

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.544 OF 2018  
WITH  
ORIGINAL APPLICATION NO.513 OF 2019**

**O.A.No.544/2018**

Shri Vijay Babarao Shende, )  
Aged 49 years, Assistant Director, )  
Town Planning, Valuation, )  
Pune Division, and )  
residing at Flat No.B-703, )  
DSK Franjipani Cooperative Housing )  
Society, Near Sadhu Waswani Chowk, )  
Camp, Pune. ) **... Applicant**

**Versus**

1. Maharashtra Public Service Commission, )  
Through its Secretary, )  
Having its office at Cooperage Telephone )  
Nigam Building, Maharshi Karve Road, )  
Cooperate, Mumbai 400 021. )
2. Government of Maharashtra, )  
Through Principal Secretary, )  
Urban Development Department, )  
Mantralaya, Mumbai 400 032 )
3. Shri Rajendra Mahadeo Pawar, )  
Occ. Assistant Director, Town Planning, )  
Add :Urban Development Department, )  
(UD-13), Mantralaya, Mumbai )
4. Chandrakant Harshal Baviskar )  
Working as Planner, Add : Planning )  
Department, MMRDA, BKC, Mumbai. ) **... Respondents**

**WITH**

**O.A.No.513/2019**

Mrs. Snehalata Vasantrao Rane, )  
 (Maiden Name) Smt. Disha Prabhakar Sawant) )  
 Occ. Govt. Service, R/o. Building No.7, Tulip, )  
 Vardhaman Garden, Bhivandi Road, Balkum )  
 Thane (W) 400 608. ) **... Applicant**

**Versus**

1. State of Maharashtra, )  
 Through Secretary, )  
 Urban Development Department, )  
 Maharashtra State, Mantralaya, )  
 Mumbai 400 032. )
2. Maharashtra Public Service Commission )  
 Through Secretary, MPSC, Kuprage )  
 Telephone Nigam Building, M.K. Road, )  
 Mumbai 400 021. )
3. The Director, Town Planning, )  
 Maharashtra State, Central Building, )  
 Pune 411 001. )
4. Shri Rajendra Mahadeo Pawar, )  
 Dy. Director of Town Planning, )  
 Pimpri Chinchwad, Mahanagarpalika, )  
 Pimpri, Pune. ) **... Respondents**

Mr. R.G. Panchal, learned Advocate for the Applicant in O.A.No.544/2018.

Mr. C.T. Chandratre, learned Advocate for the Applicant in O.A.No.513/2019.

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

Mr. Bhushan A. Bandiwadekar, learned Advocate for Respondent, Shri Rajendra Mahadeo Pawar.

Mr. Chandrakant Harshal Baviskar, Respondent No.4 in O.A.No.544/2018 present in person.

**CORAM** : **Justice Mridula Bhatkar, Chairperson  
Shri P.N Dixit (Vice-Chairman) (A)**

**RESERVED ON** : **04.03.2021**

**PRONOUNCED ON** : **24.06.2021**

**PER** : **Justice Mridula Bhatkar, Chairperson**

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

1. The Applicants, in both the Original Applications, challenge the Selection Process of Maharashtra Public Service Commission (M.P.S.C.) for the posts of Deputy Director, Town Planning, pursuant to the Advertisement No.15 of 2018, dated 06.02.2018 and so also seek directions that these candidates are to be recommended by the M.P.S.C. and to be appointed by the Respondent-State on the reserved posts as Deputy Director, Town Planning. Both the Applicants, though claim for the same posts under reservation, 1 post being S.C., a vertical reservation and other female open is a horizontal reservation. The Applicants along with M.P.S.C. and State claim the relief against Private Respondents, Mr. Rajendra Mahadeo Pawar who is Respondent No.3 in O.A.No.544/2018 and Respondent No.4 in O.A.No.513/2019. The Respondent No.4, Mr. Chandrakant Harshal Baviskar in O.A.No.544/2018 is not party in O.A.No.513/2019. The interest, claims and rights of all the Respondents in respect of the said posts are very much interlinked, hence, it is found appropriate to decide

both the matters by a common judgment. As a practice, the Applicants or the Respondents are not referred by their names in the judgment or order, however, here we are deciding both the Original Applications together and the Respondents are interlinked, so in order to avoid confusion, if any, we are referring the applicants and the Respondents not by their status in the cause title of the Original Applications, but by their names.

## 2. FACTS :

The Respondent No.1, M.P.S.C. issued Advertisement No.15 of 2018, dated 06.02.2018 in pursuant to which the applications have been invited for two posts in the cadre of Deputy Director, Town Planning, Group-I, Gazetted, Urban Development Department (U.D.D.). Out of the two posts, one post is reserved vertically for Schedule Caste Reserved Category and the other post is reserved for Female in Open Category. Both the applicants were holding the required educational qualification and so also the experience as mentioned in the said advertisement. Thus, both the applicants were eligible but in different categories. The eligibility criterion of experience as per advertisement is 5 years for Open Female Category. As per 'The Maharashtra Public Service Commission Rules of Procedure of 2014' (hereinafter referred as 'M.P.S.C. Rules' for brevity), for one post, four candidates are to be considered and to be called for the interview. In Female Open Category only one candidate was having experience more than 5 years. Therefore the

M.P.S.C. called four male candidates for the post of Open Female Category and S.C. category. The minimum 41 marks in interview were required. 4<sup>th</sup> candidate from S.C. reserved category was having experience of 8 years, 11 months and 21 days and so it was taken as cut-off for short-listing for S.C. post.

3. The Applicant, Mr. Vijay Babarao Shende, initially was appointed as Assistant Town Planner, through regular mode of selection by the Respondent No.2, State from 11.11.1993. He was entrusted with the additional charge of Town Planner for a period of one year i.e. from 03.08.2009 to 12.07.2010. Thereafter, he was appointed as Town Planner through competitive examination conducted by M.P.S.C. Respondent No.1 w.e.f. 13.07.2010. He was appointed as Assistant Director of Town Planning from 06.03.2014. The Applicant submitted the application on-line to M.P.S.C. Respondent No.1 in O.A.NO.544/2018 on 22.03.2018.

4. By applying the said short-listing criteria for both the posts, the M.P.S.C. published the list of eligible candidates and non-eligible candidates on 12.06.2018 and the date of interview of eligible candidates was fixed on 27.06.2018. The Applicant, Mr. Shende was declared not eligible. He submitted representation on 13.06.2018 to Respondent No.1, explaining his eligibility on the point of number of years of experience, thereby claiming that he worked as the Town Planner from 11.11.2005. Thus, it is the case

of the Applicant, Mr. Shende his total experience as Town Planner comes to 12 years and 7 months, therefore he was eligible and qualified to be called for the interview. The Applicant in O.A.No.513 /2019, Ms. Snehalata Vasant Rao Rane was from Open Category and she applied for horizontal reservation female open. She could fulfill both the criteria of requisite educational qualification and the experience, so she was called for the interview. She could not secure 41 marks and therefore she failed in the interview. However, it is her case that the said female open post was covered under horizontal reservation and therefore only female members, either in the open or the reserved category should have been considered and called for the interview. Hence, the selection process of M.P.S.C. is completely vitiated. Thus, both the applicants challenge the entire recommendation and selection process, and also challenge the communication by Respondents No.1 & 2. Hence, these Original Applications are filed.

5. The O.A.No.544/2018 is opposed by the Respondent No.1 by filing the affidavit-in-reply dated 06.06.2019 and also additional affidavit-in-reply dated 11.11.2019, through Ms. Sudam Bhivaji Tavhare, Under Secretary, working in the office of M.P.S.C. The Respondent No.2, State of Maharashtra in O.A.No.544/2018 has also filed the affidavit-in-reply dated 09.08.2019, through Shri Uttreshwar Namdeo Londhe, Deputy Director of Town Planning, Urban Development Department. Mr. Rajendra Mahadeo Pawar,

Respondent No.3 has filed short affidavit-in-reply dated 06.04.2021 denying the claim of both the Applicants, especially of Applicant Mr. Shende in O.A.No.513/2019 and also of Ms. Rane in female open horizontal reserved category. The relief prayed in O.A.No.544/2018 are opposed by the Respondent No.4, Shri Chandrakant Harshal Baviskar, by filing affidavit-in-reply dated 19.07.2019, who in fact is selected for the S.C. category post.

6. Arguments of learned Advocate Shri Panchal.

The learned Advocate Shri R.G. Panchal appearing for the Applicant, Mr. Shende has argued that the M.P.S.C. did not follow the rule of migration and did not call the three non open category candidates for female open category, besides, Ms. Snehalata Vasant Rao Rane. He submitted that the other three female candidates from the other reserved classes should have been migrated and considered for female open category. In the result, due to this shifting the Applicant, Mr. Shende who was shown at serial No.7, would have ranked higher in first four of S.C. candidates and would have been eligible for interview in the S.C. reserved seat. The State has failed in not applying the rule for migration. Earlier the Tribunal has considered the position by way of interim order and Mr. Shende was called for the interview and secured highest marks i.e. 47 marks in S.C. category and was appointed on S.C. reserved post. The learned Counsel relied on the judgments of Hon'ble Supreme Court laid down in the cases of **Anil**

***Kumar Gupta & Ors. Versus Municipal Corporation of Delhi & Ors. reported in JT 1995 (5) SCC 505, Indra Sawhey Versus Union of India & Ors, reported in (2000) 1 SCC 168 and Shri Rajesh Kumar Dariya Versus Rajasthan PSC reported in (2007) 8 SCC 785.*** He submitted that the M.P.S.C. has committed error in deviating the rule of migration, though the Circular dated 13.08.2014 was quashed and set aside by Tribunal's order dated 18.06.2018 passed in O.A.No.202/2017 with O.A.No.203/2017 with M.A.No.19/2018.

7. Learned C.P.O. has submitted that the M.P.S.C. has denied all the contentions raised and allegations made by the Applicant. The M.P.S.C. has followed the 'M.P.S.C. Rules' justified in the procedure of short listing so also applied Rule 10(7) while selecting one candidate out of two candidates who have obtained equal marks. In the affidavit-in-reply, the Respondent refuted the period of experience claimed by the Applicant, Mr. Shende and stated that the total admissible experience of the applicant was 7 years, 8 months and 14 days, which is less than short listing criterion fixed for S.C. category i.e. 8 years, 11 months and 21 days. She relied on the Government circular dated 03.07.2004, where the tenure of additional charge cannot be considered for counting experience. Thus, the applicant was not eligible as per the short listing criterion set for S.C. category. The Applicant could not be considered against female open because he was not from open category. In the

affidavit-in-reply, the Respondent also justified their process of selection and appointment based on Circular dated 13.08.2014 by which at the relevant time no migration was allowed by the State. The learned C.P.O. relied on the case of ***Rajani Shaileshkumar Khobgragade Versus The State of Maharashtra & Ors in Writ Petition No.10103/2015, dated 31.03.2017***, wherein the Hon'ble Division Bench of Bombay High Court, Aurangabad Bench upheld the Circular dated 13.08.2014. On that basis the State of Maharashtra further laid down the policy of filling up the post of female horizontal reservation from the open category candidates only. She further argued that even migration for female open would have applied, yet the applicant, Mr. Shende could not reach in first 4 numbers eligible for interview. She demonstrated the same by pointing the charts. The learned C.P.O. relied on the affidavit-in-reply of Mr. Londhe filed on behalf of Respondent No.2 (State of Maharashtra) and pointed out that the names of two candidates namely, Mr. Rajendra Mahadeo Pawar (Respondent No.3) and Mr. Chandrakant Harshal Baviskar (Respondent No.4) in O.A.No.544 /2018 were selected on the basis of recommendations of M.P.S.C. on the female open post and S.C. category post, respectively. However, during the pendency of this O.A. by interim order dated 20.06.2018 this Tribunal allowed the Applicant, Mr. Shende to appear for the interview. However, the result was kept in sealed cover with liberty to M.P.S.C. to move for modification order. Mr.

Pawar and Mr. Baviskar are having appointment order dated 08.03.2019 in their favour. Out of these two, only Mr. Pawar joined, but Mr. Baviskar though lawfully selected is waiting for the order of the Tribunal.

8. The learned Counsel Mr. Bandiwadekar appearing on behalf of Respondent No.3, Mr. Rajendra M. Pawar in O.A.No.544/2018 has submitted that the Respondent No.3 was appointed in Open female category in view of the corrigendum dated 19.12.2018. Only one candidate was available from open female category for one post, i.e. Ms. Snehalata Vasantrao Rane. However, they did not secure the minimum qualifying marks i.e. 41 marks in the interview and therefore the other two male candidates from the Open Category who were fulfilling the eligibility criterion in respect of education and experience were called. Respondent No.3 was one of them. In the interview Respondent No.3 secured the highest marks i.e. 80 marks, and therefore he was selected in the said reserved post for female (open). Learned Counsel further argued that the Applicant, Mr. Shende does not figure either in Open Female Category or in Schedule Caste Category for want of fulfilling the requisite eligibility for short listing criterion so he has no locus to challenge the selection and appointment of Respondent No.3. The Applicant relied on the Circular dated 13.08.2014, which was in force when the advertisement was published and later Government Resolution (G.R.) dated 19.12.2018 (corrigendum) cannot be made applicable

retrospectively. It is submitted by the learned Counsel that the corrigendum dated 19.12.2018 and proclamation of M.P.S.C. dated 27.03.2019 are rightly interpreted by Respondent No.1, M.P.S.C. on the background of Circular dated 13.08.2014.

9. Mr. Chandrakant Harshal Baviskar, Respondent No.4 in O.A.No.544/2018 has argued in person. He claimed that he was having experience of 8 years and 11 months. He was fulfilling the short listing criterion of 8 years and 11 months. He has taken stand that the applicant was, prima facie, eligible against S.C. category, but due to restrictions in the number of candidates in the ratio of 1:4, the first four candidates were called for the interview on the basis of experience and hence, the applicant was not considered according to the 'M.P.S.C. Rules' and has no legal right. It is submitted that he was found more meritorious so was short listed and was selected from the reserved post of S.C. category. However due to the pendency of this O.A. and as the interim order was passed in favour of the applicant, the applicant was called for the interview who secured more marks than the other four short listing candidates and he got appointed. Thus, the rightful claim of Respondent No.4 is hereby denied.

10. At this stage first we deal with the O.A.No.513/2019 before assessing the submissions in O.A.No.544/2018. The learned Advocate Shri C.T. Chandratre appearing for the Applicant, Mrs. Snehalata Vasantryo Rane in O.A.No.513/2019, a female candidate has submitted that she should have been considered for the open female category by giving her the benefit of migration. He further submitted that the M.P.S.C. by applying the rule of migration ought to have called the other female candidates from the reserved category and ought to have interviewed them. He further submitted that the object for open female category could have been fulfilled by applying the rule of migration.

11. The learned C.P.O. while assailing the submissions of learned Advocate Shri Chandratre has submitted that the applicant has no locus to challenge the process of this selection and recommendation because, she was called for the interview in open female category, she failed by securing 35 marks and could not reach the benchmark of 41 marks. Thus, she has no claim in this matter. The Applicant cannot argue the case of other candidates who have not approached this Tribunal and who have not challenged the process.

12. For the purpose of female against open, in the advertisement, 5 years experience was the eligibility criterion. Thus, it was necessary for the M.P.S.C. to consider the female candidates in open category as stated in the judgment of ***Indra Sawhey (supra)***.

The open category should be free for all the candidates irrespective of reservation who are meritorious and therefore one list of such meritorious candidates is to be prepared. It is settled position of law that no compartmentalization in horizontal reservation is available for non-reserved class.

13. In the female open category only one candidate was available. However, all other female candidates though were eligible considering their educational qualification and experience as per the advertisement in the reserved class the M.P.S.C. did not allow migration of such female candidates from reserved category, but under circular dated 13.08.2014 called other eligible candidates from Open Category only. The chart showing experience of candidates who were called for the interview is produced below :-

Chart showing candidates in open category

Sr. No	Names	Category	Educational Qualification	Experience accepted	Remarks for eligibility
1	Ms. Snehalata Vasantrao Rane	Open (F)	B.E. (Civil), M.E. (Town and Country planning)	10 years, 5 months and 24 days	Being eligible called for interview for Open (female) post.
2.	Mr. Rajendra Mahadev Pawar	Open (General)	B.E. (Civil), M. Tech (Urban Planning)	10 years, 8 months and 7 days	Eligible for interview as per short listing criteria from Open (F) against.

3.	Mr. Prasad Gaikwad	Open (General)	B.E. (Civil), M. Tech (Town and Country planning)	5 years, 6 months and 22 days	Eligible for interview as per short listing criteria from Open (F) against.
4.	Mr. Mayur Surendra Kulkarni	Open (General)	B. Arch, M. Tech (Town and Country planning)	7 years and 6 months	Eligible for interview as per short listing criteria from Open (F) against.

Thus, out of which Mr. Pawar secured highest marks, hence got appointed in female reserved post.

14. We do not find any substance in the O.A.No.513/2019 because the applicant was called for the interview for open female post, but she could not clear the interview so no injustice is done to her. In the interview she could not secure 41 marks which is the bench mark for passing the interview. She secured only 35 marks. Thus, she was aware of the rules of examination and when the candidates having full knowledge of the rules and the procedure, participates in the process, then unsuccessful candidate cannot challenge the said process. From the submissions of learned Advocate Shri Chandratre we gather the point raised by him that when there is a special reservation for a particular category, then the eligible candidates from the reserved class can be migrated in

the said category only and it is also applicable to the special reservation of female. However, we do not want to discuss this issue in this matter at length as the Applicant has no locus to challenge the process and moreover as argued by learned C.P.O. the Applicant cannot argue for the other female candidates who were not called for the interview and who are not before us. Thus on the point of locus, we dismiss the O.A.No.513/2019.

15. Now, we address the submissions in O.A.No.544/2018 in order to have correct grasp of the procedure followed by the Respondent No.1, M.P.S.C. the names of the short-listed candidates for S.C. category is reproduced below :-

S.C. category post

Sr. No.	Names	Category	Educational Qualification	Experience accepted	Remarks for eligibility
1.	Ms. Archana Madukar Parlewar,	S.C.	B. Arch, M. Tech	17 years, 8 months and 12 days	Not allowed for migration
2.	Mr. Amit Sambhaji Sawant	S.C.	B.E. (Civil), M. Tech	12 years, 0 months and 27 days	S.C. Category
3.	Mr. Raja Bhaguji Waghmare	S.C.	B.E. (Civil) M. Tech	10 years, 2 months and 12 days.	S.C. Category
4.	Mr. Chandrakant Harshal Baviskar (Resp. No.4 in O.A.544/18)	S.C.	B. Arch, M. Tech	8 years, 11 months and 21 days	S.C. Category

5.	Shri Vijay Babarao Shende (Applicant in O.A.544/18)	S.C.	B.E. (Civil), M. Tech	8 years, 7 months and 25 days	Not eligible for S.C. category. By Tribunal's order.
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16. The above tabular form discloses that these five candidates are placed in sequence as per the experience and eligibility. For the purpose of deciding the bench-mark of the experience, the experience of the last candidate is taken into account. The 1<sup>st</sup> candidate, Ms. Archana Madukar Parlewar is having the experience of 17 years, 8 months and 12 days and 4<sup>th</sup> candidate, Mr. Chandrakant Harshal Baviskar, (Resp. No.4 in O.A.544/18) is having the experience of 8 years, 11 months and 21 days. The ratio as per 'M.P.S.C. Rules' is maintained as 1:4. Thus, only one post of S.C. which is vertical reservation i.e. social reservation is available and therefore first four candidates come under the consideration zone for interview. Mr. Vijay Babarao Shende, Applicant in O.A.No.544/2018, though S.C. category and having requisite educational qualifications, his experience is 8 years, 7 months and 25 days, thus he stands at No.5 and therefore, he could not enter the consideration zone to give a call for the interview. Mr. Shende, was allowed to appear for the interview by interim order of this Tribunal dated 20.06.2018, subject to the final decision of this

Tribunal and the result was asked to be kept in the sealed cover. The Applicant, Mr. Shende appeared for the interview. He secured equal marks as that of Mr. Rajendra Mahadev Pawar, Respondent No.4. In view of the Maharashtra Public Service Commission Rules of Procedure of 2014 which came into effect from 16.05.2014, as per Rule 10(7) the criteria to determine the seniority when equal marks are secured Mr. Pawar was found to be senior to the Applicant. Hence, Mr. Pawar and another candidate Mr. C.H. Baviskar were recommended for appointment. The contestants for the post of S.C. category as per the short-listing criterion eligible were the first four candidates and the marks they secured are as follows:-

- |                                      |            |
|--------------------------------------|------------|
| (1) Ms. Archana Madukar Parlewar     | - 36 marks |
| (2) Mr. Amit Sambhaji Sawant         | - 37 marks |
| (3) Mr. Raja Bhaguji Waghmare        | - 38 marks |
| (4) Mr. Chandrakant Harshal Baviskar | - 43 marks |

Thus, Mr. Baviskar was rightly recommended candidate by the M.P.S.C. and has legitimate claim on the reserved post of S.C. as Deputy Director, Town Planning.

17. In the G.R. dated 16.03.1999, the Respondent-State laid down the policy of social reservation and special reservation, wherein referred the ratio laid down in the case of **Anil Kumar Gupta (supra)**. So also decision of Bombay High Court,

Aurangabad Appellate Side in Writ Petition No.4067 of 1998 issued guidelines regarding horizontal reservation and vertical reservation. As per Rule 6 there is no shifting (migration) in the special or horizontal reservation from one group of social / vertical reservation to other group of social reservation. In fact in this G.R. there was no bar in shifting or migration from reserved class to non-reserved class in horizontal reservation. Thereafter, the Respondent-State issued Circular dated 13.08.2014, explaining the paragraph 5 of G.R. dated 16.03.1999 that in the horizontal reservation while filling up the posts it is necessary to make a common merit list of the open candidates. However, it is further mentioned that in the said list, meritorious reserved candidates are also to be included and if the candidates in the horizontal reservation for the open category are not available, then the candidates who are available from the open category only are to be recommended. Thus, horizontal reservation in open category was compartmentalized in this manner by the said G.R. of 2014. Therefore, Respondent No.4, Mr. Rajendra Mahadeo Pawar got the benefit of the said G.R. in female open post, wherein Applicant, Mr. Shende did not have any claim.

18. The submissions of learned Counsel Shri Panchal to the extent that the migration of the reserved candidates to the open category was permitted under the law laid down by the Hon'ble Supreme Court is correct. However, it is also to be considered on

the background of following circumstances and legal position. The advertisement was issued on 06.02.2018. The interview was conducted and the results were declared before December, 2018. When the Government issued corrigendum on 19.12.2018, where the State on considering the decisions in different litigations decided that the said Circular of 2014 is not keeping up the spirit of law laid down in the judgments of **Anil Kumar Gupta & Ors. (supra)** and **Shri Rajesh Kumar Dariya (supra)**, naturally it was found very difficult for the M.P.S.C to again call out the process which was carried out and was consistent with the Circular of 2014 and policy of the State. Therefore the M.P.S.C. went ahead by declaring/issuing pronouncement dated 27.03.2019, that the corrigendum will be implemented where the results are not declared and therefore the M.P.S.C. took consistent stand with the State policy. Moreover, the submissions of learned Advocate Shri Bandiwadekar are also valid to that extent that the post was reserved against female so in view of Circular of 2014 the M.P.S.C called male candidates from the same i.e. open category to fill-up horizontal reservation post of female. Respondent No.3, Shri Rajendra Mahadeo Pawar was having higher experience and hence he was called for the interview who succeeded by securing highest marks. Thus his appointment cannot be faulted with at this stage.

19. The law laid down in **Indra Sawhey (supra)**, **Anil Kumar Gupta & Ors. (supra)**, and **Shri Rajesh Kumar Dariya (supra)** on

migration is discussed at length in the case of **Saurav Yadav & Ors. Versus State of Uttar Pradesh & Ors, reported in (2019) 14 SCC 692** and thereby put different interpretations and views of different judgments of the High Court of Bombay at rest and the law on the point of migration in the horizontal reservation is made more clear. Thus all the reserved candidates, if found eligible, be shifted in the open category in vertical as well as horizontal reservation and such migration is not available either vertical or horizontal to any person falling in non-reserved class or community.

20. Before **Saurav Yadav & Ors. (supra)** there are instances in the examination conducted and recommendations made not applying this law of migration in horizontal reservation due to various judgments of Bombay High Court taking different views by interpreting the law laid down in the catena of judgments of the Hon'ble Supreme Court on the point of horizontal reservation and vertical reservation. For example, in the judgment of Aurangabad Bench of Bombay High Court in case of **Rajani Shaileshkumar Khobragade (supra)**, wherein the validity of Circular dated 13.08.2014 was challenged and the Division Bench held as follows:-

*“The aforesaid circular is in tune with the judgment of the Apex Court in the case of Anil Kumar Gupta and others Vs. State of U.P. and others referred to supra and cannot be said to be illegal.*

27. *Considering the above, the challenge to judgment of the Tribunal impugned in the present petition, so also the circular dated 13.08.2014 fails. The writ petition is dismissed, however, with no order as to costs.”*

The said judgment is not considered in the judgment in O.A.No.202/2017 with O.A.No.203/2017 with M.A.No.19/2018, dated 18.06.2018 relied by the learned Advocate Mr. Panchal. Subsequently, in ***Charushila Tukaram Chaudhari & Ors. Versus The State of Maharashtra & Ors, in Writ Petition No.4159/2018 & Ors, decided on 08.08.2019***, the Division Bench held the reserved candidates in the horizontal reservation can be shifted to open category and now the law is settled by the Hon'ble Supreme Court in the case of ***Saurav Yadav & Ors (supra)***. Thus, if the law of migration is stretched back to all the earlier examinations and the recommendations, then it will have cascading effect which will cause tremendous prejudice and great loss to many who are already employed and have spent some years in the service and such chaos will also paralyze the administration. Be that as it may, here we need to consider each case on its facts whether the candidate was truly entitled to get the benefit of the migration.

21. We highlight the fallacy in the arguments in respect of migration advanced by the learned Advocate Shri Panchal. Firstly, assuming that the M.P.S.C. had applied the policy of migration for

open female reserved post, only the eligible female candidates from the reserved category would have been called for the interview. Thus, along with Ms. Archana Madukar Parlewar, (S.C.) and Ms. Snehalata Vasantryao Rane (open), not Mr. Amit Sambhaji Sawant or Mr. Rajendra Mahadeo Pawar would have been called, but other two eligible female candidates from the reserved category as per the advertisement would have been called. The learned C.P.O. on query made by us informed that there were two female candidates from the reserved category who were having 5 years experience and were eligible as per the advertisement. Thus, the Applicant, Mr. Shende would not have been any way beneficiary of the migration. Those two female candidates i.e. Ms. Parlewar and Ms. Rane were interviewed and they failed and other two female reserved category candidates, did not challenge the process.

22. Secondly, the submissions of learned Advocate Shri Panchal are also not acceptable that if Ms. Archana Madukar Parlewar would have migrated and called for open female post then she would not have been called for S.C. post for the interview. The process of selection and the appointment are two different stages and not to be confused. For the purpose of selection, candidate from the reserved category, if found eligible, can compete for one or two posts. For example, Ms. Parlewar, S.C. candidate who is the topper in experience can be No.1 in both the lists i.e. for the post of open female as No.1 and simultaneously stand No.1 in the list of

candidates who are competing for S.C. post. Ms. Parlewar was qualified and eligible candidates for both the posts for the interview. In the process of selection one candidate can claim and compete for more than one posts, however, he /she can be selected only for one post. On this point we rely on the ratio laid down by the Hon'ble Supreme Court in ***Union of India Versus Ramesh Ram, Civil Appeal Nos.4310-4311/2010, dated 07.05.2010.*** Thus, Ms. Parlewar would have been No.1 candidate in both the lists where her marks in the interview would have been considered for S.C. reserved post as well as in the open female category post, if migration would have been applied. Thus, the Applicant, Mr. Shende, as shown in the chart even by applying migration, anyhow, would not have been short-listed candidate for interview for S.C. post. The three judges Bench of Hon'ble Supreme Court in ***Ramesh Ram (supra)*** dealt with the important question –

*“Whether candidates belonging to reserved category, who get recommended against general/unreserved vacancies on account of their merit (without the benefit of any relaxation/concession), can opt for a higher choice of service earmarked for Reserved Category and thereby migrate to reservation category.”*

While answering to this issue, the Hon'ble Supreme Court held that the reserved category candidates belonging to the Scheduled Castes, the Scheduled Tribes or Other Backward Classes categories who are selected on merit and placed in the list of

general category candidates can choose to migrate to the respective reserved category at the time of allocation of service. In the said judgment the validity of sub Rule (2) of Rule 16 of Civil Services Examination, 2005 relating to Civil Services Examination held by Union Public Service Commission (U.P.S.C.) was the subject matter. The ratio laid down by the Hon'ble Supreme Court in this case is found useful on the point raised before us.

23. In so far as the case of the applicants is concerned, we are of the opinion that no interference is required in the procedure and process followed by the M.P.S.C. in selection and recommendation. Hence, we pass the following order :-

### **O R D E R**

- (A) Thus, we finally conclude that O.A.No.544/2018 and O.A.No.513/2019, both are dismissed. Our interim order dated 20.06.2018 is hereby vacated in view of dismissal of Original Applications.
- (B) Mr. Chandrakant Harshal Baviskar, Respondent No.4 in O.A.No.544/2018 is to be appointed and he shall start working on the post of Deputy Director, Town Planning, pursuant to his appointment order dated 08.03.2019. Mr. Chandrakant Harshal Baviskar whose process of appointment was stalled due to

Tribunal's order be given deemed date of appointment as on 08.03.2019 and he is entitled for all the consequential benefits.

- (C) Thus, Mr. Vijay Babarao Shende, Applicant in O.A.No.544/2018, was not entitled to appear for the interview and therefore his prayer to recommend him is rejected.

Sd/-  
**(P.N. Dixit)**  
**Vice-Chairman (A)**

Sd/-  
**(Mridula Bhatkar, J.)**  
**Chairperson**

prk