

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 127/2017 (D.B.)**

1. Deleted.
2. Hitesh S/o Shivprasad Damahe,  
Aged : Major,  
Occupation : Unemployed,  
R/o Mukkam Bhandanga,  
Mundipar, Tq. Goregaon,  
District Gondia.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai-400 032.
- 2) The Collector,  
Bhandara.

**Respondents**

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**Shri M.R.Joharapurkar, Id. Advocate for the applicant.**

**Shri M.I.Khan, Id. P.O. for the respondents.**

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**Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman &  
Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.**

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**Date of Reserving for Judgment : 31<sup>st</sup> December, 2023.**

**Date of Pronouncement of Judgment : 02<sup>th</sup> February, 2023**

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**JUDGMENT**

**(Per:-Shree Bhagwan)**

Heard Shri M.R.Joharapurkar, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the respondents.

2. The case of the applicant in short is as follows. The applicant no. 1 (Shivprasad S/o Hiralal Damahe) is a Project Affected Person (in short P.A.P.) claiming appointment for Class-IV pursuant to the Government Resolution No. AEM/1080/25/16-A, Dated 24.01.1980. Applicant no. 2 (Hitesh S/o Shivprasad Damahe) is the son of the applicant no. 1 and he is claiming appointment. Applicant no. 2 is Hitesh Damahe, son of applicant no. 1 Shivprasad Damahe. After the Tribunal's order dated 08.09.2022, the name of the applicant no. 1 was deleted and now applicant no. 2, Hitesh S/o Shivprasad Damahe is before the Tribunal.

3. Actually, the case in brief is that Shivprasad Damahe was project affected person and he was claiming appointment as P.A.P. candidate to the post of Class-IV person as per Government Resolution No. AEM/1080/25/16-A, Dated 24.01.1980. But he could not get appointment due to over age. Now, his son who is applicant no. 2 is claiming appointment under P.A.P. Category. Earlier the applicant has approached to this Tribunal. Originally late Shri Prasad S/o Hiralal Damahe filed O.A. No. 582/1998 which was decided on 17.07.2002 in

favour of applicant by Maharashtra Administrative Tribunal, Nagpur Bench and in para no. 3 of the order it was mentioned that applicant is at Sr. No. 87 in the list of project affected persons (as per P. 2 of the Rejoinder filed by the applicant). Therefore, it is appropriate to direct the authority to consider the petitioner for appointment to the post of Class-IV as per seniority list and on merits, in accordance with the rules.

4. Now, in this original application father's name i.e. Shivprasad S/o Hiralal Damahe has been deleted as per Tribunal's order dated 08.09.2022. As on today, applicant before the Tribunal is Hitesh S/o of original P.A.P. person i.e. Shivprasad Damahe. He claims that as per Tribunal's order dated 17.07.2002, he be appointed as P.A.P. candidate in accordance with the old provision of Government Resolution No. AEM/1080/25/16-A, Dated 24.01.1980.

5. Respondent no. 2 i.e. Collector, Bhandara has filed reply on 15.03.2017 and in para no. 2 he has relied upon the G.R. dated 27.10.2009, by which circular dated 18.07.2008 has been cancelled in respect of appointment of P.A.P. candidates. Respondents have also relied on full bench judgment of "**Hon'ble High Court Bombay, Bench at Aurangabad in W.P. Nos. 5266, 6100 & 7185 of 2008 decided on 09.07.2009**". Respondents have also mentioned in the reply full bench judgment of **Hon'ble High Court Bombay, Bench at Aurangabad in case of Rajendra Pandurang Pagare Vs. State of Maharashtra & Ors.,**

**2009 (4), Mh.L.J.** Wherein Hon'ble High Court in equal terms has held that project affected persons cannot be appointed without advertisement and ignoring qualification and merits. The Hon'ble High Court has observed that it is mandatory for the Government to advertise all the posts which are to be filled by project affected persons. So that everybody falling in the said category can get equal opportunity. Therefore, it is crystal clear that applicant cannot claim as right in terms of government resolution dated 18.07.2008 particularly when the above said G.R. is in the direct conflict with the judgment of full bench of the Hon'ble High Court Bombay, Bench at Aurangabad.

6. The G.R. dated 27.10.2009 (A-R-2), P. 33 has mentioned the Judgment of larger bench of Hon'ble High Court Bombay, Bench at Aurangabad dated 09.07.2009 and it clearly mentioned that :-

“प्रकल्पग्रस्तांच्या नियुक्त्या जाहिरातीशिवाय व त्यांची सेवाप्रवेश अर्हता व गुणवत्ता डावलून करता येणार नाहीत.”

7. The Id. Counsel for the applicant has filed Rejoinder on behalf of the applicants dated 23.11.2021 and submitted that while deciding the O.A. No. 582/1998, the Tribunal directed the respondents to consider the appointment of applicant on the posts of Class-IV employees. The said directions are yet not followed. In para no. 2 he has admitted that respondents have pleaded the case about the G.R. dated

27.10.2009 and cancellation of Government Resolution dated 18.07.2008. In fact present applicant is not directly a P.A.P. candidate he is son of P.A.P. candidate and P.A.P. certificate is issued by District Collector of the concerned District to the particular person who is affected by the project. The said judgment in O.A. No. 582/1998 was in respect of father of present applicant before Tribunal.

8. In this situation, present applicant does not have right to claim for P.A.P. candidate because no documentary evidence have been filed which supports that dependents of P.A.P. can be substituted against the original P.A.P. candidate. As per G.R. dated 27.10.2009, P.A.P. candidate have to participate in normal advertised posts. However, certain percentage will be reserved for P.A.P. candidates in horizontal reservation category and all P.A.P. candidates will compete among themselves. The issue in present O.A. is squarely covered by Judgment in the said O.A. i.e. O.A. Nos. 317, 318/2009 & 55/2010 of Division Bench, M.A.T., Nagpur Bench. In the said Judgment in para no. 4 is reproduced below:-

*“4. This issue has been finally decided by the Full Bench of Hon’ble Bombay High Court (Aurangabad Bench) by the judgment dated 09.07.2009 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.*

9. In view of above discussions, the **O.A. requires to be dismissed. Hence, following order:-**

**ORDER**

**A. O.A. is hereby dismissed.**

**B. No order as to costs.**

**(M.G.Giratkar)**  
**Vice Chairman**

aps

Dated – 02/02/2023

**(Shree Bhagwan)**  
**Vice Chairman**

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman  
& Hon'ble Vice Chairman.

Judgment signed : 02/02/2023.  
on and pronounced on

Uploaded on : 03/02/2023.