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

WRIT PETITION NO. 2002 OF 2019

Lata Shyamrao Sangolkar	}	Petitioner
Versus		
The State of Maharashtra	}	
and Ors.	}	Respondents

Mr.Laxman S. Deshmukh for the petitioner.

Mr. A.A.Kumbhakoni-Advocate General with Mr.
P.P.Kakade-Government Pleader and Mr.M.M.
Pable-AGP for State.

**CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE :- MARCH 4, 2021

PC :-

1. A judgment and order dated 23rd January 2019 passed by the Maharashtra Administrative Tribunal, Mumbai (hereafter "the Tribunal", for short) dismissing Original Application No. 1100 of 2012 is under challenge in this writ petition at the instance of the unsuccessful original applicant (hereafter "the petitioner" for short).

2. The petitioner is 'a woman' belonging to "Other Backward Class" (hereafter "OBC", for short) category. Her grievance is that though in the selection process for recruitment as "Jailor-Grade II" she secured quite a high score and resultantly was placed in the overall merit position higher

than women candidates from the 'unreserved' or 'open' category, she has not been appointed; whereas, women candidates belonging to 'open' category (the respondents 2 to 7) have been appointed, though they scored lesser marks than the petitioner and thereby were lower in the order of merit than the petitioner.

3. On 18th February 2009, an advertisement was published to fill in vacancies on the post of "Jailor-Grade II". Number of vacancies advertised was 100, out of which 14 vacancies were reserved for the OBC category. Considering the total vacancies reserved for various categories, 52 vacancies remained for the 'unreserved' or 'open' category.

4. Horizontal reservation for women candidates was provided, without compartmentalization and as and by way of overall reservations, to the extent of 30%. Resultantly, 4 vacancies out of 14 vacancies, stood reserved for women belonging to the OBC category and 16 vacancies remained for women belonging to the 'unreserved' or 'open' category.

5. The selection process comprised of total 200 marks, which were divided as under:

- (a)** 100 marks - for written examination
- (b)** 80 marks – for physical
- (c)** 20 marks – for interview

200 marks Total

6. On 9th November 2012, final select list was prepared and it was published on 19th November 2012.

7. The petitioner secured a total of 112.75 marks out of 200 marks and was placed at Sl. No. 206 in the overall merit list; whereas, the respondents 2 to 7 secured marks in the range of 95 to 110 out of 200 marks and were placed at Sl. No. 213 onwards in the overall merit list. Since the 4 vacancies reserved for women belonging to the OBC category were filled up by offering appointments to women candidates who scored more marks than the petitioner, there was no berth left for her appointment in the OBC category.

8. The controversy that we are tasked to resolve is, whether the petitioner belonging to the OBC category and being 'a woman' was entitled to be accommodated in any of the 16 vacancies for women belonging to the 'unreserved' or 'open' category on merit, having failed to secure a berth in any of the 4 vacancies reserved for OBC category (women). In other words, whether by dint of her meritorious performance, the petitioner ought to have been extended the benefit of appointment in the 'unreserved' or 'open' category ahead of the respondents 2 to 7.

9. Although on the last occasion, i.e. 18th February 2021, initially we were disinclined to entertain the writ petition, Mr. Deshmukh, learned advocate for the petitioner, persevered in his efforts to impress us that the contentions raised on behalf of the petitioner were indeed sound and that she was entitled

to relief in terms of the decision of the Supreme Court of recent origin in **Saurav Yadav & Ors. Vs. State of Uttar Pradesh & Ors.**, reported in **2020 SCC OnLine SC 1034**.

10. Law is well settled that if a candidate belonging to a reserved category is entitled to be selected on the basis of his own merit, his selection cannot be counted against the quota reserved for the category for vertical reservation to which he belongs. The question as to whether such legal position would also apply to individuals selected on the basis of their own merit but belonging to reserved categories for which horizontal reservation has been provided, came up for consideration before the Supreme Court in **Saurav Yadav** (supra) and the question was answered in the affirmative.

11. Looking into the decision in **Saurav Yadav** (supra), we were of the *prima facie* opinion that the impugned judgment and order of the Tribunal may not be sustainable. Additionally, on perusal of the decision in **Saurav Yadav** (supra), we had found that the Supreme Court had considered the decision of a coordinate bench of this Court in **Charushila vs. State of Maharashtra**, reported in **2019 SCC OnLine Bom 1519** where the submissions of Mr. Kumbhakoni, learned Advocate General for the State of Maharashtra were recorded. It was observed by the Supreme Court that the arguments advanced by Mr. Kumbhakoni were correct. Such arguments of Mr. Kumbhakoni, when juxtaposed with the contents of the reply affidavit filed by the State, appeared to us to be at variance. We had thus expressed that Mr. Kumbhakoni may appear on

behalf of the State and assist us in effectively deciding the issue raised in the writ petition.

12. Today, we have heard Mr. Kumbhakoni. He has, in his usual fairness, submitted that the contents of the reply affidavit filed by the State does not reflect the correct position of law and that the petitioner had been illegally denied of appointment by not accommodating her in any of the 'unreserved' or 'open' category vacancies for women, regard being had to the fact that belonging to the OBC category and securing more marks than the candidates who have been appointed securing lesser marks, i.e., the respondents 2 to 7, she ought to have been offered appointment in preference to them.

13. In view of the aforesaid submission of Mr. Kumbhakoni, we see no reason to sustain the impugned judgment and order. The same stands set aside. The writ petition stands allowed with the following directions: -

- (a) The petitioner shall be entitled to appointment as Jailor – Grade II in the post kept vacant pursuant to the interim order passed on this writ petition on 21st February 2019, or any other vacant post, immediately but not later than a fortnight from date upon compliance of all formalities;
- (b) If the petitioner successfully completes the period of probation, she shall be confirmed in service;

- (c) Although the petitioner's appointment shall be prospective, she shall have the benefit of notional appointment on and from the date whosoever amongst the respondents 2 to 7 was appointed first, and such notional appointment shall be counted for the purpose of the petitioner's retiral benefits, should she be confirmed in service; and
- (d) Apart from retiral benefits on the basis of the aforesaid clause, the petitioner shall not be entitled to any other benefits, including seniority.

14. There shall be no order as to costs.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)

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