

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.213 OF 2018  
With  
ORIGINAL APPLICATION NO.214 OF 2018**

**DISTRICT : Sangli**  
**Sub.:- Selection & Reservation**

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**ORIGINAL APPLICATION NO.213 OF 2018**

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, 5½ Floor, Cooperage )  
Telephone Exchange Building, 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, District : Pune – 411033. )...**Respondents**

**With**

**ORIGINAL APPLICATION NO.214 OF 2018**

Vrinda Sunil Suryawanshi. )  
 2, Suvandan, Near Akashvani Kendra, )  
 Digambar Padavi Society, Deopur, )  
 District : Dhule – 424 005. )...**Applicant**

**Versus**

1. The State of Maharashtra, & 2 Ors. )...**Respondents**

**Shri Shrikant Patil a/w Shri A.S. Pawar, Advocate for Applicants.**

**Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.**

**CORAM : Shri M.A. Lovekar, Vice-Chairman  
 Shri Debashish Chakrabarty, Member-A**

**DATE : 06.05.2025**

**PER : Shri Debashish Chakrabarty, Member-A**

**JUDGMENT**

1. The case of Applicant No.1 in OA No.213/2018 and Applicant No.2 in OA No.214/2018 is that they had successfully competed in 'Maharashtra Engineering (Civil) Services; Group-A Main Examination : 2013' conducted by 'MPSC' pursuant to 'Advertisement No.62' dated 19.12.2013 and though they were placed higher in the 'Merit List' in Open Category (Female) for appointment to posts of 'Assistant Executive Engineer (Civil) Group-A, Water Resources Department'; yet they were included in 'List of Recommended Candidates' published by 'MPSC' on 24.09.2015 for appointment to posts 'Assistant Engineer (Civil), Grade-I, Group-A' in 'Water Resources Department'. The contention of Applicant No.1 in OA No.213/2018 and Applicant No.2 in OA No.214/2018 is that

they ought to have been included by 'MPSC' in the 'List of Recommended Candidates' for appointment to posts of Assistant Executive Engineer (Civil), Grade-I, Group-A in 'Water Resources Department'. The Applicant No.1 in OA No.213/2018 had secured 260 marks while Applicant No.2 in OA No.214/2018 had secured 258 marks which was higher than that of last recommended candidate from amongst 'Open Category (Female)' for posts of 'Assistant Executive Engineer (Civil) Group-A, in Water Resources Department'. Therefore, Applicant No.1 in OA No.213/2018 and Applicant No.2 in OA No.214/2018 had sought relief, but these were not granted by 'Judgment' dated 31.03.2023.

2. The 'Judgment' dated 31.03.2023 in OA No.213/2018 and OA No.214/2018 was then challenged by Applicant No.1 and Applicant No.2 together by filing Writ Petition No.5358/2023 before 'Hon'ble Bombay High Court' which came to be decided by 'Judgment' dated 08.01.2024.

3. The learned Advocate for Applicant No.1 in OA No.213/2018 and Applicant No.2 in OA No.214/2018 specifically drew attention to contents of 'Para 8(iii)' of 'Judgment' dated 08.01.2024 of 'Hon'ble Bombay High Court' in Writ Petition No.5358/2023 to emphasize that their claims to be appointed to posts of 'Assistant Executive Engineer (Civil), Group-A' in 'Water Resources Department' based on 'Maharashtra Engineering (Civil) Services; Group-A Main Examination : 2013' stands comprehensively decided in their favour as is very evident from contents of 'Para 11' of 'Judgment' dated 31.03.2023 passed in OA No.213/2018 & OA No.214/2018; but reasons why their cases came to be distinguished from those of Sarla Dhoke and Tarkeshwari Tayade and their prayers were not granted was only because Applicants had already been for appointed to posts of Assistant Engineer (Civil) Grade 1 Group A but yet seeking to be appointed to post of Assistant Executive Engineer (Civil) Grade-1 Group-A in Water Resources Department and if 'the result were to be revised so belatedly, then it being Multi-Cadre Examination conducted by the MPSC; the entire 'Seniority List' of various

Departments and 'Posts' will get disrupted. Hence, Applicant No.1 in OA No.213/2018 and Applicant No.2 in OA No.214/2018 continue to serve on present posts of 'Assistant Engineer (Civil), Grade-I, Group-A' in 'Water Resources Department'.

4. The learned Advocate for Applicant No.1 in OA No.213/2018 and Applicant No.2 in OA No.214/2018 submitted that 'Hon'ble Bombay High Court' by 'Judgment' dated 08.01.2024 in Writ Petition No.5338/2023 has directed to expeditiously consider the proceedings on their merits and in accordance with law; to decide afresh OA No.213/2018 of Applicant No.1 & OA No.214/2028 of Applicant No.2 by which they have sought to be appointed to posts of 'Assistant Engineer (Civil), Grade-I, Group-A' in 'Water Resources Department' based on 'Maharashtra Engineering (Civil) Services; Group-A Main Examination : 2013'.

5. The 'Hon'ble Bombay High Court' by 'Judgment' dated 08.01.2024 in 'Writ Petition No.5358/2023' upheld the challenge to 'Judgment' passed on 31.03.2023 in OA No.213/2018 & OA No.214/2018 by emphasizing that Applicant No.1 and Applicant No.2 should have been given opportunity to seek 'Condonation of Delay'. Hence; it is imperative to reproduce contents of 'Para 5', 'Para 6', and 'Para 7' of 'Judgment' dated 08.01.2024 of 'Hon'ble Bombay High Court' in 'Writ Petition No.5358/2024' which are as follows :-

**"5.** Having heard the learned counsel for the parties and having perused the impugned judgment, we find that the reliance placed by the Tribunal on paragraph 22.2 of the decision in State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava & Ors. (supra) is misplaced for the reason that the judgment in case of Sarla D/o Madhukar Dhoke (supra) was rendered on 25th August 2021 which is much after the Original Applications were filed on 8th March 2018. It, therefore, cannot be said that the petitioners were fence sitters awaiting adjudication of some other proceedings so as to non-suit them on the aspect of delay.

**6.** It is to be noted that the Tribunal has in paragraph 11 of the impugned judgment found that the petitioners were entitled to be placed in the select list for the post of Assistant Executive Engineer (Civil), Group-A. They have however been non-suited on the ground of delay. We, however, find that an opportunity to seek condonation of delay ought

to have been granted to the petitioners in the light of Section 21(3) of the Administrative Tribunals Act, 1985. By proceeding to non-suit the petitioners on that count without giving them an opportunity to seek condonation of delay has caused prejudice to the petitioners, especially when it is found by the Tribunal itself that they were similarly placed as the petitioners in Sarla D/o/Madhukar Dhoke (supra).

**7.** We have arrived at this conclusion in the light of the law laid down by the Hon'ble Supreme Court in State of Madhya Pradesh & Anr. Vs. Pradeep Kumar and Anr, as well as the judgment of the learned Single Judge (B.R. Gavai, J. as his Lordship then was) in Madhao Somaji Sarode Vs. Jyotiba Dnyan Upasak Shikshan Prasarak Mandal."

6. The 'Hon'ble Bombay High Court' by 'Judgment' dated 08.01.2024 in Writ Petition No.5358/2023 for reasons reproduced above has set aside 'Judgment' dated 31.03.2023 passed in OA No.213/2018 & OA No.214/2018 by recording as follows :-

**"8.** For the aforesaid reasons, in our view, the following order would serve the ends of justice :-

- (i) The judgment dated 31 March 2023 passed in the Original Application Nos. 213 of 2018 and 214 of 2018 is set aside.
- (ii) The proceedings in the Original Applications are remanded to the Tribunal for enabling the petitioners to seek condonation of delay by moving appropriate applications in that regard. The petitioners are permitted to file applications for condonation of delay within a period of four weeks of receiving copy of this judgment. Reply, if any, shall be filed within further period of four weeks. The Tribunal shall, thereafter, expeditiously consider the proceedings on their merits and in accordance with law.
- (iii) It is noted that the findings recorded in paragraph 11 of the impugned judgment have not been subjected to the further challenge by the respondents.

7. The 'Hon'ble Bombay High Court' by 'Judgment' dated 08.01.2024 in 'Writ Petition No.5358/2023' has set aside 'Judgment' dated 31.03.2023 passed in OA No.213/2018 & OA No.214/2018 by emphasizing on fair opportunity which was required to be given to Applicant No.1 and Applicant No.2 to seek 'Condonation of Delay'. Against this backdrop; it is necessary to reproduce contents of 'Para 11',

'Para 12' and 'Para 13' of 'Judgment' dated 31.03.2023 in OA No.213/2018 & OA No.214/2018 which reads as under :-

**"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 Saria 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 Kumar 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."

8. The Applicant No.1 in OA No.213/2018 and Applicant No.2 in OA No.214/2018 therefore were required to be re-heard first on the limited point of 'Condonation of Delay' as specific relief had been granted to them by 'Hon'ble Bombay High Court' by 'Judgment' dated 08.01.2024 in Writ Petition No.5358/2024. The Applicant No.1 had accordingly filed MA No.78/2024 in OA No.213/2018 and Applicant No.2 had accordingly

filed MA No.85/2024 in OA No.214/2024. The MA No.78/2024 in OA No.213/2024 and MA No.85/2024 in OA No.214/2018 seeking 'Condonation of Delay' were heard at length and then decided by common 'Order' dated 26.04.2024 wherein following was observed in 'Para 10' and 'Para 11' while allowing 'Condonation of Delay'. The contents of 'Para 10' & 'Para 11' are as reproduced below :-

**“10.** We find that no satisfactory reason is given by the learned counsel for the applicants as to why the applicants did not approach this Tribunal in the year 2016 and 2017. However, it is submitted that similarly situated candidate has succeeded in the Hon'ble High Court in W.P 5721/2019 in getting the migration.

**11.** Therefore, in order to give fair opportunity to the applicants, we condone the delay of 1 years and 6 months in filing the Original Application subject to payment of cost of Rs. 7000/- each to be paid to PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS (PETA).”

9. The Applicant No.1 in OA No.213/2018 and Applicant No.2 in OA No. 214/2018 who were granted 'Condonation of Delay' by common 'Order' dated 26.04.2024 in MA No.78/2024 and MA No.85/2024 have since complied with these conditions on 30.04.2024 and 03.05.2024. The ground cited earlier regarding 'Condonation of Delay' not being allowed had resulted in denial of adequate opportunity to Applicant No.1 and Applicant No.2. Now, this ground can be considered as having been fully obliterated; facilitating re-appreciation of the findings already recorded in 'Para 11' of 'Judgment' dated 31.03.2023 in OA No.213/2018 and OA No.214/2018. The other ground cited in 'Para 12' of 'Judgment' dated 31.03.2023 in OA No.213/2018 and OA No.214/2018 for denial of relief earlier to Applicant No.2 and Applicant No.2 which is now required to be independently addressed is that if results of 'Maharashtra Engineer (Civil) Service Group A Main Examination : 2013' were to be belatedly revised then it being 'Multi-Cadre Examination' conducted by 'MPSC'; then the entire 'Seniority Lists' of various departments and posts get disrupted. In this regard, it would be pertinent to observe that 'Seniority Lists' are not documents which stand frozen in time, but are often modified or changed whenever there are instances of 'Promotions' or

'Retirements' or when 'Deemed Dates' are granted or even when the 'Seniority Lists' are set aside by any 'Judicial Orders'. Thus, even if results of 'Maharashtra Engineer (Civil) Service Group A Main Examination : 2013' were to be belatedly revised; the inviolability of 'Final 'Seniority List' published by 'Water Resources Department' cannot act as an impediment only because initial recruitment had been done through 'Multi-Cadre Examination' conducted by MPSC. The cases of Applicant No.1 and Applicant No.2 are to be decided afresh; since 'Judgment' dated 31.03.2023 in OA No.213/2018 and OA No.214/2018 has been set aside by 'Judgment' dated 08.01.2024 in Writ Petition No 5358/2023 of Hon'ble Bombay High Court and prayers for 'Condonation of Delay' have also been allowed by common 'Order' dated 26.04.2024 in MA No.78/2024 and MA No.85/2024 which stand complied with by both Applicant No.1 and Applicant No.2 on 30.04.2024 and 03.05.2024.

10. The Applicant No.1 in OA No.213/2018 and Applicant No. 2 in OA No.214/2018 who were directed by common 'Order' dated 26.04.2024 in MA No.78/2024 and MA No.85/2024 have since remitted Rs.7,000/- separately on 30.04.2024 and 03.05.2024 through 'UTI Transactions' to 'People for the Ethical Treatment of Animal India'.

11. The cases of Applicant No.1 in OA No.213/2018 and Applicant No.2 in OA No.214/2018 more than ever before now stands strengthened by another 'Judgment' dated 05.09.2023 in Writ Petition No.12532/2019 of 'Hon'ble Bombay High Court; Aurangabad Bench' which also had the occasion to deal with the selection process of 'Maharashtra Engineer (Civil) Service Group-A Main Examination 2013' and claims about appointment under 'Open Category (Female)' to cadre of 'Assistant Executive Engineer (Civil) Group-A' in Water Resources Department'. The contents of its 'Para 35', 'Para 36' and 'Para 37' are thus reproduced below:-

**“35.** The learned counsel for the petitioner has relied upon the judgment delivered by the Nagpur Bench of this Court in the matter of

Sarla Madhukar Dhoke @ Mr. Sarla W/o Anil Farkade Vs. The M.P.S.C. and others in Writ Petition No. 5721 of 2019. In that judgment there is reference to the decision of the Supreme Court in Saurav Yadav's case. The judgment in that matter was founded on the matter of Seema Munjewar's case decided in Writ Petition No. 3290 of 2019. It was emanating from the same selection process. The petition was allowed by the Nagpur Bench. We also propose to concur with the view taken by the coordinate Bench of this Court. As the learned counsel for parties have argued the matter relying upon various judgments, we have assigned elaborate and separate reasons.

**36.** It is further submitted by the respondents that the selection process was concluded long back. The impugned judgment was passed on 02.03.2016. Thereafter, on 07.09.2019, there was revision of final list. Considering the inordinate time spent after the finalization of the selection process it is not appropriate to grant any relief to the petitioner.

**37.** We have noticed that the Nagpur Bench decided Sarla Dhoke's matter on 25.08.2021. The petitioner in that case was directed to be included in the select list. The Tribunal also in a distinct matter of Tarkeshwari Tayade has shown indulgence and directed to incorporate name of the then applicant in the list of recommended candidates by judgment dated 05.09.2022. These two judgments pertain to the self same selection process. In the present case the petitioner has made out a case on the basis of law laid down by the Supreme Court. She is illegally deprived of her entitlement. Therefore, we do not find any impediment in directing the respondents to incorporate the name of the petitioner in the list of recommended candidates and to take further steps as permissible in law."

12. The cases of Applicant No.1 in OA No. 213/2018 and Applicant No.2 in OA No. 214/2014 for reasons elucidated above do not require any re-assessment of facts and circumstances or necessitate independent scrutiny from perspective of law; so as to arrive at any findings which can be divergent from those specifically incorporated in 'Para 11' of 'Judgment' dated 31.03.2023 in OA No.213/2018 and OA No.214/2018. The merits of the cases of Applicant No.1 in OA No.213/2018 and Applicant No.2 in OA No.214/2018 have been extensively considered and diligently recorded in 'Judgment' dated 31.03.2023. Therefore, conclusions specifically incorporated in 'Para 11' of 'Judgment' dated 31.03.2023 in OA No.213/2018 and OA No.214/2018 are required to be now re-appreciated in conjunction with common 'Order' dated 26.04.2024 in MA No.78/2024 and MA

No.85/2024 to allow 'Condonation of Delay' upon making payment of Rs.7,000/- each to 'People for the Ethical Treatment of Animal India'.

13. The 'Judgment' dated 05.09.2023 in 'Writ Petition No. 12532/2019' of 'Hon'ble Bombay High Court' delivered soon after 'Judgment' dated 31.03.2023 in OA No.213/2018 and OA No.214/2018 only provides greater credence for consideration albeit belatedly of prayers of Applicant No.1 in OA No.213/2018 and Applicant No.2 in OA No.214/2024 to be given appointment to cadre of 'Assistant Executive Engineer (Civil) Group-A, in Water Resources Department' from 'Open Category (Female) based on results of 'Maharashtra Engineering (Civil) Services; Group-A Main Examination : 2013'.

14. Applicant No.1 in OA No.213/2018 and Applicant No.2 in OA No.214/2018 deserve to be recommended by 'MPSC' for appointment to cadre of 'Assistant Executive Engineer (Civil) Group - A' in 'Water Resources Department' based on their overall positions in 'Merit List' from 'Open Category (Female)' for 'Maharashtra Engineer (Civil) service Group-A Main Examination 2013'. Further; while granting this relief to Applicant No.1 in OA No.213/2018 and Applicant No.2 in OA No.214/2018, we would also like to specifically observe the fact that (i) Smt. Sonal Sanjay Patil who is now Respondent No. 3 in both OA No.213/2018 and OA No.214/2018 and was earlier Respondent No. 4 in OA No.1033/2015 and (ii) Smt. Aparna Ashok Kapse who was earlier Respondent No. 3 in OA No.1033/2015 will continue to enjoy the protection already granted to them by 'Judgment' dated 05.09.2022 in OA No.1033/2015. Hence the following order.

### **ORDER**

(A) The OA No.213/2018 and OA No.214/2018 are 'Allowed'.

- (B) The Applicant No.1 in OA No.213/2018 and Applicant No.2 in OA No. 214/2018 shall be recommended by 'MPSC' within 'Four Weeks' for appointment to cadre of 'Assistant Executive Engineer (Civil) Group-A' from 'Open Category (Female)' in 'Water Resources Department' based on their overall positions in 'Merit List' for 'Maharashtra Engineer (Civil) Service Group-A Main Examination 2013'.
- (C) The Applicants No.1 in OA No.213/2018 and Applicant No.2 in OA No. 214/2018 within next 'Two Weeks' thereafter shall be appointed by 'Water Resources Department' on available posts in cadre of 'Assistant Executive Engineer (Civil) Group-A' with appropriate placements in 'Final Seniority List'.
- (D) The Applicant No.1 in OA No.213/2018 and Applicant No.2 in OA No.214/2018 within another 'Eight Weeks' shall also be granted consequential 'Service Benefits' relating to posts of 'Assistant Executive Engineer (Civil) Group-A' in 'Water Resources Department'.
- (E) No Order has to Costs.

Sd/-

**(DEBASHISH CHAKRABARTY)**  
**Member-A**

Sd/-

**(M.A. LOVEKAR)**  
**Vice-Chairman**

Mumbai

Date : 06.05.2025

Dictation taken by :

S.K. Wamanse.

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