

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
AURANGABAD BENCH, AURANGABAD**

**ORIGINAL APPLICATION NO.23 OF 2012
(O.A.NO.1208 OF 2012 AT M.A.T., MUMBAI)
(Subject : Selection)**

DISTRICT : NANDED

Vandana Chandrakant Pohare,)
R/o. Sant Dyaneshwar Nagar,)
Near Waman Nagar, Nanded.)..**APPLICANT**

VERSUS

1. The State of Maharashtra,)
Through it's Secretary,)
Higher & Technical Education)
Department, Mantralaya,)
Mumbai 400 032)
(Copy to be served on CPO M.A.T.,)
Bench at Aurangabad.))
2. The Maharashtra Public Service)
Commission, Through its Secretary,)
Bank of India Building, 3rd floor,)
M.G. Road, Hutatma, Chowk,)
Mumbai 400 001.)
3. The Director of Technical Education,)
M.S., Mumbai.)

4. Gurushantappa s/o. Sharanappa)
Harlayya,)
C/o. MPSC, Bank of India Bldg.,)
3rd floor, Hutatma Chowk, Mumbai.)

....RESPONDENTS

Ms. Bhavna Panpatil, learned Counsel for the Applicant.

Mrs. Priya Bharaswadkar, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN
SHRI J.D. KULKARNI, MEMBER (J)

DATE : 18.10.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

J U D G M E N T

1. Heard Ms. Bhavna Panpatil, learned Counsel for the Applicant and Mrs. Priya Bharaswadkar, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant on the ground that making minimum eligibility standards for general candidates applicable to female candidates is unfair and it cannot be termed as legal.

3. Learned Counsel for the Applicant argued that the Applicant has applied for the post of Industries officer in

Maharashtra Industries Service, Group 'B' pursuant to advertisement dated 23.07.2009 issued by the Respondent No.2. The Applicant is a female belonging to Scheduled Caste Category and was allowed to participate in the screening test conducted by the Respondent No.2 to select candidates, who were to be called for interview. The Applicant cleared the screening test and was called for interview on 02.09.2011. She was informed by the Respondent No.2 by letter dated 04.11.2011 that she was not recommended for the post. Learned Counsel for the Applicant argued that the Respondent No.2 had issued advertisement to fill a total of 22 posts of Industries Officer, Group 'B'. 2 posts were reserved for S.C. Category, out of which one was reserved horizontally for S.C. female. However, though the Applicant who is from S.C. Female category was interviewed, she was not selected and both posts reserved for S.C. category were filled by male S.C. Candidates. Learned Counsel for the Applicant argued that Clause 5.6.1 of the instruction for the candidate clearly mentioned that cut off marks may be different for different vertical/ horizontal reservation categories. It was, therefore, against this provision to fix minimum qualifying marks of 40% for both male and female candidates in interview.

4. Learned P.O. argued on behalf of the Respondents that this O.A. is misconceived. The Applicant is relying on instructions No.5.6.1 in the prospectus, which was regarding the screening test. Learned P.O. stated that 'screening test' is conducted to limit the number of candidates, who could be called for interview. As adequate number of candidates are

required to be called for interview from each of the vertical and horizontal reservation categories, qualifying marks in the 'screening test' may be different for candidates from different categories. However, when the candidates are called for interview, it is to be ensured that all selected candidates, regardless of the category to which they belong have minimum competence required for the post. To ensure that, Maharashtra Public Service Commission has framed Rules of Procedure under Article 320 of the Constitution of India and the relevant rule provides for 40% minimum marks in interview for all categories. This minimum standard does not cause any discrimination, as all candidates, who meet this minimum criterion, then compete for the post from their respective categories and the most meritorious are selected category-wise. Learned P.O. argued that for horizontal reservation, if no suitable candidate from the category are available, such posts are not carried forward and the post are added to vertical reservation category from which horizontal reservation was provided. In the present case, no S.C. female candidate was found eligible to be selected, so the post was added to S.C. Category, without horizontal reservation, and a male S.C. candidate was selected. Learned P.O. argued that this O.A. has no merit and it may be dismissed.

5. We find that the Applicant is relying on Clause 5.6.1 of the prospectus issued by the Respondent No.2 for direct recruitment. This reads :-

“५.६.१. आयोगाच्या घोरणानुसार चाळणी परीक्षेच्या गुणांची सीमा रेषा (cut off line) परीक्षेनंतर आयोगाच्या वेबसाईडवर प्रसिद्ध करण्यात येईल. सदर सीमारेषा सर्व उमेदवारांसाठी एकच किंवा प्रत्येक सामाजिक प्रवर्ग / उप प्रवर्गासाठी तसेच महिला, अपंग, खेळांडू, इत्यादींसाठी वेगवेगळी असेल.”

This clause is only for ‘screening’ with a view to restrict the number of candidates to be called for interview. As adequate number of candidates from each vertical and horizontal category are required to be called for interview, cut off marks for different category can be different. This cannot be confused with standing order dated 20.03.2002 issued by M.P.S.C. Exhibit ‘C’ (page 55 of the paper book), which provides that those, who score 40 or below marks out of 100 in interview will not be recommended from any category. This standing order dated 1/2002 dated 20.03.2002 has been applied in the present case. As the applicant did not get more than 40 marks in interview, she was held to be ineligible for selection for the post of Industries Officer, Group ‘B’. Minimum standards of efficiency are required to be maintained in public service and we do not find this standing order violative of Article 14 or 16 of the Constitution of India. A candidate from S.C. category may not be judged by the same standard as an open category candidate. However, minimum competence level can always be fixed. Those from S.C. Category who fulfill minimum standard then compete among themselves. In the present case, though no S.C. female candidate could reach minimum competence level, adequate S.C. Candidates were found eligible to fill all vacancies reserved for S.C. Category. Rules for horizontal

reservation for female, do provide that if eligible female candidates are not available, the posts are filled from respective vertical reservation categories without horizontal reservation. The Respondent No.2 has followed all the rules in this regard and no fault is found in the selection process.

6. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

(J.D. KULKARNI)
MEMBER(J)

(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 18.10.2016
Typed by : PRK