

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.6 OF 2023

DISTRICT : PUNE

1. Mr. Sushil Yuvraj Shinde,)
Age 28 years, Matoshri Nivas, Snow-35/A/1,)
Sulabh Colony, Rahatani Street, Pune 411017)
2. Ms. Priyanka Sainath Atule,)
Age 27 years, Sheetal Enclaves, Flat No.301,)
Near Sai Mandir, Hinda Chowk, Vishal Nagar,)
Pimple Nilakh, Pune 411 027)..Applicants

Versus

1. Maharashtra Public Service Commission,)
Through the Secretary,)
5, 7, 8th Floor, Cooperage Telephone Nigam Bldg.)
M.K. Road, Mumbai 400021)
2. Water Resources Department,)
Through the Secretary,)
Mantralaya, Mumbai 400032)..Respondents

Shri S.V. Waghmare – Advocate for the Applicants

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

RESERVED ON : 1st September,

PRONOUNCED ON: 12th September, 2023

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard Shri S.V. Waghmare, learned Advocate for the Applicants and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. The applicants who are candidates belonging to the Divyang category seek appointment on the basis of recruitment process conducted by the MPSC with respect to advertisement No.5/2019 for the Preliminary Examination and advertisement No.17/2019 for the Mains Examination for the various posts of Engineers as mentioned in the advertisement. The applicants are candidates belonging to the Divyang category which has 4% horizontal reservation for the recruitment conducted by the State Government authorities. The applicants secured their rank in the select list through Divyang category. Therefore recommendations letter dated 13.6.2022 were issued to the applicants for the post of Assistant Engineer, Grade-B, Grade-II in the Water Resources Department.

3. Ld. Advocate for the applicants pointed out that other candidates in the select list except candidates from Economically Weaker Section (EWS) category were issued appointment letters. The applicants have not been given appointment letters even though they have been selected from the Divyang category for which there is a provision for separate select list irrespective of social reservation category. Ld. Advocate pointed out that clause 4.19 of the advertisement No.5/2019 and also clause 3.16 of the advertisement No.17/2019 makes it clear that the handicapped person shall be recommended not on the basis of social category but on the basis of merit amongst the handicapped persons. He stated that it is pertinent to note that the cutoff marks shown in the EWS category and Divyang category is separate and distinct. The cutoff marks for EWS category are 282 marks and cutoff marks for EWS Female are 233 whereas the cutoff marks of Divyang and marks obtained by the applicants are as follows:

Name of Applicant	Marks obtained	Cutoff Marks	Disability category
Sushil Yuvraj Shinde	114	95	Hearing Impairment
Priyanka Sainath Atule	180	150	Locomotor/ Cerebral Palsy

4. He pointed out that the Hon'ble Bombay High Court vide order dated 1.12.2022 in W.P. No.14772 of 2022 restrained the Government from issuing any appointment letters to fill up the posts reserved for candidates belonging to the EWS category. However, Hon'ble Bombay High Court left it open for the Socially and Economically Backward Classes (SEBC) candidates to pursue their remedy before the appropriate forum in accordance with law if at all they are entitled to be appointed on open posts but are not so considered. In the present case, the applicants have scored more marks than other Divyang Category candidates who have filled up their form from Open/Unreserved category. Therefore the applicants are entitled for the appointment on open posts for which Hon'ble Bombay High Court directed to pursue the remedy before appropriate forum available as per law.

5. Ld. CPO opposes the submissions advanced by the Ld. Advocate for the applicants. Ld. CPO pointed out that the Hon'ble Supreme Court vide judgment and order dated 5.5.2021 passed in Civil Appeal No.3132/2020 was pleased to hold the reservation under SEBC Act, 2018 as ultra vires. Thereafter the GAD of the State Government issued GR dated 31.5.2021 by which SEBC candidates who were satisfying norms for EWS were held eligible to seek benefit of reservation as EWS. Considering the GR dated 31.5.2021 and Govt. letter dated 3.6.2021 the MPSC made an announcement dated 17.6.2021 and allowed the SEBC candidates to opt for Open or EWS category. Accordingly from the SEBC candidate

whosoever opted for selection from Open category are considered for Open category and whosever opted for EWS category are considered for EWS category subject to fulfillment of eligibility criteria.

6. Ld. CPO pointed out that the applicants are Divyang and while applying for preliminary examination have applied from SEBC category but later on have opted for EWS category. In the result dated 13.4.2022 the Commission recommended applicants on the posts reserved for Divyang. As per the procedure while recommending the Divyang candidate he/she is recommended on the seat reserved for category to which he/she belongs. In the present case applicants opted for EWS category hence two seats of EWS category were allotted to them.

7. The reservation of Divyang is a horizontal one. The applicants had originally applied from SEBC category but later on opted for EWS category.

8. The issue pertaining to the challenge to GRs dated 31.5.2021 and 23.12.2020 allowing SEBC candidates to apply in EWS category in the midway of the selection process of the recruitment of various posts which are to be filled up pursuant to the advertisement of the year 2019, was challenged before this Tribunal in **OAs No.814, 280 & 281 of 2022 (Gajanan Santosh Chavan & Ors. Vs. State of Maharashtra & Ors.)**. This Tribunal in its order dated 2.2.2023 has disallowed the transfer of the candidates who have opted for SEBC category at the time of filling up the application form and subsequently wanted to shift to EWS category. The Tribunal at that time has considered the ratio laid down by the Hon'ble Supreme Court dated 5.5.2021 in the case of **Dr. Jaishri Laxmanrao Patil Vs. The Chief Minister & Ors in Civil Appeal No. 3123/2020**. The Tribunal did not allow such shifting in the said recruitment processes which were already initiated and some were already

concluded. Thus, the concerned G.Rs dated 31.5.2021 and 23.12.2020 allowing the shifting from SEBC to EWS in the mid of the selection process was not applicable to the said selection process. It is to be noted that the present applicants, though, they claim horizontal reservation under disability category which is also from the same recruitment process are therefore covered under the said order of this Tribunal.

9. Further this view is also supported by the Hon'ble Supreme Court in the case of **Indra Sawhney & Ors. Vs. Union of India, 1992 Supp (3) 217**. In the judgment of Indra Sawhney (supra) it is held that horizontal reservation is to be provided to the persons with disability under Article 16(4) of the Constitution of India. However, it is to be provided in their respective categories which is a vertical/social reservation. We rely on the ratio laid in para 812 of the judgment which reads as under:

“812. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservation, which may, for the sake of convenience, be referred to as ‘vertical reservations’ and ‘horizontal reservations’. There reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations – what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even

after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains – and should remain – the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.”

(Emphasis supplied)

10. In view of the ratio laid down by Hon'ble Supreme Court in *Indra Sawhney* (supra) and judgment of this Tribunal in *Gajanan Santosh Chavan* (supra), we find that no relief can be granted to the applicants in this OA.

11. Original Application is dismissed. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
12.9.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
12.9.2023

Dictation taken by: S.G. Jawalkar.