

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3079 OF 2019

NAYANA KRUSHNARAO NANGARE,
[NAYANA NETAJI PATIL],
Aged 40 years, Occ. Service, C/o NV Patil,
2016, Ashtavinayak Colony, Vidya Nagar,
Karad, Dist Satara 415 125.

...Petitioner

~ VERSUS ~

- 1. THE STATE OF MAHARASHTRA,**
Through the Secretary,
School Education Department,
Mantralaya, Mumbai 400 032.
- 2. THE DEPUTY DIRECTOR OF**
EDUCATION,
Kolhapur Region,
Kolhapur.
- 3. RAYAT SHIKSHAN SANSTHA,**
SATARA
Through its Chairman/Secretary.

...Respondents

SHEPHALI
SANJAY
MORMARE

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SHEPHALI SANJAY
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APPEARANCES

FOR THE PETITIONER

Mr NV Bandiwadekar, Senior
Advocate, with Vinayak
Kumbhar, i/b AN
Bandiwadekar.

**FOR RESPONDENTS
NOS. 1 & 2.**

An Advocate, i/b Milind Deshmukh.

**FOR RESPONDENT-
STATE**

Mr NC Walimbe, AGP.

**CORAM : G.S.Patel &
Neela Gokhale, JJ.**

DATED : 31st March 2023

ORAL JUDGMENT (Per GS Patel J):-

1. Rule. Rule returnable forthwith.

2. The Petitioner seeks a direction to the 3rd Respondent's management to appoint her as a Shikshan Sevak in its aided higher secondary schools/junior college based on merits, i.e., the marks that the Petitioner obtained in a selection process conducted by the 3rd Respondent. The Petitioner has a B.A. in English, a B.Ed and an M.A. in English. She also has an M.Ed degree. She belongs to the Maratha caste, recognized as an educationally and socially backward category ("ESBC") under the Government Resolution ("GR") of 15th July 2014. She also has a certificate of 3rd December 2014 declaring that she does not fall in the open category creamy layer. She thus has a non-creamy layer certificate.

3. On 26th August 2014, the 3rd Respondent published an advertisement in the daily *Pudhari* newspaper. A version was also made available online. A copy of that advertisement is at Exhibit "C" at page 23, and from page 24 we find a listing of the terms and

conditions. The advertisement invited application for the posts of Shikshan Sevaks in various subjects in the 3rd Respondent's higher secondary schools and junior colleges. The 3rd Respondent is a public charitable trust. The advertisement listed 28 available posts for English and three additional ones were shown as proposed posts. Altogether, a total of 69 posts across various subjects were notified. Of these, 24 posts were earmarked for the open category. Another 14 posts were reserved for the ESBC (Maratha) reserved category. Now condition 9 of the advertisement, which we find at page 25, said that if a candidate from a reserved category was selected *on merits* it would be presumed that their selection was in an open category. We understand this to mean that a high-scoring reserved category candidate would, based on merit, be entitled to an appointment in the open category.

4. The Petitioner applied. She described herself as belonging to the ESBC (Maratha) category. The necessary documents were annexed and this is not contentious. That application was scrutinized. There was an online examination admission letter. That examination was held. It had a possible 60 marks. Altogether 1448 candidates applied and appeared for the examination in the English subject.

5. In December 2014, the 3rd Respondent published a provisional merit list for English. A copy of this is at Exhibit "F". The Petitioner had scored 49 marks out of 60 in that examination. She was placed at Serial No. 10. This provisional merit list was a

combined merit list of candidates from open categories and from all reserved categories.

6. This meant, Mr Bandiwadekar, learned Senior Counsel for the Petitioner argues, and we think correctly, that the Petitioner, because of her marks was entitled to be selected and appointed notwithstanding the fact that she had applied against a reserved category, i.e., ESBC (Maratha).

7. The Maratha caste reservation was under challenge before this Court. There was an interim stay on the Government decision. Candidates who had claimed the ESBC (Maratha) reserved category were not called to an interview though their names were on the provisional merit list. The Petitioner too was not called for an interview. The difference, Mr Bandiwadekar submits, is that since she had scored sufficiently high marks in the written examination, she was entitled to be selected on the basis of merit and more particularly since condition 9 of the advertisement said specifically that where reserved category candidates had scored on merits they would be appointed in the open category. Other reserved category candidates and open category candidates were called for interviews and seem to have been issued appointment orders.

8. An oral examination or viva was held on 22nd May 2016. On account of the High Court stay, Petitioners and other ESBC (Maratha) category candidates were not interviewed.

9. On 6th November 2017 the Petitioner made a representation to the State Government through the School Education Department and also to the 3rd Respondent, in which she said that she had scored sufficiently high marks to be considered for selection and appointment on merit, i.e., to be called to the interview and appointed. The Petitioner also made other approaches to other authorities. On 3rd February 2018 she made another representation to the 1st Respondent. There was no response. Meanwhile, the Petitioner filed a query with the 3rd Respondent under the Right to Information Act, 2005. The information she sought was given to her by a letter of 5th February 2018. A list of the candidates interviewed for the posts of Shikshan Sevaks in English was annexed. The information revealed that those who were interviewed were all appointed.

10. For the reasons that we have discussed the Petitioner's name does not find place in this list. The persons at Sr. Nos. 2, 10 and 11 were also ESBC (Maratha) category, and had their names kept blank meaning that they were not being interviewed. Mr Bandiwadekar points out that more interviews were held on 1st July 2015 and 3rd September 2015 when persons from the Nomadic Tribes (C) and the Special Backward Classes category were interviewed for the same posts of Shikshan Sevak in English.

11. On 22nd December 2017 the 3rd Respondent published a list of candidates appointed as Shikshan Sevaks for English. The first list has 25 candidates and reflects names of persons both from the open category and various reserved categories.

12. On 2nd July 2015, the 3rd Respondent published another list for various subjects which included two candidates for English, one from SBC and one from NT(C).

13. Of the 25 candidates appointed on the first list, four did not accept the appointment, one each from NT(C) and open category and two from SBC. Therefore only 21 candidates accepted the appointment and joined the service. When the second list was declared on 2nd July 2015, the 3rd Respondent made these two appointments, one each from SBC and NT(C). The total number of appointments for English were 23 against the advertised posts of 28. Five posts thus remained vacant. Of the 25 candidates in the first list, four did not accept the appointment including one candidate from the open category. That post still remains open.

14. The Petitioner made another representation on 26th February 2018 and sent a reminder on 19th April 2018. She complains that there is no action and she has therefore approached this Court.

15. The only point that Mr Bandiwadekar canvasses is that the stay by the High Court on the ESBC (Maratha) reservation cannot result in what is effectively a disqualification or an elimination from appointment. Mr Bandiwadekar points out that even if the Petitioner had applied in the ESBC (Maratha) category, if she had secured sufficiently high marks she was entitled to be interviewed and appointed in the open category. That is what condition 9 plainly says. It was impermissible, he argues, for the management to entirely exclude the Petitioner from consideration. Had the

Petitioner not scored sufficiently high marks, then condition 9 would not apply, and she would not be entitled to be called for an interview because of the stay on the reservation. In another manner of speaking, condition 9 removes the reservation requirement altogether because of the achievement on merit. This is why it says that meritorious reserved category candidates will be appointed in the open category.

16. What is particularly disturbing is that there is evidence even on the record here to show that other persons though in some reserved category were in fact called for an interview and received an appointment in the open category. The list at Exhibit “F” features the name of the Petitioner at Sr. No. 10. The person at Sr. No. 15 was in the NT(C) category but by applying and operating condition 9 was appointed in the open category. That person had scored 48 marks (as against the Petitioner’s 49 marks). Mr Bandiwadekar also points out that candidates in the open category itself with less marks than the Petitioner, i.e., less meritorious on a pure merit-based ranking have got appointments in the open category. The Petitioner may once have claimed to be ESBC (Maratha) but on merits she is ahead of others in the open category; because she applied in the ESBC (Maratha) category she has been left out of the procedure entirely.

17. This is not an issue with the Government at all. We are unable to understand why the management has not followed its own condition 9 and proceeded to assess candidates on merits. We are not shown any order of the High Court that could have prevented

the management from treating the Petitioner as an eligible candidate for an open category appointment on the basis of what she scored in the written examination.

18. The Affidavit in Reply really has no answer to this case. Prayer clause (c) does not seek a direct appointment. Neither does the prayer clause (b). They both only ask that the 3rd Respondent should consider the case of the Petitioner, that she be interviewed and then, obviously subject to the results of the interview and aggregation of marks, be appointed in the open category.

19. Today there are, we are told, five vacancies.

20. Thus, while we make Rule absolute in terms of prayer clauses (b) and (c) and direct the 3rd Respondent to call the Petitioner for an interview, we take the liberty of fixing the date of the interview with at least four days advance notice before 21st April 2023. Until that date, at least one of the existing vacancies must be maintained and is not to be filled in the open category. We do not permit the 3rd Respondent to exhaust all currently available open category posts before 21st April 2023.

21. In the event that the Petitioner is appointed to the post a proposal for approval to the Government must be sanctioned no later than by 9th June 2023.

22. We clarify that in a matter like this there is no question of the appointment of the Petitioner, if accepted and done by the 3rd

Respondent, being required to be done through the online Pavitra Portal and the Education Officer will not raise a grievance in that regard.

23. The Petition is disposed of in these terms. No costs.

(Neela Gokhale, J)

(G. S. Patel, J)