

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10769 OF 2015

Smt.Lata Shyamrao Sangolkar .. Petitioner
Vs.
The State of Maharashtra and ors. .. Respondents

Mr.L.S.Deshmukh i/b Mr.Satish S. Raut, for the Petitioner.
Mr.O.M. Kulkarni, AAGP for State.

**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 22nd FEBRUARY, 2018

ORDER (PER M.S.KARNIK, J.) :

1. Heard learned Counsel for the petitioner and learned AGP on behalf of respondents No.1 & 8. None appeared for respondents No. 2 to 7. Learned Counsel for the petitioner stated that he has served respondents No. 2 to 7.

2. The petitioner by this Petition filed under Articles 226 & 227 of the Constitution of India challenges the order dated 19/03/2014 passed by the Maharashtra Administrative

Tribunal, Mumbai Bench, Mumbai in OA 1100/2012 and the impugned select list dated 09/11/2012 finalized by respondent No.1 in respect of recruitment of Jailor Group – II (Non-Gazetted) and for directions to respondent No.1 to recompute the merit list of the open female category as well as OBC category and to issue the appointment order for the said post by including name of the petitioner in the select list.

3. The petitioner had applied as OBC female candidate in response to an advertisement issued on 18/02/2009 for filling up of 100 posts of Jailor Grade – II. Total number of posts to be filled was 100 out of which 52 posts were to be filled from open category. There were 14 posts reserved for OBC category in vertical (social) reservation. In horizontal reservation, the candidates were required to indicate the category viz. ex-servicemen, project affected person, female etc to which they were applying in the application form. G.R. dated 16/03/1999 provided for horizontal reservation. G.R. has prescribed the procedure for preparation of select list on the basis of judgment

of Hon'ble Supreme Court in **Anil Kumar Gupta Vs. State of U.P. and ors. Reported in JT 1995 (5) SC 505.**

4. The Tribunal was of the opinion that 16 posts which are reserved for open female candidates have to be filled from amongst the open female candidates. Female candidates from other vertical reservation category are not eligible to be counted as open females. If adequate number of eligible candidates from female open category or any other horizontal reservation category are not available, those posts would have to be transferred to open-general category and not to female candidates from other social reservation category. Open general category is open to all candidates regardless of social reservation but the same principle does not apply to horizontal reservation. The Tribunal held that the petitioner could not get selected from open female category as she was eligible to compete only from OBC female category or as a general candidate without any consideration of reservation.

5. Learned Counsel for the petitioner invited our attention to the decisions of this Court in the case of

I) Kanchan Vishwanath Jagtap Vs. Maharashtra Administrative Tribunal, Nagpur and ors. 2016(1) Mh.L.J. 934 and in case of

II) Asha Ramnath Gholap Vs. President, District Selection Committee/Collector, Beed and ors. 2016(3) ABR 376.

which lays down the principle that if Scheduled Caste candidates get selected in open competition on basis of their own merit, they will not be counted against quota reserved for Scheduled Castes. It is further held that meritorious candidates in women category belonging to reserved category cannot be denied benefit of their meritorious position. Learned AGP supports the order passed by the Tribunal.

6. We are of the view that there is some substance in the contention of learned Counsel for the petitioner that the decisions of this Court in the case of **Kanchan Vishwanath Jagtap** (*supra*) & in case of **Asha Ramnath Gholap** (*supra*)

referred to hereinabove will have some bearing on the facts of this case. However, decision of the Tribunal is rendered prior in point of time to these decisions of this Court. In the interest of justice, we are therefore of the opinion that the matter needs to be remitted back to the Tribunal for considering the matter afresh in the light of the decisions rendered by this Court in the case of **Kanchan Vishwanath Jagtap** (*supra*) & in case of **Asha Ramnath Gholap** (*supra*). Hence, the following order.

ORDER

- i) Impugned order dated 19/03/2014 in OA 1100/2012 passed by the Tribunal is quashed and set aside.
- ii) The matter is remitted back to the Tribunal for deciding OA afresh on its own merits without being influenced by any of the observations made by us hereinabove.
- iii) We may not be understood to have expressed any opinion on merits of the controversy.
- iv) The Tribunal is requested to decide the OA as expeditiously as possible and preferably within a period of 6 months from today.

v) No order as to costs.

7. Writ Petition is disposed of in the above terms.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)