

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.158 OF 2021
WITH
ORIGINAL APPLICATION NO.223 OF 2021**

M.M. Dawane & Ors. (O.A.158/2021)
A.V. Dudhal & Ors. (O.A.223/2021) ... Applicants
Versus
The State of Maharashtra & Ors ... Respondents

APPEARANCES :

O.A.No.158/2021

Dr. Gunratan Sadavarte, learned Advocate for the Applicants.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents No.1 & 2.

Mr. Vinod Sangvikar along with Ms. Vaishnavi Gholave, learned Advocate for the Respondents No.16, 27 & 220,

Mr. Mangal Bhandari along with Mr. Mangesh Deskmukh, learned Advocate for the Respondent No.261.

Mr. C.T. Chandratre, learned Advocate for the Respondent No.256.

O.A.No.223/2021

Mr. K.R. Jagdale, learned Advocate for the Applicants.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents No.1 to 3.

Mr. Vinod Sangvikar along with Ms. Vaishnavi Gholave, learned Advocate for the Respondents No.4, 15 & 207.

Mr. Mangal Bhandari along with Mr. Mangesh Deskmukh, learned Advocate for the Respondent No.181.

**CORAM : JUSTICE MRIDULA BHATKAR, (CHAIRPERSON)
SMT. MEDHA GADGIL, MEMBER(A)**

RESERVED ON : 18.06.2021

PRONOUNCED ON : 02.07.2021

PER : JUSTICE MRIDULA BHATKAR, (CHAIRPERSON)

J U D G M E N T

1 Pursuant to Advertisement dated 14.06.2017, the applicants, Police Constables appeared for the Limited Departmental Competitive Examination in the year 2017 conducted by the Maharashtra Public Service Commission (M.P.S.C.), wherein out of 322 posts of Police Sub Inspector, 85 posts were shown as reserved for SC-ST category. The preliminary examination was held on 04.08.2017. Result was declared on 18.11.2017 by the M.P.S.C. Thereafter, the result of main examination was declared on 06.04.2018. The first merit list was published on 10.02.2021 but the names of the candidates were not mentioned therein. After written examination the list of the roll numbers of qualifying candidates was published and the numbers of all the applicants were mentioned in it as they have cleared main written examination also. For passing of main examination minimum 230 marks were required which includes marks of written test and physical examination. The physical examination was conducted on 28.02.2020. All the Applicants falling in SC-ST category have cleared all the examinations. However, the M.P.S.C. prepared the list of 322 candidates on 10.02.2021 on merit and the last candidate secured 334 marks which is the cut-off marks. Without taking into account the principles of reservation the final merit list of 322 candidates was prepared.

2. The cut-off marks fixed by M.P.S.C. is 334 marks. In O.A.No.223 of 2021 the marks secured by Applicants are as follows :-

Applicant No.1, Mr. Ankush Vithal Dudhal - 330 marks,

Applicant No.2, Mr. Sandeep Ramnath Darade - 333 marks,

Applicant No.3, Mr. Sachin Appasaheb Jaybhaye - 332 marks,

Applicant No.4, Mr. Sainath Murlidhar Nagare - 333 marks and

Applicant No.5, Mr. Sachin Mahadev Malshikare - 332 marks.

Similarly, in O.A.No.158/2021 all the 14 Applicants though have cleared the examination and secured more than 230 marks, but less than 334 marks. Therefore, their names were not considered as the M.P.S.C. has disregarded the law of reservation and so also the law laid down by the Hon'ble Supreme Court in the case of ***M. Nagaraj Versus Union of India, reported in (2006) 8 SCC 212*** and also in ***Jarnail Singh & Ors. Versus Lachhmi Narain Gupta, reported in 2018 SCC online SC 1641.***

3. The learned Counsel Shri Sadavarte and Shri Jagdale, both have submitted that the appointment by Limited Departmental Competitive Examination is a recruitment and therefore they are entitled to reservation in promotion. Shri Sadavarte submitted that Applicants are not claiming for 50% reservation, but they are claiming 33% reservation for SC-ST category. He submitted that in the judgment in ***Writ Petition No.2797 of 2015 & Ors. dated 04.08.2017, State of Maharashtra, through Chief Secretary, Government of Maharashtra & Ors. Versus Shri Vijay Ghogre & Ors,*** though the Division Bench of Bombay High Court decided

against the policy of reservation in promotion in the State, the said judgment is challenged by the State of Maharashtra before the Hon'ble Supreme Court in SLP (C) No.28306 of 2017 with No.31288 of 2017. The Hon'ble Supreme Court while issuing notices directed to proceed with promotions based on the policy of the State. The learned Counsel Mr. Sadavarte relied on the order in Special Leave Appeal (C) No.30621/2011 with IA No.25195 /2018 wherein reference in **Jarnail Singh (supra)** is made as under :-

"1] It is directed that the pendency of this Special Leave Petition shall not stand in the way of Union of India taking steps for the purpose of promotion from 'reserved to reserved' and 'unreserved to unreserved' and also in the matter of promotion on merits."

4. The learned Counsel for the Applicants further relied on the judgment of Bombay High Court in **Writ Petition No.121/2019, Mumbai Port Trust, SC ST OBC Welfare Association Versus Chairman and the Board of Trustees of MBPT & Ors, dated 11.02.2019**, wherein the Division Bench has considered the law laid down by the Hon'ble Supreme Court in the judgments in **Indra Sawhney Vs. Union of India & Ors, reported in (1993) SCC 477, M. Nagaraj (supra)** and **Jarnail Singh (supra)** in favour of reservation in promotion. The learned Counsel has submitted that the reservation in promotion is the statutory right of the applicants. The learned Counsel heavily relied on the judgment of this Tribunal in O.A.No.394/2018 with M.A.No.472/2018 with M.A.No.586/2018, dated 06.08.2018 (Santosh B. Rathod Vs. State of Maharashtra),

which was decided after the judgment of **Vijay Ghogre (supra)** wherein it is held that **Jarnail Singh (supra)** has impliedly overruled the judgment in **Vijay Ghogre (supra)** and therefore the reservation should be given in promotions. The Applicant, Santosh B. Rathod, open category candidate appeared in the similar Limited Departmental Competitive Examination for the post of PSI as per the Advertisement in the year 2016 i.e. one year earlier to the present Advertisement. Though he was meritorious and initially his name was included, it was taken out of the select list when the reservation policy in promotion was applied and thus 154 candidates from the reserved category were included substituting 154 candidates. Though non-reserved candidates were having more marks than those 154 reserved category group, were taken out of the merit list. Action of the State was challenged by Santosh B. Rathod, Applicant in O.A.No.394/2018, before this Tribunal. However, the Tribunal upheld the said action. The judgment of this Tribunal was not stayed and those 154 candidates of the reserved category after taking training joined the services and are posted. At that time the Government created additional posts of PSI and all were accommodated. The learned Counsel submitted that it is the judgment of the Tribunal and therefore the same is binding on this Bench by way of Law of Precedent. He relied on the number of Circulars and Government Resolutions (G.R.) issued by the State of Maharashtra. He argued that the State of Maharashtra on one hand is challenging the order passed in the matter of **Vijay Ghogre (supra)** where the G.R. dated 25.05.2004 giving reservation in promotion was quashed and set aside and on the other

hand the Government has taken out the G.R. dated 07.05.2021 wherein the reservation in promotion to SC and ST hereafter will not be provided in the Government services on the basis of judgment of Bombay High Court in case of **Vijay Ghogre (supra)**. The Government thus has taken contradictory stand.

5. Our attention was drawn by the learned Counsel to the G.R. dated 28.10.2020 wherein the Respondent No.3 and other Ministers who are Respondents in the present O.A. are the Members of the Committee which was constituted to take decisions about the reservation in promotions to be applied to SC and ST employees of Government service. By G.R. dated 20.04.2021 of General Administration Department (G.A.D.) the Government ordered to keep the posts vacant for the reserved quota and the other posts in the open category can be filled up by promotion as per the seniority-cum-merit. However, the said provision was cancelled by the G.R. dated 07.05.2021 on the ground that the judgment of **Vijay Ghogre (supra)** is not stayed and therefore no post will be kept vacant under reservation. The learned Counsel further relied on the judgment of **Ms. Swati Gupta Versus State Of U.P. & Ors, reported in 1995 SCC (2) 560**, wherein it is submitted that the reservations are always provided through circulars. He relied on the office memorandum dated 15.06.2018 issued by the Government of India, where the Union of India has referred the order passed in SLP No.30621/2011 on 17.05.2018 in case of **Jarnail Singh (supra)** of giving the promotions from 'reserved to reserved' and 'unreserved to unreserved'. He argued that though the Central has taken

a view to provide reservation in promotions to SC and ST category, the State has taken a different stand. He relied on the letters written by the Minister of Energy of the State who is also the Member of Committee constituted as per G.R. dated 28.10.2020 by the State of Maharashtra and wherein he has specifically expressed his demand for keeping reservation in promotions. The learned Counsel relied at paragraph 14 of the affidavit of Shri Venkatesh Madhav Bhat, Deputy Secretary, dated 24.03.2021, wherein, the stand of the State is inconsistent with its own policy. He submitted that a vindictive stand is taken by the State as a reaction to the judgment of Hon'ble Supreme Court in case of ***Jaishri Laxmanrao Patil Versus The Chief Minister & Ors. Civil Appeal No.3123/2020 & Ors, decided on 05.05.2021***, wherein the Hon'ble Supreme Court has declared that there cannot be reservation for Maratha community. He, therefore, submitted that it is the applicant's right to go for training which was going to start on 21.06.2021 and on 24.06.2021 and are to be sent subject to the decision of this O.A. and the applicants will not claim any right or benefit even if they undergo the training, if O.A. is decided against them.

6. The learned Counsel heavily relied on the judgment of ***B.K. Pavithra & Ors. Versus Union of India reported in (2019) 16 SCC 129***. He argued that in paragraphs No.123 to 129, it is specifically cleared that the reservation in promotion is mandatory as per Article 16(4A) of the Constitution of India. Learned Counsel Mr. Jagdale has adopted the arguments of Mr. Sadavarte.

7. Learned C.P.O with learned Counsel Mr. C.T Chandratre for the Respondents relied on the affidavit-in-reply of Mr. Sumant Bhange, Secretary, (SDC & SEO-2) G.A.D, dated 9.6.2021. The learned C.P.O. has submitted that the G.R dated 7.5.2021 is a policy decision taken by the State Government and the same is followed by the M.P.S.C. Learned C.P.O argued that the Respondents have earlier issued G.R dated 4.4.2018 wherein the policy of reservation in promotion was cancelled on the basis of the judgment of the Division Bench of the Hon'ble Bombay High Court in the case of **Vijay Ghogre (supra)** decided on 4.8.2017, wherein the G.R dated 25.4.2004 giving reservation in promotion was challenged. She has submitted that the object of issuing the G.Rs dated 4.4.2018 and 7.5.2021 was to follow the law in the judgment of **Vijay Ghogre (supra)** laid down by the Hon'ble Bombay High Court. The learned C.P.O. has submitted that the said judgment is not stayed by the Hon'ble Supreme Court. The order dated 6.11.2018 of this Tribunal in O.A.394/2018 of Santosh Rathod on which the applicants are relying is per incuriam and cannot be read as a precedent for the reason that Shri Vijay Ghogre's matter is pending before the Hon'ble Supreme Court. The applicants should have approached this Tribunal much earlier when the Circular dated 4.4.2018 was issued. The learned C.P.O. with the learned Counsel Mr. Chandratre argued that the applicants have participated in the preliminary as well as main examination. The result of the main examination was declared on 6.4.2018 and the Circular was issued on 4.4.2018. However, they did not challenge the same at that time. When

they secured less marks in physical test and they could not come in the merit list, those unsuccessful applicants now cannot challenge this process when the final result was published on 10.2.2021.

8. Learned Counsel Mr. Mangal Bhandari along with Mr. Mangesh Deskmukh, learned Counsel for the Respondents No.261 & 181, Mr. Vinod Sangvikar along with Ms. Vaishnavi Gholave, learned Counsel for the Respondents No.16, 27 & 220 in O.A 158/2021 and Respondents No. 4, 15 & 207 in O.A 223/2021 have supported the State and the M.P.S.C. The private Respondents no.16 to 338 in O.A 158/2021 have cleared the preliminary as well main examination and so also the physical test and they are in the merit list. If the policy of reservation in promotion is applied, then the Respondents are going to be affected adversely because their names are likely to be deleted and they will be replaced by other candidates who are not in the merit list, but will get the benefits of reservation in promotion.

9. Considered submissions and perused record. In the case of **B.K. Pavithra (supra)** the challenge was about giving appointment to the petitioners under the Reservation Act, 2018 of the Karnataka Government. Earlier the Reservation Act, 2002 passed by the Karnataka Government on the point of giving promotion with consequential seniority was challenged. The Division Bench of the Hon'ble Supreme Court in the case of **B.K. Pavithra (supra)** declared Sections 3 and 4 of the Reservation Act, 2002 ultra vires and the entire act was thus invalidated. The Government

with a view to cure defects passed Reservation Act, 2018. Thus, in the said judgment the Reservation Act, 2002 was challenged on the point of collection of quantifiable data where the issue was raised about Ratna Prabha Committee which collected the data and so also about the validity of Karnataka Extension of Consequential Seniority to Government servants promoted on the basis of Reservation Act, 2018. The said judgment further held that methodology adopted by the committee in method of data collection was not arbitrary as the conventional method is used in social sciences, so also the Court cannot reevaluate the factual material on record. It held that the law on the ground of Reservation Policy in promotion laid down in **M. Nagaraj (supra)** and **Jarnail Singh (supra)** is also complied with. The Ratna Prabha Committee which collected data by sampling method by thirty-one Departments of State Government has shown that the Reservation in promotion did not affect overall efficiency of the administration. On the point of reservation in promotion the argument of the critics of the reservation in promotion is defended by picking up provision in Article 335 of the Constitution of India. The Hon'ble Supreme Court met his criticism in **B.K. Pavithra (supra)** reads as under :-

129. The Ratna Prabha Committee report considers in Chapter III, the relationship between reservation in promotion and maintenance of efficiency in administration. Finally, it concludes:

“3.12 : Conclusion :

Karnataka has been showing high performance in all the sectors of development viz., finance, health, education, industry, services, etc., to support sustainable economic growth. The analysis on performance of the state in economic development clearly

indicates that reservation in promotions has not affected the overall efficiency of administration.”

However, in ***B.K. Pavithra (supra)*** the power of the State to make law on consequential seniority as mentioned in Article 16(4A) was not challenged or issuance of G.R. in respect of deciding whether reservation in promotion from SC-ST to be maintained was not challenged. In the present matter the two G.Rs. of April 2018 and 07.05.2021 are challenged wherein the State has cancelled its own policy of giving reservation in promotion, thus power of the State in framing policy under 16(4A) is questioned.

10. We also note that in the case of ***M. Nagaraj (supra)*** the issue was raised whether Articles 16(4A) and 16(4B) of the Constitution of India are in violation of basic construction of the Constitution of India. It was held by the Hon'ble Supreme Court that neither the obliteration nor their existence would violate the basic feature of equality which is guaranteed under fundamental rights in Article 14, 15, 16 of the Constitution of India. Thus, consequential seniority purely is the concept based on service jurisprudence.

11. We now address the policy of the State on the point of promotions in reservation which is manifested through enactment and various Government Resolutions issued by the State of Maharashtra. Initially, with the assent of the Government the State of Maharashtra as it was found expedient to provide reservation enacted the Reservation Act which

is known as the Maharashtra State Public Services (Reservation For Scheduled Castes, Scheduled Tribes, Denotified Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 (hereinafter referred as 'Reservation Act, 2001' for brevity) which came into force w.e.f. 29.01.2004. Section 5 of the 'Reservation Act, 2001' is on Reservation in Promotion which states as follows :-

"5. (1) The reservation in promotion shall be at all stages of promotions.

(2) On the date of coming into force of this Act, if any Government orders providing for reservation for any posts to be filled by promotion, are in force, the same shall continue to be in force unless modified or revoked, by Government."

For implementation of the 'Reservation Act, 2001' it is rightly submitted by the learned Counsel Mr. Bhandari that the Government has to make Rules or issue Government Resolutions. Hence, the State of Maharashtra has passed G.R. on 25.05.2004, whereby the State of Maharashtra under Article 16(4A) of the Constitution reserved seats for SC-ST class in promotion. The said G.R. was challenged in Writ Petition No.2797/2015 and the 3 Judges with one having descending view, by judgment dated 04.08.2017 in the case of **Vijay Ghogre (supra)** had set aside and quashed the said G.R. Hon'ble Supreme Court did not stay the judgment of **Vijay Ghogre (supra)**. Hence, the law laid down by the Hon'ble Supreme Court in **M. Nagaraj (supra)** and **Jarnail Singh (supra)** is though binding, yet **Vijay Ghogre (supra)** holds the field in so far as

State of Maharashtra is concerned. In SLP order of 17.05.2018 passed by Hon'ble Supreme Court in case of **Vijay Ghogre (supra)** wherein the order in Special Leave Appeal (C) No.30621/2011 with IA No.25195/2018 in **Jarnail Singh (supra)** is referred, is only an enabling order. The Hon'ble Supreme Court cleared that there is no restriction and is left to the Union of India to promote the persons against the 'reserved to reserved' and 'unreserved to unreserved' during the pendency of the matter. It is unsafe to say that this order sets the law.

12. This Tribunal by order dated 06.08.2018 in O.A.No.394/2018, Santosh B. Rathod Versus State of Maharashtra observed that the **Jarnail Singh (supra)** has impliedly overruled **Vijay Ghogre (supra)** and upheld reservations in promotions. The said matter was taken to Hon'ble High Court in Writ Petition No.3945/2014 and the Division Bench by order dated 18.10.2019 dismissed the said Writ Petition. However, in the said judgment the submissions made by the learned Advocate for the Applicant and the learned Advocate General based on the decision of this Tribunal in **Vijay Ghogre (supra)** are recorded, the Division Bench did not discuss further the merit of the decision of **Vijay Ghogre (supra)** and also other policies of the State of Maharashtra under Article 16(4A), but the petition was dismissed on facts pertaining to the said applicant. The Tribunal in the said judgment did not discuss the law of **Jarnail Singh (supra)** nor the law laid down in **Vijay Ghogre (supra)**. Moreover, the decision in the judgment in **Vijay Ghogre (supra)** is challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court has not stayed

the judgment of **Vijay Ghogre (supra)** while issuing notices. Hence, the said order dated 06.08.2018 passed by this Tribunal in O.A.No.394/2018 is *per incurium* and not binding on us as precedent.

13. Two months before G.R. dated 07.05.2021 the State of Maharashtra through G.A.D. on 16.02.2021, has specifically directed all the Departments that the reservation policy laid down under the Reservation Act 2001 which came into force in 2004 was to be strictly followed. The Officers who avoid the implementation would be subject to penal action by the Government. The office memorandum dated 15.06.2018 issued by the Government of Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training (DOPT) wherein the Union of India has mentioned certain directions given by the Supreme Court in Special Leave Appeal (C) No.30621/2011 with IA No.25195/2018 in respect of reference of **Jarnail Singh (supra)** and the petition of **Vijay Ghogre (supra)** is challenged respectively wherein it is stated as follows :-

2. *The Hon'ble Supreme Court in SLP (C) No.30621/2011 has passed the following Order on 17.05.2018 :*

"It is directed that the pendency of this Special Leave Petition shall not stand in the way of Union of India taking steps for the purpose of promotion from 'reserved to reserved' and 'unreserved to unreserved' and also in the matter of promotion on merits."

3. *Further, in the matter related to SLP (C) No.31288/2017 connected to Special Leave to Appeal (C) No.28306/2017, the Hon'ble Supreme Court held as under on 05.06.2018 :*

"Heard learned counsel for the parties. Learned ASG has referred to order dated 17.05.2018 in SLP (C) No.30621/2011. It is made clear that the Union of India is not debarred from making promotions in accordance with law, subject to further orders, pending further consideration of the matter. Tag to SLP (C) No.30621/2011."

4. *The cadre controlling authorities of Central Government Ministeries, Departments and Union Territories are to carry out promotions in accordance with the directions of the Hon'ble Supreme Court mentioned in paragraphs 2 and 3 above based on existing seniority/select lists.*

5. *Every promotion order must clearly mention the stipulation that the promotion shall be subject to further orders which may be passed by the Hon'ble Supreme Court.*

6. *All Ministeries/Departments are requested to bring this to the notice of all concerned for information/compliance.*

Thus, the orders passed by the Hon'ble Supreme Court is not a mandate given to the State but during the pendency of SLP there is no bar or obstacle in taking decision on promotions.

14. In O.A.No.158/2021, Respondent No.3 is officiating the post of Chairman of the Committee for Reservation in the Promotion of Officers and employees in the Backward Classes and Respondents No.4 to 14 are all the Ministers of various port-folio of the State Government are the Members of the said Committee which was constituted pursuant to the G.R. dated 28.10.2020, wherein the G.R. of 25.05.2004 is referred. In view of the pendency of the SLP filed by the State challenging the judgment in case of **Vijay Ghogre (supra)**, the Committee was formed under the Chairmanship of Respondent No.3, the Deputy Chief Minister and it was for the purpose of maintaining the policy of reservations in promotions of the Government servants. Various letters dated 30.12.2020, 19.01.2021 and 23.01.2021 of different Ministers were placed before us, wherein the State's Policy of implementation of reservation in promotion was demanded.

15. Though Mr. Sadavarte has argued that on one hand the State is assuring to give reservation in promotion to SC-ST class but by issuing the G.R. contrary to this stand has cancelled the reservation in promotion. We are unable to appreciate this submission in the conspectus of law referred earlier and the power of the State of framing such policy contemplated under Articles 16(4A) and 335 of the Constitution. The power to take decision regarding reservation in promotions vests with the Government under Article 16(A) of the Constitution. In October 2020 the Committee was constituted by the State with a view to maintain the reservation in promotion. Before issuing the G.R. of 07.05.2021 the State of Maharashtra has issued letter dated 29.12.2017 to various Departments informing that the process of promotions which was stopped earlier can be commenced in the class of Government Servants from open category i.e. non reserved category and quota under reserved is not to be filled-up by promotion. Thereafter, in the year 2018 the Government issued G.R. where the reservation in promotion was cancelled.

16. In the case of ***State Of Bihar & Ors vs Mithilesh Kumar in Special Leave Petition (Civil) No.2631/2009, dated 19.08.2010***, the Respondent who was recommended and selected for the post of Assistant Instructors by Bihar Public Service Commission could not be appointed because at that stage the State of Bihar changed the policy to impart the training through NGO's. The Hon'ble Supreme Court held that the appellant State cannot deny appointment of the Respondents. The policy decision was taken by the State of Bihar on 14.11.2002 that services of

NGO's would be used for training persons with disabilities and on that day it was informed by the Government of Bihar to Bihar State Public Commission not to send further recommendations because the scheme under which Mithilesh Kumar was selected was not valid. However, on 05.12.2002 the Bihar State Public Commission declared the Respondent, Mithilesh Kumar as successful and recommended his name to the authority for appointment. The Hon'ble Supreme Court considered all the facts and the chronological developments in the earlier law. In the said judgment, the Hon'ble Supreme Court held the norms or Rules as existing on the date when the process of selection begins will control such selection and any alteration to such norms would not affect the continuing process, unless specifically the same were given retrospective effect. The ratio in ***Mithilesh Kumar (supra)*** though otherwise binding on us, it is not helpful in the present case. In ***Writ Petition No.121/2019, Mumbai Port Trust, SC ST OBC Welfare Association Versus Chairman and the Board of Trustees of MBPT & Ors, dated 11.02.2019***, the Division Bench of Bombay High Court in the said judgment clarified that the reservation policy is applicable limited only to the categories of Scheduled Castes and Scheduled Tribes in promotion. However, the power of the State to make the policy in the promotions based on reservation was not questioned in it.

17. In the case in hand, the policy was initially changed in 2018 when the applicants have cleared the examination. However, the physical test was not conducted before 2018 circular /G.R. The candidates were aware

of the policy of the State that there is no promotion in reservation because of the judgment passed by the Hon'ble High Court in the case of **Vijay Ghogre (supra)**. Despite they participated in the process and could not obtain place in open merit list. Hence, they relying on the reservation policy they approached the Tribunal. Thus, the law laid down in the case of **Mithilesh Kumar (supra)** cannot be applied on the background of the decision of **Vijay Ghogre (supra)**. The Respondents have pointed out that the similar issue was raised earlier before the Division Bench wherein the G.R. of 07.05.2021 is challenged. The learned Counsel Mr. Bhandari has rightly submitted the fact that the matter is still before the Hon'ble High Court is also to be taken into account while refusing the interim relief.

18. We hereby reproduce the order passed by the Bombay High Court in case of **Sanjeev Nivrutti Oihal Versus The State of Maharashtra & Ors, Writ Petition (St) No.10876/2021, dated 25.05.2021**, it is held,

“We make it clear that any promotions, if any that would be made by the State Government pursuant to the Interim G.R. dated 7th May, 2021 and Circular dated 10th May, 2021 shall be subject to the further orders that would be passed by this Court at the stage of admission. The promotes, if any promoted pursuant to those G.R. and Circular dated 7th May, 2021 and 10th May, 2021 respectively shall be informed about the pending proceedings in this Court.”

Thus, the judicial propriety warrants that similar order to be passed herein at interim stage.

19. We further rely on the judgment of the Hon'ble Supreme Court in case of **Mukesh Kumar & Anr. Versus The State of Uttarakhand, Civil Appeal No.1226 of 2020, dated 07.02.2020**, wherein it is held that,

“12. Article 16 (4) and 16 (4-A) empower the State to make reservation in matters of appointment and promotion in favour of the Scheduled Castes and Scheduled Tribes ‘if in the opinion of the State they are not adequately represented in the services of the State.’ It is for the State Government to decide whether reservations are required in the matter of appointment and promotions to public posts. The language in clauses (4) and (4-A) of Article 16 is clear, according to which, the inadequacy of representation is a matter within the subjective satisfaction 11 M. Nagaraj (supra) 14 | Page of the State. The State can form its own opinion on the basis of the material it has in its possession already or it may gather such material through a Commission/Committee, person or authority. All that is required is that there must be some material on the basis of which the opinion is formed. The Court should show due deference to the opinion of the State which does not, however, mean that the opinion formed is beyond judicial scrutiny altogether. The scope and reach of judicial scrutiny in matters within the subjective satisfaction of the executive are extensively stated in Barium Chemicals v. Company Law Board¹², which need not be reiterated¹³.

20. Thus, the Applicants in O.A.No.158/2021 and O.A.No.223/2021 could not make out the case for grant of interim relief. Hence, the prayer for interim relief is hereby rejected.

Sd/-

Sd/-

(Medha Gadgil)
Member (A)

(Mridula Bhatkar, J.)
Chairperson

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