

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.8357/2018

Ku. Swati D/o Nagorao Magar,
aged about 26 Yrs., Occ. Unemployed,
R/o Post Deulgaon Mali, Tahsil Mehekar,
District Buldhana.

... Petitioner

- Versus -

1. Maharashtra State Seeds Corporation
Limited, Akola, through its Managing
Director, "Mahabeej Bhavan" Krishi
Nagar, Akola 000 104.

2. Shashishekhar Anantrao Jawale,
aged about 36 Yrs., Occ. Service,
R/o Wasnt Road, Yeldarkar Colony,
Parbhani, Dist. Parbhani,
Maharashtra 431 401.

... Respondents

Mr. S.V. Purohit, counsel for the Petitioner.
Mr. K.S. Malokar, counsel for respondent 1.
Mr. R.L. Khapre, Senior Counsel for respondent 2.
Mr. Shankar Borkute, counsel for the intervenor.

CORAM: ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.

DATE : 8.3.2023

JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. The petitioner seeks quashing of the communication dated 24.10.2018 issued by respondent 1 and for a direction to the respondent 1 to consider her for the post of District Manager Grade 2 / Field Officer in seat reserved in women category.

3. The brief facts of the petition are as under:-

That the petitioner has applied for the post of District Manager Grade 2 / Field Officer. The advertisement for the said post was published on 7.5.2018. As per the said advertisement, out of four posts, one post was reserved for Scheduled Caste candidate, one for Other Backward Classes, two posts were reserved for open category, 30% reservation is shown for the female candidate and one post was reserved for physically handicapped person.

Online examination was conducted on 11.6.2018. The petitioner's name was published in the merit list dated 20.8.2018. She was called on 4.8.2018 for document verification and personal interview. The petitioner remained present for interview along with all documents. On 20.8.2018 interviews were held and the name of petitioner was there in merit list at serial No.17. After the personal interviews of the candidates for the post in question, the name of petitioner was not listed in said selection list. The petitioner was expecting to be selected from women candidate but, no candidate was selected from said category.

The petitioner has made the representation on 27.9.2018 to the Managing Director of Corporation. She did not receive any response from the Corporation, therefore, she approached the Maharashtra State Commission for Women by making a grievance. Commission for Women in response to the same, called for a report from respondent Corporation. In

response to the communication from the Women Commission, the respondent responded on 20.10.2018 and by said communication she was informed that she was not selected in said recruitment process. Therefore, the petitioner has filed this petition.

4. The learned counsel for the petitioner has stated that the petitioner belongs to O.B.C. category she filled her form from said category for consideration but was not selected for the post of District Manager Grade II / Field Officer and in the said category one Mr. Prashant Ghavade was selected who was higher in merit than the petitioner. As per recruitment procedure horizontal reservation was implemented, as per the procedure initially in the open category, merit list of candidates is required to be prepared and if in such list there are sufficient number of candidates covered by horizontal reservation then there would not be any issue or difficulty, however, if candidates covered by horizontal reservation are not sufficiently available then in such situation,

horizontal reservation which includes 30% female candidates should be considered and appointed on the concerned post out of open category. There were four posts which were advertised and were to be filled in. One post was reserved for S.C. candidate, one for O.B.C. and two posts were meant for open category candidates. He has further argued that one post is rightly filled in by person belonging to physically handicapped category, however, other post is wrongly given to Mr. Pawan Sawale in the open category who belongs to Other Backward Classes category. The petitioner is claiming for her selection in the 30% women category quota. The reason given by the respondent in not selecting the petitioner as in the physically handicapped category one candidate was available and was selected, therefore, the petitioner was not selected as she had filled in her form in the O.B.C. category and as per merit list, she was not selected in said category. As the petitioner is claiming the appointment only from the women category and said post was not filled in, the petitioner has filed this petition.

5. The respondent has filed his reply stating that the petitioner has filled in her candidature for the post of District Manager Grade 2 / Field Officer from the OBC category. There was no post reserved for women from said category and, therefore, meritorious candidate Mr. Sawale from said category was selected. Since the petitioner was not qualified to the said post in order to meet the merits, she was not considered for selection. One post for physically handicapped person was kept reserved. The said post was filled in by giving appointment to Mr. Sawale from the open category as he was found meritorious in the open category. As the petitioner has filled in her candidature from other backward classes category and was not found meritorious from said category, she was not considered for selection. The petitioner cannot claim a right to be appointed from another category since she has filled in her candidature from the O.B.C. category. Now, the petitioner is trying to shift her category since when there is no reservation for women from the category in which she had filled in the candidature, hence she cannot be considered for the post

reserved for women from open category. The petitioner does not fulfil the requisite criterion and norms and, therefore, cannot be considered for being selected.

6. Heard learned counsel for the petitioner, learned Assistant Government Pleader and Mr. Khapre, senior counsel for respondent 2.

7. After going through the advertisement it appears that the post for women was reserved. The name of petitioner was there in selection list but after considering the merit list from O.B.C. category and other reservations she was not selected. She has filled in her candidature from OBC category and the 30% reservation was there, the post for women was vacant. The respondent failed to give any explanation why said post was not filled in though the post was available. The petitioner has claimed for the appointment on the reservation quota for women as she is only meritorious candidate in said category, she is entitled for the

said post. The petitioner has filled in her candidature from O.B.C. category said post was already filled by giving appointment to the person who was above in merit list. The post from women category is not filled. The respondent 2 is appointed from O.B.C. category as he was above in the merits list and petitioner is not claiming candidature from O.B.C. category. Therefore, there is no question of disturbing his position, considering the above said facts we are of the view that the petitioner is entitled for the post from women category. Accordingly the petition is allowed in terms of prayer clause (1) which is reproduced below:-

“1. Quash and set aside the impugned communication dated 24-10-2018 (Annexure-A) and direct the respondent Corporation to consider, select and issue appointment order to the petitioner on the post of District Manager Grade-2 / Field Officer and grant her appropriate posting.”

8. The interim order passed by this Court shall not come in the way of appointment of respondent 2. The respondent 1 shall consider the appointment of respondent 2.

9. Notional seniority be considered at the time of considering the appointment of the petitioner.

10. Rule made absolute in the above terms. There shall be no orders as to costs.

CIVIL APPLICATION (CAW) NO.534/2021

11. In view of the above order, this application does not survive and is disposed of accordingly. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)