



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 2014 OF 2016

Deepanjali D/o Bhujangrao Lomate
Age : 40 years, Occ : Service (Associate Professor),
R/o C/o : Department of Pharmacology,
Shribhausahab Hire Government Medical College,
Chakkarbardi, Dhule,
Tal. and Dist. Dhule.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through it's Secretary,
Ministry of Medical Education and Drugs,
Mantralaya, Mumbai-32.
2. The Secretary,
Ministry of Women and Child Development,
Mantralaya, Mumbai-32.
3. The Directorate of Medical Education and
Research, Gokuldas Tejpal Hospital Premises,
9th Floor, Mantralaya, Mumbai – 01
4. The Director of Health Services,
Directorate of Health Services,
'Arogya Bhavan', St. George's Hospital,
P. D'milo Rd., Mumbai-01
5. Shribhausahab Hire Government
Medical College,
(Through its Dean, Department of Pharmacology),
Chakkarbardi, Dhule,
Tal. and Dist. Dhule.

..RESPONDENTS

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Advocate for the petitioner : Miss. Pradnya Talekar h/f Mr. S.B. Talekar
AGP for Respondent- State : Mr. S.R.Yadav Lonikar

...

**CORAM : S.G. MEHARE AND
SHAILESH P. BRAHME, JJ.**

RESERVED ON : 04th FEBRUARY, 2025.

PRONOUNCED ON : 13th FEBRUARY, 2025

JUDGMENT (PER SHAILESH P. BRAHME, J.) :

. Heard both sides finally at the admission stage considering exigency for the petitioner.

2. The petitioner, who is working as Associate Professor with respondent no.5 – Government Medical College, has approached this Court under Article 226 of the Constitution of India, seeking relief of quashment of clause nos.9 and 10 of the Government Resolution dated 25.05.2001 being unconstitutional and quashment of notice dated 21.01.2015 calling upon her to submit fresh Non-Creamy Layer Certificate (Hereinafter referred to as “NCL Certificate” for sake of brevity and convenience). By way of interim relief, petitioner was granted protection against coercive action for non-submission of NCL certificate.

3. The relevant facts, which are not disputed, are that Government Resolution dated 25.05.2001 was issued which is comprehensive policy for implementation of 30% of reservation for

women in the recruitment. Its clause nos.9 and 10 mandate 30% of reservation for women would not be available for person of creamy layer. The term 'family' was also defined. Accordingly advertisement for the recruitment was published on 01.04.2015 for various posts of Professors and Associate Professors. In pursuance of the same, petitioner applied from open category through 30% of reservation for women on the basis of NCL certificate issued to her father Bhujangrao Abasaheb Lomte on 18.05.2015.

4. After following due procedure of law, she was selected as Associate Professor considering her previous experience of four years as Professor, vide order dated 07.10.2015. She was issued with notice dated 21.01.2016 by respondent no.1 calling upon her to submit revised NCL certificate as per Government Resolution dated 25.05.2001 as her earlier NCL was defective. Being aggrieved present petition is filed challenging the relevant clauses of the policy and the notice.

5. It is brought to our notice that during pendency of the petition, though coercive action was not taken against petitioner because of the interim protection, petitioner was deprived of service benefits like increments, benefit of permanency, relieving her from the post of Associate Professor for joining the post of Director, Students

Welfare with the Health University. For non-compliance of the impugned notice, the probation period of petitioner has not been held to be completed satisfactorily. To make out a case of discrimination various Government Resolutions are placed on record. Lastly, pivotal subsequent development of issuance of Government Resolution dated 04.05.2023 is brought on record, thereby repudiating the clause nos.9 and 10 of the Government Resolution dated 25.05.2001.

6. Learned counsel Miss. Pradnya Talekar for petitioner submits that petitioner was in service for four years as Professor. It could not have been possible to produce NCL certificate of herself. Therefore, clause nos.9 and 10 of the Government Resolution dated 25.05.2001 are absurd, arbitrary and unconstitutional. Those clauses violates Article 19 of the Constitution of India and liable to be struck down. The impugned clauses nullifying 30% reservation of the women violates Article 15(3) of the Constitution of India. She would submit that the NCL certificate of her father ought to have been accepted by the authorities. She would further submit that impugned clauses are discriminatory in view of the Government Resolutions dated 17.08.2013, 15.12.2017 and 11.09.2019.

7. Learned counsel for the petitioner would emphatically

submit that in view of Government Resolution dated 4th May, 2023 expressly cancelling clause nos.9 and 10 of Government Resolution dated 25.05.2001, petitioner is bound to succeed as very same clauses are sought to be struck down by her in the petition. She has placed reliance on the judgment of *Dr. (Major) Meeta Sahai Vs State of Bihar and others* reported in *(2019) 20 SCC 17*.

8. Per contra, learned A.G.P. Mr. Lonikar repels the submissions of the petitioner on the basis of affidavit-in-reply and sir-rejoinder. He would submit that impugned notice issued to petitioner was in accordance with the extant policy. She did not challenge impugned clauses before participating in the selection process. Without any demour, she submitted to the conditions of the advertisement and selection process and now she is estopped from challenging impugned clauses. It is further submitted that Government Resolution dated 04.05.2023 is not retrospective and no benefit would enure to petitioner. He would further submit that petitioner failed to comply with the notice impugned, and therefore, she is not entitled to further service benefits.

9. We have considered rival submissions of the parties. When the petitioner had applied for recruitment, Government Resolution

dated 25.05.2001 was in force. Petitioner was married. She had produced her father's NCL certificate instead of her own. It is evident that the petitioner had experience for the post of Associate Professor and she was not eligible for NCL certificate in her name as she was rendering services as Professor for preceding three years.

10. The relevant clauses which are under challenge are as follows :-

(९) खुल्या प्रवर्गातील उन्नत आणि प्रगत व्यक्ती / कुटुंबातील (किमीलेअर) महिला सदस्यांना महिलांसाठी असलेले ३० % आरक्षण अनुशेष राहणार नाही. तसेच, मागासवर्गीय प्रवर्गातील इतर मागासवर्ग, भटक्या जमाती (क) आणि भटक्या (ड) या प्रवर्गातील उन्नत आणि प्रगत व्यक्ती अथवा गटातील महिला सदस्यांना महिलांचे ३० % आरक्षण अनुशेष राहणार नाही.

(१०) खुल्या प्रवर्गातील ज्या व्यक्तीचे / कुटुंबाचे सर्व मार्गानी येणारे एकूण वार्षिक उत्पन्न सलगच्या मागील तीन वर्षांमध्ये प्रत्येक वर्षी रु दोन लाख किंवा त्यापेक्षा अधिक असेल ती व्यक्ती / कुटुंब आणि प्रगत व्यक्ती / गट म्हणून समजण्यात येईल. या सदर्भातील कुटुंबाच्या व्याख्येमध्ये विवाहित महिलेच्या बाबतीत पती, पत्नी व मुले यांचा समावेश राहील. आणि अविवाहित मुलीच्या संदर्भात आई, वडील व अविवाहित भावंडे यांचा समावेश राहील.

11. Though petitioner has tried to cite various Government Resolutions to make out a case for discrimination and various subsequent events indicating loss caused to her, the latest Government Resolution dated 4th May, 2023 is decisive. We do not find it necessary to go into other niceties and factual details, which are tried to be shown

from rejoinder filed by petitioner. It is expedient to refer to Government

Resolution dated 4th May, 2023. Its prologue is as follows :-

प्रस्तावना :—

शासकीय, निमशासकीय व शासन अनुदानित संस्थांमधील सेवांमधील भरतीमध्ये महिलांसाठी ३० टक्के समांतर आरक्षणाची अंमलबजावणीबाबत महिला व बालविकास विभागाकडून शासन निर्णय दिनांक २५.०५.२००१ निर्गमित करण्यात आला असून त्यामध्ये आरक्षणासाठीच्या अटी / शर्ती विहित करण्यात आल्या आहेत.

२. महाराष्ट्र लोकसेवा आयोगामार्फत जाहिरात क्र. ८३ / २०२१ च्या अनुषंगाने प्राध्यापक, समाजसेवी औषध वैद्यकशास्त्र पदावरील भरती प्रक्रियेचा निकाल दि.२९.९.२०२२ रोजी जाहीर करण्यात आला आहे. या निकालामध्ये अराखीव (महिला) या पदावर गुणवत्ता क्र.३ वरील महिला उमेदवाराकडे शासन निर्णय दि.२५.०५.२००१ नुसार आवश्यक नॉन क्रिमीलेअर प्रमाणपत्र नसल्यामुळे त्यांची निवड न करता गुणवत्ता क्र.६ वरील उमेदवाराची निवड करण्यात आली आहे. या निकालाबाबत गुणवत्ता क्र.३ वरील उमेदवाराकडून महाराष्ट्र लोकसेवा आयोग तसेच वैद्यकीय शिक्षण व औषधी द्रव्ये विभागाकडे आक्षेप नोंदविण्यात आला. या आक्षेपाच्या अनुषंगाने प्राध्यापक, समाजसेवी औषध वैद्यकशास्त्र पदावरील नेमणूक प्रलंबित ठेवण्यात आली.

12. It is relevant to refer to further clauses of the Government

Resolution, which are as under :-

शासन निर्णय :—

खुल्या प्रवर्गातील महिलांकरिता आरक्षित असलेल्या पदावरील निवडीकरिता खुल्या प्रवर्गातील महिला तसेच सर्व मागास प्रवर्गातील महिलांनी नॉन—क्रिमीलेअर प्रमाणपत्र सादर करण्याची अट मा. मंत्रिमंडळाच्या मान्यतेने या शासन निर्णयान्वये रद्द करण्यात येत आहे.

२. शासकीय, निमशासकीय व शासन अनुदानित संस्थांमधील सेवांमध्ये भरतीसाठी महिलांकरिता ३० टक्के जागा आरक्षित ठेवण्याबाबत शासन निर्णय दि.२५/०५/२००१ निर्गमित करण्यात

आला आहे. या शासन निर्णयामध्ये 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 महिलांकरिता 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 महिलांकरिता आरक्षित असलेल्या पदावर निवड झालेल्या महिलांच्या नॉन क्रिमिलेअर प्रमाणपत्रांची तपासणी करण्याबाबत येणा—या अडचणींचे निवारण करण्याच्या अनुषंगाने शासन निर्णय दि. २५.०५.२००१ मध्ये आवश्यक तरतुदी करण्यासाठी शासन निर्णय दि. १५/१२/२०१७ निर्गमित करण्यात आला आहे. तसेच, या शासन निर्णयामधील तरतुदींबाबत येणा—या अडचणींच्या अनुषंगाने स्पष्टीकरणात्मक सूचना शासन निर्णय दि.११.०१.२०१९ अन्वये निर्गमित करण्यात आल्या आहेत. आता, खुल्या गटातील महिलांकरिता आरक्षित असलेल्या पदावरील निवडीकरिता नॉन क्रिमिलेअर प्रमाणपत्र सादर करण्याची अट रद्द करण्यात आली असल्याने शासन निर्णय दि.१५.१२.२०१७ व शासन निर्णय दि. ११/०१/२०१९ या शासन निर्णयाद्वारे निरसित करण्यात येत आहेत.

13. It is eloquent from Government Resolution dated 04.05.2023 that a conscious decision was taken for revoking clause nos.9 and 10 of Government Resolution dated 25.05.2001. It was noticed that women candidate aspiring for 30% reservation of different

categories were regulated by different parameters. The difficulty faced by them working as Assistant Professor or Associate Professor earning more than Rs.8 Lakh was noticed. In order to eradicate the anomalies and inconsistencies, respondent no.1 came out with a policy of eliminating clause nos.9 and 10 of Government Resolution dated 25.05.2001. No sooner than petitioner received impugned notice, she approached this Court raising challenge to the notice as well as clause nos.9 and 10 of the Government Resolution dated 25.05.2001. By Government Resolution dated 04.05.2023 expressly impugned clauses are revoked by citing elaborate reasons. In view of express decision, we find that the cause of the petitioner has been subserved.

14. The evil contained in clause nos.9 and 10 of the Government Resolution dated 25.05.2001 is sought to be done away with vide Government Resolution dated 04.05.2023. We do not approve the submissions of learned A.G.P. that Government Resolution dated 04.05.2023 is not retrospective. The said policy contains the reasons for to be retrospective and it is focused at hardship caused by impugned conditions. If the arguments of AGP are accepted then that would amount to perpetuating the evil of impugned clauses. That is not the purport of subsequent resolution.

15. We have gone through the eligibility condition of the advertisement for the post in question. Experience of four years in recognized medical college was the requirement. For married women, the definition of the family was extended to herself, her husband and children. Her parents did not come within its ambit. Petitioner was possessing the experience and obviously she was not eligible for NCL certificate. Not only petitioner but the aspirants claiming horizontal reservation of 30% who are similarly circumstanced would have been ineligible for the NCL certificate. The definition of 'family' prescribed in clause no.10 of Government Resolution dated 25.05.2001 is nullifying very object of reservation for women. It is against the spirit of Article 14 of the Constitution of India. It does not stand to the test of reasonableness.

16. Petitioner has relied on the judgment of ***Surinder Singh Vs. Punjab State Electricity Board, Patiala and others*** reported in ***(2014) 15 SCC 76***. The words creamy layer were considered by the Supreme Court, but those are in different context. This judgment is not helpful to the petitioner.

17. Petitioner did not challenge impugned clause of Government Resolution or the conditions of advertisement. Without

expressing any demour, she submitted to the selection process. Under normal circumstances, it is not permissible for the candidate, who voluntarily accepts the conditions of recruitment to turn around and challenge conditions. However, this principle of estoppel cannot be made applicable to the facts and circumstances of the present case. Firstly, the petitioner succeeded in making out the case that impugned conditions are absurd and unconstitutional. Those are against the reservation policy. Secondly, in view of supervening event of Government Resolution dated 04.05.2023 revoking impugned clauses of earlier resolution, plea of estoppel is inapplicable.

18. Our attention is adverted to the judgment of ***Dr. (Major) Meeta Sahai Vs. State of Bihar and others*** reported in ***(2019) 20 SCC 17*** by learned counsel for the petitioner. In that case, petitioner had participated in the selection process for the post of General Medical Officer. She had work experience of Army Medical Corporation Hospital instead of Government Hospital and she was not allocated marks for work experience. She was unsuccessful in securing the place in merit list. She was unsuccessful before single Judge as well as Division Bench. Then, she went to the Apex Court. A plea of estoppel was raised against her by the respondent. Under those circumstances, following relevant observations are made in para nos.16 and 17 :-

“16. It is well settled that the principle of estoppel prevents a candidate from challenging the selection process after having failed in it as reiterated by this Court in a plethora of judgments including *Manish Kumar Shahi v. State of Bihar*, observing as follows: (SCC p. 584, para 16)

“16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the appellant is not entitled to challenge the criteria or process of selection. Surely, if the appellant's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The [appellant] invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the appellant clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.”

The underlying objective of this principle is to prevent candidates from trying another shot at consideration, and to avoid an impasse wherein every disgruntled candidate, having failed the selection, challenges it in the hope of getting a second chance.

17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate

alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.”

19. The ratio laid down is squarely applicable to the facts of the present case. Petitioner could not have challenged the impugned clauses of Government Resolution dated 25.05.2001, had she been not confronted and called upon to furnish revised NCL produced by her. Therefore, the technicality of estoppel would not be impediment for granting relief to the petitioner.

20. Before closing matter, we find it necessary to express that the approach of the respondent in insisting for revised NCL certificate or doubting certificate produced by petitioner is against the object of women empowerment. The horizontal reservation of 30% has emerged as a constitutional policy to safeguard, uplift and empower women in the country. The policies of the State Government are needed to be in tune with the object sought to be achieved by Article 15(3) of the

Constitution of India. Hence, we are of the considered view that the petition is bound to succeed. We pass following order :-

ORDER

- (i) Writ Petition is allowed in terms of prayer clauses “A” and “B”.
- (ii) The respondents are directed to treat NCL certificate already produced by the petitioner at the time of recruitment as valid and effective and they are directed to disburse all consequential benefits to the petitioner.
- (iii) Rule is made absolute in above terms.
- (iv) There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

[S.G. MEHARE, J.]

bsb/Feb.25