



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2511 OF 2024

NAJMABANU SHABUDIN SHAIKH

VERSUS

THE CHHATRAPATI SAMBAJINAGAR MUNICIPAL CORPORATION
THROUGH ITS COMMISSIONER AND ANOTHER

...

Mr. A. S. Deshmukh, Advocate for the Petitioner

Mr. S. S. Tope, Advocate for Respondent No. 1

...

CORAM : RAVINDRA V. GHUGE &
R. M. JOSHI, JJ

DATE : MARCH 06, 2024

PER COURT :

1. This matter is heard at length yesterday and today to the extent of whether any ad-interim order could be passed considering the challenge of the Petitioner.

2. The learned Advocate for the Petitioner submits at the very outset that the Petitioner is not challenging the advertisement since she has applied pursuant to the advertisement for the post of Junior Engineer (Electrical) (Group 'C'). She has competed with all candidates. Hence, the advertisement has not been challenged, after going through the entire

selections process.

3. The Petitioner has put-forth prayer clauses 'B', 'C' and 'D':

"B) Rule may kindly be made absolute by issuing a writ of certiorari or any other writ, direction or order in the nature of writ or certiorari thereby quashing and setting aside the impugned communication dated 22/02/2024 (Annex. H) issued by Resp. No. 1 to the petitioner rejecting her request for inclusion of her name in the final Select List for the post of Junior Engineer (Electrical) from the "Open Women category" prepared in culmination of the selection process initiated vide advertisement dated 18/08/2023.

C) Rule may kindly be made absolute by issuing a writ of mandamus or any other writ, direction or order in the nature of writ of mandamus thereby directing the Resp. No. 1 to include petitioner's name in the final Select List for the post of Junior Engineer (Electrical) from the "Open Women category" prepared on 20/02/2024 in culmination of the selection process initiated vide advertisement dated 18/08/2023.

D) Pending the admission, hearing and final disposal of this Writ Petition the Resp. No. 1 may kindly be restrained from issuing appointment order on the post of Junior Engineer (Electrical) reserved for the "Open Women category" on the basis of final Select List dated 20/02/2024 prepared in culmination of the selection process initiated vide advertisement dated 18/08/2023."

4. The controversy before us is limited to the selection of women candidates to the said post. The advertisement indicates 10 posts falling in the S-14 pay scale in view of the 7th Pay Commission Recommendations. The vertical and horizontal reservation upto 30% reservation has been earmarked for women. The bone of contention is that, as women candidates were entitled to apply as per their respective reservation/social status depending upon their caste/tribe, they were also eligible to apply from the Women's reservation category to 1 post from the OBC/NTC-D and 1 post from the open category. However, a woman candidate who had applied from the EWS category, was precluded from applying to the Women's category.

5. The software used for the selection process was developed by an agency known as the Institute of Banking Personnel Services (IBPS), Mumbai, which is said to be associated with the Finance Ministry, Government of India. The software provided by the IBPS permitted women candidates applying under reservation for OBC/ NTC-D and open category, to also apply from

the women's category. However, a women candidate applying from Economically Weaker Section (EWS), for which one post was reserved, could not apply even from the open Women's category since, admittedly, the software did not permit a women candidate who had opted for the EWS category, to apply even from women category. Per contra, women candidates applying for the social reservation of OBC category and from the open general category (males and females), could also apply from the women's category since the software permitted such option to be exercised. In short, a women applying for the EWS category was precluded from exercising an option to compete for one post from the women reserved category. The post reserved for the EWS category was from the general category (males and females).

6. The issue before us is that one Shri. Rushikesh Chandulal Chavan, a male candidate, who had competed from EWS general category, secured 164 marks and was a topper. He was selected. The Petitioner, who competed from the EWS general category, secured 160 marks and was the first wait listed candidate. From the women reserved category for which one post is

available, one Ms. Swati @ Jayshri Anil Narute secured 154 marks. She had applied from the women open category, which is a form of reservation. After her selection, she has sent an e-mail to the Corporation that she does not desire to join. The first wait listed candidate from the women reservation was Ms. Vaishali Madhukar More who had applied even from OBC category and from the women reservation category. She secured 152 marks, that means 8 marks less than the Petitioner. One more candidate Ms. Kamnini S. Patil, who had competed from the OBC category and was not selected after securing 140 marks, has been included in the select list for the appointment to a post reserved for Woman. Thus, she has been allowed migration and has been selected from the OBC women reservation category. It is thus, obvious that the software does not have an option for a women candidate applying from the EWS women reservation, to apply for 1 reserved post or open post, which was available to the open category and OBC/NTC-D category. The Corporation has no explanation as to why a women who competed from the EWS women category, could not apply for the women category, considering that the software operated by the IBPS did

not have this option.

7. The learned Advocate for the Petitioner has relied upon the judgment delivered by the Hon'ble Supreme Court in Suresh Yadav and Others VS. State of U.P. and Others, AIR 2021 SC 233. He points out that one judgment delivered by the Division Bench of this Court in Charushila Tukaram Chaudhari and Others Vs. State of Maharashtra and Another, 2019 (5) AIR Bom R 561, has been held to be good law in Suresh Yadav (supra).

8. In Charushila Choudhari (supra), it is recorded in paragraph nos. 1, 40, 48(vii) & 49 (VI)(i) to (iv) as under:

1. In this group of petitions, the question, that arises for consideration, is as regards methodology of filing in the vacancies prescribed for horizontal reservation which flows from Article 16(1) of the Constitution of India. Another question, that would be required to be considered is, as to whether rule of migration/shifting can be applied and to what extent.

40. Even in case of compartmentalized horizontal reservations, the seats that are allotted to open category or quota, can be claimed by anybody and everybody, who is entitled to claim a seat or post on the basis of merit, which will include

candidates even belonging to open category i.e. all candidates even belonging to any reserved category whichever, horizontal or vertical. However, the only exception can be carved out, as has been stipulated in the judgment of the Hon'ble Supreme Court that if the applicable rule or the advertisement specifically provide to the contrary, such migration shall not be permitted from the reserved category to the open category for claiming compartmentalized reservation provided for open category. Those candidates belonging to reserved category, who have already enjoyed the benefits during the process of selection, such as concession in fees, relaxation of age, relaxation in the merit criteria, would not be eligible to claim benefits of migration from reserved category to open category for claiming a seat or post.

48. ...

vii) The horizontal reservation specifically provided in compartmentalized manner is not interchangeable or inter-transferable. The ratio of the judgment in the matter of Jitendra Kumar Singh (supra) has to be read in the context of statutory provisions and the Government Order dated 25.03.1994 and the said observations cannot be applied in case where the Government Orders are to the converse effect.

49. ...

VI) The procedure in respect of preparation of the select list of candidates referred to in sub-paragraphs (i) to (iv) as under, shall have to be followed:

(i) All the seats provided for the unreserved or open category to be filled in purely on merit and merit alone, though provisionally, on the basis of the common merit list prepared, without applying any

criteria whatsoever, other than merit.

(ii) All the seats from various vertical reservation categories to be filled in completely, without applying horizontal reservations. In selecting candidates by undertaking such exercise, every candidate who has figured in the open category allotment list to be excluded. The allotments so made in favour of the reserved category candidates not be counted towards the consumption of the reserved category.

(iii) The open category list, as also each vertical reservation list to be checked and verified to find out as to whether or not, the horizontal reservations are satisfied automatically. If they are, nothing more to be done.

(iv) If it is found, upon such verification that, either horizontal reservations are not satisfied or are partly satisfied, then, appropriate number of candidates from the bottom of respective lists to be removed or deleted and candidates strictly on merits, from the separate merit list prepared for the respective horizontal reservation category to be allotted those seats, as and by way of replacement.

9. This matter is at pre-notice stage. Though selection list has been declared, appointment orders are admittedly yet to be issued. Considering that Ms. Swati has declined to join, who had competed from open women category, Vaishali from the OBC category, who had competed from the women reservation, has reached at Serial No. 1, though scoring only 152 marks. If we

finally hold that migration, in view of the Hon'ble Supreme Court judgment, can be effected in this matter in favour of the Petitioner, Vaishali will have to be relegated back to her OBC category and in this case Kamini who has secured 140 marks, who is also from OBC category, will be out of the selection list.

10. In these circumstances, considering the ad-interim order we are passing, we deem it appropriate to direct the Petitioner to add Ms. Vaishali Madhukar More (scored 152) and Ms. Kamini S. Patil (scored 140), to be arrayed as Respondents in this matter. Similarly, we direct the Petitioner to add IBPS as a Respondent. Addition be carried out within a week.

11. **Issue notice** to the Respondents, returnable on 08th April, 2024. The learned Advocate Shri. Tope waives service of notice on behalf of Respondent No. 1.

12. As an interim measure, we direct the Corporation to keep one post of Women – General – Junior Engineer (Electrical), vacant until further orders.

13. All office objections to be removed on or before 27th March, 2024, failing which, this Petition shall stand dismissed without reference to the Court on 28th March, 2024.

(R. M. JOSHI, J)

(RAVINDRA V. GHUGE, J)

Malani