

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NOS 644 OF 2022

DISTRICT : SATARA

Vinayak B. Kashid)...**Applicant**

Versus

Maharashtra Public Service Commission & Ors)...**Respondents**

Shri Kranti L.C, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Mrs Medha Gadgil (Member) (A)

DATE : **01.08.2022**

PER : **Justice Mridula Bhatkar (Chairperson)**

ORDER

1. The applicant claims to be a transgender aspires has prayed that the Respondent no. 1 be directed to allow the applicant to apply for the post of Police Sub Inspector as a Transgender candidate as set out in Advertisement no. 53/2022 dated 23rd June 2022. The applicant further prays for reservation of posts for Transgender Persons in the recruitment to the 800 posts as set out in the said advertisement.

2. The applicant by birth has male sex. However, has opted for female sex. The applicant, therefore, has applied for the post of P.S.I pursuant to the said advertisement and the applicant applied as a transgender candidate as the said option of transgender is provided by the M.P.S.C. In the Application Form the applicant has also opted to be considered as female candidate. M.P.S.C today made statement that the Application Form of the applicant is accepted by M.P.S.C and the applicant will be allowed to appear for the Preliminary Examination which is going to be held on 8.10.2022.

3. Learned counsel for the applicant has relied on the judgment of the Hon'ble Supreme Court in NATIONAL LEGAL SERVICE AUTHORITY Vs. UNION OF INDIA & ORS, (2014) 5 SCC 438. Learned counsel for the applicant submitted that as per Article 16(1) & (2) of the Constitution of India the applicant cannot be discriminated on the basis of sex or gender. Learned counsel for the applicant further submitted that the applicant is a Graduate in Engineering (Electrical) and Post Graduate in Technology (Electrical Power System Engineering). However, she has opted for this Government service and prays that she should not be disqualified in the physical test if at all she clears the examination.

4. Learned C.P.O submits that Public Interest Litigation No. 2781/2022 is filed by Sampadha Gramin Mahila Sanstha (Sangram) Vs. State of Maharashtra & Ors and the same is pending before the Hon'ble Bombay High Court.

5. On perusal of the judgment of the Hon'ble Supreme Court in the case of NATIONAL LEGAL SERVICE AUTHORITY (supra), the Hon'ble Supreme Court has declared / directed which we want to reproduce as it is, to enable the Respondent-State to take the

necessary steps while considering the candidature of transgender or candidates who are from the other sex while giving them employment in all the areas.

“135.2 Transgender persons’ right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.

We, direct the Centre and the State Government to take steps to treat them as Socially and Educationally Backward Classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.”

6. In view of the above, we expect that the Respondent-State will come out with a clear policy regarding provision of the posts for other gender within six months especially in respect of the Police Department as the candidate has to undergo specific physical test in the Police Department. We, therefore, direct the Respondent no. 2, G.A.D and Respondent no. 6, Social Justice & Special Assistant Department, to file affidavits in reply stating therein as to what steps are taken by the Government of Maharashtra in implementing the order of the Hon’ble Supreme Court in the case of NATIONAL LEGAL SERVICES AUTHORITY (supra).

7. S.O 3.11.2022.

Sd/-

(Medha Gadgil)
Member (A)

Sd/-

(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai

Date : 01.08.2022

Dictation taken by : A.K. Nair.