

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NOS 820 & 1395 OF 2023

DISTRICT : MUMBAI/PUNE

1) ORIGINAL APPLICATION NO. 820 OF 2023

- | | | |
|----|------------------------------|------------------------|
| 1. | Sachin Kacharu Doifode, |) |
| | Daily Wage Forest Labour, |) |
| | R/at Staff Colony, |) |
| | Sanjay Gandhi National Park, |) |
| | Borivali, Mumbai 400 055. |) |
| 2. | Sharad Gangaram Shinde, |) |
| | Daily Wage Forest Labour, |) |
| | R/O Morani, Post-Chincwali, |) |
| | Tal-Bhiwandi, Dist-Thane. |)... Applicants |

Versus

- | | | |
|----|---------------------------------|---|
| 1. | The State of Maharashtra |) |
| | Through Principal Secretary, |) |
| | [Forest], Department of Revenue |) |
| | & Forest, Mantralaya, |) |
| | Mumbai 400 032. |) |
| 2. | The Principal Chief Conservator |) |
| | [Head of the Forest Force], |) |
| | Vanbhavan, Ramgiri Road, |) |
| | Civil Lines, Nagpur 440 001. |) |
| 3. | The Deputy Director [South], |) |
| | Sanjay Gandhi National Park, |) |
| | Borivali, Mumbai 400 066. |) |

4. The Chief Conservator of Forest,)
 Marathon Square, Near Teen)
 Petrol Pump, Naupada,)
 Thane 400 602.)...**Respondents**

2) ORIGINAL APPLICATION NO. 1395/2023

1. Dnyaneshwar Manohar Bhoir,)
 Forest Labour, R/at Nigdali,)
 Post-Kondwal, Tal-Ambegaon,)
 Dist-Pune 410 509.)
2. Balu Sitaram Bhoir,)
 Occ : Forest Labour, R/at Nigdali,)
 Post-Kondwal, Tal-Ambegaon,)
 Dist-Pune 410 509.)
3. Pradeep Shantaram Damase,)
 Occ : Forest Labour,)
 R/at Kondhawal, Post Kondhawal,)
 Tal-Ambegaon, Dist-Pune 410 509.)
4. Santosh Balaji Chavan,)
 Occ: Forest Labour,)
 R/at Umardari (Wadi), Tal-Mukhed,)
 Dist-Nanded 431 715.)...**Applicants**

Vs.

1. The State of Maharashtra)
 Through Principal Secretary,)
 [Forest], Department of Revenue)
 & Forest, Mantralaya,)
 Mumbai 400 032.)
2. The Principal Chief Conservator)
 [Head of the Forest Force],)

- Vanbhavan, Ramgiri Road,)
Civil Lines, Nagpur 440 001.)
3. The Dy. Conservator of Forest Officer)
Vanbhavan, 3rd floor, B-Wing,)
Bhanburda, Mendhi Farm,)
Gokhale Nagar, Pune-06.)...**Respondents**

Shri Shantanu Raktate with Shri Saurav Katkar, learned counsel for the Applicant in O.A 820/2023.

Shri V.G Panchal with Shri R.G Panchal, learned counsel for applicant in O.A 1395/2023.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents in O.A 820/2023.

Ms Archana B.K, learned P.O for the Respondents in O.A 1395/2023.

CORAM : Justice Mridula Bhatkar (Chairperson)
Shri Debashish Chakrabarty (Member) (A)

RESERVED ON : 15.02.2024

PRONOUNCED ON : 26.02.2024

PER : Shri Debashish Chakrabarty (Member) (A)

J U D G M E N T

1. The Applicants who are working as Daily Wage Forest Labourers at Sanjay Gandhi National Park, Borivali, Mumbai, seek directions to allow them to avail of 10% 'Parallel Reservation' as provided by G.R Revenue & Forest Department dated 16.10.2012 for appointment by 'Direct Recruitment' to 'Group-C' posts of 'Forest Guards' as per 'Advertisement No. 10/03' dated 08.06.2023

issued by 'Principal Chief Conservator of Forests (HOFF), Maharashtra State, Nagpur'.

2. The learned Advocates for Applicants stated that the Advertisement No.10/03 dated 08.06.2023 was issued by Principal Chief Conservator of Forest (HOFF), Maharashtra State, Nagpur for appointment by 'Direct Recruitment' to 2138 posts in 'Group C' of 'Forest Guards' across territorial jurisdictions of all 11 limits of the Chief Conservators of Forest.

3. The learned Advocate for Applicants stated that the 'Principal Chief Conservator of Forest (HOFF), Nagpur' in consultation with Deputy Director (South), Sanjay Gandhi National Park, Borivali, Mumbai has earmarked 266 posts of Forest Guards for Thane District.

4. Learned Advocate for Applicants then stated that for Thane District out of 266 posts, there are 24 posts of Forest Guards which are reserved under 10% 'Parallel Reservation' for Daily Wage Forest Labourers. However, to avail of this 10% 'Parallel Reservation' they need to produce 'Certificate' from respective Divisional Forest Officers/Dy. Conservators of Forest as per provisions of G.R Revenue & Forest dated 16.10.2012.

5. The learned Advocate for Applicants further stated that in minimum 'Education Qualification' of 12 Standard is prescribed for appointment to posts of Forest Guards. The 'Minimum Age' is 18 years and 'Maximum Age' is 55 years in respect of 'Daily Wage Forest Labourers'. Further no relaxation has been given to the Daily Wage Forest Labourers in respect of 'Physical Tests'. The Applicants case is thus related to 'Clause No. 9.21' of

Advertisement No. 10/03 dated 08.06.2023 which is about 10% 'Parallel Reservation' for Daily Wage Forest Labour.

6. The learned Advocate for Applicants thereupon explained that the scope of G.R Revenue & Forest Department dated 16.10.2012 was to primarily regularize the services of Daily Wage Forest Labours who had done atleast 240 days work in any 5 years during the period from 1.11.1994 to 30.6.2004 by absorbing them in newly created 5089 'Supernumerary Posts' in Group D.

7. The learned Advocate for Applicants further explained that there are Daily Wage Forest Labours who did not fulfill the criteria of atleast of 240 days work in any 5 years during 1.11.1994 to 30.6.2004 so as to be entitled for newly created 5089 'Supernumerary Posts' in Group 'D' but were serving as on 30.6.2004 in Forest Department. He emphasized that it was for these Daily Wage Forest Labourers that 10% 'Parallel Reservation' came to be provided at the time of 'Direct Recruitment' to all posts of Group 'C' and Group 'D' of Forest Department by Special Provision in Para 8 of Revenue & Forest Department G.R dated 16.10.2012.

8. The learned Advocate for Applicants stressed on the point of discrimination against Applicants by stating that there was no clarity with respect to entitlement of 10% 'Parallel Reservation' in 'Direct Recruitment' to all posts of Group C & D for such Daily Wage Forest Labours who may have fulfilled the criteria of 240 days work in any 5 years but after the 'Cut-off Date', of 30.6.2004.

9. The learned Advocate for Applicant stated that 'Principal, Chief Conservator of Forest (HOFF), Nagpur,' has issued 'Office

Circular' dated 31.8.2013. The 'Office Circular' was issued to clarify about implementation of 10% 'Parallel Reservation' in respect of 'Daily Wage Forest Labours' with reference to 'Para 8' of 'G.R Revenue & Forest Department dated 16.10.2012. The 'Office Circular' clarified that 10% 'Parallel Reservation' was only for those Daily Wage Forest Labours who had joined prior to 30.6.2004 and done at least 240 days work in any 5 years during the period from 1.11.1994 to 30.6.2004. However, it was silent about the Daily Wage Forest Labours who were working from much earlier than 30.6.2004 but had failed to achieve the eligibility criteria of at least 240 days work in any 5 years as on 30.6.2004 and could not become eligible to be absorbed in the newly created 5089 'Supernumerary Posts' in Group 'D'. Thus it was necessary to consider whether such Daily Wage Forest Labourers who after 30.6.2004 fulfilled the criteria of at least 240 days work in any 5 years were to be considered as eligible for the 10% 'Parallel Reservation' in all posts of Group 'C' and Group 'D' under the Forest Department with reference to 'Para 8' of Revenue & Forest Department G.R dated 16.10.2022. The learned Advocate for the Applicant contended that although expected no concerted action was taken to extend the 'Cut-off Date' of 30.6.2004 put in place by 'Office Circular' dated 31.8.2013 issued by Principal Chief Conservator of Forest (HOFF), Nagpur so as to give effect to 10% 'Parallel Reservation' for all those Daily Wage Forest Labours who may have subsequently fulfilled the criteria of at least 240 days work in any 5 years resulting in invidious discrimination against such Daily Wage Forest Workers.

10. The learned C.P.O relied on 'Affidavit in Reply' dated 13.12.2023 filed by 'Deputy Director (South), Sanjay Gandhi National Park, Borivali, Mumbai' to state that the grievance of Applicants is in respect of implementation of 'Para 8(d)' of G.R,

Revenue and Forest Department dated 16.10.2012 which relates to clarification given way by 'Office Circular' dated 31.8.2013 issued by Principal Chief Conservator of Forest (HOFF), Nagpur.

11. The learned C.P.O further relied on 'Affidavit in Reply' dated 13.12.2023 filed by 'Deputy Director (South), of Sanjay Gandhi National Park, Borivali, Mumbai' to emphasize that those Daily Wage Forest Labourers who want to avail the benefits of 10% 'Parallel Reservation' for appointment by 'Direct Recruitment' to all posts of Group 'C' and Group 'D', of Forest Department should as per G.R Revenue & Forest Department dated 16.10.2012 read with Office Circular dated 31.8.2013 issued by Principal Chief Conservator of Forest (HOFF), Nagpur should have invariably completed at least 240 days work in any 5 years prior to 30.6.2004.

12. The 'Para 8' which is 'non obstante' in respect of other contents of G.R Revenue & Forest Department dated 16.10.2012 was included only to provide a 'Step-Up Employment Opportunity' for all those working as 'Temporary Employees' in Forest Department including all such Daily Wage Forest Labourers who could not have got absorbed in newly created 5089 Supernumerary Posts in 'Group D' to still able in future to get appointments in all posts in Group 'C' and Group 'D' under Forest Department. Most pertinent to note here is that no pre eligibility condition such as (i) Minimum of 240 days work in any 5 years and (ii) Circumscribed Period of time from 1.10.1994 upto 30.6.2004 are not mentioned in Para 8 which distinguishes its intent as being different from that of absorption of Daily Wage Forest Labourers in newly created 5089 'Supernumerary Posts' in Group 'D'. The conscious decision was to provide barrier free options to those Daily Wage Forest Labours who may have achieved at least 240 days work in any 5

years but after 30.6.2004 up to G.R Revenue & Forest Department dated 16.10.2012. Further, this 'Step Up Employment Opportunity' was particularly in respect of all posts in Group 'C' because 'Para' made wider exceptions by including those posts in Group 'C' under Forest Department which were normally filled by Direct Recruitment from amongst candidates recommended by (a) 'Employment Exchanges' & (b) 'Selection Boards'. Additionally, the 'Age Relaxation' provided was based on total service rendered by such Daily Wage Forest Labourers. The 10% 'Parallel Reservation' for such Daily Wage Forest Labourers was just limited to posts of 'Forest Guards' but it cut across to posts in Group 'C' and Group 'D' under Forest Department. The contents of 'Para 8' indicate that its origins are in 'General Policy Framework' of the State Government to provide Temporary Employees with opportunities for employment in all posts of Group 'C' and Group 'D' which thus 'ipso facto' had to be made applicable to Forest Departments.

13. The 10% 'Parallel Reservation' under G.R Revenue & Forest Department dated 16.10.2012, is without any 'Sunset Clause' to mean that it would automatically come to an end after fixed number of years from issue of G.R, Revenue & Forest Department dated 16.10.2012. Important it is to also note that G.R, Revenue & Forest Department dated 16.10.2012 was largely retrospective in character because it primarily aimed at improving the service conditions of Daily Wage Forest Labourers who had done atleast 240 days work in any 5 years during the period from 1.11.1994 to 30.6.2004. However, it did not overlook the future of other Daily Wage Forest Workers as policy makers were aware of the fact that many Daily Wage Forest Labours would not have got absorbed in 5089 'Supernumerary Posts' in Group D but many more Daily Wage Forest Labours may have even been appointed after 30.6.2004. Therefore, stringent restrictions were put in place by

way of 'Para 11 and' 'Para 12' in G.R Revenue & Forest Department to not only limit prospective engagement of 'Daily Wage Forest Labours' for only short periods upto 3 Months but also terminate the engagements of those who have continued to work as Daily Wage Forest Labourers after 30.6.2004. Hence, in a way the adverse impact of the prospective restrictions brought in by Para 11' and 'Para 12' were sought to be off set by providing such Daily Wage Forest Labours who were to be terminated with future option to seek appointments by Direct Recruitment to all posts of Group C and Group D under Forest Department through the unique pathway of 10% 'Parallel Reservation'. The intricate aspects of policy formulation largely with retrospective effect relating to regularization of services as well as making available prospective employment to Temporary Employees is evident in respect of Daily Wage Forest Labourers engaged over long periods of time by Forest Department.

14. The outcomes of 10% 'Parallel Reservation' provided for all posts of Group 'C' and Group 'D' under Forest Department including Daily Wage Forest Labours for posts of Forest Guards should have been maintained after issue of Revenue and Forest Department G.R dated 16.10.2012. However, the Forest Department turned a 'Nelson Eye' towards it as is evident from the dismal picture painted by the figures now disclosed by way of Affidavit in Reply dated 13.12.2023, in respect of queries raised earlier at the time of hearing of O.A No. 734/2023. The disclosure of factual information regarding appointment of 'Forest Guards' through the pathway of 10% 'Parallel Reservation' from amongst Daily Wage Forest Laboureres is of vital implications in Public Employment because if any 'Vertical Reservation' or 'Parallel Reservation' has been provided for posts in Government Service then it must achieve its intended objectives. Thus whether

objectives of 10% 'Parallel Reservation' set out by G.R Revenue & Forest Department dated 16.10.2012 were achieved or not have now been put under the spotlight by Forest Department through Annexures to Questions asked at the time of hearing of O.A No. 734/2023 which came to be dismissed on 12.10.2023.

"8. Question-1. How many times recruitment process were undertaken for filling up the post of Forest Guard after 2012 year wise before 8.6.2023 and the number of Forest Labourers selected against the post of 10% reservation.

8.1 The answer to this Question is in the following Chart:

Sr No.	Recruitment done in the cadre of Forest Guard after the year 2012 (Year wise)	Forest Guards recruited against the reservation of 10% quota for Daily wage labourers	Remarks/Name of Circles and number of posts filled against this reservation shown against the name of Circle
01	2013	3	Dhule-1, Aurangabad-2
02	2014	1	Gadchiroli-1
03	2015	0	-
04	2016	2	Nagpur-2
05	2019	1	Amravati-1

Question No. 2 : The number of forest labourers appointed against reservation of 10% posts after 2012 up to the completed process of recruitment of Forest Guard before 8.6.2023 and out of those appointed how many fulfil the criteria of 240 days and 5 years and having worked as Forest Labourers after the cut-off date of 30.6.2004.

9.1 The answer to this Question is in the following Chart:

Sr No	Recruitment of Forest Guard done after 2012 (year wise)	Forest Guards recruited against 10% quota reserved for daily wage labourers	Out of those appointed
01	2013	3	3 Nil
02	2014	1	As per Certificate issued vide dated 13.5.2014 one Shri Dinesh Moon was

			working on daily wages who had worked 240 days as per year for 5 years with effect from 1.3.2001	
03	2015	0	Nil	Nil
04	2016	2	2	Nil
05	2019	1	Nil	1

Question No. 3 : In this process whether the daily wages Forest Labourers who have completed 240 days for 5 years and appointed after 30.6.2004 are to be given the benefit of 10% reservation while recruiting them to the post of Forest Guard as per advertisement dated 8.6.2023.

10.1 It is submitted that the letter bearing No. Desk-10(2)/Estt/1/CR 6(C)/896, dated 31.8.2013 issued by the present Respondent No. 2, through which it was directed that daily wage labourer who were working before 30.6.2004 and who have completed 240 days for 5 years till the date of publication of advertisement will be held eligible for 10% reservation. The daily wage labourers who worked after 30.6.2004 will not be held eligible for this 10% reservation.”

15. The objectives of 10% Parallel Reservation provided for Daily Wage Forest Gaurds for appointments to posts of Forest Guards’ in Group ‘C’ as per G.R Revenue & Forest Department dated 16.10.2012 has definitely not been achieved by Forest Department. Thus it is imperative to ascertain what must have caused this to happen not to be acknowledged by Forest Department. The answer clearly lies in the clarification which came to be issued by Principal Chief Conservator of Forest (HOFF), Nagpur through Office Circular dated 31.8.2013 to restrict the scope of 10% ‘Parallel Reservation’ to only those Daily Wage Forest Labourers who fulfilled the identical eligibility criteria for absorption on newly created 5086 Supernumerary Posts of Group ‘D’. The lament is that such an important policy clarification which came to be read into ‘Para 8 (d)’ without doubt was beyond the jurisdiction and competence of Principal Chief Conservator of Forest (HOFF), Nagpur. The ‘Para 8(d)’ was embedded in the G.R Revenue & Forest Department dated 16.10.2012 after policy decision approved by ‘State Cabinet’. Such crucial policy clarification in respect of 10% ‘Parallel Reservation’ which had deep implications on Public Employment therefore was to be necessarily issued only

by way of 'Modification/Corrigendum' to Revenue & Forest Department G.R dated 16.10.2012 with prior approval of State Government.

16. The unravelling of these facts happens now after more than One Decade of failed implementation of the policy of 10% 'Parallel Reservation' for all posts of Group 'C' and Group 'D' in Forest Department. Necessary in this context therefore is to reproduce 'Para 4 & Para 5' from Additional Affidavit in Reply filed on behalf of Principal Secretary, (Forest) Revenue & Forest Department, on 24.1.2023.

4. It is submitted that at present the Forest Department having two categories of Forest Labourers first is (i) Supernumerary Forest Labourers, and second is (ii) Daily Wage Labourers and as per point 8(d) of aforementioned Government Resolution dated 16.10.2012, 10% reservation is kept of daily wage labourers, who are not brought on supernumerary posts, which is confirmed by this Hon'ble Tribunal while deciding on 11.8.2023 in O.A No 137/2019 and 138/2019.

5. It is specifically submitted that while deciding OA No. 88/2015 by the Aurangabad Bench of this Hon'ble Tribunal, the Hon'ble Tribunal considered that 10% posts kept reserved for daily wage labourers who were made permanent by the GR in question in order to give them opportunity to join the services, actually it is specifically submitted that daily wage labourers who were made permanent by this Government Resolution joined the Government service immediately after their absorption against the supernumerary posts created for them only and they were governed by Maharashtra Civil Services Rules, hence the question of giving them opportunity to join the service again does not arise. Hence, this provision of G.R was interpreted by the Hon'ble Aurangabad Bench of this Tribunal but as per conditions mentioned in the advertisement wherein by mistake it was mentioned by the Department itself that 10% posts are reserved for Supernumerary labourers."

The, truth therefore is that 10% 'Parallel Reservation' was for all posts of Group 'C' and Group 'D' in Forest Department right from the very beginning since issue of Revenue and Forest

Department G.R dated 16.10.2012 and was to be made applicable for all categories of Temporary Employees including the large number of Daily Wage Forest Labourers who had joined before 30.6.2004 but could not be absorbed in 5089 Supernumerary Posts in Group 'D' due to restrictive conditions of having 240 days in any 5 years during 1.10.1994 to 20.6.2004 or but even those Daily Wage Forest Labours who came to be engaged after 30.6.2004.

17. The acknowledgment of the existence of such category of non-eligible Daily Wage Forest Labourers working in Forest Department even after 30.6.2004 and upto 16.10.2012 is found in 'Para 8(d)' of G.R dated 16.10.2012 which reads under:-

“ ड) शासनाने अंशकालीन कर्मचा-यांबाबत निर्गमित केलेल्या शासन निर्णयानुसार त्यांच्याकरिता शासनात सरळ सेवा भरतीमध्ये समांतर आरक्षण ठेवून त्यांच्याकरिता पदे आरक्षित केली आहेत. त्याप्रमाणे वन विभागात सरळसेवी भरतीवेळी पात्रता पूर्ण करिता असणा-या रोजंदारी मजूराना गट क व गट ड मध्ये १० % आरक्षित ठेवण्यात यावीत. अंशकालीन कर्मचा-यांना वयाच्या संदर्भात देण्यात आलेली सूट (४६ वर्ष) यांनाही देण्यात यावी.”

18. The above contents of 'Para 8 (d)' does not include in respect of Daily Wage Forest Workers the eligibility criteria of having done 240 days work in any 5 years during 1.10.1994 to 30.6.2004. Hence the eligibility criteria under Para 8 (d) which provides for 10% 'Parallel Reservation' does not require 240 days work to be done in any 5 years during the period 1.10.1994 to 30.6.2004, but is only above 5 years engagement as Daily Wage Forest Labours. Those who were absorbed directly in newly created 5089 Supernumerary Posts in Group-D by passed the requirement of minimum 'Educational Qualifications' of 12th Standard but also

'Physical Tests' and other stipulations as per the applicable recruitment rules for appointment of Forest Guards in Group 'C' under Forest Department.

19. The necessity to engage Daily Wage Forest Labours in future as well has also been acknowledged by Forest Department although only for 'Seasonal Works' as per provision of 'Clause 11' and 'Clause 12' of Revenue & Forest Department G.R dated 16.10.2012. The contents of 'Clause 11' and 'Clause 12' read as follows:-

“११) यापुढे वनविभागातील हंगामी कामासाठी रोजंदारी मजूरांची आवश्यकता भासल्यास हंगामी कामाशिवास इतर कोणत्याही कामावर बारमाही कामावर मजूर घेण्यात येवू नये. हंगामी कामासाठी व्यावयाच्या मजुरांच्या सेवा कोणत्याही परिस्थितीत ३ महिन्यापेक्षा जास्त कालावधीसाठी लागू करण्यात येवू नये.

१२) दिनांक ३०.०६.२००४ रोजी पाच वर्षे पूर्ण न केलेल्या परंतु रोजंदारी मजूर म्हणून कार्यरत असलेल्या मजूरांच्या आवश्यकतेबाबत आढावा घेण्यात यावा व त्याची आवश्यकता नसल्यास त्यांना विहित पद्धतीने कामावरून कमी करण्यात यावे”.

20. The Advertisement No. 10/03 issued by Principal Chief Conservator of Forest (HOFF), Nagpur on 8.6.2023 for 2168 posts of Forest Guards provides for higher 'Age Relaxation' of upto 55 Years for only for two categories viz (i) Graduate Temporary Employees and (ii) Daily Wage Forest Workers. In the mention of 'Graduate Temporary Employees' in this Advertisement No. 10/03 there is also acknowledgment of another class of Temporary Employees besides Daily Wage Forest Labourers working in Forest Department which correlates directly to contents of Para 8(a) to Para 8 (c) while Sub Clause 8(d) is specific in its mention only about Daily Wage Forest Labours. The 'Age Relaxation' up to 55 years now stretched much beyond 46 years as provided by Revenue & Forest Department G.R dated 16.10.2012 is only to provide employment opportunity through 10% 'Parallel

Reservation' to all those Daily Wage Forest Labourers who could not get absorbed in the newly created 5089 Supernumerary Posts in Group D, just because they were not engaged by Forest Department to be able to work for atleast 240 days in any 5 years from 1.10.1994 to 30.6.2004, but came to be engaged as Daily Wage Forest Labours just before 30.6.2004 or thereafter up to 16.10.2012 and continued to work till some of them did achieve the criteria of 240 days in any 5 years in the subsequent years but yet could not avail of the 10% 'Parallel Reservation' for all posts of Group C and Group D including of 'Forest Guard' as now borne out from disclosure of analyzed information reproduced in 'Para 15' as 'Question 1 to Question 3'. Then there are those Daily Wage Forest Workers who were engaged for 'Seasonal Work' as per Para 8(11) even after 16.10.2012 but only for 3 months at a time but yet again with passage of time may have achieved criteria of 240 days work in any 5 years. However, as it has transpired during the course of hearing many from this specific category of Daily Wage Forest Labours who were engaged after 16.10.2012 may have by now achieved the criteria of 240 days work in any 5 years having continued to work in Forest Department assisted as it were by orders passed in their favour by 'Labour Courts' under provisions of the 'Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971'.

21. The 'Constitution Bench' of the 'Hon'ble Supreme Court of India' while deciding Civil Appeal No 3609 with Civil Appeal No 7040/2002 regarding the issue of 100% reservation to S.T candidates for the post of Teachers in the erstwhile State of Andhra Pradesh by order dated 22.4.2020 in respect of Question No. 4 framed by them has observed the following in Para No. 147 & Para 148 which are reproduced below as under:-

“In Re: Question No.4: Whether the conditions of eligibility that is the origin and cutoff date to avail the benefit of reservation in the notification is reasonable:

147. *The G.O. in question requires candidate or the parents to reside in the area continuously w.e.f. 26.1.1950 to date. There is no rhyme or reason to require continuous residence for last 50 years or more. It overlooks the rights of various other persons who might have settled decades together in the area in question. It is discriminatory vis à vis to the scheduled tribes also settled in the area and it has no purpose to be achieved and imposes restriction which was not even provided in the Presidential Order issued under Article 371D of the Constitution of India with respect to residential or educational requirements. Thus, it does not lay down valid conditions. The same is fixed in highly unreasonable and arbitrary manner and limits zone of consideration to miniscule where an opportunity for public employment has to be afforded to all concerned with reasonable rights.*

148. *Public employment envisages opportunity to all, who have been provided reservation is by way of exception to do the compensatory jobs. The condition above deprives the scheduled tribes who are permanent residents of the areas and have settled after the said cutoff date. Thus, the classification created is illegal, unreasonable, and arbitrary. Making such a provision that a person should be a resident on or before 26th January 1950 to date is discriminatory and has the effect of exceeding the purpose of providing the reservation. It defeats the rights of other similar tribes who might have settled after 26th January 1950 in the area taken care of in the Presidential Order under Article 371D. It is violative of Articles 14, 15(1) and 16 of the Constitution and has no rationale with the purpose sought to be achieved. It creates a class within a class, and the classification made 144 failed to qualify the parameters of Articles 14, 15 and 16 of the Constitution of India.*

The above judgment of ‘Constitution Bench’ of the ‘Hon’ble Supreme Court of India’ which was in respect of 100% reservation to S.T candidates for the post of Teachers in the erstwhile State of Andhra Pradesh is pertinent because of its wide in its application not only to reservation under the Constitution of India but other Government servants which are required to be kept free from any bondages highly unreasonable and arbitrary like Cut off Dates

which make it violative of Articles 14, 15(1) and 16 of the Constitution and has no rationale with the purpose sought to be achieved as so evident in the instant case of Direct Recruitment to posts of 'Forest Guards' through 10% 'Parallel Reservation' as per Para 8(d) of Revenue & Forest Department G.R dated 16.10.2012 had crept in only because of the Office Circular issued by Principal Chief Conservator of Forest (HOFF), Nagpur dated 31.8.2013.

22. We are therefore of the considered view that the restrictive condition of 240 days work done in any 5 years read into Revenue & Forest Department G.R dated 16.10.2012 by way of 'Office Circular' issued by Principal Chief Conservator of Forest (HOFF), Nagpur dated 31.8.2013 is discriminatory and violative of provisions of Article 16 of Constitution of India as it unfairly restricts Public Employment opportunities in all posts of Group C and Group D under Forest Department only to those Daily Wage Forest Workers who fulfilled the eligibility criteria with the circumscribed time period from 1.10.1994 upto 30.6.2004 but did not include many Daily Wage Forest Workers who were engaged after 30.6.2004 by Forest Department and have subsequently fulfilled the eligibility criteria of 240 days work in any 5 years and no clarification of this crucial policy relating to Public Employment came to be incorporated as by way of any Modification / Corrigendum in Revenue & Forest Department G.R dated 16.10.2012 or even subsequent G.R dated 10.5.2018. Hence, we pass the following order:-

ORDER

- (i) The Original Applications are Allowed.

- (ii) The Applicants who are Daily Wage Forest Labourers are declared as being entitled to avail of employment opportunities by availing of 10% 'Parallel Reservation' in all posts of Group 'C' and Group 'D' under Forest Department as per provisions of Para 8 of Revenue & Forest Department G.R dated 16.10.2012.
- (iii) No Order as to Costs.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 26.02.2024
Dictation taken by : A.K. Nair.