

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10404 OF 2019

Smt. Suvarna Bhimaji Thigle

Age : 36 years

Occu: Nil.

R/at : 2368, Behind Zilla Parishad School

Tal. Khed, Dist. Pune

... Petitioner

Versus

1. The State of Maharashtra

Through Secretary to the Government

Revenue Dept., Mantralaya, Mumbai

2. The Secretary,

General Administrative Department,

Mantralaya, Mumbai

3. Collector of Pune

.... Respondent

Mr. Rushikesh G. Bhagat i/b Khandeparkar & Associates, for the
Petitioner.

Ms. Reena A. Salunkhe, AGP for the Respondent-State.

**CORAM : M.S.KARNIK &
S.M.MODAK, JJ.**

DATE : 02nd FEBRUARY 2026

ORAL JUDGMENT (PER M.S.KARNIK, J.) :

1. Heard Mr. Bhagat, learned counsel for the petitioner
and Ms. Salunkhe, learned AGP appearing for the respondent-
State.

2. The challenge in this petition is to an order passed by the Maharashtra Administrative Tribunal ('the Tribunal', for short), dismissing the original application filed by the petitioner. The matter pertains to the appointment of the petitioner in Group C (Class III) cadre under the Project Affected Persons category ('PAP', for short). Before the Tribunal, the petitioner had sought a direction to the respondents to appoint her in a Group C (Class III) cadre under the PAP category by giving priority to her whenever a job opportunity is available in the government department. It was the case of the petitioner that the PAPs should have been regarded as a separate and distinct category for the purpose of selection process.

3. It is submitted that an error has been committed by the respondents in equating the petitioner, a PAP candidate, with all those who were competing under the open category. Our attention is invited by learned counsel for the petitioner to the Government Resolution ('GR', for short) dated 27/10/2009 which provides reservation of 5% for PAPs.

4. Pursuant to the advertisement issued in the year 2015 for various posts, the petitioner duly applied. She appeared for the

written examination on 04/10/2015 for clerk-cum-typist post. The results were declared on 11/03/2016. As per the provisions of GR dated 27/10/2009, although there is a reservation of 5% for the PAPs, their selection has to be through open competition. The GR provides that PAPs cannot be appointed without following the prescribed procedure of issuing of an advertisement, conduct of the examination and merit-wise selection. The petitioner scored 50 marks out of 200 in the said examination. The passing criteria for the said examination was 90 marks out of 200. The petitioner failed in the said examination, hence, she was held not eligible for the said post.

5. Learned counsel for the petitioner was at pains to point out that if 5% reservation is prescribed for PAPs, it would stand to reason that PAPs have to be treated differently from the other categories and that a separate passing criteria for the PAPs should have been prescribed. It is submitted that prescribing the same passing criteria for PAPs as well as other candidates from the open category, would amount to treating unequals equally and hence, such a criteria is unreasonable and arbitrary. Learned counsel for the petitioner relied upon the decision of this Court in the case of

Rajendra Pandurang Pagare and anr. Vs. State of Maharashtra and ors¹ in support of his submissions.

6. Learned AGP on the other hand invited our attention to the findings of the Tribunal in support of her submissions.

7. Before we proceed to consider the submissions, it would be pertinent to reproduce some of the relevant observations of full Bench of this Court in **Rajendra Pandurang Pagare and anr. (supra)**, paragraphs 38 to 41 reads thus :

“38. Perusal of section 16 of the said Act would also reveal that an eligible affected person is also entitled to get land acquired by the State Government under section 14 with the occupancy status held by such a project affected person earlier. It can thus be seen that an affected person does not come on the roads on the execution of the projects. Under section 16 of the said Act, a duty is cast upon the State Government for complete rehabilitation of the project affected persons. Not only this, but under section 16, a person whose land has been acquired for the project, is also entitled to get land in the benefited zone on the conditions stipulated under section 16. It would thus be difficult to appreciate the contention of Mr. Mantri, learned Counsel, that a person whose name appears in the register maintained by the Collector, must be given an appointment on the basis of seniority in the register, without calling him for interview or competing with others.

39. We are, therefore, of the considered view that the directions given by the Division Bench in Sunil's Case, that the project affected persons should be appointed strictly according to the seniority list maintained by the Collector and that, they are not required to compete between themselves and that they are entitled to be appointed without any competitive examinations, are inconsistent with the mandate of the Constitution of India under Articles 14 and 16. We find, that the same is also not permissible under the said Act and the relevant Government Resolutions. As we have already held, the quota of 5% fixed for project affected persons is nothing but a

1 2009(4) Mh.L.J. 961

horizontal reservation provided for project affected persons and the candidates from that category will have to compete amongst themselves under the recruitment rules and the best amongst them would be entitled to be appointed.

40. Now, let us consider whether it is necessary for publishing an advertisement, calling applications from candidates belonging to project affected person, while filling up vacancies reserved for the said category. The Apex Court, in the case of Excise Superintendent, Malkapatnam, Krishna District, A P, vs. K.B.N. Visweshwara Rao and others, 1996 AIR SCW 3979 has considered the requirement of calling applications by advertisement. It has been observed thus:

"Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair-play, justice and equal opportunity. It is common knowledge that many a candidate are unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate are deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning Departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate Department or undertaking or establishment, should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news-bulletins, and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

41. No doubt, that under the Government Circulars, the Collectors are also required to sponsor the names of eligible candidates to the recruitment authority. However, since we have already held hereinabove, that the district-wise reservation is not permissible under the Constitution, the candidates from the other districts, who are project affected persons, would also be entitled to compete with the candidates who are sponsored by the Collector. In the absence of

the advertisement, it will not be possible for them to get knowledge about recruitment process initiated in the areas beyond their district. We, therefore, find that in order to ensure the equality of opportunity which is guaranteed in the matter of employment under Article 16 of the Constitution, it would be necessary that the posts reserved for project affected persons are advertised so that all the eligible candidates can submit their applications and get an opportunity to compete with others in their category.”

8. We find that the GR dated 27/10/2009 provides for a reservation of 5% for PAPs. No doubt GR provides that the PAP is entitled for getting an employment but the same is subject to the conditions stipulated in the GR dated 27/10/2009. The conditions are not unreasonable or arbitrary as can be seen from the decision of the Full Bench above referred.

9. We find in the present case that the advertisement was duly issued wherein 5% of the posts were reserved for the PAPs. The petitioner participated in the selection process. The Petitioner did not challenge any of the conditions of advertisement. One of the condition was of obtaining 90 marks out of 200 as the passing criteria. Having appeared for the written examination, the petitioner obtained 50 marks and therefore was not eligible. It is after the results were declared that the petitioner comes out they were unfairly equated with the open category candidates in the matter of prescribing the passing criteria. We do not find that the

criteria prescribed of 90 marks for the PAPs is in any way arbitrary. The respondents are not depriving the petitioner of the benefit of reservation. However, the petitioner is entitled to the benefits of such reservation only upon fulfilling the terms and conditions mentioned in the GR dated 27/10/2009. Prescribing the same passing criteria for open category candidates and the PAPs does not amount to hostile discrimination. This is not a case where unequals are treated equally. It is only upon passing the written examination, that the petitioner's case would be considered as against 5% reservation provided for the PAPs. It is not the petitioner's case that there is any breach of reservation policy provided to PAPs. The requirement of the petitioner passing the examination cannot be said to be unreasonable or arbitrary merely because the passing criteria is the same for the open category candidates as well as the PAPs. Such a criteria does not fall foul of Article 14 of the Constitution of India.

10. We therefore, do not see any reason to interfere with the order passed by the Tribunal. The writ petition is dismissed.

(S.M.MODAK, J.)

(M.S.KARNIK, J.)