

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

923 WRIT PETITION NO.4103 OF 2020

BHAGYASHRI ANGAD PHAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner: Mr. Munde Sandeep D.
AGP for Respondent No. 1: Mr. P. S. Patil
Advocate for Respondent No. 2: Mr. Anil M. Gaikwad
Advocate for Respondent No. 3: Mr. P. K. Joshi
Advocate for Respondent No. 4:
Mr. N. P. Patil-Jamalpurkar

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**CORAM: S. V. GANGAPURWALA &
S. G. DIGE, JJ.**

DATE: 04th JANUARY, 2022

PER COURT:

1. The Petitioner had pursuant to the Advertisement issued by the Respondent applied for the post of Technician-III from NT-D (Female) Category from 50% reservation provided for Pragat Kushal Prashikshnarthi (Apprentice). The Petitioner has Apprentice Certificate issued by the Competent Authority. Two posts were reserved for NT-D (Female) Category. Only 1 post is filled in. The Petitioner seeks directions to appoint her on the post meant for Female Category. The

present Respondent No. 4 a male person is appointed on the said post. The same is also assailed in the present Petition.

2. Mr. Munde, learned Counsel for the Petitioner strenuously contends that the Petitioner had faced the Written Examination. The Petitioner secured 22 marks and 5 extra marks were awarded as per Clause 3 of the Selection Process as detailed in the Advertisement. As such, the Petitioner secured 27 marks. The learned Counsel submits that the Advertisement nowhere provides that a candidate seeking benefit of reservation should obtain minimum 30 marks. As the Advertisement did not prescribe the cut off marks it was erroneous on the part of the Respondent to reject the candidature of the Petitioner for selection on the ground that the Petitioner has secured less than 30 marks and 30 marks is cut off marks. The terms and conditions of the Advertisement are binding on all the parties. AS the conditions in the Advertisement did not prescribe for the cut off marks, the Respondent cannot now after the exams

are conducted rely upon the same. The learned Counsel for the Petitioner relies upon the following Judgments of the Apex Court so also the Orders passed by the Division Bench of this Court-

[I] Bedanga Talukdar Vs. Saifudullah Khan and others reported in AIR 2012 SC 1803

[II] Sonia Vs. Oriental Insurance Co. Ltd. and others reported in AIR 2007 SC 2932

[III] Hemani Malhotra Vs. High Court of Delhi, Vineeta Goyal Vs. High Court of Delhi reported in AIR 2008 SC 2103

[IV] Sonali Shahadeo Avhad Vs. The State of Maharashtra and another dated 27.02.2020

3. Mr. Gaikwad, learned Counsel for the Respondent Corporation submits that Administrative Circular is issued on 23.01.2018, wherein for the post to be filled in by nomination a person seeking benefit of reservation shall obtain minimum 30 marks and a person from General Category shall obtain 40 marks. The same is the benchmark. The Petitioner has obtained only 27 marks, as such, is not considered in view of the Administrative Circular and which is now a part of Service Regulations.

4. The Advertisement in question had not laid down cut off marks. The Petitioner in all has secured 27 marks. As per the Administrative Circular dated 23.01.2018, a candidate to be considered from reserved category should possess minimum 30 marks. The said Circular is also uploaded on the website of the Respondent Corporation. The terms and conditions of the Advertisement cannot be contrary to the Service Regulations. It is not a case that after the Advertisement is issued and the participants had filled in the form the criteria has undergone change. The criteria of cut off marks is applicable prior to the Advertisement in question. It is not that after the game is played the Rules are changed. Only the Advertisement did not specify the cut Off marks as per the Administrative Circular holding the field. Further, it is also made clear in the Important Directions of the Advertisement that further information with regard to the Advertisement in detail is provided on the website of Respondent

Corporation. The Administrative Circular dated 23.01.2018 also finds place in the website of the Corporation.

5. We asked the learned Counsel for the Petitioner and Respondent that whether any candidate possessing marks less than 30 is appointed from the Reserved Category, the learned Counsel accedes that no candidate less than 30 marks has been selected and appointed on the said post.

6. In light of the above, no case for interference is made out.

7. The Writ Petition stands disposed of. No costs.

[S. G. DIGE, J.]

[S. V. GANGAPURWALA, J.]

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