

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.285/2024 (D.B.)**

Jyoti Shankarrao Dahe,
Aged about 37 years, Occ.: Private Job,
R/o.79, Kamgar Nagar, Behind Ishwar Nagar,
New Nandanvan, Nagpur

... **APPLICANT**

// V E R S U S //

- 1] The State of Maharashtra,
Through its Secretary,
Department of Higher and Technical Education,
Mantralaya, Mumbai-32
- 2] Directorate of Vocational Education and Training,
Through its Director,
Mahapalika Marg, Opposite Metro Cinema,
Dhobhi Talav, CSMT Area, Fort Mumbai- 400001,
Post Box No.10036

... **RESPONDENTS**

Shri K.N. Jain, Advocate for the Applicant.

Shri S.A. Deo, learned C.P.O. for the Respondents.

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

Dated :- 04/12/2024.

J U D G M E N T

Heard Shri K.N. Jain, learned counsel for the applicant and Shri S.A. Deo, learned C.P.O. for the respondents.

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

Respondent No.2 has published advertisement for the post of Senior Clerk all over Maharashtra, on 17/02/2023. In all total 32 posts were reserved for Open category (female). On 09/03/2023, the applicant has submitted application form from Open category (female). She has qualified the examination and her name in the merit list is at Serial No.821. The candidates who were qualified the examination, were called for documents verification and their list was published as per letter dated 22/02/2024. The name of applicant is at Serial No.19. The process of documents verification was done on 26/02/2024 at Mumbai. The applicant attended the entire process of documents verification along with all necessary documents as required. On 01/03/2024, respondent no.2 published list of eligible candidates and non-eligible candidates as per the Circular No.48, wherein, the name of the applicant is at Serial No.97 and shown as “not-

eligible” for not having Non-Creamy Layer Certificate of 2022-2023.

3. The Government of Maharashtra has issued G.R. dated 04/05/2023. The said G.R. is specific for recruitment of Open Category (Women), women candidate need not to submit Non-Creamy Layer Certificate and therefore the demand of respondent no.2 to produce the Non-Creamy Layer Certificate is against the G.R. dated 04/05/2023. Hence, the applicant has approached to this Tribunal for the following reliefs:-

“8.(a) Direct the Respondent No.2 Director, Directorate of Vocational Education and Training, to modify the list dated 01/03/2024 (Annexure- A/1) published vide Circular No.48, to the extent of Serial No.97, by showing the applicant as "eligible" candidate for the post of Senior Clerk, in view of advertisement No.02/2022 dated 17/02/2023 (Annexure-A/2), being qualified and particularly in view of Government Resolution dated 04/05/2023 (Annexure- A/8).

(b) Hold and declare that the applicant is "eligible" for the post Senior Clerk being qualified, in view of Government Resolution dated 04/05/2023 (Annexure-A/8), as Non- Creamy Layer Certificate is not necessary for the Open Category (Women) and in view of advertisement No.02/2022 dated 17/02/2023 (Annexure-A/2),

(c) Consider the candidature of the present Applicant at Serial No.97, as eligible candidate in the list dated 01/03/2024 published [vide Circular No. 48] (Annexure-A/1) for the post of Senior Clerk in Open Category (Women) being qualified, as per advertisement

No.02/2022 dated 17/02/2023 (Annexure-A/2) and in view of Government Resolution dated 04/05/2023 (Annexure-A/8)

(d) Direct the Respondent No. 2 not to release the posting orders and joining orders to the 32 Candidates of Open Category (Women), during the pendency of the present original application.

(e) Stay the effect, operation and implementation of list dated 01/03/2024 [vide Circular No. 48] (Annexure-A/1), published by the respondent No.2 for the post of Senior Clerk in Open Category (Women), as per advertisement No.02/2022, during the pendency of the present application.

(f) Grant ad-interim ex-parte relief in terms of prayer (d) & (e) above.

(g) Allow the present application and grant any other relief deemed fit and proper in the circumstances of the case in favour of the applicant;

9.(i) Stay the further process of issuance of joining letters/posting orders to the eligible candidates mentioned in List dated 01/03/2024 published vide circular No. 48 for the post of Senior Clerk, during the pendency of the present application.

(ii) Direct the Respondent No. 2 Director, Directorate of Vocational Education and Training, not to release the posting orders and joining orders to the 32 Candidates of Open Category (Women), in the list dated 01/03/2024 published vide circular No. 48, during the pendency of the present original application.

(iii) In the alternative, keep one post vacant of Senior Clerk for the present applicant being eligible in view of Government Resolution dated 04/05/2023 (Annexure- A/8) as Non-Creamy Layer certificate is not necessary for the Open Category (Women), during the pendency of the present application.

(iv) Grant ad-interim ex-parte relief in terms of prayer Clause (i), (ii) and (iii) above.”

4. The O.A. is strongly opposed by the respondents. It is the contention of the respondents that the applicant was not having Non-Creamy Layer Certificate, hence, she cannot get the benefit of the said Government Resolution dated 04/05/2023, because, the said Government Resolution is not applicable to the applicant. Therefore, O.A. is liable to be dismissed.

5. During the course of submission learned counsel for the applicant has pointed out the G.R. dated 04/05/2023. The material decision of the Government Resolution is reproduced below:-

“शासन निर्णय :-

खुल्या प्रवर्गातील महिलांकरीता आरक्षित असलेल्या पदावरील निवडीकरीता खुल्या प्रवर्गातील महिला तसेच सर्व मागास प्रवर्गातील महिलांनी नॉन-क्रिमिलेअर प्रमाणपत्र सादर करण्याची अट मा. मंत्रिमंडळाच्या मान्यतेने या शासन निर्णयान्वये रद्द करण्यात येत आहे.

२. शासकीय, निमशासकीय व शासन अनुदानित संस्थांमधील सेवामध्ये भरतीसाठी महिलांकरिता ३० टक्के जागा आरक्षित ठेवण्याबाबत शासन निर्णय दि. २५.५.२००१ निर्गमित करण्यात आला आहे. या शासन निर्णयामधील खालील तरतुदी रद्द करण्यात येत आहेत:-

- १) (एक) आरक्षणाची व्याप्ती/अटी व शर्ती मधील अट क्रमांक-९ व अट क्रमांक-१०,

- २) (दोन) प्रमाणपत्रे मधील संपूर्ण (अ) - खुल्या प्रवर्गातील महिलांसाठी क्रिमिलेअरचे प्रमाणपत्र व त्याची तपासणी,
- ३) (दोन) प्रमाणपत्रे मधील (क) - मागासवर्गीय उमेदवारांची खुल्या प्रवर्गातील महिलांच्या आरक्षित पदावर नियुक्ती झाल्यास त्याबाबतची प्रमाणपत्रे व त्याची तपासणी मधील (१) मधील (अ) येथील परिच्छेदातील "अशा महिला उमेदवारांकडून खुल्या प्रवर्गातील महिलांकरीता विहित केलेले क्रिमिलेअरचे प्रमाणपत्र देण्याची आवश्यकता राहणार नाही.", ही तरतूद,
- ४) (दोन) प्रमाणपत्रे मधील (क) - मागासवर्गीय उमेदवारांची खुल्या प्रवर्गातील महिलांच्या आरक्षित पदावर नियुक्ती झाल्यास त्याबाबतची प्रमाणपत्रे व त्याची तपासणी मधील (१) मधील (ब).

३. खुल्या गटातील महिलांकरीता आरक्षित असलेल्या पदावर निवड झालेल्या महिलांच्या नॉन-क्रिमिलेअर प्रमाणपत्रांची तपासणी करण्याबाबत येणाऱ्या अडचणींचे निवारण करण्याच्या अनुषंगाने शासन निर्णय दि.२५.५.२००९ मध्ये आवश्यक तरतुदी करण्यासाठी शासन निर्णय दि.१५.१२.२०१७ निर्गमित करण्यात आला आहे. तसेच, या शासन निर्णयामधील तरतुदीबाबत येणाऱ्या अडचणींच्या अनुषंगाने स्पष्टीकरणात्मक सूचना शासन निर्णय दि.११.१.२०१९ अन्वये निर्गमित करण्यात आल्या आहेत. आता, खुल्या गटातील महिलांकरीता आरक्षित असलेल्या पदावरील निवडीकरीता नॉन-क्रिमिलेअर प्रमाणपत्र सादर करण्याची अट रद्द करण्यात आली असल्याने शासन निर्णय दि.१५.१२.२०१७ व शासन निर्णय दि.११.१.२०१९ या शासन निर्णयाद्वारे निरसित करण्यात येत आहेत.

४. अनुसूचित जाती व अनुसूचित जमाती वगळता अन्य मागास प्रवर्गातील महिलांकरीता आरक्षित असलेल्या पदावरील निवडीसाठी दावा करू इच्छीणा-या महिलांना त्या त्या मागास प्रवर्गासाठी इतर मागास व बहुजन कल्याण विभाग तसेच सामान्य प्रशासन विभागाकडून वेळोवेळी विहित

करण्यात आल्याप्रमाणे नॉन-क्रिमिलेअर प्रमाणपत्र सादर करण्याबाबतच्या तरतुदी लागू राहतील.

५. महाराष्ट्र लोकसेवा आयोगामार्फत प्रसिध्द करण्यात आलेल्या जाहिरात क्र.८३/२०२१ अन्वये झालेल्या भरती प्रक्रियेस तसेच या भरती प्रक्रियेचा निकाल ज्या दिनांकास प्रसिध्द करण्यात आला, त्या दिनांकानंतर प्रसिध्द झालेल्या जाहिरातींअन्वये सुरु झालेल्या भरती प्रक्रियांना या शासन निर्णयातील तरतुदी लागू होतील.

६. सदर शासन निर्णय वैद्यकीय शिक्षण व औषधी द्रव्ये विभाग, इतर मागास व बहुजन कल्याण विभाग, सामान्य प्रशासन विभाग आणि विधी व न्याय विभाग यांच्या सहमतीने निर्गमित करण्यात येत आहे.”

6. Learned Advocate for applicant has pointed out the Judgment of M.A.T., Bench at Aurangabad in O.A. No.932/2023. He has submitted that the said G.R. cannot restrict the applicant in respect of the recruitments after the date of the G.R. The said G.R. is not restricted only to the recruitment of Advertisement No.83/2021. Hence, prayed to direct the respondents to appoint the applicant.

7. From the perusal of Judgment in O.A. No.932/2023, it is clear that the same issue was involved before the M.A.T., bench at Aurangabad. Para nos.18 to 22 of the Judgment in O.A. No.932/2023 are reproduced below:-

“18. Respondent Nos. 4 & 5 have placed on record the list of the candidates published by the M.P.S.C. who were eligible for recommendation. As noted by us hereinbefore 41 seats were reserved for the Open Female candidates. Perusal of the list published by M.P.S.C. reveals that respondent No. 4 is recommended against Open Female seat 40 and respondent No. 5 is recommended against Open Female seat 41. It is not in dispute that respondent No. 4 belongs to EWS category, whereas respondent No. 5 is OBC candidate. Both were however, recommended against the Open Female Seats because of the marks scored by them. Respondent Nos. 4 & 5 each has scored 128.50 number of marks. Applicant No. 1 has scored 135.50 marks, whereas Applicant No. 2 has scored 131.50 marks. Admittedly, the applicants are Open Female candidates. Their names were not recommended on the ground that they did not submit the Non-Creamy-Layer Certificate. We have held both these applicants entitled for the benefit of Government Resolution dated 04.05.2023. We have, therefore, held entitled both these applicants for their selection against Open Female seats. Considering the marks scored by these applicants they are liable to be selected against Open Female 40 & 41 respectively. In view of the interim order passed by this Tribunal the respondents have kept 02 seats vacant, the applicants are entitled to be given appointment against the said seats meant for Open Female candidates.

19. It is a matter of record that respondent Nos. 4 & 5 were earlier recommended against the said Open Female seats. If the applicants are to be appointed against Open Female seats, obviously respondent Nos. 4 & 5 will have to be shifted from there. Though one of them belongs to EWS category and the other to OBC category, it is discernable that these candidates competed with the open category candidates. Thus, it can be reasonably inferred that these candidates must be toppers amongst the candidates of their respective category. Perusal of the list of recommended Open Female candidates demonstrates that in EWS as well as OBC category, some of the candidates were more meritorious than respondent Nos. 4 & 5 and hence those candidates have been recommended against the Open Female seats at a higher position. For accommodating the applicants against Open Female seats, if at all 02 candidates are to be shifted they would be respondent Nos. 4 & 5. In view of the fact that more meritorious candidates in the respective categories, are already appointed against Open Female seats, respondent Nos. 4 & 5 may be

the toppers amongst the candidates in their respective category and hence deserve to be appointed against the seats reserved for their respective categories. Still there would be an issue of 02 female candidates who if had been recommended against EWS and OBC female seats, on appointment of respondent Nos. 4 & 5 against the said seats probably would be required to vacate the said seats. The question would be how to accommodate them?

20. *In an additional affidavit filed by respondent No. 5 the vacancy position has come on record. The affidavit reveals that 11 posts have remained unfilled. Out of the said 11 posts 02 posts were kept vacant as per the interim order passed by this Tribunal. Out of remaining 09 posts, 03 candidates who are named at Sr. Nos. 18, 50 & 185 belonging to Open, OBC and NTC (Female) category respectively and who were recommended on the posts reserved for Open-General, Open-General and NTC (Female) categories respectively, did not remain present for document verification and hence appointment orders have not been issued in their favour. 06 candidates now remain. One candidate named at Sr. No. 285 in the list of eligible for recommendation namely Ranveer Asmita Uttamrao belonging to SC female locomotor disability category did not show interest in accepting the offer of appointment. Out of 05 remaining seats, 03 are earmarked for P.W.D. category and 02 for Orphan category. As stated on affidavit, no candidates have become available against the said seats.*

21. *Considering the vacancy position as aforesaid, it appears to us that 02 candidates who may require to be shifted from EWS and OBC category can very well be accommodated against any of the aforesaid unfilled seats, so that no injustice is caused to any of the candidates, who has already been joined.*

22. *For the reasons elaborated hereinabove the following order is passed:-*

O R D E R

[i] Clause 5 of the G.R. dated 04-05-2023 issued by Women and Child Development Department to the extent it restricts the applicability of the said G.R. only to the extent of advertisement no.83/2021 issued by Maharashtra Public Service Commission and to the process of recruitments commenced after 29-09-2022, is held unconstitutional and hence set aside.

[ii] It is declared that the benefit of the G.R. shall be applicable to all recruitments commenced subsequent to advertisement no.83/2021.

[iii] Applicants are held entitled for the benefit of the G.R. dated 04-05-2023. Consequently, respondents are directed to issue appointment orders in favour of the applicants against the seats reserved for Open Female candidates within 6 weeks from the date of this order.

[iv] Respondent nos.4 and 5 have been appointed provisionally subject to outcome of the present O.A. Their appointments be confirmed against the seats in the categories to which they belong. Surplus female candidates be appropriately adjusted against the unfilled seats."

8. From the Judgment it is clear that the M.A.T., Bench at Aurangabad has declared that the benefit of G.R. dated 04/05/2023 shall be applicable to all recruitments commenced subsequent to the Advertisement No.83/2021. The present applicant appeared for the examination as per the advertisement dated 17/02/2023. Therefore, in view of the Judgment of M.A.T., Bench at Aurangabad, the applicant is entitled to get the benefit of G.R. dated 04/05/2023. She is not required to produce Non-Creamy Layer Certificate. Hence, we pass the following order.

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to appoint the applicant, if she is eligible for the post applied for and if she has qualified (in the merit list), as per rules.

(iii) No order as to costs.

(Nitin Gadre)
Member (A).

(Justice M.G.Giratkar)
Vice Chairman.

Dated :-04/12/2024.
dnk.

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

Name of Steno : D.N. Kadam.

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

Judgment signed on : 04/12/2024.