

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4945 OF 2018

Smita D/o. Mahendra Jadhav,
Age 27 years, Occu. Nil.,
R/o. Aman Patil Road, Dhor Galli,
Maliwada, Ahmednagar,
Tq. & Dist. Ahmednagar.

...Petitioner.

Vs.

1. The Maharashtra State Road
Transport Corporation,
Central Building, Dr. Anandrao Nair
Marg, Mumbai,
Through its General Manager (KVAS)

2. The Divisional Controller,
Maharashtra State Road Transport
Corporation Division, Ahmednagar,
Tal. & Dist. Ahmednagar

...Respondents.

Mr. S.S. Thombre, Advocate for the petitioner.

Mr. Bhausahab S. Deshmukh, Advocate for respondent Nos. 1 & 2.

Mrs. R.P. Gaur, AGP for State.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ.
& ARUN R. PEDNEKER, J.**

DATE : 13th OCTOBER, 2023.

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of parties heard finally.

2. By the present writ petition, the petitioner is seeking direction to the respondent No. 1 – Maharashtra State Road Transport Corporation (for brevity hereinafter referred as 'M.S.R.T.C.') to

consider the petitioner's claim for giving an appointment on the post of Clerk-Typist (Junior) from the open (female) category.

3. While issuing notice, this Court passed following order on 23.05.2018 :-

" Heard.

2. Issue notice to the respondents, returnable on 13.06.2018.

3. Considering the facts and circumstances there shall be interim relief in the form of prayer clause 'C' and 'D' in view of the law laid down by the Division Bench of this Court in the case of Anil Pandurang Shep V/s. State of Maharashtra (Writ Petition No. 10396 of 2016) decided on 08.12.2016 and Sneha Gajanarao Farkade V/s. State of Maharashtra & Ors. (Writ Petition No. 2670 of 2017) decided on 11.09.2017. Parties to act upon authenticated copy of this order."

4. Prayer clause 'C' and 'D' in this petitioner are as under :-

"C) Pending hearing and final disposal of the writ petition, the respondents may kindly be restrained from issuing the appointment orders in favour of the candidates who are having less marks than the petitioner and for that purpose issue necessary orders;

D) Pending hearing and disposal of the writ petition, the respondents may kindly be directed not to fill one post of the Clerk-Typist (Junior) from the open (female) category and for that purpose issue necessary orders;"

5. The case of the petitioner is that respondent No. 1 - M.S.R.T.C. published an advertisement No. 2/17 for filling up various posts in 10 divisions. For Ahmednagar division, total 111 posts were advertised and there were no posts reserved for NT (D) category.

Forty nine posts were shown for general category and out of which 15 posts were shown for general (female) category.

6. As there were no posts reserved for NT (D) category, the petitioner applied from the general (female) category. The petitioner mentioned her caste and category while filling her application form.

7. The petitioner's application was accepted and admit card was issued for the examination which was to be held on 9.11.2017. Since there was no post reserved for NT (D) category, the petitioner's candidature was considered from the open category. The petitioner secured 82.61 marks and her name was shown at Sr. No. 2594 of the general select list published by respondent No. 1 – M.S.R.T.C. on 28.3.2018. In the select list published for the post of Clerk-Typist (Junior) on 9.4.2018, wherein though the petitioner had secured 82.61 marks, she was not shown in the final select list, but the candidates having marks lesser than the petitioner were shown in the select list at Sr. Nos. 31 to 36.

8. Mr. S.S. Thombre, learned counsel for the petitioner submits that the petitioner's claim ought to have been considered from open (female) category as she secured higher marks than the candidates at Sr. Nos. 31 to 36. The petitioner made various representations to the authorities. However, due to inaction of the respondents to appoint the petitioner on the post of Clerk-Typist (Junior), the petitioner has filed the present writ petition.

9. The learned counsel for the petitioner submits that although petitioner belongs from NT (D) category, she had applied from the open (female) category and that she is entitled to be considered for the appointment in the general (female) category. The learned counsel has relied on the judgment of the Hon'ble Supreme Court in the case of **Saurav Yadav and Ors. Vs. State of Uttar Pradesh and Ors. reported in AIR 2021 SC 233** to contend that the Hon'ble Supreme Court has held that there is no special reservation for open category and that the candidates belonging to reserved category can compete from open category. In view of the judgment cited supra, the learned counsel for the petitioner submits that petitioner is entitled to be selected from open (female) category.

10. Per contra, Mr. B.S. Deshmukh, learned counsel appearing for respondent Nos. 1 and 2 submits that the petitioner belongs to the reserved category and that law as regards horizontal reservation is recently settled in terms of judgment of Hon'ble Supreme Court in the case of **Saurav Yadav and Ors. Vs. State of Uttar Pradesh and Ors.** cited supra.

11. In view of the judgment passed by the Hon'ble Supreme Court in the case of **Saurav Yadav and Ors. Vs. State of Uttar Pradesh and Ors.**, cited supra wherein the Hon'ble Supreme Court has held that there is no reservation for the open category and that all candidates including the reserved category candidates are entitled

to be considered from open category on merit for horizontal reservation, we are of the opinion that the claim of the petitioner cannot be denied in the open category (female) on the ground that she belongs to NT (D) category.

12. Since this Court, by interim order had directed not to fill one post of the Clerk-Typist (Junior) from the open (female) category, the respondents are directed to appoint the petitioner on the post of Clerk-Typist (Junior) from open (female) category in the respondent No. 1 – M.S.R.T.C. from the date on which other female candidates were appointed for Ahmednagar Division from the same select list within four weeks from the date of receipt of this order, if she fulfills all other requisites.

13. The petitioner shall be eligible for all service benefits at par with those appointed earlier pursuant to the same recruitment process.

14. Rule is made absolute in above terms.

(ARUN R. PEDNEKER, J.)

(CHIEF JUSTICE)

ssc/