

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.1142/2021(D.B.)

Pooja S/O Ramesh Allarwar
Aged 26 Years, Occu.- Student,
R/O Ramesh Allarwar, Akoli Khurd,
Pandarkawada, Yavatmal, Maharashtra,
445302.

Applicant.

Versus

- 1) State of Maharashtra,
Through its secretary for
Public Health Department,
Having his office at Mantralaya Mumbai.

- 2) State of Maharashtra through
Deputy Director, Health,
Services Nagpur Board, having his office
At MA /15/1, S.Ambazari Road.
Vasant Nagar, Nagpur – 440020.

Respondents

Shri N.B.Rathod, Ld. Counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman &
Hon'ble Shri Nitin Gadre, Member (A).

Dated:- 08th August, 2024.

JUDGMENT

Heard Shri N.B.Rathod, learned counsel for the applicant and Shri S.A.Sainis, learned P.O. for the respondents.

2. The case of the applicant in short is as under-

The respondent issued advertisement to fill the post of X-Ray Scientific Officer in the year 2018. The applicant applied for the post of X-Ray Scientific Officer in response to advertisement in Open quota. Applicant had filled her nomination for the post of X-Ray Scientific Officer on 12.12.2020. The respondent vide order dated 12.12.2020 communicated a decision to public at large whereby only 50% of the advertised seats were decided to be filled. The exam of X-Ray Scientific Officer came to be held on 28.02.2021. The applicant appeared and was able to secure 128 marks out of 200. That merit lists of 15 other candidates were published. The respondents converted reservation for Part Time Employee. In short, the applicant is entitled for the post which was advertised for Ex-serviceman. The Ex-serviceman was/is not available and therefore that post should have given to the applicant.

3. The O.A. is strongly opposed by the respondents. It is submitted that the applicant is not in the category of Ex-serviceman therefore the O.A. is liable to be dismissed.

4. During the course of submission, the learned counsel for the applicant has pointed out advertisement. As per the revised G.R. dated 04.07.2019, two posts in open category were reserved for Ex-serviceman. The learned counsel for the applicant has pointed out (P.62) letter issued by Director Health Department, Pune to the Additional Chief Secretary (Mantralaya, Mumbai). As per this letter, two posts of Ex-serviceman are vacant. Hence, the applicant prayed to direct the respondents to appoint her in the vacant post of Ex-serviceman.

5. The learned counsel for the applicant has pointed out the Judgment in O.A.No.416/2022 and also in other O.As.. He has pointed out the Judgment of the Hon'ble High Court, Bench at Aurangabad in the case of **Nikhil Santosh Chaudhari Vs. the State of Maharashtra and Others decided on 05.09.2018.**

6. The Hon'ble High Court, Bench at Aurangabad has held that Government has issued G.R. dated 16.03.1999 after the Judgment of Apex Court. As per this G.R., the Government has to fill the vacant posts giving opportunity to the other candidates belongs to other category, when the Ex-serviceman candidate is not available. The learned counsel for the applicant has filed the copy of G.R. dated 16.03.1999.

7. The same issue was before the Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Nikhil Santosh Chaudhari Vs. the State of Maharashtra and Others decided on 05.09.2018.**

The issue before the Hon'ble High Court was that persons from the OBC Ex-serviceman and OBC Part Time were not available, therefore, the respondents / Government were directed to consider the petitioner and respondent no.3 for appointment to the post of Measurer from the OBC category.

8. In the present O.A., as per the submission of learned counsel for the applicant, the Ex-serviceman candidate in Open Category was / is not available. The applicant applied in Open Category and she is having 128 marks. She is meritorious candidate. All other candidates who were having more marks are already appointed by the respondents.

9. As per the submission of learned counsel for the applicant, the post is vacant and therefore prayed to direct the respondents to give the appointment to the applicant as the candidate from Open Ex-serviceman Category is not available.

10. In view of the Judgment of the Hon'ble High Court in the case of **Nikhil Santosh Chaudhari Vs. the State of Maharashtra and Others,** respondents may consider the claim of applicant for the post claimed by her. Hence, the following order -

ORDER

1. The O.A. is allowed.
2. The respondent no.2 shall consider the applicant for appointment to the post of X-Ray Scientific Officer from Open Category as the person from Open Ex-serviceman Category is not available.
3. The respondents may consider for appointment of applicant, if the post is vacant and available.
3. No order as to costs.

(Nitin Gadre)
Member(A)

(Justice M.G.Giratkar)
Vice Chairman

Dated – 08/08/2024
rsm.

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

Name of Steno : Raksha Shashikant Mankawde.
Court Name : Court of Hon'ble Vice Chairman
& Hon'ble Member (A).
Judgment signed on : 08/08/2024.
and pronounced on