

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.670 OF 2023

DISTRICT : THANE

Ms. Raveena Hemant Metkar,)
Age 25 years, Assistant Urban Planner,)
Techcomm Urban Management & Consultants,)
Ashar Tiara Complex, Gandhi Nagar, Thane)
R/at D1-401, Lok Upwan Phase-2, Vasant Vihar,)
Thane (W))..Applicant

Versus

1. The Secretary,)
Maharashtra Public Service Commission,)
Trishul Gold Field, Plot No.34,)
Opp. Sarovar Vihar, Sector 11, CBD Belapur,)
Navi Mumbai 400614)
2. The Additional Chief Secretary,)
Urban Development Department, Mantralaya,)
Mumbai 400032)
3. The Secretary,)
Women & Child Development Department,)
New Administrative Building, 3rd Floor,)
Opp. Mantralaya, Mumbai 400032)..Respondents

Shri U.V. Bhosle – Advocate for Applicant

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

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)
RESERVED ON : 25th June, 2024
PRONOUNCED ON: 12th July, 2024
PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. In this case the applicant challenges the recommendation list dated 2.6.2023 issued by the respondent no.1 MPSC for the post of Assistant Town Planner, Group-B and GR dated 4.5.2023 issued by the respondent no.3 by which the Government has cancelled the condition of submission of Non-Creamy Layer (NCL) Certificate for Open as well as all reserved category female candidates.

2. Ld. Advocate for the applicant points out that applicant who belongs to OBC category had applied for the post of Assistant Town Planner as per advertisement No.005/2022 dated 28.1.2022. The applicant further states that she did not have the NCL certificate at the time of submitting the form. She received her NCL certificate on 15.2.2023 and has submitted the same to the MPSC on 27.2.2023. He further pointed out that applicant had appeared for the screening test and interview for the post of Assistant Town Planner, Group-B and had secured 181 marks. The name of the applicant was at Sr. No.50 in the merit list. There were 15 posts reserved for Open Female and the applicant is 5th in the Open Female category. Further there are 8 posts reserved for Other Backward Class (OBC) Female and the applicant is 3rd in the OBC Female category.

3. Ld. Advocate for the applicant states that in the online application form of the post in issue the applicant had claimed for 'OBC category' and selected option 'No' for NCL. Therefore as per clause 5.4 of the advertisement of the post in issue, she is not eligible to be considered for the posts reserved for Open (Female) category. Accordingly in the final result she was considered for Open (General) post only, but she couldn't score sufficient marks to get recommended for Open (General) category. Hence she was not recommended to the Government.

4. Ld. Advocate for the applicant submits that pursuant to the advertisement mentioned above total 17,767 candidates applied for the post in issue. The Applicant had also applied for the post in issue from OBC (Female) category. Accordingly the screening test was conducted and the result of the screening test was declared on 19th January, 2023. In the said result total 431 candidates qualified for interview. After scrutiny of the documents submitted by candidates total 420 were found eligible for the interview.

5. Ld. Advocate for the applicant submits that following provisions have been made in clause 5.4 of the advertisement of the post in issue:

“5.4 महिलांकरिता आरक्षित पदांकरिता करणाऱ्या उमेदवारांनी महिला आरक्षणाचा लाभ घ्यावयाचा असल्यास त्यांनी अर्जामध्ये न चुकता महाराष्ट्राचे अधिवासी (Domiciled) असल्याबाबत तसेच नॉन क्रीमीलेअरमध्ये मोडत असल्याबाबत (अनुसूचित जाती व अनुसूचित जमाती वगळून) स्पष्टपणे दावा करणे आवश्यक आहे.”

6. Ld. Advocate for the applicant submits that following provisions about NCL certificate have been made in clause 3.5.8.6 (One) of the 'General Instructions to the candidates' of the Commission:

“3.5.8.6 (एक) महिलांसाठी आरक्षित पदांवर दावा करणाऱ्या उमेदवारांनी सक्षम प्राधिकाऱ्याने वितरित केलेले व संबंधित पदभरतीकरिता अर्ज सादर करण्याच्या अंतिम दिनांकास (दोन टप्प्यातील परीक्षांकरिता पूर्वपरीक्षेकरिता अर्ज सादर करण्याच्या अंतिम दिनांकापूर्वीचे) वैध असणारे नॉन-क्रिमीलेअर प्रमाणपत्र अर्जासोबत सादर करणे आवश्यक आहे.”

7. Ld. Advocate for the applicant submits that the State Government vide GR dated 4.5.2023 cancelled the condition of submission of NCL certificate for Open (Female) and all backward category (Female) for selection to the posts reserved for Open (Female). Para 5 of the said GR mentions as follows:

“5. महाराष्ट्र लोकसेवा आयोगामार्फत प्रसिध्द करण्यात आलेल्या जाहिरात क्र. ८३/२०२१ अन्वये झालेल्या भरती प्रक्रियेस तसेच या भरतीप्रक्रियेचा निकाल ज्या दिनांकास प्रसिध्द करण्यात आला, त्या दिनांकानंतर प्रसिध्द झालेल्या जाहिरातीअन्वयक सुरु झालेल्या भरतीप्रक्रियांना या शासन निर्णयातील तरतुदी लागू होतील.”

8. Ld. Advocate for the applicant pointed out that MPSC has included several female candidates who have secured less mark than the applicant. The names of some of the candidates are as follows:

(i) Sr. No.96 Sneha Kaldate, 165.50 last candidate to be recommended in the Open Female category.

(ii) Sr. No.112 Madhuri Jadhav, 158.50 marks. Last candidate to be recommended in the OBC Female category.

9. He further pointed out that in similar cases regarding advertisement nos. 063/2021 to 083/2021 dated 17.9.2021 the MPSC had recommended the name of one Geeta Narayan Bhat.

10. Ld. Advocate for the applicant relied on the order dated 22.1.2016 passed by the Hon'ble Bombay High Court Bench at Aurangabad in **W.P. No.393/2016 Mrs. Patil Vijaya Milind Vs. State of Maharashtra & Ors.**

11. Ld. CPO opposes the submissions of the Ld. Advocate for the applicant. She pointed out that in the online application form for the post in question the applicant had claimed for OBC category and selected 'No' in front of NCL. Therefore as per the provisions in clause 5.4 of the advertisement she was not considered for the post reserved for Open Female. She pointed out that as per GR dated 4.5.2023 the Commission on 25.5.2023 revised the final list of advertisement no.83/2021. The advertisement of the post in issue (Advt. no.5/22) was published on 28.1.2022 i.e. before 29.2.2022 i.e. the date of the GR. Therefore, its results cannot be revised. She pointed out that the provisions of GR dated 4.5.2023 are not applicable for the advertisement in issue. The applicant had opted option 'No' to NCL in the online application form as she was not having the NCL certificate at that time.

12. We posed the question to the Ld. CPO as to how many advertisements were issued between 17.9.2021 (date of advertisement No.83/2021) and the result of the same on 29.9.2022? In response she submitted that during the period from 17.9.2021 to 29.9.2022, 284 advertisements were issued. The said 284 advertisements were for selection to 14987 posts and of 14987 advertised posts, 1577 were reserved for Open Female Category.

13. We find that in similar matter the Aurangabad Bench of this Tribunal in **OA No.932/2023 Saraswarti Keshavrao Makne & Anr. Vs. The State of Maharashtra & Ors. decided on 10.5.2024** has held that clause 5 of the GR dated 4.5.2023 is unconstitutional. We are bound by

the decision of the coordinate bench. Moreover, it is to be noted that we had already passed interim orders dated 25.10.2023 & 2.11.2023 that if any appointments are made by the respondents they would be subject to outcome of this OA. Since the coordinate Bench has already passed an order in similar matter in OA No.932/2023 (supra), we pass the following order.

14. The Original Application is allowed. The applicant is entitled to the benefit of GR dated 4.5.2023. Respondent No.1-MPSC is directed to recommend the name of the Applicant for the post of Assistant Town Planner, Group-B within a period of three weeks from today and Respondent No.2 is directed to issue appointment order of the applicant within three weeks thereafter. No order as costs.

**Sd/-
(Medha Gadgil)
Member (A)
12.7.2024**

**Sd/-
(Mridula Bhatkar, J.)
Chairperson
12.7.2024**

Dictation taken by: S.G. Jawalkar.