

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 925/2017 with M.A 569/2017 in
O.A 925/2017 and O.A 862/2019**

DISTRICT : PUNE

1. ORIGINAL APPLICATION NO. 925/2017 with M.A 569/2017

Shri. Dattatray Karbhari Gunjal,)
Age-42 years , Occ.- Asst. Teacher,)
A/P- Ale , Tal- Junnar , Dist-Pune,)
Pin-412411.)...Applicant

Vs

1. The State of Maharashtra,)
Through Principal Secretary,)
General Administration Department,)
Mantralaya , Mumbai – 400 032.)
2. The Principal Secretary,)
School Education & Sports Department) ,
Mantralaya, Mumbai – 400 032.)
3. The Commissioner of Education,)
Maharashtra State,)
Central Building,)
Dr. Annie Besant Road)
Pune-411001)
4. The Director of Education,)
Secondary and Higher Secondary,)
Central Building, Pune- 411001.)
5. The Under Secretary,)
School Education & Sports Department)
Mantralaya Mumbai-32.)
6. The Maharashtra Public Service)
Commission, Office at, 3rd floor,)
Bank of India Building,)
Mahatma Gandhi Road,)
Mumbai - 400 001.)
7. Dr. Subhash Ramesh Borase,)
Office at -Education officer, (secondary))
Zilla Parishad, Dhule, Dist- Dhule.)

8. Harun Ismail Attar)
Education officer [Continuing Education]
Zilla Parishad, Pune)
Dist- Pune.)
9. Sandeep Pramod Sangave)
Joint Secretary,)
Maharashtra Secondary and)
Higher secondary divisional board,)
Mumbai.)
10. Shivling Namdev Patwe)
Education officer (Secondary))
Zilla Parishad, Nagpur)
Dist – Nagpur)
11. Katolkar Ravindra Shankarrao)
Education officer (Continuing education)
Zilla Parishad, Bhandara,)
Dist – Bhandara.)
12. Aruna Ganeshrao Sangewar)
Shivsai Nagar,)
Taroda bk, Nanded, Maharashtra)
13. Mangala Gorakhnath Anarase)
(Minakshi Bharat Raut))
Administrative Officer,)
Pune Municipal Corporation,)
Pune.)
14. Madhuri Govindrao Savarkar)
Joint Secretary,)
Maharashtra Secondary and)
Higher Secondary Education)
divisional board,)
Nagpur.)
15. Ashok Nanasaheb Kadus)
Education officer (Secondary))
Zilla Parishad, Sindhudurg)
Dist- Sindhudurg.)
16. Rajesh Ramakantrao Hajare)
Education officer, Municipal)
Corporation, Thane.)

17. Nilima Ramesh Rao Takey)
Education officer (Secondary))
Zilla Parishad, Amaravati)
Dist – Amaravati)
18. Devidas Pandit Mahajan)
Education officer, Municipal corporation)
Nashik.)
19. Mohan Shashikant Desale)
Education officer (Continuing education))
Zilla Parishad, Aurangabad,)
Dist- Aurangabad.)
20. Pravin Shridhar Patil)
Education officer (Continuing education))
Zilla Parishad, Nashik,)
Dist- Nashik.)
21. Sunanda Bhagaji Thube)
Education officer (Primary))
Zilla Parishad, Sangali)
Dist – Sangali)
22. Nishadevi Babanrao Waghmode)
Education officer (Secondary))
Zilla Parishad, Ratnagiri)
Dist- Ratnagiri)
23. Shakurao Govindrao Chilgar)
Shivajinagar, Jintur,)
Parbhani – 431509)
24. Savita Tukaram Wadiyar)
Education officer (Continuing education))
Zilla Parishad, Parbhani,)
Dist- Parbhani.)
25. Lata Sakharam Sanap,)
Education officer (Primary))
Zilla Parishad, Palghar,)
Dist- Palghar)
26. Asha Balaji Garud)
Education officer (Continuing education))
Zilla Parishad, Jalna)
Dist- Jalna.)

27. Sanjay kumar Dharma Rathod,)
Education officer (Primary))
Zilla Parishad, Solapur)
Dist- Solapur.)
28. Rajesh Gopinath Kshirsagar,)
Education officer (Secondary))
Zilla Parishad, Satara,)
Dist- Satara.)
29. Sangeeta Chandrakant Bhagwat)
Education officer (Primary))
Zilla Parishad, Thane)
Dist- Thane.)
30. Smt. Archana Arvind Kulkarni)
Deputy Director (Education))
Social Welfare Commissioner office,)
Pune.)
31. Vaishali Jagannath Jamdar)
Education officer (Primary))
Zilla Parishad, Latur,)
Dist – Latur.)
32. Prafulla Mahadevrao Kachave,)
Education officer (Secondary))
Zilla Parishad, Gondia,)
Dist- Gondia.)
33. Ulhas Kauduji Narad)
Education officer (Secondary))
Zilla Parishad, Vardha)
Dist- Vardha.)
34. Shivnath Gajaba Mandalik,)
Education officer (Secondary))
Zilla Parishad, Nashik.)
Dist- Nashik.)
35. Bhaskar Jagannath Patil)
Education officer (Secondary))
Zilla Parishad, Jalgaon,)
Dist- Jalgaon)

36. Prakash Mugutrao Mukund)
Education officer (Continuing education))
Zilla Parishad, Akola)
Dist – Akola.)
37. Subhash Rajaram Chougule)
Assistant Director of Education)
Kolhapur Division, Kolhapur)
38. Sanjay Vasanttrao Dorlikar)
Education officer (Secondary))
Zilla Parishad, Chandrapur)
Dist- Chandrapur.)
39. Punita Ganpati Gurav)
Education officer (Continuing education))
Zilla Parishad, Kolhapur.)
Dist- Kolhapur.)
40. Deepak Ambadas Mali)
Education officer (Secondary education)))
Pune Municipal Corporation)
Pune.)
41. Tejrao Ramkrushna Kale)
Assistant Director of Education)
Amravati Division, Amravati)
Dist- Amravati.)
42. Vaishali Bhagwan Thag)
Education officer (Primary),)
Zilla Parishad, Akola,)
Dist – Akola.)
43. Pushpawati Madhukar Patil,)
Assistant Director of Education,)
Nashik Division, Nashik,)
Dist – Nashik.)
44. Pravin Vasant Ahire)
Assistant Director of Education)
Pune Division, Pune)
Dist – Pune.)
45. Shailaja Ramchandra Darade,)
Administrative officer,)

- Directorate of Education (Primary),)
Pune.)
46. Bhagwan Shridharrao Sonawane)
Education officer (Primary))
Zilla Parishad, Beed)
Dist – Beed)
47. Ramakant Mahadev Kathmore)
Education officer (Primary))
Zilla Parishad, Ahemadnagar)
Dist – Ahemadnagar)
48. Bhavna Patilbuwa Rajnor,)
Joint Secretary,)
Maharashtra State Board of)
Secondary and Higher Secondary)
Education, Ratnagiri.)
49. Prabhavati Muralidhar Kolekar,)
Education officer (Primary))
Zilla Parishad, Satara,)
Dist – Satara.)
50. Kiran Anant Lohar,)
Education officer (Secondary))
Zilla Parishad, Kolhapur.)
Dist – Kolhapur.)
51. Smita Bandusingh Gaud)
Assistant Commissioner,)
Maharashtra State,)
Examination Beuro, Pune.)
52. Sheshrao Namdev Bade,)
Education officer (Secondary))
Zilla Parishad, Thane,)
Dist – Thane.)
53. Meena Haribhau Yadav)
Education officer (Continuing education))
Zilla Parishad, Thane)
Dist – Thane)
54. Prashant Prakash Digaskar,)
Education officer (Primary))

- Zilla Parishad, Nanded,)
Dist – Nanded.)
55. Sandipkumar Sureshrao Sontakke)
Education officer (Primary))
Zilla Parishad, Hingoli,)
Dist – Hingoli.)
56. Eknath Shashikant Ambokar)
Education officer (Primary))
Zilla P arishad, Sindhudurg,)
Dist – Sindhudurg.)
57. The Tahasildar,)
Shirur Kasar, Shirur Tahasil)
Dist – Beed)
58. The Tahasildar,)
Bhandara, Bhandara Tahasil)
Dist – Bhandara.)
59. The Deputy Collector,)
Citizen Facility Centre, Pune.)
60. The Sub Divisional Officer,)
Basmat Nagar, Basmat)
61. The Deputy Collector)
Citizen Facility Centre, Amaravati.)
62. The Sub Divisional Officer,)
Gadchiroli, Dist – Gadchiroli.)
63. The Sub Divisional Officer,)
Revenew, Miraj Sub-Division, Miraj.)
64. The Sub Divisional Officer)
Revenew, Faltan Sub-Division, Faltan.)
65. The Sub Divisional Officer)
Baramati Sub-Division, Baramati,)
Citizen Facility Centre-Indapur.)
66. The Deputy Collector,)
The Special Land Acquisition officer,)
National Highway Project, Nashik)

67. The Deputy Collector)
The Special Land Acquisition No. 4.)
Office of Dy. Collector & Comp.)
Authority Solapur (Setu))
68. Uday R. Kisave,)
Sub Divisional Officer,)
Malegaon Sub-Division office, Malegaon)
Dist – Nashik)
69. The Deputy Collector, (Setu))
Aurangabad.)
70. Manohar Chaudhary)
Sub divisional officer, Pachora division,)
Pachora, Dist- Jalgaon.)
71. The Sub Divisional officer,)
Karvir Division, Kolhapur.)
72. The Sub Divisional Officer,)
Desaiganj (Wadsa) ,Dist- Gadchiroli.)
73. T. D. Hulawale,)
The Sub Divisional Officer,)
Sub division, Dhule.)
74. The Sub Divisional Officer,)
Sub division, Akot, Dist- Akola.)
75. The Sub Divisional Officer,)
Gadhinglanj division, Gadhinglanj,)
Dist- Kolhapur.)
76. The Sub Divisional Officer,)
Malkapur, Dist- Buldhana.)
77. The Sub divisional Officer,)
Amalner Division, Amalner,)
Dist- Jalgaon.)
78. The Sub Divisional Officer,)
Ambejogai, Beed.)
79. The Deputy Collector and Special)
Land Acquisition Officer, No. 14)
Ahemadnagar.)

80. The Deputy Collector Land Acquisition)
No. 09, Sangali.)
81. The Sub Divisional Officer,)
Beed, Dist- Beed.)
82. Land Acquisition Officer No.01,)
Solapur,)
Deputy Collector Competent Authority.)
83. The Sub Divisional Magistrate,)
Sub division office, Deglor, Dist- Nanded)
84. The Sub Divisional Officer,)
Nagar division , Ahemadnagar.)
85. Geetaram Mhaske,)
The Head Master / Principal,)
Parner Public School, Parner Tal- Parner)
Dist- Ahemadnagar.
86. The Head Master,)
New English School, Supa,)
Tal- Parner, Dist- Ahemadnagar.)...Respondents.

2. ORIGINAL APPLICATION NO 862/2019

Shri Dattatraya Karbhari Gunjal,)
Occ-Assistant Teacher,)
AT Post Ale, Tal-Junnar,)
Dist-Pune.j)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Principal Secretary,)
School Education & Sports Dept,)
Mantralaya, Mumbai 400 032.)

2. Shri Ashok Nanasaheb Kadus,)
Education Officer, Secondary,)
Zilla Parishad, Sindhudurg.)...**Respondents**

Ms Neha Bhide with Shri C.T Chandratre, learned advocate for the Applicant in both the Original Applications.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondent no. 1.

Shri M.D Lonkar, learned counsel for Respondent no. 2 in O.A 862/2019 and for Respondents no 7, 11, 15, 19, 21 & 24 in O.A 925/2017.

Shri S.B Deore with Shri S.J Pawar, learned counsel for Respondents no. 18, 20, 22, 35, 37, 43, 45, 49 & 51 in O.A 925/2017.

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

DATE : 28.07.2023

J U D G M E N T

1. The applicant in O.A 925/2017 prays that this Tribunal be pleased to direct the Respondents no 2 and 6 to forthwith appoint the applicant for the post of Education Officer, Grade-I and further the Tribunal be pleased to forthwith quash and set aside the selection of Respondents no 7 to 56 made during the year 2010 to 2014 for the post of Education Officer, Group-I, by M.P.S.C., Respondent no. 6. The applicant in O.A 862/2019 prays that the Tribunal be pleased to quash and set aside the impugned order dated 8.12.2017 thereby reinstating Respondent no. 2, Mr Ashok N. Kadus, in service.

2. The present Original Application 925/2017 is filed nearly after three years and Misc Application No. 5692/107 is filed seeking condonation of delay in filing the Original Application. In this matter undoubtedly there is a delay. It was submitted by the learned counsel for the applicant that the applicant is also the complainant in the case of Respondent no. 15, Mr Ashok N. Kadus and his complaint was not decided therefore there was a delay. However, it was subsequently decided. There is opposition by learned counsel for all the Respondents. We agree that there is a delay. However, considering the prayers in the Original Application and specific complaint made against Respondent no. 15, Mr Kadam and the matter is of the year 2016, we are of the view that in all fairness it is appropriate to condone the delay and hear the parties and decide the matter on merits. Hence, Misc Application seeking condonation of delay is allowed.

3. Learned counsel for the applicant has submitted that Respondent no. 6, M.P.S.C, issued the advertisement on 21.10.2010 for the post of Education Officer and synonymous post of Group-A for the recruitment of 74 posts, out of which 37 posts were available for open category and 37 posts were reserved for candidates from different categories. The applicant applied in open category. The select list was published on 16.2.2013. The name of the applicant was not mentioned. However, thereafter, M.P.S.C selected 4 candidates. The wait list was valid upto 16.2.2014. Respondents no. 52, 53 & 54 were selected. Thus, the applicant in O.A 925/2017 challenges the said recruitment process which were made during the year 2010-14 on the post of Education Officer pursuant to this advertisement and also prays that the selection of Respondents no 7 to 56 be quashed and set aside as it is violative of the Rules of M.P.S.C and in breach of Article 14 of the Constitution of India.

4. Learned counsel for the applicant has submitted that Respondents no. 7 to 56 are illegally selected to the post of Education Officer. Learned counsel further submitted that the applicant has specific grievance against Respondent no. 15, Mr Ashok N. Kadus, and about Respondents no. 7 to 56, they all have applied in the reserved category under Non Creamy Layer. However, the Respondents were not holding the N.C.L Certificate of the immediately preceding Financial Year of the advertisement year, i.e., 1.4.2009 to 31.3.2010. They all belong to VJ(A), NT(B), SBC, VJ, NT(D) & OBC. Therefore, the Certificates which were produced by these candidates has they were not of the period specified as 1.4.2009 to 31.3.2010, they should not have been selected. So far as grievance against Respondent no. 15 is concerned, he has filed a false affidavit that he was not having three children at the time of his application to the said post, though factually he was having three children at the relevant time. Learned counsel has further submitted that the stand of the applicant is that if all these candidates would not have been selected, then the applicant could have been selected and has a claim over the said post. Thus, being aggrieved, the applicant filed O.A 925/2017 on 26.9.2017. At that time the Respondent no. 15, Mr Ashok N. Kadus, was dismissed from service as the complaint was filed by the applicant against him on 2.8.2017. Thereafter, during the pendency of the Original Application, the Respondent-State set aside the dismissal order of Respondent no. 15 and reinstated him in service by order dated 8.12.2017. The applicant had knowledge of this fact of reinstatement of Respondent no. 15, Mr Ashok N. Kadus by order dated 8.12.2017 and therefore, he filed O.A 862/2019 on 23.8.2019, thereby challenging the order of reinstatement of Respondent no. 2, Mr Ashok N. Kadus, Respondent no. 15 in O.A 925/2017. The applicant has challenged the recruitment process of the year 2010-

14, which came to end on 16.2.2013, by filing O.A 925/2017 on 26.9.2017. Learned counsel has submitted that Original Application No. 862/2019 was filed during the pendency of O.A 925/2017. Respondent No. 2, Shri Ashok N. Kadus was dismissed from service by order dated 2.8.2017, when the Original Application No. 925/2017 was filed on 26.9.2017. However, by order dated 8.12.2017, the order of dismissal of Mr Kadus, Respondent no. 2 was set aside by the Respondent-State and he was reinstated in service. The said order dated 8.12.2017 is challenged in O.A 862/2019. Thus, the second Original Application, i.e., O.A 925/2017 is against Respondent no. 15 and O.A 862/2019 is filed stating that the order of dismissal of Respondent no. 15 on the ground that he made a false affidavit of not having three children at the time of filling up the application form. Learned counsel for the applicant Ms Bhide has submitted that the applicant has locus standi to challenge the order as the order of reinstatement is illegal and if Respondents no 2 is removed from service, then in his place the applicant is to be appointed. Secondly, the applicant is the complainant who demanded action against Respondent no. 2, on the ground that though he was having three children, he has stated false facts in the affidavit. Learned counsel Ms Bhide has submitted that thus, the locus standi cannot be challenged.

She read the entire order of reinstatement dated 8.12.2017 and also relied on the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 (herein after referred to as the Rules for brevity) framed by the State of Maharashtra and especially to Rule 6 which is reproduced below:-

- “6. Power to Relax the provisions of these Rules. Notwithstanding anything contained in these rules, Government may relax the provisions of any of these

rules, under such circumstances in such manner as shall appear it to be just and reasonable and shall record the reasons for any such relaxation.”

She has submitted that the Government cannot invoke its power under Rule 6 of the said Rules under which the Government enjoys power to relax the violation of the said Rules. She submitted that basically the order of dismissal was passed not for the breach of the false family Rules, but it was on account of making a false affidavit before the authority. Thus, stating false facts before the authority is a different issue than to breach of Small Family Rules. Hence the power under Rule 6 of the said Rules cannot be invoked if the reason is beyond the said Rules.

5. Learned Advocate Ms. Bhide relied on the following judgments:-

- (1) Dr. Duryodhan Sahu & Ors. Versus Jitendra Kumar Mishra & Ors. reported in 1998 (7) SCC 273 on the point of locus.
- (2) Sheetal Vishnu Pund Versus State of Maharashtra and Anr. in Writ Petition (Stamp) No.15201/2018 of Bombay High Court on the point who is the person aggrieved.
- (3) State of Uttar Pradesh Versus Arvind Kumar Shrivastava reported on (2015) 1 SCC 347 on the point of parity.
- (4) Avdhoot s/o. Gangaram Puri Versus State of Maharashtra & Ors. in Writ Petition No.11901/2015 dated 06.06.2017 on the point of locus.
- (5) Bansilal s/o. Chiranjilal Jaiswal Versus State of Maharashtra & Anr dated 20.03.2017 in O.A.No.502/2018 M.A.T. Bench Aurangabad.

6. Shri M.D Lonkar, learned counsel for Respondent no. 2, has submitted that the applicant has no locus standi and the word “total stranger” in the case of **Dr. Duryodhan Sahu (supra)** is not to be capitalized in isolation, but ratio is to be understood. Learned counsel Mr Lonkar further submitted that the application

is not maintainable in view of Section 19 of the Administrative Tribunals Act, 1985. A person who has suffered legal injury is a person aggrieved. However, the applicant is not so. Under these circumstances, what treatment is given to others should not be the basis of the locus standi. He has submitted that the remedy is elsewhere but not before this Tribunal. He, further submitted that Respondent no. 2 was given the further promotion in 2020 and 2021. Learned counsel has submitted that dismissal of Respondent no. 2 without holding enquiry was illegal. Learned counsel Mr Lonkar relied on Rule 6 of the said Rules. He pointed out that the authority has rightly explored the power under rule 6 and Rule 6 open with non obstante clause. He has submitted that the Respondent has given three reasons for cancellation of dismissal order of Respondent no. 2 that he has adopted his child in the year 2010. However, it was not notarized till 2013 and he became aware about this fact that he joined Government service. This Respondent no. 2, was working as a Teacher and it is also considered that the advertisement of M.P.S.C was after the birth of the third child. Therefore, the order of cancellation cannot be said to be illegal. Learned counsel Mr Lonkar for Respondent no. 2, relied on the following judgments:-

- 1) Shri Sunil T. Khade Vs. Government of Maharashtra & Ors, O.A 919/2015, dated 22.3.2022
- 2) Ms Harshada S. Avhad & Ors Vs. The State of Maharashtra & Ors O.A 195 & 985/2015, dated 25.1.2017

7. Two points are required to be answered, first point is of locus and second challenge is on merit.

8. In ***Dr. Duryodhan Sahu (supra)*** the Petition in the nature of PLI was filed by the private person before Central Administrative

Tribunal. The Hon'ble Supreme Court held that the definition of service matters found in Section 3(q) of the Administrative Tribunals Act, 1985:-

“service matters”, in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation [or society] owned or controlled by the Government.”

Thus, it is in relation to ‘person’ and ‘his’ service. The word ‘his’ cannot be ignored. Learned Advocate has relied on the expression mentioned in paragraphs 15 and 17 of the said judgment that the person aggrieved has to be construed in the context of the Act and the facts of the case. On the point of locus, she has further relied on the reproduction of the ratio in **Jashbhai Motibhai Desai Versus Roshan Kumar** which is reproduced in judgment of **Dr. Duryodhan Sahu (supra)** it states as follows:-

“... It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner’s interest, and the nature and extent of the prejudice or injury suffered by him.”

In the case of **Dr. Duryodhan Sahu (supra)**, the Hon'ble Supreme Court has very specifically held that the Administrative Tribunals Act, 1985 constituted under the Act cannot entertain the Public Interest Litigation at the instance of a total stranger. In the present case, we agree that the Applicant has participated in the entire process and he was not selected. However, as per his case only for the reason that all the Respondents are appointed illegally and one of them is removed he has every chance of getting in and to be appointed as he has secured good marks i.e. 53 marks.

9. In the case of ***Sheetal Vishnu Pund (supra)***, the Division Bench of the Tribunal in the said matter which related to transfer, dealt with the issue of locus standi, which was decided against the applicant. An argument was made that there were two officers who were senior to the original applicant, whose request for transfer had also not been accepted. Their request to give that particular post was denied and therefore, the applicant cannot insist that particular posting. The Hon'ble High Court has stated that "Admittedly, such senior officers, have not agitated the matter of any denial of posting to them before this Court. This means that they are satisfied with their postings. It is the petitioner who has agitated the issue and has made out the grounds for grant of relief in her favour."

10. In ***Shri Sunil T. Khade case (supra)***, the Respondent was not holding a requisite Certificate of typing speed, but due to the flaw in the advertisement he was appointed and put in 7 years on that post. The applicant, in fact was not holding any requisite educational qualification, and therefore, he had no locus to challenge the appointment of Respondent no. 3. On the ground of continuity of service of 7 years the Respondent was allowed to continue and the application was dismissed.

11. In ***Ms Harshada S. Avhad's case (supra)***, the applicant has challenged the selection of Respondent no. 3, on the post of Executive Engineer. The Tribunal held that applicant is not eligible to be selected as at least one candidate was more meritorious than him. It is also held that once the post is open it is to be filled on merit regardless of the caste, class to which the candidate belongs. Learned counsel for Respondent no. 2 also further submitted that Respondent no. 2 should not have been dismissed from service without conducting enquiry once he has put in one year of service,

then he is protected under Article 311 of the Constitution of India. Learned counsel further submitted that the order of cancellation of dismissal of Respondent no. 2 and his reinstatement is an administrative decision which cannot be subjected to judicial review. In the impugned order, the administrative authority has given three reasons for which the dismissal order should be cancelled. Thus, no procedural flaw can be attributed to this order for judicial review.

12. On the point of locus, we considered the law laid down in the above cases. The Applicant who has participated in the recruitment process has been pursuing the matter since 2016, however, we are in a position to take this matter today. We also gave weightage to a fact that the applicant is the complainant wherein he has challenged the appointment of Respondent No.15 on the ground of forgery and fraud. Therefore, we hold that the applicant has shown that he is going to be affected and has ground to agitate the issue before us and thus has locus to approach the court and challenge the recruitment process of the Respondent. The applicant has made the persons against whom he seek relief as Party Respondents and it is not a petition in the nature of Public Interest Litigation. Now we deal with the issue of the recruitment of the Respondents on merit.

13. Though we have considered the case of the Applicant with all leniency, we are unable to understand that when the Applicant has not secured good marks to secure higher placement in the merit, then even Respondent No.15 is removed from the service how the Applicant is entitled to get the said post in view of the merit. Moreover, the challenge given by the Applicant to all other Respondents on the ground that the Applicants do not hold valid NCL and yet they are accommodated in open merit list is a

complete deviation to the settled position of law on the point of migration. Though other Respondents except Respondent No.15 have applied in reserved NCL, they have secured more marks therefore whether they are holding valid NCL certificate is immaterial. We got it confirmed that these Respondents have been considered in open category as they have secured more marks than the cut-off. Thus, the challenge of the Applicant on the ground of Respondents not holding valid NCL certificate is not sustainable and hence not accepted.

14. In order to ascertain merit of the Applicant, it is necessary to find out what was the cut off of the Open Category. The cut-off of the Open Category was 58 marks and the Applicant has secured 53 marks. Thus, we have question in mind and therefore even if the Respondent No.15 is removed from service there may be few numbers of other candidates who have secured between 58 to 53 marks. The gap between cutoff marks of the Open Category and the marks secured by the Applicant is of 5 marks and this makes considerable difference in the competitive examination. The Applicant's name appears in the waiting list at Serial No.1. It was counter argued by learned Advocate Ms. Bhide that the candidates who have secured marks in between 58 to 53 chose to keep quiet and not to approach the Tribunal and thus they are out of the race but the applicant wanted to challenge and therefore he has agitated this issue before the Tribunal, and entitled to relief.

15. We are unable to pursue this leg of argument mainly in view of the time gap. The recruitment process was completed in the year 2014. The Applicant was aware of his result and other facts. However, he filed O.A. three years thereafter i.e., on 26.09.2017. Though we have condoned the delay in all fairness with a view to hear grievance of the Applicant, the fact remains that the ground of challenge on the point of migration is not sustainable and

therefore the answer that why other candidates did not take recourse is explainable. These candidates might have been fully aware and accepted the principle of migration in respect the candidates not having N.C.L, but have secured above the cut-i-off marks of the open category. Applicant pursued this matter by giving written complaints against so called illegal appointment of the Respondents by the competent authority and M.P.S.C. for two years.

16. In the present case all other Respondents are meritorious and therefore, they are appointed in the open category though they have applied under Non-Creamy Layer. Now, the issue only remains in respect of Respondent no. 15 in O.A 825/2019. The present applicant got the information about the fact that Respondent no. 2 had three children and others may not be having that information. Therefore, they could not come to the Court.

17. **Discussion in respect of Rule 6.** The scheme of Small Family is framed under Rules 1 to 5 which is required to be given as mentioned in the Schedule and which is also part of the Rules. Rule 6 starts with a non obstante clause 'Notwithstanding anything'. Therefore, whatever is mentioned above and which includes also the undertaking that can be considered by the State Government by exploring the powers under Rule 6 of the said Rules. Thus, whatever affidavit is given by the Respondent no. 2, Shri Kadus, which is prima facie false and for that reason he is dismissed from service. However, that Certificate itself is removed by the virtue of the G.R dated 12.10.1993, relied on by learned counsel for the applicant which states that the Government servants who were not eligible or not holding the requisite qualification at the time of appointment and if at all they have given a false information to secure appointment or any false

Certificate is produced, then the said Government servant, if on probation or temporary, then he is to be dismissed/removed from the service. Learned counsel for the applicant Ms Bhide has heavily relied on this G.R. This G.R is a general provision in respect of making false statement or furnishing the information in order to secure appointment. This G.R is a general provision for taking action for making false statement. The Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 came into force on 28.3.2005. Declaration in Form 'A' is part of Rule 4 of the said Rules. However, the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005, which are specific and therefore, it being a special legislation, the rules prevail over the G.R and therefore, we have to consider the powers of the State Government of relaxation under Rule 6 only and we hold that the Government is competent in the present case to explore the power under Rule 6.

18. In view of the above, we find no merit in the Original Application and the same stands dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 28.07.2023
Dictation taken by : A.K. Nair.