

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NOS 317 & 318/2009 WITH
55/2010**

DISTRICT : NAGPUR

1) ORIGINAL APPLICATION NO 317 OF 2009

Shri Satish Kawaduji Mahakulkar,)
Occ : Nil, R/o: Ridhora Satgaon)
Tahsil - Hingna, Dist-Nagpur.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Secretary to the Govt.)
of Maharashtra in the)
Department of Water Resource)
Mantralaya, Mumbai.)
2. The Superintending Engineer,)
Nagpur Irrigation Circle,)
Nagpur Sinchan Bhavan,)
Civil Lines, Nagpur.)
3. The Superintending Engineer,)
Coordination Circle,)
Administrative Building No. 1,)
Civil Lines, Nagpur.)

RH

4. The Collector/District)
 Rehabilitation Officer,)
 Kanholi Nala Project,)
 Collectorate, Civil Lines,)
 Nagpur.)...**Respondents**

2) ORIGINAL APPLICATION NO 318 OF 2009

- Shri Premshankar Natthuji Sarve,)
 Occ : Nil, R/o: Umri, Post-Umri,)
 [Nanda], Tahsil – Saoner,)
 Dist-Nagpur.)...**Applicant**

Versus

1. The State of Maharashtra)
 Water Resources Department,)
 Mantralaya, Mumbai.)
 Through its Secretary.)
 2. The Superintending Engineer,)
 Nagpur Irrigation Circle,)
 Nagpur Sinchan Bhavan,)
 Civil Lines, Nagpur.)
 3. The Superintending Engineer,)
 Coordination Circle,)
 Administrative Building No. 1,)
 Civil Lines, Nagpur.)

RH

4. The Collector/District)
 Rehabilitation Officer,)
 Kanholi Nala Project,)
 Collectorate, Civil Lines,)
 Nagpur.)...**Respondents**

3) ORIGINAL APPLICATION NO 55 OF 2010

- Shri Dashrath M. Korde,)
 Occ : Nil, R/o: Velora Satgaon,)
 Tahsil – Hingna, Dist-Nagpur.)...**Applicant**

Versus

1. The State of Maharashtra)
 Through Secretary to the Govt.)
 of Maharashtra in the)
 Department of Water Resource)
 Mantralaya, Mumbai.)
 2. The Superintending Engineer,)
 Nagpur Irrigation Circle,)
 Nagpur Sinchan Bhavan,)
 Civil Lines, Nagpur.)
 3. The Superintending Engineer,)
 Coordination Circle,)
 Administrative Building No. 1,)
 Civil Lines, Nagpur.)

4. The District Rehabilitation)
Officer, Collectorate, Civil Lines)
Nagpur.)...**Respondents**

~~Kum~~ K.K Pathak, learned counsel advocate for the Applicants in O.A nos 317, 318/2009 & 55/2010.

Shri S.A Sainis, learned Presenting Officer for Respondents no 1, 3 & 4 in O.A no 317/2009 and Shri A.M Khadatkar, learned Presenting Officer for Respondents no 1, 3 & 4 in O.A nos 318/2009 & 55/2010.

Shri V.G Palshikar, learned advocate for Respondent no. 2 in O.A nos 317, 318/2009 & 55/2010.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

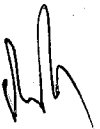
Shri J.D Kulkarni (Member) (J)

DATE : 06.01.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard ~~Kum~~ K.K Pathak, learned counsel for the Applicants in O.A nos 317, 318/2009 & 55/2010, Shri S.A Sainis, learned Presenting Officer for Respondents no



1, 3 & 4 in O.A no 317/2009 and Shri A.M Khadatkar, learned Presenting Officer for Respondents no 1, 3 & 4 in O.A nos 318/2009 & 55/2010 and Shri V.G Palshikar, learned advocate for Respondent no. 2 in O.A nos 317, 318/2009 & 55/2010.


2. The Original Applications were heard together and are being disposed of by a common order as the issues to be decided are identical.

3. The Applicants in these Original Applications are Project Affected Persons (P.A.P) and are seeking appointment to Class-III and Class-IV posts in the Government on the basis of seniority in the list of eligible P.A.P maintained by respective district Collectors.

4. This issue has been finally decided by the Full Bench of Hon'ble Bombay High Court (Aurangabad Bench) by the judgment dated 9.7.2009 in W.P no 5266/2008. The issue before the Hon'ble High Court was:

“Whether Project Affected Persons can be appointed without advertising the posts, ignoring their qualifications and merit.”

Hon'ble High Court has held as follows:-



“28. At the cost of repetition, we reiterate that what has been provided under the said Act is horizontal reservation for project affected persons and no right to be appointed without competing with the candidates from that category. We find that in consonance with the equity rule enshrined under Article 14 and 16 of the Constitution, the candidates from Project Affected Persons category are required to compete amongst themselves in accordance with the relevant recruitment rules and the best candidate is entitled to be selected.”

It is further observed in the judgment that:-

“As we have already held hereinabove, the Act does not prescribe that the appointments will have to be made de hors the recruitment rules only on the basis of the seniority in the list maintained by the Collector.”

The answer to the issue referred to the Bench was as follows:-

“That the project affected persons cannot be appointed without advertising the posts ignoring their qualifications and merit.”



Hon'ble High Court has categorically held that P.A.P candidates cannot be appointed directly and they have to apply for the post horizontally reserved for P.A.Ps as and when advertisements are issued by the recruiting authorities. The prayers in these O.A cannot be considered in the light of the judgment of the High Court mentioned above.

5. In the result, these Original Applications are dismissed with no order as to costs.

sd/-

(J.D Kulkarni)
Member (J)

sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Nagpur

Date : 06.01.2017

Dictation taken by : A.K. Nair.