

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATIONS NO.213 & 214 OF 2018**

ORIGINAL APPLICATION NO.213 OF 2018

DISTRICT : SANGLI

Anuja Ashok Walvekar,)
1570 Mahaveer Chowk, Uran Islampur,)
Tal. Walva, District Sangli)..Applicant

Versus

1. The State of Maharashtra,)
Through the Additional Chief Secretary,)
Water Resources Department,)
Mantralaya, Mumbai 400032)
2. Maharashtra Public Service Commission,)
5 ½ Floor, Cooperage Telephone Exchange Bldg.)
M.K. Road, Mumbai 400021)
3. Sonal Sanjay Patil,)
R/o 702, E-E/17 MSR Queenston Udyog Nagar,)
SKF Road, Chinchwad, Opp. Chinchwad)
Railway Station, Tal. Haveli, Dist. Pune 411033)..Respondents

AND**ORIGINAL APPLICATION NO.214 OF 2018****DISTRICT : DHULE**

Vrinda Sunil Suryawanshi,)
 2, Suvandan, Near Akashvani Kendra,)
 Digambar Padavi Society, Deopur, Dhule 424005)..Applicant

Versus

1. The State of Maharashtra,)
 Through the Additional Chief Secretary,)
 Water Resources Department,)
 Mantralaya, Mumbai 400032)
2. Maharashtra Public Service Commission,)
 5 ½ Floor, Cooperage Telephone Exchange Bldg.)
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3. Sonal Sanjay Patil,)
 R/o 702, E-E/17 MSR Queenston Udyog Nagar,)
 SKF Road, Chinchwad, Opp. Chinchwad)
 Railway Station, Tal. Haveli, Dist. Pune 411033)..Respondents

Shri A.A. Desai, Counsel with

Shri S.D. Patil – Advocate for the Applicants

Smt. K.S. Gaikiwad – Presenting Officer for Respondents No.1 & 2

None for Respondent No.3 though served.

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)
RESERVED ON : 21st March, 2023
PRONOUNCED ON: 31st March, 2023
PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Both the applicants are at present working as Assistant Engineer (Civil), Grade-1, Group-A in Water Resources Department. They belong to OBC category. They challenge the select list dated 24.9.2015 and seek declaration that applicants are successful in the examination for the post of Assistant Executive Engineer (Civil), Grade-1, Group-A in Water Resources Department.

2. Pursuant to advertisement dated 13.9.2013 issued by MPSC the applicants applied and appeared in the examination. On 24.9.2015 the results were declared and select list was published. Applicant in OA No.213/2018 has secured 260 marks and applicant in OA No.214/2018 secured 258 marks. The applicants had applied under OBC Female category. The cutoff for Open Female was 248 marks. Though both the applicants secured more than the cut off marks for Open Female their names were not considered in Open Female category but were considered in the category of OBC Female as per circular dated 13.8.2014. The reserved category candidates could not be considered for the post for horizontally reserved open/unreserved category. Hence, though the applicants secured 260 and 258 marks respectively they were not considered for Open Female category as they belong to OBC category. Respondent No.3 who secured less marks (248) than the applicants but was from Open category was recommended for Open Female post.

3. Ld. Advocate for the applicants pointed out that as per advertisement out of 47 posts of Assistant Executive Engineers in Water Resources Department, 14 were reserved for Female. Though both the applicants should have been given higher post of Assistant Executive Engineer, they were given the post of Assistant Engineer (Civil), Grade-I, Group A in Water Resources Department.

4. Ld. Advocate for the applicants relied on the judgment and order dated 25.8.2021 passed by the Hon'ble High Court, Bench at Nagpur in **W.P. No.5721 of 2019 Sarla Madhukar Dhoke Vs. MPSC & Ors.** and also the judgment and order dated 5.9.2022 passed by this Tribunal in **OA No.1033 of 2015 Tarakeshwari Devekar Tayade Vs. MPSC & Ors.**

5. In *Sarla Dhoke* (supra) the Hon'ble High Court observed in para 10 as under:

“10. In the above facts and circumstances, the judgment in Writ Petition No. 3290 of 2019 is squarely applicable to the case of the petitioner herein. The relevant paras of the aforesaid judgment are as follows:

“6. The decision in Saurav Yadav and others (supra) was considered by a co-ordinate Bench of this Court in Lata Shyamrao Sangolkar Vs. State of Maharashtra and others, reported in 2021 (3) ABR 246. The relevant paragraphs from such decision are quoted below :-

“10. Law is well settled that if a candidate belonging to a reserved category is entitled to be selected on the basis of his own merit, his selection cannot be counted against the quota reserved for the category for vertical

reservation to which he belongs. The question as to whether such legal position would also apply to individuals selected on the basis of their own merit but belonging to reserved categories for which horizontal reservation has been provided, came up for consideration before the Supreme Court in Saurav Yadav (supra) and the question was answered in the affirmative.

12. Today, we have heard Mr. Kumbhakoni. He has, in his usual fairness, submitted that the contents of the reply affidavit filed by the State does not reflect the correct position of law and that the petitioner had been illegally denied of appointment by not accommodating her in any of the 'unreserved' or 'open' category vacancies for women, regard being had to the fact that belonging to the OBC category and securing more marks than the candidates who have been appointed securing lesser marks, i.e., the respondents 2 to 7, she ought to have been offered appointment in preference to them.”

7. The aforesaid extract would reveal the submissions advanced on behalf of the State by Mr. Kumbhakoni, learned Advocate General for the State of Maharashtra who had, in similar circumstances, submitted that candidates like the petitioner ought to be accommodated on posts where horizontal reservation applies, subject to merit.”.

6. In *Tarakeshwari Tayade* (supra) it is observed in para as under:

“2. The applicant seeks appointment to the post of Assistant Executive Engineer (Civil), Group-A in Water Resources Department,

reserved for Open (Female) category and challenges the selection of respondents no.3 & 4 as they are less meritorious.”

The Tribunal held that facts of this case were covered in judgment of the Hon'ble High Court, Nagpur Bench in *Sarla M. Dhoke* (supra) and directed the respondents to place the applicant in the list of recommended candidates for appointment to the post of Assistant Executive Engineer (Civil), Group-A Water Resources Department in Open Female category.

7. Ld. Advocate for the applicants relied on para 22.1 of the judgment of the Hon'ble Supreme Court in **State of Uttar Pradesh & Ors. Vs. Arvind Kumr Srivastava & Ors., (2015) 1 SCC 347**, which reads as under:

“22.1 The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under: (1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.”

8. Ld. Advocate for the applicant therefore prayed that respondent no.1 should recommend the applicants for the post of AEE (Civil), Group A in the Water Resources Department instead of the recommendation to the

post of Assistant Engineer (Civil) Grade-I) Group-A Water Resources Department effected by respondent no.2 vide recommendation list dated 24.9.2015 and then direct the respondent no.2 to issue the order of appointment of the applicants in the said post.

9. Ld. PO while opposing the OAs relied on the affidavit in reply dated 16.2.2023 filed by Sushma Suhas Chandramore, Under Secretary, MPSC on behalf of respondent no.2. She pointed out that the difference between the present applicants and Sarla M. Dhoke & Tarakeshwari D. Tayade is that Sarla Dhoke and Tarakeshwari Tayade were already recommended by the MPSC for the post of Assistant Executive Engineer. The Hon'ble High Court and this Tribunal have only allowed to change their department from Water Supply and Sanitation Department to Water Resources Department. However, the applicants in the present case have been selected for the post of Assistant Engineer and are praying to be selected for the post of Assistant Executive Engineer. Another difference between them is that Sarla Dhoke and Tarakeshwari Tayade filed OAs immediately after declaration of the results whereas applicants in the present OA have filed their OAs at a belated stage on/or after 5.3.2018 and hence are not entitled for similar relief.

10. Ld. PO further pointed out that if the prayer of the applicants is granted then other candidates may also demand the same relief for the examination whose results were declared long back by considering circular dated 13.8.2014 making it an unending process. She further pointed out that MPSC has acted as per the then existing reservation policy of the government mentioned vide circular dated 13.8.2014 and therefore they were entitled to any relief.

11. We have considered the submission of both the sides. It cannot be denied that the applicants had secured higher marks in the examination

than the last candidate in Open Female category. The Hon'ble High Court in the case of *Sarla Dhoke* (supra) had granted relief to the petitioner and directed the respondents to place the petitioner in the list of recommended candidates dated 24.9.2015 for appointment to the post of Assistant Executive Engineer (Civil) Group-A, Water Resources Department in the Open Category with all consequential benefits. Similarly, in *Tarakeshwari Tayade* (supra) this Tribunal has given similar relief as granted by the Hon'ble High Court in *Sarla Dhoke* (supra).

12. There are two major factors which distinguish present case from that of *Sarla Dhoke* (supra) and *Tarakeshwari Tayade* (supra). In the first place these OAs were filed in 2015 while present OAs are filed belatedly on 8.3.2018. In the earlier cases the Hon'ble High Court and this Tribunal only allowed change of department from Water Supply and Sanitation Department to Water Resources Department. This is distinguishable from the present OAs, where applicants who have been selected to the post of Assistant Engineer are praying to be selected for the post of Assistant Executive Engineer. If the result is revised at this time, this being multi-cadre examination, the entire seniority list of the various departments and posts will get disrupted.

13. We refer to the ratio in the judgment in **State of Uttar Pradesh & Ors. Vs. Arvind Kumr Srivastava & Ors., (2015) 1 SCC 347**, which reads as under:

“22.2 However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot

claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

14. In view of the above mentioned ratio, we are unable to grant any relief in these two OAs. Hence, both the Original Applications are dismissed. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
31.3.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
31.3.2023

Dictation taken by: S.G. Jawalkar.