

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION (CAO) NO.1797/2017
IN
MISC. CIVIL APPLICATION (REVIEW) ST. NO.22265/2017
IN
WRIT PETITION NO.4607/2017 (D)

The Maharashtra Public Service Commission, through its Secretary,
Mumbai - 400 021

...Versus...

Dr. Rajeshree d/o Digambarrao Raut and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

S/Shri Abhay Sambre & M.B. Kolpe, Counsel for applicant
Shri Gawande, Counsel h/f Shri V.A. Kothale, Counsel for respondent no.1
Shri A.M. Joshi, AGP for respondent no.2

**CORAM : SMT. VASANTI A NAIK AND
ARUN D. UPADHYE, JJ.**

DATE : 09.01.2018

Heard.

The civil application is allowed. The delay is
condoned. The civil application is disposed of accordingly.

MISC. CIVIL APPLICATION (REVIEW) ST. NO.22265/2017

Heard.

No reason whatsoever for seeking a review of the
order dated 26/7/2017 in Writ Petition No.4607/2017 is made
out. Since some of the posts that were advertised remained

vacant, without disturbing the appointments that were made by the Maharashtra Public Service Commission (MPSC), the Maharashtra Administrative Tribunal and this Court had directed the MPSC to appoint the respondent no.1 on the post of Associate Professor in Electronics and Communications as she was the most meritorious female candidate.

Admittedly, one out of the eight posts of Associate Professors was earmarked for the open – female category. Admittedly, the respondent no.1, who had applied from the Other Backward Classes category is a woman and she has secured the highest marks from amongst all the women candidates. The criterion of experience for the open – female candidates is nine years and eight months. Admittedly, the respondent no.1 fulfills the criterion of experience as she had the experience of ten years and eight months on the date of making of the application. Mohini Shripat Prabhakar, who was the respondent no.3 to Original Application No.770/2015 is appointed by the MPSC on the post earmarked for the open-female category. Mohini Prabhakar does not fulfill the experience criterion for open – general category as the criteria for open-general category is eleven years and ten months. However, Mohini Prabhakar fulfills the experience criteria for the open-female category as the criteria of experience for open-female category is nine years and eight months. Both Mohini Prabhakar and the respondent no.1 fulfill the criteria of experience for open female category. The MPSC, however, did not consider the claim of the respondent no.1 for open-female category as she had applied for a post reserved for the Other Backward Classes. Admittedly, the respondent no.1 has secured 65 marks and Mohini Prabhakar has secured 53 marks,

that are lesser than the marks secured by the respondent no.1. Only because Mohini Prabhakar had applied from open – female category and the respondent no.1 had applied from Other Backward Classes category, the MPSC did not consider the candidature of the respondent no.1 for the post meant for the open- female category. This is clearly in violation of the directives issued by the Hon'ble Supreme Court in the judgment in the case of ***Rajesh Kumar Daria...Versus...Rajasthan Public Service Commission and others***, reported in ***(2007) 8 Supreme Court Cases 785***. It is clearly laid down by the Hon'ble Supreme Court in the said judgment that when a particular number of posts or seats are earmarked for open female category, it would be necessary to prepare a merit list of all women that had applied for the post and select the woman who has secured the highest number of marks for appointment, if only one post is to be filled. If more than one posts are required to be filled, the women that possess the second highest marks, the third highest marks and so on in succession would be entitled to be appointed on the posts earmarked for open female category. Merely because a woman who belongs to the Scheduled Castes or Scheduled Tribes or the Other Backward Classes has applied on the post reserved for those castes and tribes, their merit cannot be given a go-bye while making the appointment to the post of open-female category. If a woman belonging to a reserved category secures more marks than the woman belonging to the open category, the woman belonging to the reserved category would be entitled to be considered for appointment on the post meant for the open-female category. Though this Court has time and again held to the aforesaid effect in several petitions in which the petitioner –

MPSC is a party, successive writ petitions and review applications are filed. In the circumstances of the case, since the Maharashtra Administrative Tribunal and this Court did not wish to interfere with the appointment of Mohini Prabhakar as more than a couple of posts were vacant, we had directed that the respondent no.1 be appointed on one of the vacant posts as she was the most meritorious candidate from amongst the women candidates and was entitled to be appointed on the post earmarked for the open-female category. This would be an additional reason for the dismissal of the review application.

In the circumstances of the case, we dismiss the review application with costs.

JUDGE

JUDGE

Wadkar