

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

**TRANSFER APPLICATION NO.01 OF 2016
(WRIT PETITION NO.115 OF 2016)**

**DISTRICT: BEED
SUBJECT: APPOINTMENT**

Shri Abhay Ginyandeo Sanap)
Age : 20 years, Occ : Education)
R/o. Abhay Niwas, Bhakti Construction Road,)
Eknathnagar, Beed, District Beed.) ... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through its Secretary,)
Department of General Administrations &)
Through its Secretary,)
Department of Sale Tax)
Mantralaya, Mumbai-32.)
- 2) Maharashtra Public Service Commission,)
Through its Deputy Secretary,)
Bank of India Building, 3rd Floor,)
Fort, Mumbai -04.) ... **Respondents**

Shri Sandeep D. Munde, learned Advocate for the Applicant.

Shri M. S. Mahajan, learned Chief Presenting Officer for the Respondent No.1.

Shri M. B. Kolpe, learned Counsel for the Respondent No.2 (M.P.S.C.).

**CORAM : SMT. JUSTICE MRIDULA BHATKAR, (CHAIRPERSON)
SHRI P.N. DIXIT, VICE-CHAIRMAN (A)**

DATE : 12.02.2021.

PER : SMT. JUSTICE MRIDULA BHATKAR, (CHAIRPERSON)



J U D G M E N T

- 1) Heard Shri Sandeep D. Munde, the learned Advocate for the Applicant, Shri M.S. Mahajan, the learned Chief Presenting Officer for the Respondent No.1 and Shri M.B. Kolpe, the learned Counsel for the Respondent No.2 (M.P.S.C.).
2. The Applicant had earlier filed the Writ Petition No.115 of 2016 in the High Court of Judicature at Bombay, Aurangabad Bench due to non availability of the Maharashtra Administrative Tribunal Aurangabad Bench. However, by the order dated 12.02.2016 of the High Court, Aurangabad Bench transferred the said Writ Petition to Maharashtra Administrative Tribunal, Aurangabad Bench and numbered as T.A.01/2016. Now the matter is placed before the Principal Bench of the Tribunal at Mumbai, as again the Aurangabad Bench has become non-functional due to retirement of all its Members and no Member is appointed by the Government.
3. All the pleadings are ready and the matter is admitted on 04.10.2016 and hence it is finally decided.
4. Applicant who belongs to N.T.-D category by claiming horizontal reservation has applied in sports category.
5. Respondents had issued advertisement for the post of Tax Assistant, Group-C, advertisement bearing no.209/2014 which was conducted on 22.02.2015. The Applicant appeared for the examination, he secured 122 marks and the last candidate selected and recommended for the open sports category has secured 108 marks.
6. It is the contention of the Applicant that though he has secured higher marks than the cut off marks i.e. 108 in open sports category, was not considered for the Tax Assistant from the open category. Hence, he approached to the Tribunal to declare him eligible in open sports category.

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7. The learned Advocate for the Applicant has submitted that during the pendency of the Writ Petition by order dated 15.01.2016 the Hon'ble Bombay High Court has directed the Respondent to keep one post of Tax Assistant Group-C from the open sport category vide advertisement No.209/2014, vacant. The learned Advocate submitted that today the said post is vacant and the Applicant claims the said post on the ground of merit and his shifting to the open sports category. He submitted that while filling the form he has given option that his name to be considered in both the categories i.e. open as well as N.T.-D category and on this ground his shifting to the open category is refused. The learned Advocate further submitted that the Applicant has not taken benefit of relaxation viz. age, chances (opportunity) and relaxation of marks as well as in payment of examination fees. In support of his submissions he relied on judgment of **Hon'ble Bombay High Court, Nagpur Bench in Smt. Shantabai Laxman Doiphode v/s. State of Maharashtra in Writ Petition No.6326 of 2018 decided on 14.10.2020, reported in (2020) SCC OnLine Bom 1659.**

On the point of law of shifting of the candidates of the reserved category to open category in the horizontal reservation, the learned Advocate relied on the judgment of the **Hon'ble Supreme Court in Saurav Yadav & Ors. v/s. State of Uttar Pradesh and Ors. in Miscellaneous Application No.2641 of 2019 in Special Leave Petition (Civil) No.23223 of 2018 and decided on 18.12.2020.**

8. Learned Advocate appearing on behalf of Respondent No.2 M.P.S.C. and also State both filed the Affidavit-in-Reply and opposed the claim.

9. Learned Advocate for the M.P.S.C. has submitted that migration in horizontal reservation is not permissible as it is compartmentalized reservation in view of the judgment of **Hon'ble Bombay High Court, Aurangabad Bench in Charushila Tukaram Chaudhari and Ors. v/s. State of Maharashtra and Ors., Writ Petition No.4159 of 2018 decided on 08.08.2009** and he also relied on the

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judgment of *Hon'ble Supreme Court in Indra Sawhney v/s. Union Of India and Ors. reported in (1992) Supp (3) SCC 217* and he relies on para. 812 which is reproduced below:-

"812. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under Clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations - what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to S.C. category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.

10. A group of matters involving the issue of availability of the migration in horizontal reservation is before us. We have considered the submissions of both the parties on the background of the law settled down by the Hon'ble Supreme Court in the case of *Saurav Yadav & Ors. (Supra)*. The Full Bench of the Hon'ble Supreme Court while discussing this issue threadbare thereby allowed and held that migration to open category within horizontal reservation is legal and permissible. The Hon'ble Supreme Court has addressed the two opposite views, one holding migration in horizontal reservation is barred as the horizontal reservation is compartmentalized which interlocks the vertical reservation. The second view wherein migration is permissible is also discussed on the basis of the earlier judgments passed by the Hon'ble Supreme Court in *Indra Sawhney v/s.*

Union Of India and Ors. (supra), Anil Kumar Gupta v/s. State of Uttar Pradesh & Ors., reported in (1995) 5 SCC 173 and Rajesh Kumar Daria v/s. Rajasthan Public Service Commission, reported in (2007) 8 SCC 785. The Judgments decided by the Hon'ble Bombay High Court in *Charushila Tukaram Chaudhari (supra), Asha R. Gholap v/s. The President, District Selection Committee/Collector, reported in 2016 SCC OnLine Bom 1623, Tejaswini R. Galande v/s. Chairman, Maharashtra Public Service Commission & Ors, reported in (2019) 4 Mah L.J. 527* are taken into account. It is useful to refer to the ratio laid down in the case of *Smt. Shantabai Laxman Doiphode (Supra)* as it is relevant to the facts of the present case.

".....It is clear that inspite of the petitioner choosing to be selected to a post reserved for N.T.-D category, the petitioner still could legitimately stake her claim to post available in the open category and not only that she could do so also to a post horizontally reserved for women in the open category."

Thus when this issue is fully addressed and the Hon'ble Supreme Court thereby gave its verdict that the migration to open category from the reserved category in horizontal reservation is permissible hence we make it clear that the Respondents have to follow this law of the land.

11. In the present case the Applicant though has given option by tick marking in N.T.-D category and also open category in his application form, this cannot be considered a restricted option. The Applicant has not taken the benefit of relaxation available to N.T.-D category candidates and one post is kept vacant hence the Applicant is entitled to recommendation by M.P.S.C.

12. Hence, T.A. is allowed.

13. Respondent No.2 i.e. M.P.S.C. is hereby directed to issue the orders of recommendations within two weeks from the receipt of the order and further the Respondent No.1 to take steps within two weeks.

14. Hence the entire process is to be completed in four weeks. i.e. on or before 15.03.2021.

Sd/-
(P.N. Dixit)
Vice-Chairman (A)

Sd/-
(Mridula R. Bhatkar, J.)
Chairperson

Place: Mumbai
Date: 12.02.2021
Dictation taken by: N.M. Naik.