required to produce Non Creamy Layer Certificate.

20. The order of M.A.T., Bench at Aurangabad dated 19/10/2023 in O.A.St.No.2083/2023 it was the contention of the applicant that she has obtained more marks i.e. 135.50 marks, whereas another applicant secured 131.50 marks. Both applicants had applied in Open (female) category. They have wrongly filled the form stating that they do not belong to Non Creamy Layer category. Only on that basis they were not considered in Open category. The Court has observed that as per the G.R. dated 04/05/2023, they need not to produce Non Creamy Layer Certificate. Therefore, the respondents were directed to keep two posts vacant.

21. In the present case, even the contention of the applicant is accepted, then also it is clear that she has filled the form in Open (female) category. In the Open (female) category candidates who are appointed by the respondents obtained more marks than the applicant. The applicant secured 88 marks, whereas the last candidate in Open (female) category secured 89 marks. As per the Judgment of the Hon'ble Supreme Court in the case of **Saurav Yadav and others Vs. State of Uttar Pradesh and others** (cited supra), the reserved category candidates shall be appointed according to their

merits, if their marks are more, then they be shifted in Open category. First Open category is to be filled and thereafter reserved category is to be filled. The respondents have filled Open category according to the marks / merits. All the four women namely Ku. Kalpana L. Wagh, Bhagyashri V. Pagade, Ku. Puja M. Gawli and Ku. Manisha D. Agashe are appointed as per their merits in the Open category. The applicant cannot shift from Open category to reserved category. The last candidate in OBC (female) has secured 88 marks. The applicant applied in Open (female) category. She has secured less marks as compared to the other Open (female) candidates appointed by the respondents, who are shifted from other category to Open category as per the merits.

22. The learned counsel for the applicant has pointed out the Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in the case of ***Mrs. Patil Vijaya Milind Vs. State of Maharashtra & Ors.*** It was case of the petitioner that names of other candidates from Open (female) category who secured less marks than the petitioner were included in the list of successful candidates eligible for oral examination / oral interview. The petitioner secured more marks, but inadvertently she has filled the column no.13 as 'No'. The petitioner has filled the form in Open (female) category. In para-6 of the Judgment, the Hon'ble High Court has observed as under –

“(6) We have carefully considered the submissions advanced by the learned Counsel for the respective parties. From the material on record, it is abundantly clear that the post for which the petitioner has applied was reserved for Open Female. It is true that in the form to be filled in on-line, Clause 13 thereof prescribes for the information whether the candidate applying for the said post is eligible for horizontal reservation and the petitioner has filled in the information against said clause as "No". We are however, convinced that, that was an inadvertent mistake committed by the petitioner. In the circumstances, according to us merely for that reason the application of the petitioner could not have been rejected. We reiterate that when the post itself is reserved for Open Female, none else than Open Female could have applied for the said post. Having regard to the fact that in the test, the petitioner has secured 47 marks out of 80, she needs to be given an opportunity to prove her merit even in the interview and her candidature cannot be rejected merely on the ground that she has wrongly filled in the information against Column No. 13.”

23. In the present case, the applicant applied in the Open (female) category. As per the Judgment of the Hon’ble Supreme Court in the case of **Saurav Yadav and others Vs. State of Uttar Pradesh and others** (cited *supra*), reserved woman female category such as S.C., S.T. etc., who secured more marks according to their merits, they are appointed in Open (female) category. It is perfectly legal as per the Judgment of the Hon’ble Supreme Court.

24. The applicant has secured less marks in Open (female) category. According to the merits, other reserved female category candidates were shifted in the Open (female) category. The appointment by the respondents is perfectly legal and correct. The applicant has secured less marks in Open (female) category. Therefore, she cannot say that she should be appointed. As per the Judgment of the Hon’ble Supreme Court, reserved category candidate on the basis of merit shall be appointed in the Open category. But,

Open category candidate cannot shift to reserved category as per the Judgment of the Hon'ble Supreme Court cited supra.

25. The communication issued by the respondents dated 03/07/2023 is perfectly legal and correct because the applicant is unsuccessful in the Open (female) category candidates as per her marks. If she is taken into consideration in the Open (General) category, then last candidate in the Open (General) category obtained 132 marks, whereas the applicant has secured only 88 marks. Therefore, she cannot be appointed. Her documents were found contradictory. In her school leaving certificate, her Caste was mentioned as 'Kunbi', but in Non Creamy Layer Certificate her Caste was mentioned as 'Maratha'. Therefore, the decision taken by the respondents vide communication dated 03/07/2023 is perfectly legal and correct. Hence, the following order –

ORDER

The O.A. is dismissed. No order as to costs.

(Medha Gadgil)
Member(A).

(Justice M.G. Giratkar)
Vice Chairman.

Dated :- 23/04/2024.

*dnk.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman & Member (A).

Judgment signed on : 23/04/2024.