

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

WRIT PETITION NO. 3461 OF 2017

Smt. Shubhangi Digambar Chavhan,
Age : 30 years, Occup : Nil,
R/o : 2, Dipak Nagar, Dheku Road,
Amalner, Dist. Jalgaon

... PETITIONER

VERSUS

1. The State of Maharashtra
(Through Principal Secretary,
Higher & Technical Education Department,
Mantralaya, Mumbai – 32.
2. North Maharashtra University,
Jalgaon, Through its-
Registrar, Jalgaon.
3. The Joint Director of Higher &
Technical Education, Jalgaon
District Jalgaon.
4. Khandesh Education Society,
Amalner, Tq. Amalner,
District Jalgaon
Through its Chairmanship
5. The Principal,
Pratap College, Amalner,
Tq. Amalner, Dist. Jalgaon.
6. The Director (Higher Education),
Maharashtra State, Pune.
7. Prof. Miss Bhagyashri S. Jadhav,
Age : 28 years, Occ. Service.
8. Prof. Vijay Pundalik Salunke,
Age : 35 years, Occ. Service.
9. Prof. Awit Reghunath Patil,
Age : 27 years, Occ. Service.

10. Prof. Kiran Nilkanth Suryawanshi,
Age : 31 years, Occ. Service.
11. Prof. Yogesh Devidas Patil,
Age : 31 years, Occ. Service.
12. Prof. Kiran Pandit Bhagwat,
Age : 29 years, Occ. Service.
13. Prof. Dr. Ramesh Namdeo Mane,
Age : 37 years, Occ. Service.
14. Prof. Dnyaneshwar Mohan Marathe,
Age : 33 years, Occ. Service.
15. Prof. Mrs. Pushpa Madhavrao Patil,
Age : 35 years, Occ. Service.
16. Prof. Vilas Jaywant Gavit,
Age : 31 years, Occ. Service.
17. Prof. Dnyanoba Dattatray Kamble,
Age : 39 years, Occ. Service.
18. Prof. Anil Sadashiv Zalake,
Age : 26 years, Occ. Service.
19. Prof. Rohan Namdev Gaikwad,
Age : 25 years, Occ. Service.
20. Prof. Nitesh Sevakram Koche,
Age : 31 years, Occ. Service.

Nos. 7 to 20 R/o. C/o. Pratap College,
Amalner, Tq. Amalner, District Jalgaon

... RESPONDENTS

Mr. Uday S. Malte, Advocate for the petitioner
Mr. A. V. Deshmukh, AGP for respondents No. 1, 3 and 6
Mr. Y. B. Bolkar h/f Mr. A. B. Girase, Advocate for respondent No.2
Mr. M. N. Nawandar, Advocate for respondents No. 4 and 5
Mr. M. S. Kulkarni, Advocate for respondents No. 7 to 20.

CORAM : SUNIL P. DESHMUKH &
S.M.GAVHANE, JJ.

DATED : 01-10-2019

ORAL JUDGMENT (PER :- SUNIL P. DESHMUKH, J.)

1. Rule. Rule made returnable forthwith, heard finally with the consent of the parties.

2. Advertisement inviting applications for appointments 15 posts of Assistant Professors in various subjects, had been published on 21-07-2016 by respondents No. 4 and 5, inter alia containing four posts for Marathi subject, from said four posts one had been reserved for scheduled caste category and one for scheduled tribe. Rest of the two were for open category. The advertisement had also referred to 30% reservation for women in the posts advertised.

3. Petitioner, it appears, pursuant to said advertisement who is possessed of qualifications B.A., B.Ed., M.A., Ph.D, considered herself eligible to be appointed as Assistant Professor in Marathi subject and being women applied for appointment.

4. It appears in the selection process petitioner had not been recommended or selected while other candidates were recommended in order of their merit and were selected and appointed.

5. It is the contention of petitioner that government resolutions dated 01-08-1997 and 16-03-1999 ordains 30% reservation for women. Resolutions dated 24-04-1995, 22-01-2014 and 24-08-2015 provide for

subject-wise reservation for women in aided and non aided institutions and in universities. According to petitioner, from the 15 posts advertised only two posts have been filled in from women category and as such 30% reservation for women as is incumbent under policy of government in making appointments is not maintained. Two posts do not comprise 30% reservation referred to in the advertisement. There is a breach of the decisions of the government under aforesaid resolutions.

6. Learned counsel for petitioner submits the respondents did not follow the policies and procedure under the resolutions issued from time to time. While 30% reservation for women ought to have been observed, yet out of 15 posts under the advertisement, at least four woman persons were imperative to be appointed, pursuant to horizontal reservation policy of the State. Yet, only two women were selected. Though petitioner being eligible and qualified women candidate and an experienced person and being woman and available for being appointed as Assistant Professor in Marathi, the inaction of respondents to appoint her and to discard her candidature is malafide and arbitrary. The appointment process had not been transparent and is imbued with favoritism and partiality.

7. No proper selection procedure has taken place while petitioner, an experienced person ought to have been selected as a women candidate as Assistant Professor in Marathi. He submits despite requests, requisite information had not been forwarded or rather had been kept back.

8. Learned counsel submits that decision of this court in *Kanchan Vishwanath Jagtap Versus Maharashtra Administrative Tribunal, Nagpur and others, 2015 DGLS (Bom) 474* would show that woman category reservation is a horizontal reservation. The case of the *Asha D/o Ramnath Gholap Versus The President, District Selection Committee and others in Writ Petition No. 3929 of 2015 Bombay High Court at Aurangabad* is pressed into service to emphasise that there is no carrying forward of vacancies reserved for horizontal reservation to mean that it had been incumbent to fill up four posts under advertisement from women category and had such exercise being done, petitioner would have had a good chance of getting recommended. *Shiv Prasad Versus Government of India & Ors. 2008 DGLS (SC) 612 (Supreme Court)* has been referred to impress upon that reservation for women candidates cannot be held invalid or in excess of permissible quota. It is a case wherein the court had observed that while the U.P. Government had provided 20% reservation for women and the policy had been accepted by university, selection and appointment of women was justifiable.

9. On the other hand, Mr. Nawandar, learned counsel for respondents No. 4 and 5 draws our attention to their affidavit-in-reply and submits, it reveals that by following due procedure of selection through duly constituted committee, on recommendations, candidates were selected and appointed. Petitioner's name did not figure in the recommended

candidates and thus, she had not been in the zone of consideration at all. In such a case while in the competition she does not stand in the order of merit and had not been recommended, the grievance being made would be untenable.

10. Learned counsel Mr. Nawandar particularly points out that in the recommended candidates names of two women had figured in for Marathi subject. Yet the persons who stood higher in merit, who were men, were selected and appointed and the recommended women had not made any grievance. He further goes on to submit that while 31 posts in the college were to be filled in, as per the government instructions were required to be restricted to 50% and respondents No. 4 and 5 could not advertise all the 31 posts. As such advertisement had been published for 15 posts. In such a case, 30% reservation will have to be looked at accordingly and as such there would still be an opportunity to observe the reservation while next recruitment process would be undertaken. No grievance as such can be made on the ground of reservation for women by petitioner. The petitioner's case does not stand, on merit being not recommended and being not a selected candidate. Her grievance is not legitimate and is liable to be snapped at the threshold. He purports to draw attention to that while *Kanchan Jagtap* (Supra) is being referred to, the same would show that it is the merit which would get prominence in making selection as has been observed in 9th paragraph of the decision. On that ground as well the petition does not warrant consideration.

11. Learned counsel for the university Mr. Bolkar from the record of selection process in respect of Marathi language candidates, points out that in the list of recommendations of selected candidates, petitioner's name has not figured and that the same contains two women at serial numbers 4 and 6.

12. Learned counsel Mr. Kulkarni appearing for selected candidates contends that there is no substance in the case of petitioner that there are malafides in selection as it stands revealed that a proper selection procedure has been followed and while the petitioner did not stand in merit, malafides are being imputed. Only vague suggestions have been given with regard to malafides that there is partiality and favoritism and the same is arbitrary. It is not shown as to how the selection of candidates is defective in any way. No material has been produced in support of the allegations of malafides, partiality, favoritism or arbitrariness.

13. Having heard the learned counsel for the petitioner as well the respondents, one aspect clearly emerges that the petitioner had participated pursuant to the advertisement in the selection process and that duly constituted selection committee had not recommended petitioner's name. She was not a selected candidate. In such a case, it is difficult to consider that a grievance being made by her with regard to non observance of 30% reservation for women would be tenable particularly in the light of

that duly constituted selection committee has recommended two women candidates in order of their merit for appointment to the post of Associate Professor in Marathi pursuant to the advertisement. Said women candidates have not made any grievance in respect of non observance of reservation for women. In such a case going by the observations as appearing in paragraph No. 9 in *Kanchan Vishwanath Jagtap* (Supra) reading thus;

“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 complete for non-reserved 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 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- *Indira Sawhney* (Supra), *R.K. Sabharwal v. State of Punjab* (1995(2) SCC 745), *Union of India V. Virpal Singh Chauhan* (1995)(6) SCC 684 and *Ritesh R. Sah v. 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.”

as well as observations of the Supreme Court in the case of *Jitendra Kumar Singh & Anr* (Supra) of paragraphs No. 58, 59 and 60 reading thus;

“58. As noticed earlier, Mr. L.N. Rao and Dr. Dhawan had submitted that the vacancies reserved for women and for the outstanding sports person had to be filled by applying horizontal reservation. No carrying forward of the vacancies was permissible.

59. We have considered the submissions made by the learned counsel. It is accepted by all the learned counsel for the parties that these vacancies had to be filled by applying the principle of horizontal reservation. This was also accepted by the learned Single Judge as well as by the Division Bench. This in consonance with the law laid down by this Court in the case of *Indra Sawhney* case (*supra*):-

"812. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture; all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations - what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure."

60. The aforesaid principle of law has been incorporated in the instructions dated 26.02.1999. Paragraphs 2 and 4 of the aforesaid instructions which are relevant are hereunder:-

"2. The reservation will be horizontal in nature i.e. to say that category for which a woman has been selected under the aforesaid reservation policy for posts for women in Public Services and on the posts meant for direct recruitment under State Government, shall be adjusted in the same category only;

4. If a suitable women candidate is not available for the post reserved for women in Public Services and on the posts meant for direct

recruitment under State Government, then such a post shall be filled up from amongst a suitable male candidate and such a post shall not be carried forward for future;"

14. Besides, the concerned respondent in its affidavit-in-reply has made it clear that if petitioner stands in competition in next recruitment process it is not the case that her candidature will not be considered. It has been referred to that the position with regard to recruitment has been clarified by respondents No. 4 and 5 in paragraph No. 8 of affidavit-in-reply.

15. Petitioner is not likely to be benefitted by giving any indulgence and we only refrain from academic discussion. Writ petition, therefore, is not entertained and is dismissed.

16. Rule stands discharged.

[S.M. GAVHANE, J.]

[SUNIL P. DESHMUKH, J.]