AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3574 OF 2021

Nayna Rajaram Valkunde …Petitioner
V/s.
The State of Maharashtra & Ors. …Respondents

Ms. Madhavi Ayyappan i/by Talekar & Associates for the petitioner.

Mr. B. V. Samant, AGP for respondent no. 1/State.

Mr. Asif I. Patel for respondent no. 2/MPSC.

CORAM: DIPANKAR DATTA, CJ &
V. G. BISHT, J.

DATE: MAY 4, 2022

P.C.:

1. Dismissal of the petitioner's original application (OA No. 389 of 2018) by the Maharashtra Administrative Tribunal, Mumbai (hereafter "the Tribunal", for short) by its order dated 8th May 2019 has given rise to this writ petition.

2. The petitioner was an aspirant for the post of Sales Tax Inspector. Although it is submitted on behalf of the petitioner by Ms. Ayyappan, learned advocate that the petitioner had applied for consideration in the open (female) category, she was considered as a reserved candidate belonging to NT(C). Having scored 125 marks, the petitioner could not be accommodated on any post reserved for NT(C) candidates. However, the last ranked open (female) category candidate, who obtained 123 marks, was appointed on a post for the open (female) category candidates.

3. We have ascertained from Mr. B. V. Samant, learned AGP for the respondents that recruitment to 251 posts was sought to be made by the process in question and that all such posts having been filled up, no post is presently available for accommodating the petitioner.

4. We have perused the judgment and order dated 4th March 2021 passed by a coordinate Bench of this Court in Civil Writ Petition No. 2002 of 2019 (**Lata Shyamrao Sangolkar v The State of Maharashtra & Ors.**) wherein the decision of the Supreme Court reported in (2021) 4 SCC 542 (**Saurav Yadav & Ors. Vs. The State of Uttar Pradesh & Ors.**) was considered and relief granted to the petitioner considering the factual position that had such petitioner been considered as an open female category candidate and not a reserved candidate, she could have been appointed on a post in the open female category.

5. Mr. Samant does not dispute that the issue raised in this writ petition is squarely covered by the decision in **Lata Shyamrao Sangolkar**.

6. In that view of the matter, the impugned judgment and order of the Tribunal stands quashed and set aside. The writ petition is allowed with the following directions:

a) The petitioner shall be entitled to appointment on any vacant post of Sales Tax Inspector qua the selection process in which the petitioner had participated; and if no post is vacant, she shall be accommodated in any other vacant post of Sales Tax Inspector, 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 respondent nos. 3 to 18 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 apart from retiral benefits on the basis of the aforesaid clause, the petitioner shall not be entitled to any other benefits, including seniority.

7. There shall be no order as to costs.

(V. G. BISHT, J.) **(CHIEF JUSTICE)**

PRAVIN DASHARATH PANDIT

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