

BEFORE THE KARNATAKA ADMINISTRATIVE TRIBUNAL AT BENGALURU

APPLICATION NO. _____ / 2019

BETWEEN

... APPLICANT

Address of the Counsel:

AND

1. Karnataka Public Services Commission

Udyog Soudha, Devaraj Urs Road,

Near Vidhan Soudha

Bengaluru – 560 001

Represented by its Secretary

2. State of Karnataka

Department of Women and Child Development

1st Floor, M.S. Building

Dr. B.R. Ambedkar Veedhi

Bangalore - 560001

Represented by its Principal Secretary

RESPONDENTS

**MEMORANDUM OF APPLICATION UNDER SECTION 19 OF ADMINISTRATIVE
TRIBUNAL ACT, 1985**

1. ORDER AGAINST WHICH APPLICATION IS MADE:

- (i) **Order No. : Notification No. E(2) 7271/2018-19/PSC (Annexure A/1)**
- (ii) **Date: 11.02.2019**
- (iii) **Passed by : Karnataka Public Service Commission**

(iv) SUBJECT IN BRIEF:

The Applicant herein is a transgender woman. The Respondent No. 1 issued a Notification No. E(2) 7271/2018-19/PSC calling for applications from eligible candidates to fill up the remaining First Division Assistant (FDA) and Second Division Assistant (SDA) posts of the Residual Parent Cadre in Bangalore City Civil Court and the different District and Sessions Courts across the State. The Applicant had applied for the post of Second Division Assistant (SDA). Despite the guidelines in the decision of the Hon'ble Supreme Court in *NALSA v. Union of India* [(2014) 5 SCC 438], and The Karnataka State Policy on Transgender Persons both of which provide that reservations in education and employment should be provided to transgender persons, no such reservations have been provided by the Respondents in the FDA post. Aggrieved by the failure of the Respondents in providing reservations to the members of the transgender community, the Applicant has filed this Application.

2. LIMITATION:

This Application is challenging Notification No. E(2) 7271/2018-19/PSC dated 11.02.2019 issued by the Respondent No. 1. As per Section 21(1) of the Administrative Tribunals Act, 1985, any Application may be made within one year of any impugned order. Therefore, this Application challenging the notification dated 11.02.2019 is well within the period of limitation.

3A. BRIEF FACTS OF THE CASE:

- a) The Respondent No. 1 invited applications from eligible candidates to fill up 219 posts of First Division Assistant (FDA) and 494 posts of Second Division Assistant (SDA) of the Residual Parent Cadre in Bangalore City Civil Court and the different District and Sessions Courts across the State vide Notification No. E(2) 7271/2018-19/PSC dated 11.02.2019 (Impugned Notification). The said Impugned Notification provided reservations for different categories such as Scheduled Castes, Scheduled Tribes, Physically Handicapped, Rural Candidates, and Kannada Medium. However, no reservations were provided for the category of 'Transgender Persons'.

(A copy of the Impugned Notification dated 11-02-2019 is annexed herein as **ANNEXURE – A/1**)

- b) In order to sustain and support herself through stable public employment, the Applicant, who is a transgender woman, submitted her application on 16.02.2019 for the post of Second Division Assistant (SDA) through the online form. The eligibility requirement for SDA is that the candidate should have PUC conducted by the Pre-University Education Board. The Applicant has the required eligibility. As the Applicant is from OBC category, she also filled in her caste status as 'Other Backward Category' in the said form to avail of the applicable reservation. Further, she marked her gender as 'transgender'.

(A Copy of Medical certificate reflecting the Applicant's gender – **ANNEXURE A/2**)

(A copy of the On-Line Application of the Applicant for the SDA post is annexed herein as **ANNEXURE – A/3**)

A copy of the Statement of Marks of PUC of the Applicant is annexed herein as **ANNEXURE – A/4**)

- c) Thereafter, the Applicant took the written examination for the said post on 16.06.2019 and is currently awaiting the results of the same.

(A copy of the admission ticket dated 16.06.2019 is annexed herein as **ANNEXURE –**

A/5)

- d) It is submitted that after giving the exam, on 10.07.2019, the Applicant made a representation to the Respondent No. 1 and on 30.08.2019 to Respondent No. 2 requesting the said authority to provide horizontal reservations for transgender persons in the SDA post, in accordance with the decision of the Hon'ble Supreme Court in *NALSA v. Union of India* [(2014) 5 SCC 438] (hereinafter *NALSA*) and the Karnataka State Policy on Transgender Persons, 2017 so that she can get reservation as a transgender person within the SC category.

(The copy of the representation dated 10.07.2019 is annexed herein as **ANNEXURE –**

A/6)

(A copy of the representation dated 30.08.2019 sent to the Respondent No. 2 –

ANNEXURE – A/7)

- e) The Applicant submits that despite making a representation to the Respondents, requesting them to provide for reservations for transgender persons in the sphere of public employment and specifically for recruitment to the post of Second Division Assistant (SDA), the Applicant did not receive any response.
- f) It is submitted that in *NALSA v. Union of India*, the Hon'ble Supreme Court directed the State and Central Governments to provide reservations to transgender persons in admission in educational institutions and in public employment and to take steps to treat them as socially and educationally backward classes. Despite this direction, the Respondent No. 2 has not taken any steps so far to provide reservations in any form to transgender persons in public employment.

(A copy of the NALSA Judgement is annexed herein as – **ANNEXURE – A/8)**

(A copy of the Karnataka State Policy on Transgender Persons in annexed herein as –

ANNEXURE –A/9).

- g) Aggrieved by the inaction of the Respondent No. 1 and 2 to provide reservations for transgender persons in public employment in the State of Karnataka, and

having no other equally efficacious and alternative remedy, the Applicant has filed this Application.

3B. GROUNDS FOR PRAYER OR RELIEF:

- a) The Hon'ble Supreme Court in *NALSA v. Union of India (2014) 5 SCC 438* held that the right to equality guaranteed under Article 14 has been declared as a basic feature of the Constitution of India, 1950 and that Article 14 guarantees to everyone the equal protection of laws so that everyone including transgender persons are afforded equal protection of the law. It acknowledged that the non-recognition of the gender identity of transgender persons denies them equal protection of law, thereby leaving them extremely vulnerable to harassment, violence and sexual assault in public spaces, at home and in jail and also by the police. Further, noting the centuries of discrimination faced by the transgender community, the Hon'ble Supreme Court directed that steps and measures are required to be taken by the Centre and State Governments to integrate the transgender community into society. The Supreme Court not only held that gender identity is an attribute of sex and hence any discrimination on the basis of gender identity would constitute discrimination on the basis of sex under Article 15, but went a step ahead and recognised the poor socio-economic condition of transgender persons and the fact that transgender persons have not been able to access their social, economic, political and cultural rights. Therefore, the Supreme Court held that:

“We direct the Centre and the State Governments 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.”

Despite the said guidelines by the Honourable Supreme Court, the impugned notification does not provide for any reservations for transgender persons and hence deserves it to be set aside.

- b) **THAT** in *NALSA v. Union of India*, the Hon'ble Supreme Court held that

transgender persons have a right to self-identify their gender. Further, the Hon'ble Court noted that transgender persons are discriminated on the basis of their gender identity. Therefore, reservations for transgender and intersex persons should also be provided on the basis of their gender identity in a horizontal manner, similar to the manner in which horizontal reservations are provided for women on the basis of sex. The impugned notification by not providing reservations for transgender persons makes it extremely difficult for them to secure employment.

- c) **THAT** the Hon'ble Supreme Court in *NALSA* held that transgender persons have been systematically denied their rights and have been discriminated against with respect to appointment to public posts under Article 16(4) despite being a socially and educationally backward class of citizens. Further, the Hon'ble Supreme Court also held that transgender persons are entitled to receive the benefits that have been accorded to socially and educationally backward class of citizens and that the State must accordingly implement affirmative action measures and reservations for the advancement of the transgender community and to increase their representation in public employment. Despite this, the impugned notification does not provide any reservations for transgender persons and deserves the intervention of this Hon'ble Court.
- d) **THAT** reservations are crucial for integrating transgender persons in mainstream society by enabling them to receive education and gain employment in public office. Reservations will ensure that transgender persons are provided with the means to actively participate in social life in the future and further that there is greater diversity and representation in public appointments. The impugned Notification by not providing reservations excludes transgender persons from the mainstream society thereby prejudicing their possibility of gainful employment.
- e) **THAT** the appropriate method of providing reservations for transgender persons would be horizontal reservations which would cut across the vertical reservations provided based on caste categories and indicators of backwardness. Horizontal

reservations recognise that an individual can come from a marginalised caste background and can have other vulnerabilities such as disability or transgender status. Horizontal reservations would ensure that transgender persons who come from marginalised caste groups need not give up their caste status and can access reservations and therefore, the Respondents ought to have made reservations available to transgender persons in public employment.

- f) **THAT** in *Indra Sawhney v. Union of India and Others AIR 1993 SC 477*, the Hon'ble Supreme Court of India held that reservations may be either vertical or horizontal. Vertical reservations are social reservations given under Article 16(4) in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes, while horizontal reservations are special reservations, which cut across vertical reservations. Such horizontal reservations, for instance, are provided to persons with disabilities under Article 16(1). After *Indra Sawhney*, in *Anil Kumar Gupta v. State of Uttar Pradesh*, (1995) 5 SCC 173 and *Rajesh Kumar Daria v. Rajasthan Public Services Commission & Ors.* (2007) 8 SCC 785, the Hon'ble Supreme Court of India has reiterated that there are two kinds of reservations, being vertical reservations for Scheduled Castes, Scheduled Tribes and Other Backward Classes under Article 16(4) and horizontal reservations various groups such as ex-army personnel, displaced persons, women under Article 15(3) and persons with disability under Article 16(1). Horizontal reservations cut across vertical reservations whereby reservations under a horizontal category are provided within an existing category of vertical reservations. Thus reservations for transgender and intersex persons should be provided horizontally under the respective categories of vertical reservations such as Scheduled Caste, Scheduled Tribes, Other Backward Class and Open Competition. Hence, transgender persons should also be provided horizontal reservations under a 'transgender' or 'woman' category in the impugned Notification.

- g) THAT in **Swapna & Ors. v. Chief Secretary, W.P. No. 31091 of 2013** vide order dated 05.07.2016, Hon'ble High Court of Madras held that reservations be provided to transgender persons in education and employment on a percentage or post basis and in **Tharika Banu v. Secretary to the Government & Ors, 2018 (2) CTC 683**, the Hon'ble Court directed the State Government to frame a policy on providing reservation in education and public employment for transgender persons, in order to streamline the procedure. Therefore, similar directions may be given to the State of Karnataka to provide horizontal reservations to transgender persons in the impugned notification for the FDA posts.
- h) THAT the non-provision of reservations in public employment for transgender persons, amounts to a violation of the guarantee of equal opportunity in public employment provided in Article 16 of the constitution, amounts to a violation of the right to equality guaranteed under Article 14 of the constitution and also a violation of the fundamental right to life under Article 21 of the constitution which includes the right to livelihood of the Applicant and hence deserves the intervention of this Hon'ble Court.

4.GROUNDS FOR INTERIM RELIEF

It is submitted that the recruitment process for the post of Second Division Assistant (SDA) has commenced and the applicants have also taken the written examination. However, as no reservations have been provided for transgender persons, the Applicant is placed at a disadvantage when compared to other categories of applicants. Therefore, pending disposal of this Application, it is submitted that the operation of the Impugned Notification and the process of recruitment for the post of Second Division Assistant (SDA) under the said Impugned Notification be stayed. The Applicant has a good case on merits and it is now a settled position that reservations should be provided to transgender persons in education and public employment. In the event the operation of the Impugned Notification is not stayed, the Applicant would suffer immeasurable harm. On the other hand, the Respondents will not suffer any harm or loss if the

process of recruitment under the Impugned Notification is stayed. Therefore, the balance of convenience is in favour of the Applicant.

5. WHAT ALTERNATIVE REMEDY IS AVAILABLE? WHETHER SUCH REMEDY IS AVAILED? RESULT THEREOF.

The Applicant has no other alternative remedy, which is speedier and more efficacious except to approach this Hon'ble Tribunal for appropriate relief.

6. MATTER NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT

The Applicant declares that this matter is not previously filed or is pending before any other court.

7. RELIEF/PRAYER SOUGHT FOR:

WHEREFORE, in light of the above facts and circumstances, the Applicant humbly prays that this Hon'ble Tribunal may be pleased to:

- A. Direct the Respondent No. 1 to quash the Notification No. E(2) 7271/2018-19/PSC dated 11.02.2019 annexed herein as ANNEXURE A/1 to the extent that no reservations are provided for transgender persons for the post of Second Division Assistant (SDA);
- B. Direct the Respondent No. 1 to issue a fresh Notification providing for reservations for transgender persons to the post of Second Division Assistant (SDA) under the Notification No. E(2) 7271/2018-19/PSC dated 11.02.2019 annexed herein as ANNEXURE A/1
- C. Pass an order directing the Respondent No. 1 to consider the Applicant for the post of Second Division Assistant (FDA);
- D. Grant any relief which this Hon'ble Tribunal deems fit on the facts and circumstances of the case, in the interest of justice and equity.

8. INTERIM RELIEF PRAYED FOR:

WHEREFORE, in light of the above facts and circumstances, the Applicant humbly prays that this Hon'ble Tribunal may be pleased to:

- A. Stay the operation of the Impugned Notification No. E(2) 7271/2018-19/PSC dated 11.02.2019 annexed herein as ANNEXURE A/1 pending the hearing and final disposal of the present Application ; and
- B. Grant any relief which this Hon'ble Tribunal deems fit on the facts and circumstances of the case, in the interest of justice and equity.

VERIFICATION

I,

Application as true to the best of my knowledge and Paragraph _____
to be true on legal advice, belief and information. What is stated is true and correct, I have
not suppressed any material facts.

Place:

Date:

DEPONENT