

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION No. 539 of 2017**

Seema D/o Sudhakar Munjewar,  
Aged about 34 years, Occ. Student,  
R/o Plot No.114, Jaidurga Layout No.2,  
Manish Nagar, Nagpur-440 015.

**Applicant.**

**Versus**

- 1) Maharashtra Public Service Commission  
through its Chairman 5<sup>th</sup>, 7<sup>th</sup> & 8<sup>th</sup> floor,  
Cooperage Telephone Nigam Building,  
Maharshi Karve Marg, Cooperage,  
Mumbai-400 021.
- 2) The State of Maharashtra,  
through its Secretary,  
Higher & Technical Education,  
Mahapalika Marg, Post Box No.1967,  
Opposite Metro Cinema,  
Mumbai-400 001.

**Respondents.**

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**S/Shri M.M. and A.M. Sudame, Advs. for the applicant.**

**Shri V.A. Kulkarni, P.O. for respondents.**

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**WITH**

**ORIGINAL APPLICATION No. 660 of 2015**

Sarla Madhukar Dhoke,  
Aged about 36 years, Occ. Service,  
Assistant Engineer Gr.I, R/o 301,  
Swapnapurti Apartment, Janki Nagar,  
Uday Nagar Square, Nagpur-440 034.

**Applicant.**

**Versus**

- 1) Maharashtra Public Service Commission  
Bank of India Bldg.,  
3<sup>rd</sup> floor, Mahatma Gandhi Road,  
Hutatma Circle, Mumbai-400 001.
- 2) The State of Maharashtra,  
through the Secretary to Govt. of  
Maharashtra, Water Resources Department,  
Mumbai.
- 3) Sonal Raosaheb Patil
- 4) Kshitija Sayajirao Suryawanshi
- 5) Anuradha Anandrao Jadhav
- 6) Mayura Subhash Joshi
- 7) Vinaya Dattatraya Badani
- 8) Surekha Bhimrao Porke
- 9) Prajakta Sanjay Patil
- 10) Aparna Ashok Kapse
- 11) Sonal Sanjay Patil

3-11 all R/o, C/o Secretary to Government of Maharashtra  
Water Resource Department, Mumbai.

**Respondents.**

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**S/Shri M.M. and A.M. Sudame, Advs. for the applicant.**

**Shri A.M. Ghogre, P.O. for respondent nos. 1&2.**

**None for respondent nos. 3 to 11.**

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**WITH**

**ORIGINAL APPLICATION No. 661 of 2015**

Nilambari D/o Ramesh Gharde,  
Aged about 38 years, Occ. Asstt. Engineer,  
R/o Plot No.34, Flat No.101, Sakhi Apartments,  
Pathan Layout, Parsodi, Trimurty Nagar, Nagpur.

**Applicant.**

**Versus**

- 1) Maharashtra Public Service Commission  
Bank of India Bldg.,  
3<sup>rd</sup> floor, Mahatma Gandhi Road,  
Hutatma Circle, Mumbai-400 001.
- 2) State of Maharashtra,  
through the Secretary to Govt. of  
Maharashtra, Water Resources Department,  
Mumbai.
- 3) Surekha Bhimrao Korke
- 4) Prajakta Sanjay Patil
- 5) Aparna Ashok Kapse
- 6) Sonal Sanjay Patil

3-6 all R/o, C/o Secretary to Government of Maharashtra  
Water Resource Department, Mumbai.

**Respondents.**

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**S/Shri M.M. and A.M. Sudame, Advs. for the applicant.**

**Shri S.A. Deo, C.P.O. for respondent nos. 1&2.**

**None for respondent nos. 3 to 6.**

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**WITH**

**ORIGINAL APPLICATION No. 717 of 2015**

Rajashri Arun Deshmukh,  
Aged about 36 years, Occ. Service,  
R/o 11A, Shree Prasad, Gurudev Nagar  
Near Hardik Colony, Vidyut Nagar,  
VMV area, Amravati-444 604.

**Applicant.**

**Versus**

- 1) Maharashtra Public Service Commission  
Bank of India Bldg.,  
3<sup>rd</sup> floor, Mahatma Gandhi Road,  
Hutatma Circle, Mumbai-400 001  
New Address :  
5<sup>th</sup>, 7<sup>th</sup> & 8<sup>th</sup> floor,  
Cooperage Telephone Nigam Building,  
Maharshi Karve Marg, Cooperage,  
Mumbai-400 021.
- 2) Deleted.
- 3) Deleted.
- 4) Nandini Vijay Gurve,  
House No.204, E-Wing Kashikapadi Puram,  
Paud Road, near Eklavya Polytechnic,  
Kotharud, Tq. Pune, Dist. Pune-411 038.
- 5) Dipti Prabhakar Joshi,  
C/o Chief Engineer, Gosikhurd Project,  
Irrigation Department, VIDC Campus,  
Sinchan Seva Bhavan, Civil Lines,  
Nagpur-440 001.
- 6) Mayuri Ajit Patil,  
Civil Engineering Department,  
Dr. J.J. Magdum College of Engineering  
Gate No.289, Shirol- Wadi Road,  
Agar Bagh, Jaisingpur, Kolhapur-416 101.
- 7) The State of Maharashtra,  
through Secretary to the Govt. of Maharashtra,  
Public Works Department, Mantralaya,  
Mumbai-400 032.

- 8) The State of Maharashtra,  
through the Secretary to the Govt. of Mah.  
Water Resources Department, Mantralaya,  
Mumbai-400 032.
- 9) The State of Maharashtra,  
through the Secretary to the Govt. of  
Maharashtra Water Supply & Sanitation Department,  
Mantralaya, Mumbai-400 032.
- 10) Dipali Babasaheb Patil,  
C/o Chief Engineer, Jaisampada Vibhag,  
(Panchganga Irrigation Sub Division),  
Sinchan Bhavan, Tarabai Park, Kolhapur-411 011.
- 11) Jyoti Shyamrao Bhilare,  
Building No.1102, Class-I,  
Krushna nagar, Irrigation Colony  
Koregaon Road, Satara, Tq. Satara,  
Dist. Satara-415 003.
- 12) Seema Bhagwan Patil,  
C/o Irrigation Department,  
Hutatma Rajguru Chowk,  
Mantralaya, Mumbai-400 032.
- 13) Deleted.
- 14) State of Maharashtra,  
Through the Secretary,  
General Administration Department,  
Mantralaya, Mumbai.

**Respondents.**

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**S/Shri M.M. and A.M. Sudame, Advs. for the applicant.**

**Shri P.N. Warjurkar, P.O. for respondent nos.1, 7 to 9 & 14**

**None for other respondents.**

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**WITH**

**ORIGINAL APPLICATION No. 837 of 2015**

Payal Devidas Chafle,  
Aged about 30 years, Occ. Service,  
R/o Plot No.63-A, Manavseva Nagar,  
Nagpur-440 006.

**Applicant.**

**Versus**

- 1) Maharashtra Public Service Commission  
Bank of India Bldg.,  
3<sup>rd</sup> floor, Mahatma Gandhi Road,  
Hutatma Circle, Mumbai-400 001.
- 2) State of Maharashtra,  
through the Secretary to Govt. of  
Maharashtra, Water Resources Department,  
Mumbai.
- 3) Dipali Prabhakar Joshi
- 4) Nutan Sunil Chougule
- 5) Seema Bhagwan Patil
- 6) Seema Balasaheb Raut
- 7) Dipali Babasaheb Patil

3-7 all R/o, C/o Secretary to Government of Maharashtra  
Water Resource Department, Mumbai.

**Respondents.**

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**S/Shri M.M. and A.M. Sudame, Advs. for the applicant.**

**Shri H.K. Pande, P.O. for respondent nos. 1&2.**

**None for respondent nos. 3 to 7.**

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**Coram :- Shri Shree Bhagwan,  
Member (A) and  
Shri Anand Karanjkar, Member (J).**

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**COMMON JUDGMENT**

**Per : Anand Karanjkar : Member (J).**

**(Delivered on this 15<sup>th</sup> day of March,2019)**

Heard Shri M.M. Sudame, learned counsel for the applicants in all the O.As and the learned P.O. appearing on behalf of the respondents no. 1 & 2, no one appeared for rest of the respondents.

2. All these applications are involving the same questions of fact and law, therefore, all the applications are decided by this common Judgment.

3. The material facts are that the applicant in O.A.539/2017 applied for the post of Lecturer Mechanical Engineering, on the establishment of Maharashtra Polytechnic Lecturer Service, Group-A. This applicant was S.C. candidate and she applied in S.C. (female) quota.

4. In O.A. No.660/2015, the applicant was OBC candidate and she applied in OBC (female) quota for the post of Assistant Executive Engineer, Grade-A. In O.A.661/2015 the applicant was S.C. candidate and she applied under SC (female) quota for the post of Assistant Executive Engineer, Grade-A. In O.A.717/2015, the applicant was OBC candidate and she applied for the post of Assistant Executive Engineer under OBC (female) quota and in O.A.

837/2015 the applicant was OBC candidate and she applied for the post of Assistant Executive Engineer under OBC (female) quota.

5. In all applications, it is grievance that the applicants were entitled to apply in all categories including the open category reserved for female. It is submitted that the respondents have committed illegality and not considered these applicants in Open (female) quota for filling the posts. According to the applicants, though they have obtained more marks in the examination, they were not considered in Open (female) quota and the open female candidates who scored less marks than the applicants were appointed. On the basis of this it is contention of the applicants that the recruitment process followed by the respondents is contrary to law and therefore, it be declared that the applicants were entitled to be appointed on the respective posts in a Open (female) quota and such directions be issued to the respondents after cancellation of the appointment orders of the candidates who are appointed in service though they secured less marks than the applicants.

6. The respondent MPSC submitted the reply and justified the action of the respondents. It is submitted that as per the law as, the applicants were not the candidates in the open female category, they applied for the post reserved for their respective caste quota, therefore, at the most the applicants could have been considered in



category open (general) or in a general category reserved for their caste or category reserved for the female of their own caste. Specific stand is taken by the MPSC that this action of the respondent was in accordance with the Circulars issued by the Government of Maharashtra in the year 1999 and year 2014. It is submitted that the same contentions were raised in other original applications filed before the Maharashtra Administrative Tribunal, Mumbai Bench and are rejected. It is submitted that in O.A.437/2012, decided on 02/04/2014, it was held that the Govt. circular dated 16/03/1999 be followed. It is also submitted by the MPSC that in case of **Irfan shaikh Vs. State of Maharashtra & Ors.** in O.A.301/2009 decided on 26/08/2009, same contentions were specifically raised and turned down by the Maharashtra Administrative Tribunal. It is also submitted that the order passed in case of *Irfan shaikh Vs. State of Maharashtra & Ors.* was challenged in Writ Petition No. 272/2010 before the Division Bench of Hon'ble High Court Bombay, at Aurangabad and vide order dated 15/11/2010 it was held that the view taken by the Tribunal was in consonance with the law laid down by the Hon'ble Apex Court in case of **Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Ors.**, reported in AIR 2007 SC,3127. It is also contended by the respondents that the same questions were examined by the Hon'ble Bombay High Court, Division Bench , Aurangabad in Writ Petition No. 10103/2015 decided

on 31/03/2017. It is submitted that the entire action of the respondents is based on law laid down by the Hon'ble Apex Court and the Hon'ble Bombay High Court, therefore, there is no substance in all these applications, they are liable to be dismissed.

7. We have heard submissions of Shri M.M. Sudame, the Id. counsel for the applicants and the learned C.P.O./ P.Os. for respective respondents. There is no dispute about the fact that several decisions are delivered after considering the same controversy. We have perused the Judgment in Writ Petition No. 10103/2015 delivered by the Hon'ble Bombay High Court, on 31-03-2017 at Aurangabad. In para-26 of the Judgment it is specifically observed that the Circular dated 13/08/2014 was based on the judgement delivered by the Hon'ble Apex court in case of **Anil Kumar Gupta & Ors. Vs. State of U.P. & Ors.,** the Hon'ble High Court also considered the Circular dated 16/03/1999 and held that as the Circular was in tune with the Judgment of the Hon'ble Apex court in case of *Anil Kumar Gupta & Ors. Vs. State of U.P. & Ors.,* therefore, the Hon'ble Bombay High Court rejected the contention that the Circular dated 13-08-2014 was illegal. After reading Circular dated 16/03/1999 and 13/08/2014 it is crystal clear that for filling the reserved posts by horizontal reservation it was mandatory to consider the candidates of the same category and it was not permissible to consider the candidates belonging to other category. All the

applicants are belonging to reserved categories, they submitted their applications for the post under their reserved quota available to their categories and now they are claiming that they should have been considered in open female category. After reading Circular dated 13/08/2014 it appears that the open female category was a special reserved category and it was only available for the female belonging to open category, therefore, the candidates who were not covered in open female category had no right in law to claim the posts reserved for open female category. This Circular has made it clear that the candidates of other reserved category had no right to claim a post in open specially reserved category only on the ground that they were female and secured higher marks. In the present case after examining this legal position apparently we do not see any merits in all these applications.

8. The learned counsel for the applicants has invited our attention to Government Circular issued on 19/12/2018. After reading this it seems that in fact it is a corrigendum to the previous Circulars dated 16/03/1999 and 13/08/2014. On the basis of this corrigendum it is contended that now the Government has taken a liberal view and on the basis of this corrigendum the applicants are entitled for the relief.

9. We have gone through the Circular dated 19/12/2018. It is specifically mentioned in this Circular that this Circular will come in force from the date of its issuance. It is nowhere mentioned in this Circular that it would operate retrospectively. Similarly after reading the entire Circular it is not possible to infer that it was intention of the Government to give retrospective effect to the operation of this Circular. The legal position is settled that every Statute, Notification, Ordinance, Resolution issued by the Government would operate prospectively, unless its operation is expressly made retrospective or by necessary implication it can be inferred that it would operate retrospectively. In view of this legal position, we do not see any merit in the contention that when the select list was prepared illegality is committed by the respondents in not considering the applicants in open female category. We, therefore, hold that there is no substance in these applications. Hence, the following order –

**ORDER**

All the applications i.e. O.A.Nos. 539/2017, 660/2015, 661/2015,717/2015 and 837/2015 stand dismissed with no order as to costs.

**(Anand Karanjkar)**  
**Member(J).**

**(Shree Bhagwan)**  
**Member (A).**

**Dated :- 15/03/2019.**

\*dnk.