

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

WRIT PETITION NO.8236 OF 2023

Dr. Manoj Narsi Patil

....Petitioner

Versus

The State of Maharashtra & Ors.

....Respondents

Appearances :

Mr. Arvind G. Ambetkar for the Petitioner.

Smt. R. A. Salunkhe, AGP for State.

**CORAM : DHIRAJ SINGH THAKUR &
SANDEEP V. MARNE, JJ.**

DATE : 04 JULY 2023.

P. C. :

Petitioner has filed the present petition challenging order dated 20 June 2023 passed by the Maharashtra Administrative Tribunal (**Tribunal**) in Original Application No.568 of 2022.

2. Original Application No.568 was filed by 3 Original Applicants. Petitioner was Applicant No.3 in that Original Application. It appears that grievance of applicant No.1 (K. N. Dombale) was altogether different, as he was aggrieved by non-grant of reservation for promotion to the post of Deputy Education Officer. As against this, applicant Nos.2 and 3 in the Original

Application were aggrieved by their declaration as ineligible for participation in the further process of selection. The Tribunal has noted this fact in paragraph No.2 of it's order which reads thus :

“2. Ld. Advocate for the applicants submits that Applicant No.1 who is working as Assistant Teacher in District Technical Services (DTS) is aspiring to be Dy. Education Officer and appeared for the examination of 2017. The cut off for DTS is 150 and he has secured 142 marks. Therefore, his name is not included in the list of eligible candidates. In this OA the cause of action of applicant no.1 is different. The Ld. Advocate for the applicants should have filed separate OA for this applicant no.1. The cause of action for remaining respondents no.2 & 3 is different as they have secured more marks than the cut off but they are not found eligible on different ground. Ld. Advocate submits that applicant no.1 has applied under NT-C quota and in the advertisement 3 posts are reserved for NT-C.”

(respondents no. 2 & 3 appears to be a mistake, which should read as Applicant Nos. 2 & 3)

3. After noting that the grievance of Applicant No.1 was distinct than that of Applicant Nos.2 and 3, the Tribunal proceeded to decide the grievance of applicant No.1 in Paragraph Nos. 3 to 6 of the order, which reads thus.

“3. In continuation of earlier order dated 19.6.2023, Ld. Advocate for the applicants prays for reservation in promotion. He submits that the Government has made policy that there will be reservation while appointment in this examination Ld. PO pointed out that by Circular dated 16.10.2018 Government has taken policy decision not to give reservation in promotion. We make it clear that candidates from feeder cadre of DTS and MES are allowed to appear for the examination if they hold necessary eligibility. Thus, we hold that these are promotional post and as per this circular the government has taken policy decision not to provide reservation in promotions. Hence, it is up to applicant no.1 to take necessary steps.

4. We also accept the submissions that policy decision on the point of reservation can be changed by the Government as per the decision given by the Hon'ble Supreme Court in view of the pending cases of reservation in promotion and also the judgment dated 4.8.2017 of the Hon'ble High Court in W.P. No.2997 of 2015 State of Maharashtra Vs. Vijay Ghogre.

5. It is necessary for the respondents to maintain separate quota for NT-C and therefore applicant's name is not included and hence respondents, as of today, have to follow the law laid down by the Hon'ble High Court which holds the field in the State of Maharashtra.

6. In view of the above, the prayer made in the OA cannot be entertained and hence, OA disposed off accordingly."

Thus, after noticing that Applicant Nos. 2 and 3 had a different cause of action than Applicant No.1 it appears that grievance of applicant Nos.2 and 3 has remained undecided.

4. Petitioner has filed the present petition challenging the order dated 20 June 2023 who was original Applicant No.3. Applicant No. 2 has chosen not to challenge the Tribunal's Order. It is Petitioner's grievance that he was allowed to participate in the selection process and has secured more than the cut-off marks. He is however declared ineligible on the ground that he is not covered by judgment and order dated 4 October 2018 passed by the Tribunal in Original Application No.634 of 2007.

5. Petitioner has been working as a Teacher in Primary School of Zilla Parishad. By letter dated 18 May 2017, he was directed by the State Government that the Assistant Teachers working in Zilla Parishad Schools cannot participate in selection for Limited Departmental Competitive Examination for promotion to the post of Deputy Education Officer. The said

decision was challenged by 11 teachers working in Zilla Parishad Schools before the Tribunal by filing Original Application No.643 of 2007. The Original Application was allowed with following directions.

- “(A) Impugned decision of M.P.S.C. in rejecting applicants’ candidature for recruitment furtherance to Advertisement No. 40/2017 is quashed and set aside.
- (B) [Primary Teachers who are serving in employment of Government of Maharashtra and]* whose qualification and eligibility corresponds concurs with Col. 4 of Appendix IV Part-I of M.Z.P (D.S.) R. Rules, 1967 too are declared to be eligible to apply along with Primary Teachers for the post of advertised through Adv. No. 402017.

**Replaced with the word ‘The Applicants’*

- (C) Result of written test undergone by applicants be declared and its validity shall be subject to applicants’ eligibility as is laid down by joint reading of M.Z.P. (D.S) R. Rules 1967 and the Deputy Education Officer in the Maharashtra Education Service, Group-B (Administrative Branch) (Gazetted) (Recruitment) Rules, 2016.
- (D) M.P.S.C. and State Government shall keep in mind M.Z.P. (D.S.) R. Rules 1967 referred to in foregoing para no 28, while scrutinizing and examining eligibility of applicants’ candidature.
- (E) Those applicants who withstand eligibility shall be permitted to pursue their candidature for recruitment subject matter.
- (F) Parties are directed to bear own costs.”

6. The Tribunal had earlier directed that all primary teachers serving in the employment of Government of Maharashtra were eligible to apply in pursuance of the advertisement No.40 of 2017. However, by order dated 9 April 2017, the judgment was corrected and the words ‘*Primary teachers who*

are serving in employment of Government of Maharashtra and' were replaced by the words '*The Applicants*'. It is Petitioner's grievance that he has been declared ineligible to participate in the process of selection, because his name did not figure in the cause title of Original Application No.634 of 2017. It is his contention that similarly situated candidates who are Applicants in Original Application No.634 of 2017 are held eligible to participate in the selection process.

7. It however appears that Petitioner erroneously filed a joint OA with Khandu Namu Dombale (Applicant No.1) who had an altogether different cause of action relating to reservation to NT category in promotion.

8. It appears that the Tribunal, after noticing that the original Applicant Nos.2 and 3 had different cause of action, has failed to adjudicate their grievances. The Tribunal has not granted liberty to Original Applicant Nos. 2 and 3 to file a separate Original Application in respect of their cause. Thus, without deciding grievance raised by Petitioner, the Original Application is disposed of. We are of the view that the grievance raised by the Petitioner is required to be considered and decided by the Tribunal. We could have remanded the Original Application to the Tribunal for deciding Petitioner's grievance. However considering the fact that the cause of action of Petitioner is entirely different than the one raised by Khandu Namu Dombale (Applicant No.1), it would be appropriate if Petitioner is permitted to file his own Original Application to redress his grievance before the Tribunal.

9. We accordingly proceed to pass following order.

- i) Judgment and order dated 26 June 2023 passed by the Tribunal in Original Application No.568 of 2022 shall be treated as if it was filed by Applicant No. 1 (Khandu Namu Dombale) alone.
- ii) Petitioner shall be entitled to institute his own Original Application in respect of his grievance declaring him ineligible to participate in further process of selection for promotion/appointment to the post of Dy. Education Officer.
- iii) Considering the fact that the interviews for effecting promotions to the post of Deputy Education Officer are slated to be held from 11 July 2023 onwards, the Tribunal may consider prayer for grant of interim order to decide whether Petitioner can appear for interview during pendency of the Original Application.

10. With the above directions, Writ Petition is disposed of.

SANDEEP V. MARNE, J.

DHIRAJ SINGH THAKUR, J.

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