

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO.73 OF 2020**

**DIST:MUMBAI**

1. Nikhil Ranjit Manaware )  
Clerk Typist, Office of Controller of )  
Rationing and Director of Civil )  
Supplies, Churchgate, )  
Mumbai 20 )
2. Mr. Sandesh Fakira Hake, )  
Clerk Typist, Controller of Rationing )  
Mumbai 20 )
3. Mr. Subhash Ganeshrao Shinde )  
Clerk Typist, Commissioner of Police) )  
Mumbai )
4. Mr. Ashok Babulal Sable, )  
Clerk Typist, Directorate of General )  
Information & Public Relations, )  
M.S. Mantralaya, Mumbai. )
5. Smt. Madhuri Umeshrao Waghmare )  
Clerk Typist, Additional/ )  
Commissioner of Police, Motor )  
Transport Section, Nagpada, )  
Mumbai 400 008 )
6. Smt. Savita Vijakumar Sakelwad, )  
Clerk Typist, Home Department, )  
Mantralaya, Mumbai . )
7. Smt. Devita Ashish Patle, )  
Clerk Typist, Commissioner of Police) )  
Mumbai )

8. Mr. Ankush Keshav Ghuge, )  
Clerk Typist, Regional Transport )  
(East), Andheri )
9. Smt. Deepali Laxman Gawali, )  
Clerk Typist, Regional Transport )  
(East), Andheri )
10. Smt. Swati Tirupati Rathod, )  
Clerk Typist, Deputy Collector, )  
Encroachment / Demolition )  
Mulund, Mumbai. )
11. Mr. Rahul Maher )  
Clerk Typist, Food and Civil Supplies )  
Department, Thane, Ulhasnagar )
12. Mr. Vijaykumar Gangadharrao )  
Karandikar, )  
Clerk Typist, Commissioner of Police,) )  
Mumbai )
13. Mr. Pradip Gokuldas Ingale )  
Clerk Typist, Controller of Rationing )  
& Director of Civil Supplies, )  
Thane Zone. )
14. Mr. Satosh Maruti Pakhare )  
Clerk Typist, Government Pleader, )  
High Court, Mumbai )
15. Mr. Ravindra Jawahar Paydham )  
Clerk Typist, Director of Technical )  
Education, Mahapalika Marg, )  
Mumbai. )
16. Mr, Nitesh Nandkishor Chulet )  
Clerk Typist, Commissioner of )  
Transport Office, Mumbai )
17. Mr, Sachin Prabhakar Gawali )

- Clerk Typist, Regional Transport Office, Tardeo. )  
)
18. Mr. Ganesh Dukre, )  
Clerk Typist, Director of General Information and Public Relation, )  
Mantralaya, Mumbai. )
19. Mr. Ganesh Haridas Shrisat, )  
Clerk Typist, Industrial Training Institute, Dadar, Mumbai. )
20. Mr. Shrikrushna Kachru Kuklar )  
Clerk Typist, Home Department, )  
Mantralaya, Mumbai. )
21. Mr. Rajesh Motilal Chavhan, )  
Clerk Typist, Water Resource )  
Department, Mantralaya, Mumbai )
22. Mr. Kiran Sulane, )  
Clerk, Typist, Water Resource )  
Department, Mantralaya, Mumbai. )
23. Smt. Priya Rajkumar Bansode )  
Clerk, Typist, Water Resource )  
Department, Mantralaya, Mumbai. )
24. Smt. Ashlesha Gorakh Howal, )  
Clerk, Typist, Water Resource )  
Department, Mantralaya, Mumbai. )
25. Smt. Kalpana Krushnarao Bamnote )  
Clerk Typist, P.W.D. Mantralaya, )  
Mumbai )
26. Smt. Priyanka Gautam Chatse, )  
Clerk Typist, General Administration )  
Department, Mantralaya, Mumbai. )

27. Mr. Satish Vinayak Patil, )  
Clerk Typist, Home Department )  
Mantralaya, Mumbai. )
28. Smt. Jyoti Baliram Chavhan, )  
Clerk Typist, Finance Department )  
Mantralaya, Mumbai. )
29. Mr. Nitesh Babarao Nagrale, )  
Clerk Typist, Water Resources )  
Department, Mantralaya, Mumbai. )
30. Mr. Sandeep Ramesh Borkar )  
Clerk Typist, Home Department, )  
Mantralaya, Mumbai. )
31. Mr. Sagar Laxman Ugalmogle, )  
Clerk Typist, Administrator General )  
And Official Trustee, Maharashtra )  
Fort, Mumbai. )
32. Mr. Dayanand Prakash Baikare, )  
Clerk Typist, Controller Rationing, )  
Churchgate, Mumbai. )
33. Mr. Rajesh Hiranman Uike, )  
Clerk Typist, Gazetter Dept. )  
Fort, Mumbai. )
34. Mr. Swapnil Dilip Chaudhari, )  
Clerk Typist, Directorate of Govt. )  
Printing and Stationary, Fort, )  
Mumbai. )
35. Mr. Bhikaji Satappa Chaugule, )  
Clerk Typist, Director of Ayush, )  
St. George Hospital, Mumbai. )
36. Mr. Vikas Rajaram Indure, )  
Clerk Typist, Administrator General )  
And official Trustee, Maharashtra )  
Fort, Mumbai. )

37. Mr. Darvesh Ramdas Chavhan, )  
Clerk Typist, Directorate of Technical )  
Education, Mahapalika Marg, )  
Mumbai. )
38. Mr. Rajendra Sitaram Dhone, )  
Clerk Typist, R.T.O. office, )  
Mumbai. )
39. Mr. Prashant Pralhad Bangar, )  
Clerk Typist, R.T.O. office, )  
Mumbai. )
40. Smt. Chhaya Raosaheb Mane, )  
Clerk Typist, Finance Department, )  
Mantralaya, Mumbai. )
41. Smt. Papita Vinayak Vakure, )  
Clerk Typist, R.T.O. Central, )  
Mumbai. )
42. Smt. Ashwini Muktararam Pandagale )  
Clerk Typist, Controller of Rationing )  
And Director of Civil Supplies, )  
Thane Zone. )
43. Smt. Nileshwari Sunil Sinkar, )  
Clerk Typist, Rationing Office No. )  
15A, Mumbai. )
44. Smt. Kavita Anant Chathe, )  
Clerk Typist, Controller of Rationing )  
And Director and Civil Supplies, )  
Churchgate, Mumbai. )
45. Smt. Tejaswini Yogesh Patil, )  
Clerk Typist, Controller of Rationing )  
And Director and Civil Supplies, )  
Churchgate, Mumbai. )

46. Smt. Manda Shrikrushna Bawane )  
Clerk Typist, Rationing office, )  
47 G, Dahisar, Mumbai )
47. Mr. Sunil Babji Thakre, )  
Clerk Typist, Controller of Rationing )  
Churchgate, Mumbai. )
48. Mr. Ashish Ashok Bhadarge, )  
Clerk Typist, Finance Department, )  
Mantralaya, Mumbai. )
49. Smt. Ashwini Bhagwat Murkute, )  
Clerk Typist, Controller of Rationing )  
And Director & Civil supplies, )  
Churchgate, Mumbai. )
50. Mr. Mayur Ramchandra Dhandkar )  
Clerk Typist, Commissioner of State )  
Employee Insurance Scheme, Lower )  
Parel, Mumbai. )
51. Mr. Avinash Baburao Chavre, )  
Clerk Typist, Controller of Rationing )  
Churchgate, Mumbai. )
52. Smt. Sharayu Sudhir Shende, )  
Clerk Typist, Controller of Rationing )  
& Director and Civil Supplies, )  
Churchgate, Mumbai. )
53. Mr. Latib Nurmohammed Pathan )  
Clerk Typist, Dy. Director of Ayush )  
St. George Hospital, Mumbai. )
54. Smt. Latika Ram Rajgore )  
Clerk Typist, Commissioner of )  
Police (Railway), Churchgate, )  
Mumbai )

55. Mr. Anuruddha Ramesh Rao )  
Kulkarni, Clerk Typist, )  
Commissioner of Police, Mumbai )
56. Smt. Swati Dattatraya Sidewad )  
Clerk Typist, Water Resource Dept )  
Mantralaya, Mumbai. )
57. Mr. Yogesh Jarwal, )  
Clerk Typist, Public Works Dept. )  
Mantralaya, Mumbai )
58. Mr. Sachin Ramchandra Matkar, )  
Clerk Typist, Rationing Office, )  
21 A, Worli. )
59. Mr. Ashok Kankal, )  
Clerk Typist, Director of Technical )  
Education, Mahapalika Marg, )  
Mumbai )
60. Smt. Swati Krushnarao Bawane )  
Clerk Typist, Dy. Controller )  
Rationing Zone-G, Kandivli. )
61. Mr. Rupesh Baliram Shinde, )  
Clerk Typist, District Skill )  
Development, Employment, )  
Entrepreneurship, Guidance Centre )  
Suburban, Mumbai. )
62. Mr. Bhausahab Vishwanath Lalge, )  
Clerk-Typist, Rationing Office, 31E, )  
Matunga, Mumbai. )
63. Shri Kiran Shantaram Patil, )  
Clerk-Typist, Water Resource Dept, )  
Mantralaya, Mumbai. )
64. Shri Sanjay Saykarji Pawar, )  
Clerk-Typist, Commissioner of Police,)  
Mumbai. )

65. Shri Mohan Dilip Nimse, )  
Clerk-Typist, R.T.O [E], )  
Wadala Division, Mumbai. )
66. Shri Ramesh P. Karhale )
67. Smt Nikita F. Jarwal )
68. Shri Arvind B. Garad )
69. Shri Swapnil N. More, )  
Working as Clerk-Typist )  
R.T.O Office, Mumbai Central, )  
Mumbai. )
70. Smt Sushila Mohan Humbe, )
71. Smt Nisha R. Ingale, )
72. Smt Manisha D. Bhasme, )  
Working as Clerk Typist, )  
R.T.O,Wadala, Mumbai. )
73. Smt AartiDamodar Khedkar )  
Clerk-Typist, R.T.O, Wadala, )  
Mumbai. )
74. Shri Shaikh Navid Shaikh Shafik, )  
Clerk-Typist, )  
District Skill Development, )  
Employment Entrepreneurship )  
Guidance Centre, Suburban, )  
Mumbai. )
75. Shri Appasaheb Ramesh Diwte, )  
Clerk-Typist, R.T.O, Wadala, )  
Mumbai. )
- ] )
76. Shri Deepak Audumbar Bhise, )
77. Smt Apurva Aniruddha Jog, )  
Clerk-Typist, R.T.O, Mumbai. )
78. Shri Abhijit Ravindra Pawar, )  
Clerk-Typist, Water Resource Dept, )  
Mantralaya, Mumbai. )



79. Shri Pralhad Vasant Pawar, )  
Clerk-Typist, Rationing Office, )  
32E, Kurla, Mumbai. )
80. Shri Sandeep Abasahab Chavhan )  
Clerk-Typist, Rationing Office, )  
31E, Matunga, Mumbai. )
81. Shri Devram Haribhau Ghodke, )  
Clerk-Typist, Rationing Office No. 3, )  
Dongri, Mumbai. )
82. Shri Shirish Ninda Pawar, )  
Clerk-Typist, Rationing Office, )  
39F, Dombivli, Thane. )
83. Shri Premdas S. Rathod, )  
Clerk-Typist, )  
Commissioner of Police, )  
Mumbai. )
84. Shri Pandharinath P. Wagh, )  
Clerk-Typist, Rationing Office, )  
31E, Matunga. )
85. Shri Sumit Kundlik Ohol, )
86. Shri Subhash U. Gaikwad, )  
Clerk-Typist, R.T.O, )  
Mumbai. )
87. Shri Pravin Sarjerao Patil, )  
Clerk-Typist, Rationing Office, )  
Mumbai. )
88. Shri Rajkor P. Umbarhande, )  
Clerk-Typist, R.T.O, Wadala [E], )  
Mumbai. )
89. Shri Dattatraya B. Kharat, )  
Clerk-Typist, Collector and District )

- Election Office, Bandra, )  
Mumbai Suburban. )
90. Smt Sonal Nilkanth Telgote, )  
Clerk-Typist, R.T.O, )  
Wadala [E], Mumbai. )
91. Shri Madhav R. Ramchaure, )  
Clerk-Typist, )  
Water Resources Department, )  
Mantralaya, Mumbai. )
92. Shri Surajsinh Shivshin Jadhav, )  
Clerk-Typist, Tahsildar Office, )  
Borivli, Mumbai. )
93. Shri Somnath Taterao Pathade, )  
Clerk-Typist, )  
Commissioner of Transport, )  
Mumbai. )
94. Sarjerao Suresh Bondre, )  
Clerk-Typist, R.T.O, Central Office, )  
Mumbai. )
95. Shri Nitin Abhiman Nakhate, )  
Clerk-Typist, Rationing Office No. 41F) )  
Vashi. )...**Applicants**

**Vs.**

1. The State of Maharashtra, )  
Through Chief Secretary, )  
Mantralaya, Mumbai. )
2. The Secretary, )  
General Administration Department,) )  
Mantralaya, Mumbai 400 032. )...**Respondents**

Shri S.S Dere, learned advocate for the Applicants.

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

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

**RESERVED ON : 16.06.2022**

**PRONOUNCED ON : 04.07.2022**

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

### **J U D G M E N T**

1. All the applicants are working as Clerk-cum-Typists in various departments in Mantralaya and so also in Government offices in Mumbai, challenge clause No. 6(1)(a) of the G.R dated 15.5.2019, that it is ultra-virus to Articles 14 and 16 of the Constitution of India. Hence it may be quashed and set aside.

2. The applicants after passing the examination conducted by the Maharashtra Public Service Commission are appointed to the post of Clerk-cum-Typist in Group-C, in Mumbai. However, the posts of Clerk-cum-Typist in all over Maharashtra, except Mumbai are filled up not through M.P.S.C but by the District Selection Committees. The recruitment of the present applicants in Mumbai is governed by the Brihan Mumbai (Recruitment) Rules, 2018, and there are separate Recruitment Rules for the employees outside Greater Mumbai.

3. It is the contention of the applicants that in earlier G.Rs, especially in G.R dated 3.6.2011 there was a provision of transfer outside Mumbai of the Clerk-cum-Typist who are recruited

through M.P.S.C under such exceptional circumstances. However, the transfers from Mumbai to other Districts is not allowed whereas the inter district transfers of Clerk-cum-Typists are allowed under certain circumstances and certain conditions. However, clause 6(1)(a) of the G.R dated 5.5.2019 completely prohibits the transfer or absorption of the Clerk-cum-Typists, Group-C posts working in Mumbai to any other District.

4. The Respondent-State has filed affidavit in reply dated 25.6.2021 through Shri Deepak B. More, Under Secretary in the office of G.A.D, Mantralaya, Mumbai.

5. Learned counsel for the applicants Mr Dere, has submitted that the applicants are not challenging the said Government Resolution dated 5.5.2019 in toto, but only clause 6(1)(a) is challenged as violating Articles 14 and 16 of the Constitution of India. He has submitted that though the Recruitment Rules of filling up the posts of Clerk-cum-Typists in Mumbai and in other Districts are different, their cadre, i.e. Group-C and pay scales are equal. It is submitted that the Clerk-cum-Typists who are working in one District can be absorbed or transferred in another District. However, this facility is not made available to the Clerk-cum-Typists who are appointed through M.P.S.C and working in Mumbai. Learned counsel for the applicants submitted that the Clerk-cum-Typists appointed through M.P.S.C and working in Mumbai and the Clerk-cum-Typists appointed through the District Selection Committees working in other Districts in Maharashtra, though enjoy equal status and same service conditions, however, on the point of transfer and absorption in other Districts or the region, same is not available to the Clerk-cum-Typists appointed through M.P.S.C and working in Mumbai. Learned counsel for the applicants therefore, submitted that this particular clause 6(1)(a)

of the G.R dated 15.5.2019 is ultra-virus and is to be quashed and set aside.

6. The learned C.P.O while opposing the Original Application has submitted that apart from the separate procedure to the Recruitment Rules under Art 323(2) of the Constitution of India, M.P.S.C's approval is necessary. While justifying clause 6(1)(a) of the G.R dated 15.5.2019, the learned C.P.O submitted that the Respondent-State cannot transfer Group-C employees i.e. Clerk-cum-typist in Mumbai to any other place as the consultation by M.P.S.C is required under Art. 323 (2) of the Constitution of India. While transferring or absorption of the Clerk-cum-Typists inter-se Districts in State of Maharashtra, i.e. outside Mumbai, do not face such hurdle as the Government is not bound to consult the M.P.S.C. Learned C.P.O further submitted that on the ground of administrative convenience and efficiency, such transfers of Clerk-cum-Typists are not allowed from Mumbai to outside Mumbai. The process of recruitment through M.P.S.C is lengthy, tedious and therefore, once the person is selected, recommended by M.P.S.C and appointed by the State Government, then he should not leave Mumbai. Learned C.P.O further submitted that all transfers which had taken place on account of liberal policy of transfers, led the reduction of the man power in Mumbai and therefore, the Government has taken a policy decision of not transferring and absorbing the Clerk-cum-Typists, Group-C employees who are appointed through M.P.S.C, outside Mumbai to other Districts. Accordingly clause 6(1)(a) in the G.R dated 15.5.2019 was added.

7. The applicants are challenging not the entire G.R dated 15.5.2019, but they are challenging a portion of clause 6, i.e. clause 6(1)(a). The said clause is reproduced below:-

- “६. कायमस्वरूपी समावेशनाचे धोरण खालील बाबींसाठी अनुज्ञेय राहणार नाही.
- (9) महाराष्ट्र लोकसेवा आयोगाच्या कक्षेतील पदे -  
(अ) महाराष्ट्र लोकसेवा आयोगाच्या कक्षेतील गट क च्या पदावर कायमस्वरूपी समावेशन करता येणार नाही. तसेच, महाराष्ट्र लोकसेवा आयोगाच्या कक्षेतील गट क च्या पदावरून आयोगाच्या कक्षेबाहेरील अन्य गट क च्या पदांवर कायमस्वरूपी समावेशन करता येणार नाही”. (emphasis is placed)

Thus a Government servant who is recruited through M.P.S.C cannot be absorbed in any establishment outside Mumbai. Admittedly the Clerk-cum-Typists who are recruited through M.P.S.C are only placed in Mumbai. In other words, M.P.S.C is the recruiting agency for the posts of Clerk-cum-Typists in so far as Mumbai Region is concerned. The Clerk-cum-Typists in all over Maharashtra except Mumbai are recruited not through M.P.S.C, but through the respective District Selection Committees. Admittedly the recruitment rules for appointment to the post of Clerk-cum-Typists through M.P.S.C are different from the recruitment rules for the appointment by the District Selection Committee in other Districts. A policy decision is declared and executed through the Government Resolution which is a delegated legislative power of the executive under Article 162 of the Constitution of India. The Courts and all Judicial FORAs are always slow in interfering in such policy decision, as it is the prerogative of the State Government. The Hon'ble High Court has power of judicial review under Articles 226 & 227 of the Constitution of India and so far as the service law is concerned this power of review is extended to the Administrative Tribunal which supplants the High Court. Thus, the Tribunal has power to decide whether there is a breach of the fundamental rights guaranteed under the Constitution of India in making or in implementing the policy decision of the State. Thus, the Tribunal has to play within the limited frame work, where the Government policy is challenged.

8. The entire challenge and arguments of the applicants are based on Articles 14 & 16 of the Constitution of India. In order to ascertain the breach of equality under Art. 14, one has to show that there is inequality amongst the equals because the unequals cannot claim equality. The applicants need to prove that hostile discrimination has occurred due to arbitrary decision. The absence of arbitrariness is the first rule of law. In the present case, admittedly, the recruitment rules of the post of Clerk-cum-Typists posted in Mumbai and are recruited in other Districts in all over Maharashtra are different. In the District the Clerk-cum-Typist is promoted to the post of Awal Karkun, while in Mumbai, the Clerk-cum-Typist is promoted to the post of Assistant or Assistant Section Officer, Group-B. In Mumbai some allowances are paid more due to the life style of the Metropolitan City. However, the requisite educational qualifications, nature of work, pay scales for these two groups are the same. Both the groups fall in same cadre of Group-C. Thus, most of the service conditions are same, however, the Clerk-cum-Typists working in different places all over Maharashtra can apply for transfer and absorption in other Districts. However, in the District, Clerk-cum-Typists can apply for transfer and absorption in a different District, i.e. a different cadre on the same post and they can be transferred inter-regional or zonal transfers, subject to the existing rules. As per the new rules, if a Government servant opts for transfer in other Districts, then he loses his seniority and accepts a lower rank in his cadre. However, it is a matter of the choice of that particular Government servant. Such choice is not available to the Clerk-cum-Typists in Mumbai, who are appointed through M.P.S.C. Thus, the avenue of option of transfer or absorption on the same post in a different cadre which is available to Clerk-cum-Typists in the District is not available to the Clerk-cum-Typists working in Mumbai recruited through M.P.S.C. We are of the view that considering the

educational qualification, nature of duties, pay scale, of these two groups of Government servants in the District and in Mumbai, however, clause 6(1)(a) of the G.R dated 15.5.2019 prohibits the Clerk-cum-Typists in Mumbai who are recruited through M.P.S.C to opt for their transfer and absorption in any other District outside Mumbai.

9. We address the reasons for transfer and absorption to other cadre of Clerk-cum-Typists from Mumbai to other Districts as under:-

- (i) Distance from native place,
- (ii) His health issue and health issues of his family.
- (iii) Education of his children.
- (iv) Job of the spouse.
- (v) Financial difficulties.

For e.g. a person posted in Satara District, hails from Osmanabad or Wardha, is away from the family and the family members are getting old, the employee may think his presence is necessary near to his family.

A Government servant himself may have health issues, may be climate and he may be staying alone and therefore he wants to be near to his family.

The children may get better education and admission in school or college at some other place and the employee may opt for the said place where the children get good education.

A spouse may be having a job or business in some other District and therefore the Government servant wants to be transferred or absorbed at the place of his spouse.



Sometimes, the Government servant is the sole bread winner in the family and to run two house-holds financially it is cumbersome, so transfer or absorption is asked for.

10. One more important angle in respect of prohibiting transfers outside Mumbai is required to be taken in account that the people move wherever they get the jobs. In city like Mumbai being capital of Maharashtra, more jobs are available in the Government set up so youngsters come to Mumbai to avail of and appear for the examination of M.P.S.C and they are recruited. All the Civil Servants who are working in Mumbai and recruited through M.P.S.C, barring few exceptions come from lower middle class who cannot afford to buy house in Mumbai or pay very high rents for near-by houses to their work place, most of them stay far away from Mumbai City and travel minimum 20 to 70 kms away and they travel every day to come to their respective places by travelling 20 to 100 kms in public transport. This takes toll on the body and mind of the person. Thus, some of them want to leave Mumbai and they want to apply for absorption to the District out of Mumbai by sacrificing their seniority for their physical and mental health.

11. One more important aspect is also not considered in the said clause 6(1)(a) of the said G.R. The Government has lost the gender perspective while issuing the G.R. For e.g. a young female Clerk-cum-Typist in Mumbai gets married to a person working in Marathwada Region and they reside separately out of compulsion because such bar the spouse cannot come to Mumbai due to scarcity of roof or place to stay or due to his profession. However, he/she cannot go out of Mumbai in other cadre or District because of clause 6(1)(a) of the G.R dated 15.5.2019. While women civil servants in the District do not face such problem as their

movement/mobility from one cadre district to other District is possible because of the absence of such stringent clause 6(1)(a). Nearly 40% of the staff at present working in Government set up is female. Under such circumstances, Maharashtra being a welfare State cannot take this policy decision prohibiting women to have a option of transfer/absorption after few years to other cadre, i.e. district.

12. The reason for inserting this clause and modifying the Government Resolution of 2011 given by the Respondent-State is administrative smoothness and efficiency. In Mumbai, people find it difficult to lead a peaceful and comfortable life and therefore, some Government servants want to go out of Mumbai. If large number of Clerk-cum-Typists opt for going out of Mumbai, then the authority faces acute shortage of staff and it is unable to function. Therefore, in order to plug the liberal transfers causing severe inconvenience in the administration on account of insufficient staff, this clause 6(1)(a) was introduced. This reasoning cannot be justified as it is found arbitrary and discriminatory for the reasons mentioned above. As per G.R dated 21.4.1982, the Government servants can be transferred out of Mumbai who are recruited through M.P.S.C after 3 years under certain circumstances.

13. Thus, earlier the said facility of transfer/absorption to the Government servant recruited through M.P.S.C to the post of Clerk-cum-Typists in Mumbai was available. The said provisions is required to be made available by removing discriminatory clause 6(1)(a) in the G.R dated 15.5.2019. It is clarified that the provisions of giving option of transfer/absorption from Mumbai to any other District in Mumbai on the same post doesn't mean that if such application is made by any Government servant it is to be allowed.

The authority has always a power to refuse such request on the ground of administrative difficulties. Moreover, it is upto the said Clerk-cum-Typists to apply and prove the exceptional circumstances under which he is asking for transfer/absorption to other Districts. Moreover, the Clerk-cum-Typists opting to go out of Mumbai is bound to lose his seniority. Thus, it is upto the authority not to adopt a liberal view in the matters of transfer/absorption, but there should be a provision of transfer under exceptional circumstances, such discretion vests with the authority.

14. Article 14 of the Constitution of India denies treatment of inequality to the persons who stand on equal footing. Similarly, Article 16 of the Constitution of India states that there shall be equality of opportunity for all the citizens in matters relating of employment or appointment to any office under the State. Clause 6(1)(a) of the said G.R dated 15.5.2019 denies this equal opportunity to the Clerk-cum-Typists who are recruited through M.P.S.C and employed in Mumbai to opt for transfer/absorption outside Mumbai, but in Maharashtra, which is available to Clerk-cum-Typists who are placed in all over Maharashtra, except Mumbai. We need to state that the Clerk-cum-Typists working in Districts vice-versa cannot be transferred/absorbed in Mumbai because the recruitment of the Clerk-cum-Typists in Mumbai is through M.P.S.C. However, as they are all similarly placed we are concerned with clause 6(1)(a) of the G.R dated 15.5.2019, which should be deleted.

15. In view of the above, we pass the following order:-

(a) The Original Application is allowed.

- (b) Clause 6(1)(a) of the G.R dated 15.5.2019 is ultra-virus to Articles 14 and 16 of the Constitution of India and the same is hereby quashed and set aside.

**Sd.-  
(Medha Gadgil)  
Member (A)**

**Sd/-  
(Mridula Bhatkar, J.)  
Chairperson**

**Place : Mumbai**

**Date : 04.07.2022**

**Dictation taken by : A.K. Nair.**