

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1578 OF 2023

DISTRICT : PUNE

Bansode Jeevan Shivaji,)
Age 39 years, C/o Omprakash Pandit Bansode,)
House No.7, Sr. No.16, Shree Datta Colony,)
Nr. Mahatma Fule Bhaji Mandai, Gondhalenagar,)
Hadapsar, Pune 411028)..Applicant

Versus

1. Maharashtra Public Service Commission,)
Through its Secretary, Trishul Gold Field Building)
Plot No.34, Opp. Sarovar Vihar, Sector 11,)
CBD, Belapur, Navi Mumbai 400614)
2. The Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400032)
3. The Secretary,)
Finance Department,)
Mantralaya, Mumbai 400032)
4. The Secretary,)
Social Justice & Special Assistance Department,)
Mantralaya, Mumbai 400032)..Respondents

Shri Jeevan Shivaji Bansode – Applicant in person

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)
RESERVED ON : 25th April, 2024
PRONOUNCED ON: 19th June, 2024
PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard Shri Jeevan Shivaji Bansode, Applicant-in-person and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

Brief facts:

2. An advertisement No.45/2022 dated 11.5.2022 was published by Maharashtra Public Service Commission (MPSC) for State Services Preliminary Examination, 2022 for recruitment of various cadres under various departments of Government of Maharashtra. The applicant had applied by mentioning his category as NT-D and also under The Rights of Persons with Disabilities Act, 2016. The said examination was conducted on 21.8.2022 and the result of the said examination was declared on 4.11.2022. Thereafter notification No.099/2022 was issued on 11.11.2022 by the MPSC calling applications for State Services Main Examination, 2022 from the candidates who were qualified in the result of the Preliminary Examination. The applicant being a qualified candidate, as per result of the preliminary examination, had applied for the State Services Main Examination, 2022. The Mains Examination was conducted on 21st to 23rd January, 203 and results were declared on 11.10.2023. The applicant qualified in the mains examination however

his name did not appear in the list of selected candidates for interview which was scheduled to be conducted from 30.11.2023 to 17.1.2024. The applicant approached this Tribunal by way of above OA and this Tribunal by order dated 4.1.2024 granted interim relief and directed the MPSC to allow the applicant to appear for the interview.

3. The applicant is suffering from Recurrent Depression Disorder as per the disability certificate issued by the B.J. Medical College and Sassoon General Hospital, Pune dated 21.1.2022. In this certificate it is certified that he has 40% temporary disability in relation to his brain as per the guidelines.

4. The applicant relies on the judgment and order dated 8.5.2020 passed by the Hon'ble Delhi High Court in **W.P. (C) No.5948/2019 Bhavya Nain Vs. High Court of Delhi** whereby the Hon'ble Delhi High Court after considering various judgments and medical literature set aside the notice dated 21.5.2019 of the Delhi High Court wherein the disability of the petitioner was declared to be not permanent and gave directions to select the petitioner even if he possesses a temporary disability certificate.

5. Applicant submits that he is a disabled person and therefore the benefits of The Rights of Persons with Disabilities Act, 2016 be extended to him. Applicant further prays that G.R/Circular of Finance Department dated 25.2.2021 be quashed and set aside as the mental illness candidate is not eligible for the post Assistant State Tax Commissioner. Applicant also challenges the Circular dated 13.9.2022 wherein it is stated that temporary disability period of certificate should not be considered for appointment for permanent posts/job in any service or cadre.

6. Applicant has challenged column No.4 attached to the said G.R. dated 25.2.2021 with regard to the post of Assistant State Tax

Commissioner. Applicant submits that he falls under Section 34(d) of The Right of Persons with Disabilities Act, 2016. Applicant submits that he is mentally disabled and prays reservation under Section 34(d) of the said Act, amended in the year 2021. Section 34(d) is with regard to mental illness. Applicant relies on the Disability Certificate issued on 21.1.2022 by the B.J. Government Medical College and Sassoon General Hospital, Pune. It is certified as follows:-

- “(A) He is a case of Mental Illness
 - (B) The diagnosis in his case is Recurrent Depressive Disorder.
 - (C) He has 40% (in figure) Forty percent (in words) Temporary Disability in relation to his Brain as per the guidelines (Guidelines for the purpose of assessing the extent of specified disability in person included under RPwD Act 2016 notified by Government of India vide S.O 76(E) dated 4.1.2018).
- This Certificate recommended for 5 year(s) and therefore this certificate shall be valid till 21.1.2027.”

7. Applicant pointed out Annexure ‘A’, Sr. No.4 attached to the G.R dated 25.2.2021 by which Staffing Pattern for the Persons with Disability was prepared. In the said Annexure ‘A’ at Sr. No.4 the post of Assistant State Tax Commissioner is shown. Applicant submits that all the criterion of physical eligibility can be fulfilled by any person with disability under Section 34(d), i.e., mental illness. Applicant further submits that in Annexure ‘A’ at Sr No.4, for Assistant State Tax Commissioner, Section 34(d) for persons with mental illness are excluded and this exclusion is illegal.

8. Applicant further refers to Annexure A-2 in the advertisement. He pointed out that at Sr. No.3 the post and eligibility of Assistant State Tax

Commissioner, Group-A is shown. There are 47 posts and out of 47 posts, 2 posts are reserved for Persons with Disability, one post for Deaf and hard hearing and another post of Persons with Disability is reserved for autism, intellectual disability, specific learning disability and mental illness.

9. Applicant referred to advertisement dated 11.5.2022. He pointed out to clause 3.16.2 where a chart is provided showing the posts, relevant G.R and type of disability. Assistant State Tax Commissioner is shown as Group-A. Applicant submits that the advertisement in the Chart gives persons suffering from mental disability were required to be considered as one post is reserved for mental disabled with mental illness for the post of Assistant State Tax Commissioner. However, in the same advertisement in para 3 a Chart is given declaring persons with disability not eligible and in this column no.3, the post of Assistant State Tax Commissioner is shown, where persons with mental illness are eliminated. Thus, there is a contradiction in clause 3.16.2 of the advertisement and main clause 2 of the Advertisement.

10. Applicant submits that this elimination of the persons suffering from mental illness from the post of Assistant State Tax Commissioner is due to G.R dated 25.2.2021 as in Annexure 'A' at Sr. No.4 of the said G.R the persons having mental illness is excluded.

11. Applicant submits that State of Tamil Nadu has given reservation for persons with mental illness on 21.7.2022. Further Rajasthan Public Service Commission also gave the reservation to persons with mental illness on 19.10.2023. Applicant submits that persons with same disability are considered able and eligible to hold the post of Assistant State Tax Commissioner in other States and why in Maharashtra such

persons are not considered for appointment to the post of Assistant State Tax Commissioner.

12. Applicant referred to Advertisement dated 11.5.2022 at Sr. No. 2, the post of Dy S.P /A.C.P. For the post of Dy S.P/A.C.P the persons with disability is declared not eligible and all the persons are disqualified.

13. Applicant relied on the affidavit in reply dated 10.4.2024 filed by Swapnil G. Borse, Under Secretary, Home Department, Mantralaya, Mumbai. The reason given in the affidavit in reply is that a person who will be officiating the said post needs to be strong, healthy, physically as well as mentally. The post is from the Police Force and to protect law and order and therefore for such posts the no person from the category of persons with disabilities is considered suitable for these posts.

14. Ld. CPO relied on the affidavit in reply dated 10.4.2024 filed by Swapnil Gopal Borse, Under Secretary, Home Department. Para 9.2 of the said affidavit reads as under:

“9.2 Vide GR Home Department dated 24.11.1999 the posts in the cadre of inter alia Deputy Superintendent of Police (Unarmed) were exempted from reservation for persons with disabilities. The relevant extract of the said GR is reproduced below:

“२. “सदर अधिनियमाच्या कलम ३२ अनुसार राज्य शासनाने अपंगासाठी आपल्या आस्थापनेवरील जी पदे आरक्षित करता येतील ही शोधून काढणे (*identify*) आवश्यक आहे व या अधिनियमाच्या कलम ३३ अनुसार अपंगांच्या नियुक्तीसाठी ३% पदे आरक्षित ठेवणे आवश्यक आहे. तसेच कामाचे स्वरूप लक्षात घेता ज्या आस्थापनेवर अपंगासाठी आरक्षण करणे शक्य नाही, अशा बाबतीत सूट देण्याची तरतूद सदर अधिनियमाच्या कलम ३३ मध्ये आहे.

३. पोलीस विभागीय पोलीस उप अधिक्षक /सहायक पोलीस आयुक्त [गटअ] व त्यावरील दर्जाच्या खाली नमूद केलेल्या विविध संवर्गामध्ये संबंधित सेवाप्रवेश नियमानुसार उमेदवारांची सरळसेवेने नियुक्ती करण्यात येते –

१) पोलीस उप अधिक्षक सहाय्यक पोलीस आयुक्त (निशस्त्र);

२)

३)

वरील पदांची कर्तव्ये व जबाबदाऱ्या पाहता सदर पदांवर नियुक्त करावयाची व्यक्ती ही शारीरिक व मानसिकदृष्ट्या सुदृढ असणे आवश्यक आहे. म्हणून सदर पदांवरील सरळ सेवेने नियुक्तीसाठी शारीरिक दृष्ट्या अपंग असलेल्या व्यक्तींचा विचार करणे योग्य होणार नाही, असा निर्णय शासनाने घेतला आहे. त्यानुसार सदरहू पदासाठी अपंग उमेदवारासाठी आरक्षण करण्यापासून सूट देण्यात येत आहे”.

15. Ld. CPO relied on the affidavit in sur-rejoinder dated 24.4.2024 filed by Swapnil Gopal Borse, Under Secretary, Home Department. Para 2 of the said affidavit reads as under:

“2. With reference to para 1 to 6.3 of the rejoinder, I say and submit that para 8 of the affidavit in reply filed by the answering respondent elucidates the facts and circumstances leading to the issuance of GR dated 5.7.2021 whereby the cadre of inter alia Deputy Superintendent of Police (Unarmed) was exempted from reservation for persons with disabilities. It is reiterated as follows:

i. That the proposal of Home Department was duly considered by the committee of experts constituted vide Govt. Circular, Social Justice and Special Assistance Department, dated 12.11.2020 in its meeting held on 8.6.2021.

ii. That the said committee of experts in its meeting held on 8.6.2021 decided to exempt the cadre of inter alia Deputy Superintendent of Police (Unarmed) was exempted from reservation for persons with disabilities.

iii. Thereupon, the Social Justice and Special Assistance Department communicated to the Home Department to take action as per the minutes of the said meeting held on 8.6.2021.

iv. Thus, the said GR, Home Department dated 5.7.2021 came to be issued in accordance with law.”

16. It is the contention of the MPSC that at the time of document verification before the interview the applicant produced a temporary disability certificate of mental illness dated 21.1.2022 having 5 years validity till 21.1.2027. As per 4.1.6 of the General Instructions of the Commission, a candidate applying from Divyang Category should possess certificate of having 40% permanent disability.

17. It is the stand of the Government that the mental illness category has been held as not suitable for the post of Assistant Commissioner of State Tax as per notification of State Services Main Examination, 2022 No.99/2022 dated 11.11.2022. It was stated that the matter of identification of suitability of disability category for various posts come under the purview of Government of Maharashtra. As per GR dated 25.2.2021 respondent no.3 has identified suitability of disability category for the post of Assistant Commissioner of State Tax.

18. Section 34 of The Rights of Persons with Disabilities Act, 2016 reads as under:

“34. Reservation.—

(1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

- (a) blindness and low vision;*
- (b) deaf and hard of hearing;*
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;*
- (d) autism, intellectual disability, specific learning disability and mental illness;*
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:*

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.”

19. Keeping in mind the duties and responsibilities of the Deputy Superintendent of Police (Unarmed), the Home Department has exempted the post from reservation for persons with disabilities. It is to be noted that the Home Department has opined that candidate should possess required physical and mental fitness. Furthermore it is to be noted that the Police Force is a disciplined force and keeping in mind their duties and responsibilities the physical and mental fitness is a must. Being Deputy Superintendent of Unarmed the officer has to lead the police personnel under him by giving necessary suitable or urgent orders as per the requirement of time with a view to maintain law and order. Hence, they took the decision that it would not be appropriate to give appointment to a person who is physically or mentally disabled.

20. As regards the prayer of the applicant for the post of Assistant Commissioner State Tax & Deputy Commissioner, State Tax the Finance Department has issued GR dated 25.2.2021. In the said GR they have taken a policy decision not to include the said post keeping in mind the job requirement of the said post. It is our view that the Tribunal is not the appropriate authority to interfere with the policy decision taken by the Government. The Government has taken the said decision based on the requirement and duties of the said post.

21. Thus, it is seen that the Government has exempted certain posts from reservation under the said Act. As this is a policy decision, we find that there is no occasion to interfere with the same.

22. In view of the aforesaid facts and circumstances of the case, we do not find any merit in the above Original Application and the same is dismissed with no order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
19.6.2024

Sd/-

(Mridula Bhatkar, J.)
Chairperson
19.6.2024

Dictation taken by: S.G. Jawalkar.