

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.483 OF 2024
(corrected as per speaking to minutes
order dated 26.07.2024)**

Bharat Kishan Gangawane)	
Age : 33 years, Occ. Service,)	
R/at. Room No.2, Indira Nagar,)	
OT Section, Ulhasnagar, Dist. Thane)APPLICANT

VERSUS

- | | | | |
|----|---|---|--|
| 1) | The State of Maharashtra, |) | |
| | Through the Principal Secretary, |) | |
| | General Administration Department |) | |
| | Mantralaya, |) | |
| | Mumbai 400 032 |) | |
| 2) | The Maharashtra Public Service |) | |
| | Commission, through the Secretary |) | |
| | Trishul Gold Field, Plot No.34, |) | |
| | Sector 11, Opp. Sarovar Vihar, |) | |
| | Belapur CBD, Navi Mumbai 400 614 |) | |
| 3) | The Commissioner, |) | |
| | Persons with Disabilities, Pune, |) | |
| | Maharashtra State, 3 Church Road, |) | |
| | Pune 411 001 |) | |
| 4) | The State of Maharashtra, |) | |
| | Through Principal Secretary, |) | |
| | Divyang Kalyan Ayuktalaya, |) | |
| | Mantralaya, Mumbai. |) | |
| 5) | Rajashree Chhatrapati Shahu Maharaj |) | |
| | Government Medical College, |) | |
| | Shenda Park Road, Kolhapur, |) | |
| | Maharashtra 416 013 |) | |
| 6) | Civil Surgeon Hospital Solapur. |) | |
| | Civil Chowk, New Bldg of Civil Hospital |) | |
| | Kumta Naka, Solapur 413 003 |) | |

- 7) Civil Surgeon Hospital,)
 Traymbakeshwar Road,)
 Police Staff Colony, Nashik 422 002)
- 8) Snehal Vilas Naukudkar,)
 Age : Adult, Occ Service,)
 Add : Teginhal, Post Mungurwadi)
 Naukudkar Niwas, Mahagaon Road,)
 Naukudkar Colony, Gandhilaj 416 503)
- 9) Rupesh Dilip Pagore)
 Age : Adult, Occu. Service,)
 Add : New TV Service,)
 Ramnagar, Mehkar 443 301)
- 10) Balu Digambar Markand)
 Age : Adult, Occ. Service)
 Add : Markandwadi, PO Phondshiras,)
 Malshiras 413 109)
- 11) Civil Surgeon Hospital,)
 Civil Hospital Road,)
 Chaitanyawadi, Buldhana 443 001) **...RESPONDENTS.**

Mr. S.S. Dere along with Ms. Sonali Pawar and Ms. Pooja Mankoji, learned Counsel for the Applicant.
 Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Ms. Medha Gadgil, Member (A)

DATE : **25.07.2024**

J U D G M E N T

1. Applicant applied for the Multi Cadre State Services, Selection in Groups A and B category under 4% reservation for disabled persons under the Rights of Persons with Disabilities Act, 2016. Applicant prays that Respondents be directed to

inquire and assess whether the Disability Certificates of the Private Respondents are genuine.

2. The Applicant has filed this O.A. against the State as well as against the three Private Respondents No.8, 9 and 10 challenging their disability certificate. Learned Counsel has submitted that the name of the Applicant was not found in the provisional select list dated 18.01.2024 hence O.A. is filed on 04.04.2024.

3. Learned C.P.O. has objected the maintainability on the basis of G.R. dated 14.09.2018 by pointing out that Clause (g) of the said G.R. the applicant cannot raise any objection. It is found that Clause (g) states about the locus of the person who can file an appeal or can give complaint in respect of the certificate of disability is if it is not issued the way he / she wants or in respect of the contents of such disability certificate. In Clause (g) itself a table is provided by giving the names of the Issuing Authority so also the Appellate Authority and status, designation of the members of the Appellate Committee.

4. Our attention is drawn by learned Counsel for the Applicant to Section 59 of the Rights of Persons with Disabilities Act, 2016 which reads as follows :

59. Appeal against a decision of certifying authority : (1) Any person aggrieved with decision of the certifying authority, may appeal against such decision, within such time and in such manner as may be prescribed by the State Government, to such appellate authority as the State Government may designate for the purpose.

(2) On receipt of an appeal, the appellate authority shall decide the appeal in such manner as may be prescribed by the State Government.

(emphasis placed)

Thus the Section provides a forum to any aggrieved person to challenge the decision of the certifying authority and that person may appeal against the decision of the authority who issued certificate. For comparison and correct grasp we also reproduce Clause (g) of G.R. dated 14.09.2018 which is in Marathi as it is.

“ग) तक्रार, अपिल व निर्देशी मंडळ:-

१) एखादया व्यक्तीचे प्रमाणपत्राच्या स्वरूपावरून किंवा त्याला पाहिजे तसे प्रमाणपत्र न मिळाल्यास, त्याला विभागीय उपसंचालक, आरोग्य सेवा (परिमंडळे) किंवा अधिष्ठाता, जे. जे. समुह रुग्णालय, मुंबई किंवा केंद्रीय संस्था प्रमुख यापैकी संबंधित अपिलीय मंडळाकडे अपिल करण्याची मुभा राहिल. संदर्भाधिन क्र.५ येथील शासन निर्णय दिनांक १७.१०.२०१७ मध्ये नमुद केल्याप्रमाणे तक्रार, अपिल व निर्देशी मंडळाची खालीलप्रमाणे पुनर्रचना करण्यात आली आहे.

अ. क्र.	प्रमाणपत्र देणाऱ्या संस्थेचे नांव	अपील करावयाच्या मंडळाचे नाव	अपिलीय मंडळातील सदस्य
१	राष्ट्रीय संस्था (AJIPMR, AYJNISHD, AFMC)	त्याच संस्थेच्या प्रमुखाचे अध्यक्षतेखालील समिती	१) संस्थेचे प्रमुख २) विभाग प्रमुख ३) संबंधित विशेष तज्ञ (यापूर्वी प्रमाणपत्र दिलेले तज्ञ वगळून)
२	सर्व शासकीय व महानगरपालिकेची वैद्यकीय महाविद्यालये व रुग्णालये	अधिष्ठाता, जे.जे. समुह रुग्णालय, जी.एम.सी., मुंबई	१) अधिष्ठाता २) वैद्यकीय अधिक्षक ३) संबंधित विषयाचे वरिष्ठ प्राध्यापक
३	सर्व इतर मनपा रुग्णालये व शासकीय जिल्हा/सामान्य / उपजिल्हा / अस्थिरोग रुग्णालये/ विभागीय संदर्भ सेवा रुग्णालये / कुष्ठरोग रुग्णालये	संबंधित विभागीय उपसंचालक, आरोग्य सेवा, परिमंडळे	१) उपसंचालक, आरोग्य सेवा परिमंडळ २) जिल्हा शल्य चिकित्सक, (अपील करावयाच्या वैद्यकीय मंडळाशी संबंधित नसलेले) ३) संबंधित विशेष तज्ञ (यापूर्वी प्रमाणपत्र दिलेले तज्ञ वगळून).”

The first sentence of Clause (g) discloses that the Appellate forum is restricted and the definition of aggrieved person is also restricted to the persons who applied for his or her certificate and has any issue about the same. Thus Clause (g) restricts the locus

which in fact is available to any person even other than the person who applies for the certificate as per Section 59 of the Rights of Persons with Disabilities Act, 2016. Thus, Clause (g) is not consistent with the Act. Hence, the Government needs to look into this matter and Clause (g) needs to be corrected at the earliest as the issue in respect of truthfulness of disability certificates when 4% reservation is provided to disabled persons in the Government service, is always raised and seriously contested before the judicial forum. Hence, we direct the Government/ State to take note of this legal and factual aspect and to rectify and take corrective measures in respect of Clause (g) of the said G.R. dated 14.09.2018 and it is to be made within four weeks in order to avoid further chaotic situation.

5. In the present case there are 22 posts for disabled persons of the advertisement dated 11.11.2022 for Multi Cadre State Service. As per instructions given by learned C.P.O. 22 posts are reserved under 4% reservation as per the Rights of Persons with Disabilities Act, 2016. It is further informed that out of these 22 disabled candidates certificate of 8 candidates are questioned by the other candidates like the present one.

6. (i) We therefore hold that the present Applicant along with the Respondents are directed to appear before the Appellate Authority of their region which is provided in sub clause (1) of Clause (g) of G.R. dated 14.09.2018 on Monday, 29.07.2024 at

11.00. a.m. The Appellate Authority shall decide the genuineness of the disability certificate of the applicant and respondents on or before 31.07.2024 along with their respective medical papers and certificate, and the authority shall take decision on or before 01.08.2024, and the said decision be communicated to the concern authority on or before 04.08.2024 and to be communicated to the M.P.S.C. and concern Respondent and Applicant on or before 05.08.2024.

(ii) We direct M.P.S.C. to publish Notification regarding this order in the official website till tomorrow 12.00 noon. If the applicant or the Respondents do not appear before the Appellate Authority then their disability certificate will be treated as doubtful by the M.P.S.C. and they will not be considered by the M.P.S.C. and candidature of those candidates will be cancelled as far as the present selection process is concerned.

(iii) We are informed that total 8 person disability certificates are doubted including the present three respondents. In order to avoid further litigation we direct the M.P.S.C. to publish the names of such candidates about whom doubts are raised in the official website and notify all these candidates to approach their respective Appellate Authority to verify their certificates. Learned C.P.O. is directed to communicate the Appellate Authority of the respective District to enable them to take necessary steps as per the order. This procedure is to be

followed if any doubts are raised about any certificate of disability.
This order is to be strictly followed.

7. With above directions, O.A. stands disposed of.

Sd/-

(Medha Gadgil)
Member (A)

prk

Sd/-

(Mridula Bhatkar, J.)
Chairperson