

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 6262 OF 2016

The Maharashtra Public Service Commission, Mumbai, thr. Secretary

-vs-

Dr. Bharatsingh S/o Deorao Rathod and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. Abhay Sambre, counsel for the petitioner.
Mr. A.S.Fulzele, Addl.G.P.for respondent No.6.

CORAM : SMT. VASANTI A NAIK &
MRS. SWAPNA JOSHI, JJ.

DATE : 21.11.2016.

By this writ petition, the petitioner-Maharashtra Public Service Commission challenges the order of the Maharashtra Administrative Tribunal dated 07/04/2016 partly allowing the original application filed by the respondent Nos.1 and 2 and setting aside the select list dated 28/05/2015 and directing the Maharashtra Public Service Commission to prepare a fresh select list by observing the principles laid down in the case of **Rajesh Kumar Dariya v. Rajasthan Public Service Commission**, reported in **AIR 2007 SC 3127**.

On hearing the learned counsel for the petitioner and on a perusal of the impugned order, it appears that the tribunal was justified in directing the Maharashtra Public Service Commission to prepare a fresh select list, after quashing and setting aside the select list dated 28/05/2015. Admittedly, 4 posts were earmarked for open (women) and 5 for open (general). So also, 3 posts were earmarked for the scheduled castes and 3 posts were earmarked for the vimukta jatis-A, nomadic tribes-B and nomadic tribes-C. Though as per the select list, Mrs.Rashmi Moreshwar Wahane, who had applied from the scheduled caste category had secured the second highest marks from amongst the women candidates, she was not appointed on the post earmarked for women in the general category and was appointed on a post earmarked for the scheduled castes. The tribunal rightly held that if the candidates belonging to the reserved category secure a position in the select list

which would entitle them to appointment on the post for open (general) or open (women) they would be entitled to be appointed in open category. The tribunal rightly held by relying on the judgment of the Hon'ble Supreme Court in the case of **Rajesh Kumar Dariya** (*supra*) that the Maharashtra Public Service Commission was not justified in appointing Mrs. Rashmi Moreshwar Wahane, the respondent No.3 to this writ petition on a post earmarked for the scheduled castes as she had secured the second highest marks from amongst the women and was entitled to be appointed on one of the posts that was earmarked for open (women). The tribunal rightly held that the law laid down by the Hon'ble Supreme Court ought to have been followed by the Maharashtra Public Service Commission and the Maharashtra Public Service Commission could not have relied on the government circular dated 13/08/2014. We do not find any illegality in the action on the part of the tribunal in setting aside the select list, in view of the illegality committed by the Maharashtra Public Service Commission in preparing the same. Even otherwise, on a reading of the circular dated 13/08/2014, we do not find that the same is in variance with the law laid down by the Hon'ble Supreme Court in the case of **Rajesh Kumar Dariya** (*supra*). Since the principles laid down in the aforesaid judgment were not followed by the Maharashtra Public Service Commission while preparing the select list, the Maharashtra Public Service Commission was rightly directed to prepare a fresh select list after quashing and setting aside the select list prepared by the petitioner- Maharashtra Public Service Commission.

Since the order of the tribunal is just and proper, the writ petition is dismissed with no order as to costs. The petitioner- Maharashtra Public Service Commission should prepare a fresh select list within a period of four weeks. Order accordingly.

JUDGE

JUDGE