

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 310 OF 2015

The State of Maharashtra
through the Hon'ble Secretary
Medical Education & Drugs Department
Mumbai.

.... Petitioner

Versus

Dr. Shrikant Ananda Rokade

.... Respondent

Mr. C.P.Yadav, AGP for Petitioner/State.
Mr. Sanjay Kshirsagar for Respondent.
Mr. Sanjay Kamalakar, Deputy Secretary, MEDD.
Mr. Sharad Ghavate, Assistant Section Officer, MEDD.

**CORAM : R. M. BORDE AND
 A. S. GADKARI, JJ.
DATE : FEBRUARY 28, 2017.**

P.C.

. The Petitioner/State is objecting to the order passed by Maharashtra Administrative Tribunal in Original Application no. 471 of 2014 directing Petitioner/State to take action on recommendation of Maharashtra Public Service Commission regarding appointment to the post of Associate Professor (Anatomy) from S.C. category within a period of eight weeks from the date of order.

2. The Secretary, Medical Education and Drugs Department published an advertisement inviting applications for filling up 67 posts of Associate Professor in various subjects in Government Medical Colleges in State. The advertisement prescribes reservation for SC, ST, DT(A), NT(B), NTC, SBC and OBC categories, so also certain posts are prescribed for physically challenged category. There were 10 posts of Associate Professor (Anatomy) prescribed for SC category, out of which one post is reserved for physically challenged, i.e. partially sighted/low vision candidate. The Respondent herein applied for the post of Associate Professor (Anatomy) from Scheduled Caste category, however, the application was not entertained on the ground that the said post was kept reserved for physically handicapped SC category candidate. One of the candidates applying from amongst SC category vacancy, presented the Original Application No. 446 of 2010 to the Maharashtra Administrative Tribunal, Aurangabad Bench challenging the action of the Respondent of prescribing reservation in favour of physically challenged category in respect of vacancies already earmarked for SC category. After hearing the parties, Maharashtra Administrative Tribunal, Aurangabad Bench directed the Maharashtra Public Service Commission to invite five SC category candidates, who had tendered applications, for interview and conclude the selection process by selecting candidates having the best performance within a period of three months from the date of order.

3. The Respondent was found to be meritorious by Maharashtra Public Service Commission and his name was recommended, however, despite recommendation by Maharashtra State Public Commission, he was not appointed, as such he approached the Tribunal seeking appropriate directions.

4. The question that arose for consideration in the matter is, as to whether there can be a reservation for persons with disabilities against the vertical reservation category posts. A reference is made to the Office Memorandum dated 29th December, 2005 which quoted in the order passed by the Tribunal. Considering the Office Memorandum as well as the law laid down by the Supreme Court in respect of filling up of vacancies prescribed for horizontal reservations, the decision taken by the Respondent to prescribe vacancy of Associate Professor (Anatomy) for SC category candidate with disabilities cannot be said to be valid. The reservation in favour of the persons with disabilities form part of the horizontal reservation and a person with disabilities belonging to vertical reservation category can very well be considered.

5. In this context, judgment of the Supreme Court in the case of *Rajesh Kumar Daria V/s Rajasthan Public Service Commission, AIR 2007 SC 3127* as well as in the case of *Anil Kumar Gupta and Ors. V/s State of U.P. and Ors., (1995) 5 SCC*

173 is to be considered. It has been observed by the Supreme Court in para 9 of the judgment in the case of *Rajesh Kumar Daria* (cited *supra*) as under :

“9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are 'vertical reservations'. Special reservations in favour of physically handicapped, women etc., under Articles 16(1) or 15(3) are 'horizontal reservations'. Where a vertical reservation is made in favour of a backward class under Article 16(4), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. [Vide – *Indra Sawhney* (Supra), *R. K. Sabharwal vs. State of Punjab* (1995 (2) SCC 745), *Union of India vs. Virpal Singh Chauhan* – (1995 (6) SCC 684 and *Ritesh R. Sah vs. Dr. Y. L. Yamul* – (1996 (3) SCC 253)]. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes – Women'. If the number of women in such list is equal to or more than the number of special reservation

quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of scheduled caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women.

Let us illustrate by an example : If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC women candidates, then there is no need to disturb the list by including any further SC women candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four women SC candidates. [But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess women candidate on the ground that 'SC-women' have been selected in excess of the prescribed internal quota of four].”

The observations in para 18 of the judgment in the case of Anil Kumar Gupta (cited supra) are as under :

“18. Now, coming to the correctness of the procedure prescribed by the revised notification for filling

up the seats, it was wrong to direct the fifteen percent special reservation seats to be filled up first and then take up the O.C. (merit) quota (followed by filling of OBC, SC and ST quotas). The proper and correct course is to first fill up the O.C. quota (50%) on the basis of merit : then fill up each of the social reservation quotas, i.e., SC, ST and BC, the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied – in case it is an over-all horizontal reservation – no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen percent in favour of special categories, overall, may be satisfied or may not be satisfied). Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the O.C. quota.”

6. Considering the law laid down by the Apex Court as well as the consideration laid down in Office Memorandum dated 29th December 2005 by the State Government, we are of the considered opinion that the view taken by the Maharashtra Administrative Tribunal is reasonable and proper and do not call for any interference by this Court.

7. The writ petition is devoid of merits and stands rejected.

[A. S. GADKARI, J.]

[R. M. BORDE, J.]