

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 82 OF 2017**

**DISTRICT : PUNE**

Dipika Kashinath Khairnar )  
Residing at Post-Chaundhane, )  
Tal-Satana, Nasik 423301. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through Principal Secretary, )  
Education & Training Department, )  
Mantralaya, Mumbai 400 032. )
2. The Chairman, )  
Maharashtra Public Service )  
Commission, [M.S], having office at )  
Cooperage Telephone Nigam Bldg, )  
M.K Road, Mumbai 400 021. )
3. Kiran Vishwanath Rapatwar, )  
C/o Sachin Ramgirwar, )  
Near Income Tax Colony, )  
Janardhan Nagar, Nanded, )  
Dist-Nanded. )
4. Vijaya H. Honkalashka, )  
Plot No. 4, Adarsha Colony, )  
Himalaya Bldg, Tamajainnagar, )  
Satara 415 002. )

5. Snehal S. Patil, )  
At Popst-Prayag Chikhali, )  
Dist-Kolhapur 416229. )
6. Suchitra Devrao Jadhav, )  
Shingewadi, Shinde Niwas, )  
Kave Road, Near Hand Water Pump, )  
Solapur 413 252. )
7. Yogeshwari Ramesh Nande, )  
At Post-Palsap, )  
Dist-Osmanabad. )
8. Sujata Genbhau Bhaterao, )  
C/o: Dhage Kisorkumar Murlidhar, )  
Ghati Road, Chakuli Niwas, )  
Jai Bheem Nagar, )  
Near Dr. Babasaheb Ambedkar )  
Statue, Aurangabad 431001 )
9. Sarita Bajirao More, )  
At Sarawade, Kudale Galli, )  
Tukaram Niwas, Back Side Vitthal )  
Temple, Dist-Kolhapur 416212. )
10. Sulakshana S. Pawar, )  
Barbole Plot, Shivshakati Ground, )  
Barbole Plot, Solapur 413 411. )
11. Ashish A. Patil, )  
At Post Bambavade, )  
Patil Galli, Dist-Sangli 415410. )
12. Jaymala R. Patange, )  
C/o: Vijay N. Bhosle, )  
N.H.S Vijay Nagar, Mauli Niwas, )  
Nanded, Dist-Nanded 431 602. )
13. Nilofer Balasaheb Patel, )  
C/o: B.P Shaikh, )

- Ambajohai Road, Taj Villa, )  
 Khori Galli, Shivaji Chowk, )  
 Dist-Latur 413 512. )
14. Shital Subhashrao Shinde, )  
 C/o. Shinde Subhash Tukaram, )  
 Ravikunj, Behind Rahul Hotel, )  
 Aayodhya Nagar, Dist-Beed 431 517.)
15. The Secretary, )  
 General Administration Department,)  
 Having office at Mantralaya, )  
 Mumbai 400 032. )
16. Smt Ghule Poonambai Babasaheb, )  
 Residing at Sangvi, Khurd, )  
 8 Post Pagori, Tal-Pathardi, )  
 Dist-Ahmednagar. )
17. Smt Jyoti Kailas Rajput, )  
 Residing at-Survey No. 89, )  
 B/1C, Plot No.24, Infront of the )  
 Dreams Ragini Society, )  
 Manjari Budruk, )  
 Tal-Haveli, Dist-Pune. )
18. Smt Ranitai Shivajirao Patil, )  
 Occ-Service, R/o: Ajinkya Tara Colony)  
 Kasaba Bawada, Tal-Karvir, )  
 Dist-Kolhapur. )
19. Smt Madhuri Muniraj Dalal, )  
 Occ-Service, R/at Flat No. 701, )  
 Arya Casa,. Gat No. 55, )  
 Tal-Aurangabad, Dist-Aurangabad. )
20. Smt Sulbha M. Gavade, )  
 R/o: Tambve, Post-Sapatne, )  
 Tal-Madha, Dist-Solapur. )...**Respondents**

Shri A.S Gaikwad, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents No.

Shri K.R Jagdale, learned counsel for Respondents Nos 3 4o 14 and 16 to 20.

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

**DATE : 17.01.2024**

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

1. The applicant prays that this Tribunal be pleased to call for the entire record and proceedings from the office of M.P.S.C, Respondent No. 2, in respect of the impugned result dated 31.12.2016 and after going through the legality, validity and propriety of the same, be pleased to quash and set aside the result dated 31.12.2016 to the extent of candidates selected from the Open Women Category for the post of Lecturer - District Institute of Education & Training, Group-B. Further the Tribunal be pleased to issue order thereby directing Respondent No. 2 to declare the applicant as selected from the General Women category for the post of Lecturer-District Institute of Education and Training, Group-B, on the basis of merit and accordingly modify the result dated 31.12.2016.

2. Learned counsel for the applicant submits that the applicant is from O.B.C category. However, she made application under Open Female Category. She holds Master's Degree, i.e., M.A in Hindi and also completed M. Ed. She worked as Assistant Professor in the Department of Education from 2.7.2013 to 12.8.2015. Learned counsel has submitted that M.P.S.C,

Respondent No. 2, issued advertisement on 18.6.2015 for the post of Lecturer-District Institute of Education and Training, Group-B, in the department of School Education and Sports, Respondent No. 1. Learned counsel has submitted that the applicant filled on-line application form. He drew our attention to Exh. 'B' and pointed out that in form there is a column which states as under:-

“Whether your application is to be considered under Open category?”

Learned counsel submitted that in the said Column, the applicant has ticked mark “Yes”. Learned counsel for the applicant submitted that the applicant cleared the written examination and secured 106 marks out of 200 marks. She was called for interview. The cut-off marks for Open Female Category is 66 marks. The applicant has secured 31 marks out of 50 in the interview. So the total marks of her is 137. Learned counsel has submitted that M.P.S.C has published the merit list on 10.1.2017 of 279 candidates, but the name of the applicant does not appear in the said list. Learned counsel pointed out that in the meantime Smt Dipalil T. Bhosale and Smt Sandhya A. Jaiswal filed W.P No. 4915 & 4916/20216 before the Hon'ble High Court, bench at Nagpur. The Hon'ble High Court, Nagpur Bench by order dated 2.9.2016, has directed M.P.S.C to permit these Petitioners to appear for interview from Open Female category though both the Petitioners have applied from OBC female category. In the said order it is mentioned that the cut- off marks for OBC female category was 106 marks, but the cut-off marks for Open Female Category was 66 marks. Both the Petitioners have secured more than 66 marks. The Division Bench has relied on the ratio laid down in the case of Kanchan Vishwanath Jagtap Vs. Maharashtra Administrative Tribunal, Nagpur, reported in 2016(1) Mh.L.J 934, and held that meritorious candidates in women category belonging

to reserved category cannot be denied benefit of their meritorious position. Thus, the women who have applied in OBC Female category are entitled to be considered in Open Female category.

3. Learned counsel for the applicant has further pointed out that this Tribunal by order dated 22.6.2017, has passed interim order that appointments, if any, made will be subject to outcome of this Original Application. On 12.4.2021, learned counsel for the applicant has pressed the matter for hearing, as the Hon'ble High Court has expedited the matter. Learned counsel for the applicant has pointed out that the merit list was published on 31.12.2016 and so the wait list was valid till 31.12.2017 and appointments of Respondents No 4 & 12 was made on 23.2.2018. Learned counsel for the applicant pointed out that by order dated 23.2.2018, issued by the Respondents, 16 private Respondents who were wait listed, were appointed.

4. Learned C.P.O relies on the affidavit in reply dated 9.4.2021 filed by Tikaram W. Karpate, Deputy Secretary, G.A.D, Mantralaya, Mumbai. Learned C.P.O submits that when the result was declared and the recruitment process of the advertisement was going on, the Circular dated 13.8.2014 issued by the State of Maharashtra was in force and at the relevant time the judgment in the case of Saurav Yadav & Ors Vs. State of Uttar Pradesh & Ors, M.A No. 2641/2019 in S.L.P (C) No. 23223/2018 dated 18.12.2020 was not in field. Therefore, the Women candidates who have taken benefit of reservation from reserved category was not allowed to migrate in open category, even though they were meritorious. The Circular dated 13.8.2014 was issued by the State of Maharashtra as per the law laid down by the Hon'ble Supreme Court in the case of Anil Kumar Gupta & Ors Vs. State of Uttar Pradesh & Ors JT 1995 (5) SC 505. The Circular dated 13.8.2014 was challenged before the

Tribunal in O.A Nos 202 & 203/2017 and the Tribunal set aside that Circular dated 13.8.2014 by order dated 18.6.2018. Learned C.P.O further submits that in the case of Rajni Shailendrakumar Khobragde, O.A 189/2015, and the Hon'ble Bombay High Court, Aurangabad Bench in W.P No. 10103/2015 upheld the policy of the State of Maharashtra as per Circular dated 13.8.2014. Learned C.P.O has further submitted that as Circular of 13.8.2014 was set aside by the Tribunal, the Respondent-State issued Corrigendum dated 19.12.2018, by substituting paragraph (a) of the Circular dated 13.8.2014, wherein it is mentioned that the migration of the meritorious candidates from the reserved category can be permitted in the open category and the said Corrigendum was made applicable w.e.f 19.12.2018. She submits that the present process of recruitment is prior to Circular dated 19.12.2018, and therefore, no effect was given to the Circular on the point of migration in the present case. Learned C.P.O submitted that the requisition was sent within time before the wait list has lapsed and therefore the private Respondents were appointed from the wait list.

5. Learned counsel Shri Jagdale, for private Respondents 3 to 14 and 16 to 20 has relied on the affidavit in reply dated 12th June, 2017 and submitted that all the 17 private Respondents have secured less marks than the present applicant. However, all the 17 private Respondents have completed their probation period and their services have been regularized. Learned counsel has further submitted that Respondents No. 4 Mrs Vijaya Hanmat Honkalaskar and Respondent No. 12 Mrs Jaymala Ramrao Patange are not interested to be appointed and hence both are not interested in joining the said post.

6. Learned C.P.O today produces copy of letter dated 16.1.2024 of the Under Secretary, School Education and Sports Department, wherein it is stated that out 68 open candidates, 67 have joined their posts and therefore one post from open category is vacant. Learned C.P.O submitted that on the said one post from open category, the applicant can be appointed as Lecturer, so that private Respondents are not disturbed.

7. In view of the above, we dispose of the Original Application with a direction to the Respondents to take necessary steps in respect of the appointment of the applicant to the post of Lecturer - District Institute of Education, Group-B within four weeks from the date of the order.

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

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

**Place : Mumbai**  
**Date : 17.01.2024**  
**Dictation taken by : A.K. Nair.**