

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

WRIT PETITION NO. 4942 OF 2013

SEEMA VITTHAL ADAGALE. ... PETITIONER.

VERSUS

**THE STATE OF MAHARASHTRA
AND ANOTHER. ...RESPONDENTS.**

...

**Advocate for Petitioner : Mr.Nagargoje Ankush N.
AGP for Respondent No.1/State: Mr.M.M. Nerlikar.
Advocate for Respondent No.2: Mr.G.N. Patil.**

...

CORAM : S.S. SHINDE & P.R. BORA, JJ.

Dated: 08th APRIL, 2015.

PER COURT :-

1. Heard.
2. Learned Counsel for the petitioner submits that there is no basis for the observations made by the Maharashtra Administrative Tribunal in the impugned judgment. He further submits that when the posts were advertised, the minimum marks for selection and appointment were not prescribed. He further submits that the Maharashtra

Administrative Tribunal made observations / laid down test in paragraph 10 that the candidate who has secured equal or more marks than the last candidate selected amongst 121 selected, should be issued appointment order. However, the authorities have appointed the candidates who have secured marks below 73. He invited our attention to the selection list and marks obtained by the candidates. He, therefore, submits that the petition may be allowed.

3. On the other hand, learned Counsel for the respondent No.2 submits that already seven posts which were reserved for the women from S.C. Category have been filled in. The last candidate in the list has not been joined as party respondent. Therefore, the petition is not maintainable. It is further submitted that even the petitioner lacks the basic qualification. To that effect, proceedings are pending before this Court. Therefore, he submits that since the petitioner has secured 48 marks out of 200, the authorities have rightly refused appointment to her.

4. We have considered the submissions of the learned

Counsel for the parties. We have also perused the order passed by the Maharashtra Administrative Tribunal and in particular, paragraph 10 thereof. Nothing has been brought to the notice of this Court by the respondents that there was any basis for observations / test laid down by the Maharashtra Administrative Tribunal about conducting the examination or to whom appointment order should be issued. In absence of any material on record, in our opinion, the authority ought to have ignored the observations made by the Maharashtra Administrative Tribunal in para 10 of the impugned judgment and the case of the petitioner should have been considered in accordance with the relevant rules and advertisement issued. Upon perusal of the impugned communication, it appears that relying upon the observations of the Maharashtra Administrative Tribunal in para 10 of the judgment / oral order dated 06.04.2011 in Original Application No.492 of 2010, the respondent No.2 has communicated to the petitioner that last candidate in the selection list has secured 76 marks and the petitioner has secured only 48 marks and, therefore, the petitioner is not entitled for the appointment. In our opinion, when there is no basis for the observations

in para 10 of the order of the Maharashtra Administrative Tribunal, the consequential communication would not survive.

5. In the circumstances, we direct the respondents – authorities to consider the case of the petitioner, in accordance with the advertisement and relevant rules, ignoring the observations in para 10 of the judgment / oral order of the Maharashtra Administrative Tribunal dated 06.04.2011 in Original Application No.492 of 2010. The impugned communication dated 19th March, 2013 stands quashed and set aside. The respondent No.2 is directed to consider the case of the petitioner for appointment, as expeditiously as possible and preferably within a period of two months from today. Petition stands disposed of, accordingly.

(P.R. BORA,, J.)

(S.S. SHINDE, J.)