

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO.136 OF 2012

DISTRICT : SANGLI

Mr. Pramod Dadasaheb Dorkar)
R/at. Bharatnagar, Bhosale Plot No.11,)
Behind Hudco Colony, Miraj,)
District Sangli 416 410) **...Applicant**

Versus

1. The State of Maharashtra,)
Through Principal Secretary,)
Home (Transport), Mantralaya,)
Mumbai 400 032)
2. The Maharashtra Public Service)
Commission, Through its Secretary,)
3rd floor, Bank of India Building,)
M.G. Road, Hutatma Chowk,)
Mumbai 400 001.)
3. Mr. Jadhav Vaibhav Sarjerao,)
At & Post Budhgaon, Behind Post Office,)
Taluka Miraj, District Sangli 416 304.)
4. Mr. Gaikwad Prathivraj Pralharao)
101, Akshya Krupa Housing Soc.,)
Krishna Nagar, Satara 415 003)

5. Mr. Shaikh Firoz Subhan)
Malik, Sheetal Colony, Mukund Nagar,)
Ahmednagar 414 001)
6. Mr. Raut Bhushan Shriharid)
Sai, Kotecha Colony, Behind Shanta)
Tai Hotel, Jalna Road, Beed 431 112.)
7. Mr. Patil Sandeep Shantaram)
Garjana Chowk, Near Masjid, At & Post)
Pimparla, District Jalgaon 425 002.)
8. Mr. Madke Manishkumar Bhiwaji)
Mahatma Phule Chowk, Washiv 444 505)
9. Mr. Nagre Raju Murlidhar,)
At & Post Pimpalgaon, Bahula,)
Taluka & District Nashik 422 013)
10. Mr. Aade Sanjay Vishnu,)
At & Post Dhamgaon, Taluka Darwaha,)
District Yavatmal 455 202.)
11. Mr. Mahajan Vijay Sudam,)
N-402, Mayur Nagar, S.R. No.63-3-1,)
Near Katepuram Chowk, Pimplegurav,)
Pune 411 027.)
12. Mr. Pawar Suraj Devidas,)
At Shari, Post Selu, Taluka Ani,)
District Yavatmal 455 103)
13. Mr. Navghare Satish Shalikram,)
At & Post Pangri Pawaghrehk,)
Taluka Malegaon, District Wasig 444 503)

14. Mr. Shinde Sunil Balaso,)
At & Post Savitra Nagar, Junawadi Road,)
Pangalli, Taluka Baramati,)
District Pune 413 102)
15. Mr. Khemnar Anil Namdeo)
At & Post Ambhore, Taluka Sangamner,)
District Ahmednagar 422 605.)
16. Mr. Malthane Amol Gangadhar)
C/o. Shri Dilip S. Bhuyar, Flat No.402,)
A Wing, Vrindavan Apartment,)
Near Rainbow Tower, Airoli,)
Navi Mumbai 400 608.)
17. Mr. Shinde Shrikant Shankar,)
1587-3, Shree Ganesh Nagar,)
Taluka Niphad, District Nashik 422 303)
18. Mr. Lokhande Vijaykumar Basant,)
Mahavir Complex, Vikram Nagar,)
Near Khan Hospital, Vashi Road,)
Taluka & District Latur 413 531.)
19. Mr. Bansode Kiran Chandrakant,)
Kanthak Niwas, Prakash Nagar,)
Near Tulsi Hospital, Vashi Road,)
Taluka & District Latur 413 531.)
20. Mr. Ghodke Nitin Namdeo,)
17, Ambika Nagar, Beside Radharaman)
Apartment, Ring Road, Jalochi, Taluka)
Baramati, District Pune 413 102.)
21. Mr. Chavan Sanjay Naiba,)
Dy. Engineer Mechanical Store,)
Sub-Division, Free Press Journal Marg,)
Government Barrack No.02,)
Mumbai 400 021.)

22. Mr. Patil Yogesh Shantilal)
Plot No.65, A, Kshire Complex, Near)
Panchayat Samiti, Wadibhokar Road,)
Deopur, Dhule, Taluka & District)
Dhule 424 002.)
23. Mr. Korewale Bajrang Ganpat,)
At & Post Anagar, Taluka Mohol,)
District Solapur 413 214.)
24. Mr. Ledade Vipin Damodharrao)
Building No.06, 2nd floor, Bhosle Nagar,)
Nagpur 440 024.)
25. Mr. Shinde Prashant Balasaheb,)
Utkarsh Residency, Flat No.F-02,)
Beside Flake Eye Hospital, E Ward,)
Tarabai Park, Taluka Karveer,)
District Kolapur 416 001.)
26. Mr. Hajare Maruti Tulsiram,)
C/o. Kandalkar N.S.No.73, Adarsh Nagar,)
Beside Prasanna Shop, Dighi,)
Pune 411 052)
27. Mr. Nalavade Amit Shrirang,)
Maharshi Karve Ladies Educational)
Institute, Karve Nagar, Taluka Haveli,)
Pune 411 052)
28. Mr. Pawar Harishkumar Arjun,)
A-5, Sheetal Pardeshi, Beside Satyuap)
Sweets, Govind Nagar, Nashik 420 009)
29. Mr. Pawar Kishor Ramlal,)
C/o. A. Z. Gujare, Swami Niwas,)
Rameshwar Nagar, Jail Road,)
Nashik Road, Nashik 422 101)

30. Mr. Allavawar Vijaykumar Gangaram)
C/o. Nandedkar S.D. Sport Department,)
Government Medical Degree College &)
Hospital, Taluka & District)
Aurangabad 415 002.)
31. Smt. Pawar Prasanna Shekhar,)
Sangam Plot No.04, Shridhar Colony,)
Sahu Nagar, Godoli, Taluka Koregaon,)
District Satara 415 002.)
32. Smt. Patil Rajshree Pramod,)
335, Navi Peth, Beside Sewashram Lodge,)
Taluka & District Jalgaon 425 001.)
33. Smt. Somwanshi Shivali Pradip)
Kukadi Colony, Pedgaon Road,)
Shrigaonda, District Ahmednagar 413 701)
34. Smt. Kondagule Sapna Pocham)
C/o. Sandeepkumar Pathade, Bibisar)
Nagar, Near Nehru High School, Anna)
Bhau Sathe Chowk, Ghuntkala)
Ward No.03, Taluka & District)
Chandrapur 442 402)
35. Smt. Chavan Aparna Sashiprakash)
46, Sankalp Housing Society, Near)
Alankar Police Station, Karve Nagar,)
Kothurd, Pune 411 038)

Respondents No.3 to 35 All Working as Assistant Inspector of Motor Vehicles, Maharashtra State, Home Department, Mumbai.

36. Commissioner of Transport,)
Fountain 2, MTNL Building, 5th floor,)
Hutatma Chowk, Mumbai 400 001.)

...Respondents

Mr. Abhijeet A. Desai, learned Advocate for the Applicant.

Mr. Bhushan A. Bandiwadekar, learned Counsel for the Respondents No. 6 and 7.

Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents.

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

RESERVED ON : **14.10.2021**

PRONOUNCED ON : **20.10.2021**

PER : **Justice Ms. Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. The Applicant challenges the process of scrutiny which has taken place in the advertisement dated 27.05.2011 and 09.09.2011 for the post of Assistant Motor Vehicle Inspector thereby declaring that the degree holders in Engineers are not eligible to participate in the said selection process as the requirement of educational qualification was of the diploma holders. The Applicant further seeks declaration that he is entitled to be called for the physical test and interview for the said post and also that the selection of the Private Respondents is *void ab initio* and liable to be struck down.

2. It is the 2nd inning of the hearing of this Original Application as it was earlier allowed by the Division Bench of this Tribunal by judgment dated 19.01.2015. The said judgment was challenged before the Hon'ble High Court by the State of Maharashtra in two

petitions i.e. Writ Petition No.12327/2016 and 1227 of 2017. The Hon'ble High Court by order dated 04.12.2018 quashed and set aside the order dated 19.01.2015 and remanded with directions that the selected candidates possessing a degree of engineering are to be made as Respondents and after hearing them, the matter to be decided afresh.

3. Pursuant to this direction the Original Applicant made 32 selected candidates as Private Respondents in the array of Respondents i.e. from Respondent No.3 to 35. Hence, the matter is heard again.

4. It is the case of the Applicant that he belongs to NT-B category and a diploma holder in Mechanical Engineer conducted by the Maharashtra State Board of Technical Education.

5. The Respondent No.2, Maharashtra Public Service Commission (M.P.S.C.) invited the applications for the preliminary examination to fill-up 116 posts of Assistant Motor Vehicle Inspector, out of which 7 posts were earmarked for NT-B category. Out of those 7 posts, 2 posts were for females and 1 post for ex-serviceman. In the advertisement the educational qualification was mentioned as S.S.C. or equivalent certificate as recognized by the Government of Maharashtra and Diploma in Automobile Engineering (3 years course) or Mechanical Engineering (3 years course) from the State Board of Technical Education or holding

other diplomas as held equivalent by the Central or State Government.

6. The Applicant appeared for the preliminary examination conducted on 03.07.2011. However, he was not allowed to appear for the main examination which was held on 09.10.2011. He found that the candidates who were having a degree in engineering were allowed to appear for the main examination which was contrary to the Rules under Motor Vehicles Act, 1988 and the advertisement. Thereafter, he realized that the Private Respondents who were selected for the posts were all degree holders and therefore he filed this O.A.

7. The Respondent No.1-State filed affidavit-in-reply dated 26.03.2012 through the Deputy Transport Commissioner, office of Transport Commissioner. The Respondent No.2, M.P.S.C. filed affidavit-in-reply dated 23.08.2012. Thereafter upon amendment Respondent No.2 filed another affidavit-in-reply dated 27.08.2019., through the Under Secretary. The Private Respondents No.7 and 6 filed their affidavit-in-reply on 15.03.2021 and 08.03.2021 respectively. All the Respondents denied allegations made and contentions raised by the Applicant.

8. The learned Advocate Mr. A.A. Desai appearing for the Applicant has submitted that in the advertisement dated 27.05.2011, Respondents No.1 and 2 have consciously omitted the

degree holders in the eligibility criterion and have specifically mentioned that the candidates should be diploma holders. He submitted that in the advertisement there is no mention that any preference or weight-age would be given to the candidates holding the higher educational qualification. He further submitted that under Section 213(4) of the Motor Vehicles Act, 1988 and so also Motor Vehicle Rules under the Act the required educational qualification for the post of Assistant Motor Vehicle Inspector is the diploma holder. The Clause 4.4 and 4.4.2 of the advertisement is also in consonance with the Rules. The requirement for the said post is the diploma holder, because it is completely supervisory in nature. The appointment of degree holders by passing the diploma holders amount to complete deviation from the Rules and the Advertisement. Such deviation is not allowed under the law. The Respondents raised question of eligibility criterion of the degree holders and argued that the cut-off marks also increased automatically and therefore it was not possible for the diploma holders to reach to that level which was not the job requirement of Assistant Motor Vehicle Inspector. The learned Advocate Mr. Desai argued that no vested discretion could be used by the Respondents in selection process once advertisement is very specific. The degree holders may be holding higher education, but higher education is not necessarily the equivalent education and thus it is violative of Articles 14 and 16 of the Constitution. The degree education is

more for the managerial, however, here the job is more of supervisory because he has to give certificate of fitness of the vehicle on the streets. The learned Advocate Mr. Desai further argued that sometimes lower is not included or covered in higher. He submitted that as per the directions given by the Hon'ble High Court the Applicant made the degree holders and selected candidates as Private Respondents.

9. On the point of eligibility criterion learned Advocate Mr. Desai heavily relied on the judgment of Bombay High Court, Nagpur Bench, Nagpur in ***Rajesh Shrirambapu Fate Versus The State Of Maharashtra, through its Secretary, Ministry of Home, Transport Department, Mantralaya, Writ Petition No.1270/2018 decided on 28.09.2018.*** The Bombay High Court, Nagpur Bench has dealt with the examination for the post of Assistant Inspector of Motor Vehicle, Group-C in Motor Vehicle Department (Recruitment) Rules, 2016 and where the relevant Section 213(4) of Motor Vehicles Act, 1988 was considered.

10. The learned Advocate Mr. Desai relied on the following judgments -

- (a) P.M. Latha And Another Versus State Of Kerala And Others reported in (2003) 3 SCC 541.
- (b) Yogesh Kumar And Others Versus Government Of Ntc Delhi And Others reported in (2003) 3 SCC 548.
- (c) Rajesh Shrirambapu Fate Versus The State Of Maharashtra, through its Secretary, Ministry of Home,

Transport Department, Mantralaya, Writ Petition No.1270/2018 decided on 28.09.2018.

- (d) Dr. (Major) Meeta Sahai Versus State Of Bihar, Civil Appeal No.9482/2019 arising out of Special Leave Petition (Civil) No.12245/2017 decided 17.12.2019.
- (e) Zahoor Ahmad Rather Versus Sheikh Imtiyaz Ahmad, Civil Appeal Nos.11853-11854/2018 @ Special Leave Petition (C) Nos.30797-30798/2017 dated 05.12.2018.
- (f) State Of U.P.& Ors Versus Arvind Kumar Srivastava & Ors, Civil Appeal No.9849/2014 (arising out of SLP © No.18639/2012) decided on 17.10.2014.

11. The learned Presenting Officer Ms. K.S. Gaikwad appearing for the Respondents No.1 and 2 has argued that the applicant has no locus to challenge the process because the applicant is unsuccessful candidate as he has participated in the selection process so he is estopped from challenge the said selection process. The learned P.O. in support of her submissions relied on the Hon'ble Supreme Court judgment in case of ***Dhananjay Malik & Ors Versus State Of Uttaranchal reported in (2008) 4SCC 171.***

12. The learned P.O. Ms. Gaikwad and learned Advocate Mr. Bandiwadekar both have relied on Section 213[4] (c) of Motor Vehicles Act, 1988 and the Rules. They submitted that the Recruitment Rules of Motor Vehicle Department, amended Rules 2006 do not prescribe bar on higher qualification for the post. The M.P.S.C. has mentioned the minimum requisite qualification for the post of Assistant Motor Vehicle Inspector and nowhere it has been mentioned that the degree holders should not apply for this post of

Assistant Motor Vehicle Inspector. Our attention was drawn by learned Advocate Mr. Bandiwadekar to the standing order 443(E) dated 12.06.2009 published by the Government of India under Section 213[c] of the Motor Vehicles Act, 1988 wherein the minimum qualification for Assistant Motor Vehicle Inspector is prescribed. The learned P.O. pointed out that the cut-off standard marks for the qualifying main written examination is 118 marks and the applicant had secured 80 marks, so he failed to reach the cut-off standard as fixed by the M.P.S.C. for NT-B category. Thus, it is submitted that the qualification mentioned in the advertisement is the minimum qualification and it is not to be read as the specific qualification. It was further argued that the advertisement was issued as per the recruitment Rules of the said post. The learned Advocate Mr. Bandiwadekar has submitted that the Respondents are the successful candidates and they are in the service of Respondent No.1 since 2012. The qualification of degree i.e. Civil and Mechanical is a continuation of the further higher degree to diploma in the respective faculties and therefore selection of the Respondents is not illegal or contrary to the Rules. The applicant could not reach the cut-off marks and therefore he has no locus to claim. Mr. Bandiwadekar further has submitted that the rights of the Private Respondents No.6 and 7 are crystallized as they are appointed and after successful completion of their probation and also after passing the Departmental examination for

the confirmation of the post and made permanent. They cannot be removed from the services as prayed by the Applicant. The learned Advocate Mr. Bandiwadekar relied on the judgment of Hon'ble Supreme Court in case of ***Suman Devi Versus The State Of Uttarakhand & Ors. reported in (2021) 6 SCC 163.***

13. The learned P.O. Ms. K.S. Gaikwad relied on the following judgments:-

- (a) Petroleum and Natural Gas Regulatory Board Versus Indraprastha Gas Limited & Ors. reported in (2015) 9 SCC 209.
- (b) Dhananjay Malik & Ors Versus State Of Uttaranchal reported in (2008) 4SCC 171.

14. Learned Advocate Mr. Bandiwadekar for the Private Respondents submitted the judgment of Bombay High Court, Nagpur Bench in case of ***Rajesh Shrirambapu Fate (supra)*** is set aside by the Hon'ble Supreme Court by the judgment of ***Vishal Ashok Thorat & Ors., Versus Rajesh Shrirambapu Fate & Ors., Civil Appeal No.5444/2019 (arising out of SLP (Civil) No.31957/2018, decided on 19.07.2019.***

15. The learned Advocate Mr. Bandiwadekar relied on the following judgments:-

Vishal Ashok Thorat & Ors., Versus Rajesh Shrirambapu Fate & Ors., Civil Appeal No.5444/2019 (arising out of SLP (Civil) No.31957/2018, decided on 19.07.2019.

16. In the present case also we accept the submissions of the learned Advocate Mr. Desai that the Applicant was not aware of the type of criterion which was applied in the selection process while selecting the candidates. The selection comes after the candidate appears for the examination. The challenge on legality may stand or may not, but the challenge itself cannot be thrown at the threshold on the ground of locus or maintainability.

The learned Advocate Mr. Bandiwadekar on this point has clarified that the Respondents are challenging his locus not on this ground, but on the ground that the applicant not only is unsuccessful, but he could not even secure the cut-off marks. Thus, on the ground of competency of the Applicant, Respondents have challenged the locus. These submissions carry substance.

17. In the present case thus, we need to see the Rules as the rules stand on the higher pedestal than the advertisement.

18. [In the case of **Arvind Kumar Srivastava (supra)** the Hon'ble Supreme Court held that in normal rule in the service jurisprudence the employees who are similarly situated they are to be treated alike by extending them the benefit. However, there are certain laches and delays as well as acquiescence. On this basis the learned Advocate Mr. Desai submitted that there are many other candidates who had appeared in 2011 examination for the

post of Assistant Motor Vehicle Inspector and were being diploma holders were held unsuccessful and therefore the case of the Applicant is held to be in representative in nature. Similar relief is to be advanced to the other similarly situated candidates. These submissions of learned Advocate Mr. Desai do not stand to the reason as this is not a Public Interest Litigation.

In this Tribunal we cannot entertain the matter as Public Interest Litigation (PIL) and especially it cannot be treated as judgment in rem so also the said judgment was not confirmed by the Hon'ble High Court or the Hon'ble Supreme Court.

19. The Hon'ble Supreme Court in case of ***Dhananjay Malik (supra)*** had dealt with the selection and appointment of the physical education teacher, lower grade. Unsuccessful candidates have challenged the said process and it is held that if the candidate takes calculated chance and having unsuccessful participated in the selection process without any demur then such candidates is estopped from challenging the selection criterion *inter alia* that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

20. In the first we deal with the point of maintainability for which was rely on the case of ***Dr. (Major) Meeta Sahai (supra)*** the Hon'ble Supreme Court considered the policy of giving weight-age to the experience in the hospital run by the Government of Bihar

under the head of work experience and not any other. However, there was no such specific mention in the advertisement. In the said case the Respondents had questioned the maintainability of the challenge once he had participated in the recruitment process on the ground that the Applicant cannot challenge the correctness of the process only because he failed in the selection. The Hon'ble Supreme Court distinguished the locus of the unsuccessful candidates who challenged the process.

*“18. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, **unless he/she participates in the selection process.**”*

We are bound by the ratio therefore the locus of the present applicant and the maintainability cannot be discarded only on the ground of his participation in the process.

21. In case of **Zahoor Ahmad Rather (supra)** the posts of Technician-III, the Junior Engineers were filled-up in the State of Jammu and Kashmir however in the process the State changed the Rules after selection process had been initiated and the applicants were shown disqualified. It was held that generally the possession of higher qualification can presuppose the acquisition of lower

qualification prescribed for the post. In the absence of such stipulation, it was held that such hypothesis could be deduced. The Hon'ble Supreme Court in this case further held it is not the part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications that equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. It is further held that the State is entrusted with the authority to assess the needs of its public services. In the matters of policy the judicial review must tread warily. In the said judgment the Hon'ble Supreme Court relied on the judgment **Jyoti K.K. (supra)** wherein it was reiterated that as per the profile of a particular job the Government should decide the eligibility and accordingly the rules are framed.

22. This being the remanded matter we have gone through the judgment of the earlier Bench and also the Hon'ble Supreme Court judgment minutely. The earlier Bench has relied on the Hon'ble Supreme Court judgments of **P.M. Latha (supra)** and **Yogesh Kumar And Others (supra)**. In the judgment of **P.M. Latha (supra)** it is held that in the advertisement issued for recruitment to the post of teachers in Government Primary Schools, B.Ed. is not the prescribed qualification and only candidates with prescribed educational qualifications of Teachers Training (Certificate) (shortly

referred to as TTC) were entitled to compete for the selection and seek appointments. It was further held that there is sufficient logic and justification in the State prescribing qualification for the post of primary teachers as only TTC and not B.Ed. Whether B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed. candidates, for the present vacancies advertised, as eligible and therefore the Tribunal has compared the present set of facts with the case of **P.M. Latha (supra)**. Thus the Tribunal thought it safe to adopt the said principle in the present case.

23. After adding the Private Respondents who are the degree holders another dimensions are unfolded before us by the Respondent-State and so also the Private Respondents. It is pertinent to note that the recruitment of the Assistant Motor Vehicle Inspectors is made under the said Rules. We are bound by the ratio laid down by the Hon'ble Supreme Court in the case of **Zahoor Ahmad Rather (supra)** wherein it is held that it is up to the State to decide the requirement of educational qualification and the eligibility depending on the requirement of each job and it is not the matter of judicial review.

Notification the standing order 443(E) dated 12.06.1989 was issued which states as follows :

*“In exercise of the powers confined by sub-section (4) of section 41 of the Motor Vehicles Act, 1988 (59 of 1988) the Central Government hereby prescribes that the **minimum** qualification for the class of officers consisting of the category of Inspector of Motor Vehicles or Assistant Inspector of Motor Vehicles.”*

Therefore, let us advert to the Section 213(4) of the Motor Vehicles Act, 1988 which is reproduced as under:-

*“(4) The Central Government may, having regard to the objects of the Act, by notification in the Official Gazette prescribe the **minimum** qualifications which the said officers or any class thereof shall possess for being appointed as such.”*

(emphasis placed)

Thus, it shows that in the main body of standing order 443(E) and Section 213(4) of the Motor Vehicles Act, 1988, the word ‘minimum’ is used for the qualification mentioned there below. Thus, the State has taken conscious decision by issuing the standing order in the year 1989.

24. The Advertisement was issued in the year 2011. In the advertisement we do agree the word ‘minimum’ is not mentioned. Similarly, there is no mention that the preference will be given to the degree holders. It is not the case of the State that the State wanted to give preference to only the degree holders. The selection process and the advertisement are to be read in the light of the Rules where the minimum qualification of SCC and qualification of diploma holders is prescribed. Though the word ‘minimum’ is not again specifically mentioned under the head of qualification in sub clause (2) of 443(E) it is to be noted that in the body of the opening part of standing order the qualification prescribed below is

minimum. Thus the degree holders are not at all prohibited from applying for the post of Assistant Motor Vehicle Inspector. To read it by placing bar in that manner will amount to misreading the legislative intent. Had it been the case of the Applicant that the Applicant had secured cut-off marks i.e. 118 or more than that and he being diploma holder his name was excluded, then he has locus to challenge the selection. No material is brought on record by the Applicant that weightage is given to the degree holders, though diploma holders had secured more marks than the degree holders. Hence, submissions of the learned Advocate Mr. Desai are not convincing.

Basically, the applicant who is unsuccessfully even securing cut-off marks had no locus on merit, so the argument, that the standard of the cut-off marks was increased because of the degree holders' and so the applicant was excluded is baseless. Bringing the standard at a lower level cannot establish any claim of the Applicant. It is up to the Government to fix the standard and the quality of the candidates. These Rules were not at all argued and were not considered by the earlier Bench while allowing the Original Application. We are of the view that the Act and the Rules stand on the higher footing than the advertisement and if the Rules are in existence the advertisement is required to be read in consonance with the Rules.

25. The Hon'ble Supreme Court relied on the point that if there is omission to mention the relevant qualification in the advertisement it did not leave the State from its obligation to follow the existing rules. In the said matter **Suman Devi (supra)** the Hon'ble Supreme Court was dealing with the selection process of Auxiliary Nurse-Midwives who wanted to be appointed to the cadre of female Health Worker wherein it is held that,

“29. For all other periods, the basic educational qualification of intermediate or equivalent pass with a mandatory science stream qualification, remained an essential condition. Therefore, the argument that the state was bound by the standards it specified (in the advertisement which had omitted any mention as to the educational qualification of intermediate with science) did not relieve the state from the obligation of enforcing statutory rules. It is too late in the day to assert that any kind of estoppel can operate against the state to compel it to give effect to a promise contrary to law or prevailing rules that have statutory force. All arguments to this effect on the part of the appellants are therefore rejected. ”

We also rely on the judgment of **Petroleum and Natural Gas Regulatory Board Versus Indraprastha Gas Limited & Ors. reported in (2015) 9 SCC 209**. The Hon'ble Supreme Court has held that for interpretation of statute and hierarchy of the legislation if there is omission of certain words or definitions then it is not permissible if legislature deliberately omits certain words or definitions.

26. Additionally private Respondents have put their services since last 8 to 9 years and have also cleared their probation and giving the services to the State. They are not found incompetent because they are holding degree and therefore they are not suitable to the job. Under such circumstances, Original Application is dismissed.

Sd/-
(Medha Gadgil)
Member(A)

prk

Sd/-
(Mridula Bhatkar, J.)
Chairperson