

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.967 OF 2023

Mr. Mahendrasingh Balasaheb Magar)
R/o. 9, Urja Residency, Sant Janardhan)
Swami Nagar, Panchavati, Nashik 3)

....APPLICANT

VERSUS

1. The Deputy Director of Land)
 Records, Nashik Region, Nashik,)
 Having office at Old C.B.S.)
 Sharanpur Road, Nashik 422 002)
2. The Commissioner for Settlement)
 and Director of Land Record, M.S.)
 Pune)
3. Smt. Gitanjali Shivaji Solanke,)
 Working as Junior Clerk in the)
 Office of Deputy Director of Land)
 Records, Parner, Dist. Ahmednagar) **...RESPONDENTS.**

Mr. Bhushan A. Bandiwadekar, learned Counsel for the Applicant.
Ms. K.S. Gaikwad learned Presenting Officer for the Respondents.
Ms. Gitanjali Shivaji Solanke, Private Respondent No.3 is absent

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

DATE : **29.04.2024**

J U D G M E N T

1. Applicant prays to quash and set aside impugned order dated 11.05.2023 passed by the Respondent No.1 under which Respondent No.1 rejected the request made by the Applicant for his appointment to the post of Land Surveyor cum Clerk. Further he prays to quash and set aside the appointment order dated 30.06.2023 issued by Respondent no.1 thereby appointing Respondent no.3 to the post of Junior Clerk through VJ(A) Female Category.

2. Learned Counsel has submitted that the Applicant belongs to VJ(A) (General) Category. Due to the selection of the Respondent no.3, Applicant was out. Learned Counsel has pointed out that Applicant has secured 154 months and stands at Serial No.118 in VJ(A) Category and Respondent no.3, stood at Serial No.648 in VJ(A) Category as he has secured 134 marks. Learned Counsel has submitted that Respondent no.3 is lower in merit than the applicant. He has submitted that the list dated 15.02.2023 calling the candidates for document verification was published on 15.02.2023 wherein Applicant was also called. Learned Counsel drew our attention to the Advertisement dated 20.07.2021 wherein at Clause (3) of paragraph 6 pertains to instructions to the candidates applying for the said impugned post. He has argued that total posts in VJ(A) Category is 1 post and in General there are 3 posts. Learned Counsel has relied on the judgment of Hon'ble

Supreme Court in the **Civil Appeal No.1566/2024 dated 02.02.2024, Anil Kishore Pandit Vs. The State of Bihar & Ors.**

3. Learned P.O. has submitted that on 10.02.2023 Respondents realized that there was mistake in calculating the horizontal reservation and therefore they revised the final select list and published it on 20.03.2023. She has further submitted that the Deputy Director of Land Records, Nashik has sent letter dated 10.02.2023 to the Commissioner for Settlement and Director of Land Record regarding the said mistake. Learned P.O. has relied on the Additional affidavit-in-reply dated 19.03.2024 filed on behalf of Respondent Nos.1 and 3, through Mr. Mahesh Trimbakrao Ingle, Deputy Director Land Records, Nashik. She has pointed out paragraph 4 of the said affidavit which reads as below :

“4. I say that as per above directions office of Settlement Commissioner and Director of Land Records (Maharashtra State), Pune, by letter dated 13.03.2024 communicated and thrown light on its position why the such changes in vacancy chart were carried out by the Respondent authorities. In said communication it is stated that after reviving the vacancy chart before declaring final results of recruitment it was came to notice that there is mistake of Horizontal reservation calculation.”

4. Learned Counsel has submitted that he has filed counter affidavit dated 15.04.2024 to the additional affidavit of learned P.O. He has pointed out paragraph 7 of the said rejoinder which reads as under :

“7. I say that it is well settled law that the right of a candidate is considered in the terms of advertisement which stands crystalized on the date of the publication of the advertisement and any subsequent amendment to the advertisement during the course of the selection process unless retrospective, cannot be a ground to disqualify the candidate from the zone of consideration. To put it differently, the action should not be arbitrary and malafide much less colourable exercise of powers more particularly in the matter of the selection process because the selection process is govern by the rules of law and any action which smacks of arbitrariness and unreasonableness in the selection process attracts attention of the judicial scrutiny for enforcement of the legal right.”

5. A query was put to learned P.O. that if there was any change in reservation or giving or taking once reserved a particular post whether it was by way of corrigendum. Learned P.O. replied that the corrigendum in the present case was issued by way of chart which was published giving information about reserving one post for Female VJ(A) category.

6. It is the issue of conversion of VJ(A) Sports Category to VJ(A) Female and the Applicant belongs to VJ(A) Category. No candidate was available in the Sports VJ(A) Category. The applicant who stands next in merit is from VJ(A) Category has claim over it. Learned Counsel has submitted that such kind of conversion from Sports Category to Female Category as per G.R. dated 24.01.2021 is not permitted. Learned Counsel has further pointed out Circular dated 25.01.2024 wherein sub Clause 7 of Clause 8

pertains to strict implementation of Horizontal Reservation in the State along with the directions.

7. In the judgment of Hon'ble Supreme Court in **Anil Kishore Pandit (supra)** wherein learned Counsel has relied on paragraph 8 which reads as below :

“8. It is settled law that it is not open for an employer to change the qualifications prescribed in the advertisement midstream, during the course of the ongoing selection process. Any such action would be hit by the vice of arbitrariness as it would tantamount to denial of an opportunity to those candidates who are eligible in terms of the advertisement but would stand disqualified on the basis of a change in the eligibility criteria after the same is announced by the employer. Having applied for appointment in accordance with the terms prescribed in the advertisement, a candidate acquires a vested right to be considered in accordance with the said advertisement. This consideration may not necessarily fructify into an appointment but certainly entitles the candidate to be considered for selection in accordance with the rules as they existed on the date of the advertisement. To put it differently, the right of a candidate for being considered in terms of the advertisement stands crystalized on the date of the publication of the advertisement. Any subsequent amendment to the advertisement during the course of the selection process unless retrospective, cannot be a ground to disqualify a candidate from the zone of consideration.”

We are of the view that the said judgment is not applicable to the present case because change in qualification and change in type of reservation are two different aspects.

8. Learned Presenting Officer has submitted that the candidate from VJ(A) Category Mr. Rohit Dyneshwar Kukade has resigned on 27.03.2024 i.e. within a year of recruitment and the proposal

regarding the same is sent by the Commissioner for Settlement and Director of Land Records to the Government on 06.03.2024 and the same is under consideration.

9. We refer the Additional Affidavit-in-reply dated 19.03.2024 filed by the Respondents No.1 and 2, through Mr. Mahesh Trimbakrao Ingale, Deputy Director Land Records, Nashik Region, Office of Deputy Director Land Records, Nashik. In the said Add. affidavit-in-reply the decision taken by the Settlement Commissioner and Director of Land Records (Maharashtra State), Pune has been clarified and the position why the changes in the vacancy chart were carried out by the Respondent-Authority. It is clarified that there were three posts available in the VJ(A) Category out of which as per 30% Female Reservation one post was actually available for Female VJ(A) Category which was earlier wrongly shown as Zero. The Sports Category has 5% reservation, which means 0.15 of three posts, means actually Zero post for VJ(A) Category and which was wrongly shown as one post. It was further stated that with a view to mitigate the said mistake, the final results were changed to avoid injustice to the candidates. We have perused the Additional Rejoinder dated 15.04.2024 filed by the Applicant. It is mentioned that the G.R. dated 31.10.2022 is misinterpreted. It was mentioned that the right to the applicant was crystalized on the date of publication of the Advertisement and subsequent amendment to the Advertisement during the course of

Selection Process unless retrospective cannot be a ground to disqualify the candidates from the zone of consideration. We are in disagreement with these contentions of the Applicant. It is necessary for the Respondent-Department to maintain roster indeed there was a mistake in calculating the reservation. We also rely on the G.R. dated 25.01.2024 wherein it is reiterated and ascertained that the Government is required to follow horizontal and vertical reservation by maintaining their respective percentage. In Clause 8 of the said G.R. the directions are given about the same and in Sub clause 7 of Clause 8 of the said G.R. which is relied by the learned Counsel for the Applicant states as follows :

“७) समांतर आरक्षण एका सामाजिक आरक्षण प्रवर्गातून दुस-या सामाजिक आरक्षण प्रवर्गात स्थलांतरीत करता येणार नाही. एका सामाजिक आरक्षणातर्गत समांतर आरक्षणासाठी घटकनिहाय राखून ठेवण्यात आलेल्या जागेवर सुयोग्य उमेदवार उपलब्ध न झाल्यास, सदर पदे संबंधित समांतर आरक्षण घटकासाठी निश्चित केलेल्या कार्यपद्धतीचा उपलंब करून, त्या त्या सामाजिक प्रवर्गात गुणव-तेवर देण्याबाबत कार्यवाही करण्यात यावी.”

This Sub-Clause explains the situation by giving solution if no eligible candidate is available in a particular Category then as per the procedure fixed of allowing the reservation of the other candidate is to be followed. This particular Clause cannot be useful to the present Applicant in view of the circumstances and facts of the case. It is not the case where no candidate was available in Sports Category and therefore that reservation should have been given to the candidates in VJ(A) General Category. It is the case where the Department realized that by mistake it was

declared as VJ(A) Category instead it should have been VJ(A) Female.

10. In view of above, we find no merit in the case of the Applicant and hence Original Application stands dismissed.

Sd/-
(Medha Gadgil)
Member(A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

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