

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 315, 425 & 426 OF 2016**

**DISTRICT : KOLHAPUR**

Suhas J Wayachal )  
2538, C-Ward, Wayachal Villa, )  
Shaniwar Peth, Tal-Karvir, )  
Dist-Kolhapur 416 002. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through its Secretary, )  
Public Works Department, )  
Mantralaya, Mumbai 400 032. )
2. The State of Maharashtra, )  
Through Secretary, )  
Water Resources Department, )  
Mantralaya, Mumbai 400 032. )
3. The M.P.S.C, )  
Through Secretary, )  
5 ¼ floor, Cooperage Telephone )  
Corporation Bldg, M.K Road, )  
Mumbai – 21. )
4. Abhinav Sudhir Pawar, )  
R/o: Date College Chowk, )  
Yavatmal, Tah & Dist-Yavatmal. )
5. The Director, )  
Directorate of Sports & Youth Services )  
Central Building, Pune-1. )...**Respondents**

**ORIGINAL APPLICATION NO 425 OF 2016****District : Kolhapur**

Mr. Avadhoot Shivaji Bhosale, )  
 Room No.584, A-Ward, Shivaji Peth, )  
 Near Vetel Talim, Kolhapur 416 012 )...**Applicant**

**Versus**

1. The State of Maharashtra, )  
 Through Secretary, )  
 Water Resources Department, )  
 Mantralaya, Mumbai 400 032 )
2. The M.P.S.C., )  
 Through Secretary, 5 ½ Floor, )  
 Cooperage, Telephone Corporation )  
 Bldg, M.K. Road, Mumbai 21 )...**Respondents.**

**3. ORIGINAL APPLICATION NO.426 OF 2016****District : Solapur**

Mr. Gaurav Tatyasaheb Deokar, )  
 Occ. Assistant Engineer, Grade-1, )  
 At Post Sugaon, Bhose (K) )  
 Taluka Pandharpur, Dist. Solapur )...**Applicant**

**Versus**

1. The State of Maharashtra )  
 Through Secretary, )  
 Water Resources Department, )  
 Mantralaya, Mumbai 400 032 )
2. The M.P.S.C., )  
 Through Secretary, )  
 5 ½, floor, Cooperage, )  
 Telephone Corporation Bldg. )  
 M.K. Road, Mumbai 21 ) ....**Respondents**

Mr. S.S. Dere, learned Advocate for the Applicants.

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

Shri K.R Jagdale, learned counsel for Respondent no. 4 in O.A 315/2016.

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

**RESERVED ON : 14.06.2023**

**PRONOUNCED ON : 25.7.2023**

### **J U D G M E N T**

1. In O.A 315/2016, the applicant challenges the recommendation and appointment of Respondent no. 4 dated 5.6.2016 to the post of Assistant Executive Engineer in Public Works Department. He also seeks the directions to M.P.S.C to consider his case in view of letter dated 1.4.2016 and recommend the name of the applicant in P.W.D for the post of Assistant Engineer, Grade-I in O.B.C category.

2. Learned counsel for the applicant has submitted that at present applicant is working as Assistant Engineer, Grade-I in Water Resources Department. He seeks placement in Public Works Department on the same post of Assistant Engineer, Grade-I, in the place of O.B.C candidate Mr Dhole, who was posted in P.W.D as Assistant Engineer, Grade-I. The applicant is selected and recommended by M.P.S.C in OBC category. The applicant in his preference has given, first preference - Assistant Executive Engineer in Public Works Department, second preference - Assistant Executive Engineer in Water Resources Department, third preference - Assistant Engineer, Grade-I in P.W.D and fourth preference - Assistant Executive Engineer in Water Supply

Department. Thus, the applicant has given his fourth choice as Assistant Executive Engineer in Water Supply Department, that is the post which was given as per revised result. However, the applicant now on account of one vacancy of the said post in P.W.D which is kept vacant pursuant to the interim order of the Tribunal, wants his placement as per his choice preference no. 3, though as per revised list he was appointed as Assistant Engineer, Grade-I, initially in Water Supply and now working as Assistant Executive Engineer, which is higher post than Assistant Engineer, Grade-I.

3. Learned counsel for the applicant Mr Dere relied on clause 9 of the Advertisement No. 62/2013 dated 13.9.2013. Learned counsel for the applicant has submitted that clause 8 of the Notification dated 19.12.2013 issued by M.P.S.C which is a same replica.

“ ८. परीक्षेच्या वेळी उमेदवाराने प्रवेशप्रमाणपत्र आणणे सक्तीचे आहे. त्याशिवाय, परीक्षेस दिला जाणार नाही. प्रस्तुत अधिसूचनेमध्ये परीक्षेसंदर्भातील संक्षिप्त तपशिल दिलेला आहे. मुख्य परीक्षेच्या प्रवेशासाठी अर्ज स्वीकारण्याची पध्दत आवश्यक अर्हता, आरक्षण, वयोमर्यादा, शुल्क, निवडीची सर्वसाधारण प्रक्रिया, परीक्षा योजना, अभ्यासक्रम इत्यादीबाबत सविस्तर तपशिलासाठी आयोगाच्या [www.mpsc.gov.in](http://www.mpsc.gov.in) या वेबसाईटवरील स्पर्धा परीक्षेअंतर्गत उमेदवारांना सर्वसाधारण सूचना तसेच स्पर्धा परीक्षा विभागातील महाराष्ट्र अभियांत्रिकी सेवा परीक्षामध्ये उपलब्ध करून देण्यात आलेल्या माहितीचे कृपया अवलोकन करावे, आयोगाच्या वेबसाईटवर प्रसिध्द करण्यात आलेली माहिती अधिकृत समजण्यात येईल.”

Learned counsel for the applicant also relied on the general guidelines of July, 2013 by M.P.S.C to the candidates appearing for the examination. Clause 2.2.8 is pertaining to the reservation of the posts in Sportsmen category and in that category Respondent no. 4 has applied. Clause 2.2.8. reads as under:-

“२.२.८ खेळाडूसाठीच्या आरक्षणाकरिता पात्र असल्याचा पुरावा :-

अत्युच्च गुणवत्ताधारक खेळाडूसाठी आरक्षित पदावर दावा करणा-या उमेदवारांनी सोबतच्या परिशिष्ट-नऊ ते परिशिष्ट-तेरा मध्ये नमूद केलेल्या नमुन्यात (लागू असेल त्याप्रमाणे) सक्षम प्राधिका-यांनी प्रदान केलेले प्रमाणपत्र सादर करणे आवश्यक राहिल,

तसेच सदर प्रमाणपत्रे संचालक, क्रिडा व युवक संचालनालय यांच्याकडून अर्ज करण्यापूर्वीच प्रमाणित करून घेण्यात यावीत.”

Learned counsel for the applicant has submitted that this Tribunal has taken consistently a view holding that the candidates who have committed error at the time of filling up the Application Form or did not produce the required Certificates within the stipulated time, they are not eligible and cannot be recommended for appointment. 2. Learned Advocate Mr. Dere has submitted that Applicant's Kabaddi certificate was validated on 06.11.2015. The final select list was published on 13.08.2014 and the first recommendation list was published on 24.09.2015.

4. Learned counsel for the applicant has relied on the following cases:-

- 1) Judgment of the Hon'ble Supreme Court in Bedanga Talukdar Vs. Saifudaullah Khan & Ors, (2011) 12 SCC 85.
- 2) Judgment of the Hon'ble Bombay High Court, Nagpur Bench dated 10.3.2023 in W.P 4139/2022, Anup A. Pahade Vs. State of Maharashtra & Ors.
- 3) Judgment of this Tribunal dated 21.2.2023 in O.A 980/2019 Shri S.D Shelke Vs The Director, Directorate of Accounts and Treasuries, MS, Mumbai & Ors.
- 4) Judgment of this Tribunal dated 7.2.2023 in O.A 293/2020, Shri A.R. Lohar Vs. The Secretary, M.P.S.C & Ors.
- 5) Vikas Pratap Singh & Ors Vs. State of Chhattisgarh & Ors, (2013) 3 SCC (L & S)100.

5. Learned Presenting Officer for the Respondents pointed out the rules framed by the Commission, i.e, The Maharashtra Public Service Commission Rules of Procedure of 2014, (hereinafter referred to as the said Rules for brevity). Under Rule 16 of the said Rules of Procedure, the M.P.S.C has power to correct the mistakes

which are described in the said rule. The said Rule 16 is reproduced below:-

“16. Power of the Commission to correct the mistake:- The Commission may correct any clerical, typographical, arithmetical or other mistake in the rank list, advice list or short list etc. or errors arising therein from any accidental slip or omission at any time, either on its own motion or on the application of any of the concerned.”

“Secretary shall keep a detailed record of such deliberation leading to correcting the mistake by the Commission. This record shall be maintained permanently.”

A question was put to the Respondent-M.P.S.C as to why the applicant was not recommended by M.P.S.C to his choice posting in P.W.D as Assistant Engineer, Grade-I, which is below Assistant Executive Engineer. Learned P.O on instructions from the officers from the Respondent - M.P.S.C, informs that though the applicant has made this request in the year 2016, his request could not be considered because as per the gradation and the procedure followed by M.P.S.C, the applicant was given post as Assistant Executive Engineer as per merit in Water Supply, which was his fourth preference. Learned P.O. filed short affidavit-in-reply dated 27.06.2023 on behalf of Respondent No.3, through Ms. Suvarna S. Kharat, Secretary, M.P.S.C. Learned P.O. relies on Section 151 & 152 of the CPC as well as Rule 16 of the Rules of Procedure.

6. Learned counsel Shri Jagdale, for Respondent no. 4, submitted that the Respondent no. 4 submitted application for validation of Sports Kabaddi on 14.10.2015, that is after the first recommendation list was published. The Certificate in respect of Soft Ball was issued on 8.12.2002 and for Kabaddi was issued on 22.11.2000. By letter dated 5.9.2015 the said Certificate issued on 8.12.2002 in respect of Soft Ball is held that the said Certificate cannot be considered for Class-I as it does not fulfill the

requirement prescribed under G.R dated 30.4.2005. By letter dated 6.11.2015, the Director, Sports and Youth Department validated the Sports Certificate of Respondent no. 4. G.R dated 6.5.2008 is referred in the validity Certificate of Respondent no. 4. By letter dated 6.11.2015 issued by the Deputy Director there is reference of G.R dated 6.5.2008. If the Sports are organized by the Sports Authority of India at Rural & Women Sports or at National level or if a person has secured 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> position or got Gold, Silver or Bronze medal, then those persons are eligible for appointment to Group – A, B, C and D posts. Application Form dated 19.12.2013 is taken on record. It shows that Respondent no. 4 has said 'yes' before the relevant category of Sports – National Championship Competition organized by National Federation affiliated with Indian Olympic Committee. It is the contention of the learned counsel for Respondent no. 4 that Respondent no. 4 has said 'yes' before he was holding Certificate in Sports in Soft Ball. However, Soft Ball was not recommended game and therefore, he produced the Certificate in Kabaddi which is also categorized under No. III, Rural and Women State and National Competition organized by the Sports Authority of India. Shri Abhay Chavan, District Sports Officer who is present submitted that the Certificate issued is valid as the said event was conducted at State Level Rural Sports Competition under the auspices of Sports Authority of India. On 24.6.2015 the Respondent no. 4, has also applied for validation of Sports Certificate. On 7.11.2015, Respondent no. 4 made application to M.P.S.C that his Certificate is validated. Learned counsel Shri Jagdale for Respondent no. 4 has submitted that Respondent no. 4 has approached the Director of Sports and Youth and the M.P.S.C for validation of his Certificate of Kabaddi because he has achieved and reached upto the requisite caliber as per the G.R dated 6.5.2008. The information about the game was not mentioned in the Application Form because it was not asked for

and there was no such place in the Application Form. He submitted that the Respondent no. 4 had suffered injustice and it was corrected by M.P.S.C by rightly adding his name in the recommendation list. Learned counsel for the Respondent no. 4 has further submitted that he has not committed any fraud on the competent authority and he is rightly posted and has been working for the last 7 to 8 years and the grievance of the applicant against Respondent no. 4 is misplaced.

7. Shri Jagdale, learned counsel for Respondent no. 4 relied on the following cases:-

- (i) Judgment of the Hon'ble Supreme Court dated 5.10.2004 in Dolly Chhanda Vs. Chairman, JEE & Ors, AIR 2004 SC 5043.
- (ii) Judgment of the Tribunal dated 24.11.2014 in O.A 990/2012, Shri S.V Rathod Vs. The Chairman/Secretary & Ors.
- (iii) Judgment of the Hon'ble Bombay High Court dated 6.4.2016 in W.P 5410/2015, Shri S.V. Rathod Vs. The Chairman/Secretary, M.P.S.C & Ors.

8. It is stated in the advertisement and also the G.R that a candidate who claims the reservation being a Sportsman is required to produce the Certificate in a prescribed form and these Certificates should have been certified from the Director, Sports and Youth Department before the application is made. It is to be noted that applicant has a grievance against Respondent no. 4 because earlier Respondent no. 4 was neither selected nor recommended. In the first select list of the recommended candidates for the post of Assistant Engineer (Civil), Grade-I in P.W.D the applicant was shown at Sr. No. 29 as no candidate claiming the reservation in Sports-OBC category was available and



therefore on account of de-reservation of the said post the applicant being from OBC category was recommended under OBC reservation. It is a settled procedure followed by the Government that a person who is meritorious amongst the selected candidates are given their choice posting from the preference of posting submitted by the candidates. The applicant has secured total 289 marks and Respondent no. 4, who was selected from OBC Sport category has secured 193 marks. Though, Respondent no. 4 was the candidate with highest marks in OBC-Sports category, he could not be selected on account of rejection of his Sports Certificate in the game of Soft Ball. However, Respondent no. 4, after the declaration of the first recommendation list dated 24.9.2015 made a representation that he has achieved skill and recipient of 3<sup>rd</sup> prize at District level in the Sports of Kabaddi. His Sports Certificate in Kabaddi was subsequently validated by the Director, Sports and Youth by communication dated 6.11.2015 and M.P.S.C accepted that Certificate and changed the result by publishing revised list of recommended candidates on 28.4.2016. It is to be noted that at interim stage the learned counsel has urged the protection to be given to the applicant in respect of his post of Assistant Executive Engineer in P.W.D as it was recommended by M.P.S.C. He was relieved from his earlier post of Assistant Executive Engineer, Grade-I, Khilari Canal Division, Charathe-Sawantwadi on 28.3.2016. However, on account of M.P.S.C's revised merit list in his place Respondent no. 4, Shri Abhinava Pawar was recommended. So, the Tribunal by order dated 7.4.2016 has directed that while granting interim relief to the extent "those appointed should be made clear that their appointment would be subject to the outcome hereof. That interim relief is hereby granted till further orders." Thus, if the applicant is given the post of Assistant Executive Engineer in P.W.D as on

vacancy of Mr Dhole, who has now retired, is readily available, no prejudice will be caused to the others.

Rule 16 of the Rules of Procedure of 2014 of M.P.S.C is akin to Section 152 of the Civil Procedure Code, which reads as below:-

“Section 152. Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.”

Few more words are added in Rule 16 of the Rules of Procedure of 2014 of M.P.S.C, which are highlighted as below:-

“16. Power of the Commission to correct the mistake:- The Commission may correct any clerical, typographical, arithmetical or other mistake in the rank list, advice list or short list etc. or errors arising therein from any accidental slip or omission at any time, either on its own motion or on the application of any of the concerned.”

Thus, the correction of adding name of Respondent no 4, Mr Abhinav Pawar, Respondent no. 4, in the list of recommended candidates, whether can be covered under “other mistakes” in the rank list or under the word of ‘omission’. We are of the view that these two words are controlled by the earlier terms used by the Legislature. Thus, the words “other mistake” cannot be considered “any mistake” in preparing the rank list, but that is to be necessarily read in context as mistake clerical, typographical and arithmetical and any other mistake which is similar to that can be corrected by the M.P.S.C under Rule 16 of the said Rules. It is to be read ‘Ejusdem generis, means of the same kind, class or nature and is more restricted than the word ‘analogous’. “Ejusdem generis rule” is that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general

words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned.

In the rule the words 'mistake' and 'error' both are used. These two words are not synonym, they are different and are to be read in that way to have better understanding of the rule. The word 'mistake' as per Oxford is "something which is not correct, inaccuracy, an act or judgment that is misguided or wrong". The word 'error' defined in Oxford a mistake, the state of being wrong in conduct or judgment, a measure of the estimated difference between the observed or calculated value of a quantity and its true value. Before word mistakes, the types of mistakes are described, i.e., clerical, typographical and arithmetical. Thus, these mistakes are due to deviation, lack of knowledge and poor judgment. These mistakes are classified and should necessarily be either clerical, typographical and arithmetical or of similar nature as we read by applying the principle of 'Ejusdem generis'. Error and deviation from accuracy and correctness, these two factors speak about the correctness and accuracy of the facts. It doesn't say about the accuracy and correctness of judgment or the inference drawn by the judicial officer, similarly, i.e., by M.P.S.C, particularly Rule 16.

For correction of any mistake or error when elaborate arguments or evidence or introduction of altogether new fact on question of facts and law is required then it cannot be said to be error or mistake arising out of accidental slip or omission contemplated under Rule 16. In the present matter, the preparation of the list of recommended candidates is the issue. The select list was revised not because of any accidental slip or omission, which is contemplated in the rule, that is for e.g., mistake in the names of the candidates or mistake in placement in the seniority on account of erroneous reading of marks, putting

wrong dates etc. A fresh decision making process in respect of one candidate whose Sports Certificate is validated subsequent to the publication of the list of the recommended candidates cannot be considered as an omission under Rule 16 of the Rules of Procedure, but it is changing of recommended list on account of change of decision of addition of the name of the candidate. Adding the names on the basis of change of decision is not permissible under this rule. For instance, addition of name, or if a name of meritorious candidate by accidental or typographical error, if found omitted or placed wrongly on the list then that omission can be corrected by M.P.S.C. But nothing can be added on account of omission to take decision on the basis of changed circumstances.

9. In the case of **Vikas Pratap Singh & Ors (supra)**, it was a case pertaining to the change in the select list due to revaluation. In the said case, it was held that a person appointed erroneously must not reap the benefits of wrongful appointment jeopardizing interest of meritorious and worthy candidates. It is held that no legal right vest in the candidate who has obtained employment by fraud, mischief, misrepresentation or malafide. In the present case, no such malafide or fraud can be attributed to the Respondent no. 4. However, the act of the M.P.S.C as we have held above is beyond its power and therefore, it is illegal. However, as Respondent no. 4 has put in his service since 2016, now he cannot be ousted. If at all any illegality would have occurred on account of the fraud or malafide attributable to Respondent no. 4, we would not have hesitated in cancelling the appointment of Respondent no. 4.

10. In the case of **Shelke (supra)**, the applicant has applied for the post of Junior Auditor and he committed many mistakes while filling up the form and the Tribunal has observed as under:-

“12. In view of the facts and circumstances, provisions of Recruitment Rules and details furnished by the applicant in his online form, it is clear that the applicant was rightly not considered for the post of Junior Auditor. Each and every mistake or the error may not be deliberate. However, it does not mean that it is due to inadvertence. Every inadvertence cannot be condoned or acceptable.”

In the present case, there is no issue of inadvertence but it is the issue of the power of MPSC to change the select list and recommended the candidate on the ground that it was an error on the part of M.P.S.C.

11. In the case of **Shri Amol R. Lohar (supra)**, a similar view is taken by the Tribunal as in the case of Shri Shelke that there should be no deviation from the rules and the procedure.

12. In **Bedanga Talukdar's case (supra)**, it is held as under:-

“32. In the face of such conclusions, we have little hesitation in concluding that the conclusion recorded by the High Court is contrary to the facts and materials on the record. It is settled law that there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement. In the present case, no such rule has been brought to our notice. In such circumstances, the High Court could not have issued the impugned direction to consider the claim of Respondent no. 1 on the basis of identity card submitted after the selection process was over, with the publication of the select list”

13. In the case of **Anup Pahade (supra)**, the applicant in the said case has applied for the Engineering post in Government in Sports category has mentioned the names of the sports as Basketball, Tug of War and Sepak-Takrwa. At the time of verification, it was found that the Certificates produced by him in game of Basketball and Tug of War for inter-District level Sports do not meet the criteria of meritorious Sports as contemplated in the advertisement and later on the name of the Petitioner did not appear in the select list. But the Petitioner, thereafter, approached the Respondents and submitted Certificate of the game 'Sepak-Takrwa'. The said Certificate of Sepak-Takrwa was submitted subsequently and therefore, the Division Bench of the Bombay High Court held that the Petitioner failed to adhere to the procedure for applying for the posts of Sports as per clause 6 in the advertisement and he has not given the correct information and hence the said Writ Petition was dismissed.

14. In the case of **Sunil Vitthal Rathod (supra)**, it was about the Certificate of experience. His Certificate was not appreciated earlier in the proper perspective, so he made representation to the M.P.S.C and upon consideration M.P.S.C allowed Respondent no. 3 to take part in the selection process and subsequently Respondent no. 3 was selected on merit in the said category. So, the applicant challenged the action of M.P.S.C. In the said matter, the Hon'ble Division Bench has held that the action of M.P.S.C subsequently allowing Respondent no. 3, to participate in the process was legal and correct under Rule 16 of the said Rules. The Division Bench had gone through the file relating to the selection process of Respondent no. 3 and it found that there was substantial compliance with the provisions prescribed under Rule 16 of the said Rules. Detail record of deliberations have been maintained. Thus, the experience Certificate which was produced timely in the

case of Sunil Rathod was misread and therefore, M.P.S.C could take decision. In the present case, the Certificate itself was produced after the recommendation list was published and the process was finally concluded. Hence, this case is not applicable to the present facts of the case.

15. In **Dolly Chhanda's case (supra)**, the mistake was made by the Zilla Sainik Board. The Certificate entitling reservation found on the date of counselling of admission was refused and thereafter certificate with corrected mistake on the date of the second counselling was produced, and so admission was not granted in M.B.B.S course. It is held that the Certificates are the documents in the nature of proof of holding a particular qualification or percentage of marks which entitle the candidate for claiming benefits of reservation. However, depending on the facts of the case, some relaxation in the matter of submission of proof can be given and rigid and pedantic view is not to be taken. It is held that every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature. The candidate Dolly Chhanda has come from a very humble background and therefore, the mistake in her Certificate she had applied in a category of daughter of Ex Servicemen. The Zilla Sainik Board gave Certificate to her father and they wrongly used the word 'not eligible' and therefore, it was allowed to be corrected and she was allowed to produce the corrected Certificate. Again, we hold that this case is not applicable to the present case as the Respondent no. 4 has produced the Certificate afresh after the recommendation list was published.

16. Thus, after analyzing the legal aspect on the background of the facts of the case, we are of the view that the applicant is entitled to get appointment as per his third choice to the post of

Assistant Engineer, Grade-I in P.W.D. It is to be noted that he is appointed on one vacancy available i.e. the one post directed to be kept vacant by virtue of the interim order dated 7.4.2016.

17. In view of the above, we pass the following order:-

- (a) The applicant is entitled to get appointment as per his third choice to the post of Assistant Engineer, Grade-I in Public Works Department.
- (b) The appointment of Respondent no. 4 by order dated 5.7.2016 is upheld and the prayer of the applicant challenging the appointment of Respondent no. 4 is hereby rejected.

**O.A 426/2016:-**

18. The facts of the case in O.A 426/2016 are very much connected with the issue in O.A.No.315/2016 as the appointment of Applicant in O.A.No.315/2016, Mr. S.J. Wayachal as per the select list of M.P.S.C of September 2015 has a direct bearing on the appointment of the Applicant, as the choice of the Department is merit based.

19. The Applicant challenges the order dated 28.04.2016 issued by the M.P.S.C. informing that the Applicant was recommended as per final select list dated 24.09.2015 in Water Resources Department on the post of Assistant Executive Engineer, Group-A. However, due to the revised result dated 28.04.2016 the Applicant is recommended for the post of Assistant Executive Engineer, Group-A, Water Supply and Sanitation Department.



20. The Respondent No.2 has issued advertisement dated 13.09.2013 for the post of Assistant Executive Engineer and Assistant Engineer, Group-A for 482 posts in various Departments of the State. The Applicant has appeared for this examination. He secured total 279 marks in Preliminary and Main Examinations and the cut-off was also 279 for Water Resources Department. On 24.09.2015 the Respondent No.2, M.P.S.C. published the result of eligible candidates in which the name of the Applicant was shown at Serial no. 57. On 25.01.2016, the Respondent-State issued the order of appointment of the Applicant in Water Recourse Department. However, 7 months thereafter Respondent No.2 revised and changed the recommendation list and published it on 28.04.2016. In the said list the name of one Mr. Abhinav Sudhir Pawar who is Respondent No.4 in O.A.No.315/2016 was shown recommended and therefore the Applicant was pushed down by one number. By necessary corollary Respondent passed the order dated 28.04.2016, which is under challenge, recommending his name to the Water Supply and Sanitation Department, than his earlier Department of Water Recourses Department.

21. The O.A. is contested by the Respondent No.2 by filing affidavit-in-reply dated 26.09.2016 through Mr. Maruti Pandurang Jadhav, Under Secretary in the office of Maharashtra Public Service Commission. The stand of publishing the revised list was defended. Learned Advocate Mr. Dere has pointed out interim relief order dated 11.05.2016 of this Tribunal passed in O.A.No.425/2016 with O.A.No.426/2016 wherein it is submitted that the Applicant Mr. Deokar has already joined on the post of Assistant Engineer, Grade-I, Water Resources Department before the order under challenge is passed. He relies on paragraph no.9 of the said order. The same is quoted below:-

“9. Till then interim relief in O.A.No.426/2016 that the Applicant will not be transferred out from Water Recourses Department is granted and Shri A.S. Bhosale’s order of termination is stayed till next date.”

22. Thus, as on today considering the reasoning given by us above in O.A.No.315/2016 and in view of the fact that the appointment of applicant Mr. Deokar is protected and he continued to work as Assistant Engineer, Grade-I, Water Resources Department. Interim relief granted is hereby made final.

23. In view of above, impugned order dated 28.04.2016 is hereby quashed and set aside. O.A. No 426/2016 stands allowed

**O.A 425/2016:-**

24. This O.A. is from the chain of O.A.Nos.315, 425 and 426 of 2016 as the appointment of Mr. Abhinav Sudhir Pawar, Respondent No.4 in O.A.No.315/2016 has adversely affected on the appointment of Mr. Avadhoot Shivaji Bhosale, Applicant in O.A.No.425/2016.

25. The Applicant has cleared the examination with 246 marks in written and 30 marks in the interview. In the merit list published on 24.09.2015 his name appeared and as per the cut-off marks the applicant was shown selected for the post of Assistant Engineer (Civil) Grade-1, Group A in Water Supply and Sanitation Department in Open Category. His name was recommended and he appeared for the medical test on 22.04.2016 before the Civil Surgeon, Kolhapur.

26. Learned Advocate for the Applicant Mr. Dere has submitted that the Applicant was also selected in the Department of Boarder Road, Organisation (Indian Government). However, the Applicant did not accept the said post as he was recommended by the M.P.S.C. and selected for appointment in the office of Water Supply and Sanitation Department. The Respondent published the revised list on 28.04.2016 and the name of the Applicant was not shown in the said revised list as the name of Mr. Abhinav Sudhir Pawar, Respondent No.4 in O.A.No.315/2016 was added. Learned Advocate has submitted that in fact the applicant wanted to join the service however his name was not recommended by the M.P.S.C and therefore though he was having the interim order dated 11.05.2016 passed in his favour in O.A.No.425/2016 with O.A.No.426/2016 thereby protecting his termination from the service, he actually could not get the fruits of his appointment.

27. Learned P.O. for the Respondents Ms. Gaikwad has opposed this O.A., but however as we have allowed O.A.No.315/2016 of Applicant Mr. Suhas J Wayachal and in view that the other consequential reliefs in all these O.As. are entailed with each, learned P.O. on our request has verified that there are vacant posts available in Water Supply and Sanitation Department.

28. We have enquired whether the applicant is willing to join the Government service as per his recommendation and the Applicant remained present and informed that he is 36 years old and thus he is within the age limit and wants to join the service. We have already discussed this issue and thus the recommendation of the present applicant in O.A.No.425/2016 in Water Supply and Sanitation Department is hereby maintained and he be given appointment as per the first recommendation list dated 24.09.2015 in the Water Supply and Sanitation Department.

29. In view of above, we direct the State, Respondent No.1, Water Supply and Sanitation Department to issue the order of appointment of the applicant within six weeks from the date of this order subject to his eligibility. Further, the communication dated 28.04.2016 which is challenged by the Applicant regarding cancellation of his recommendation is hereby set aside.

Sd/-

**(Medha Gadgil)**  
**Member (A)**

Sd/-

**(Mridula Bhatkar, J.)**  
**Chairperson**

**Place : Mumbai**

**Date : 25.07.2023**

**Dictation taken by : A.K. Nair.**