

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 8685 OF 2016
WITH CA/9387/2018 IN WP/8685/2016**

**SANGITA RAMCHANDRA MAGHADE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr.A.S.Deshpande, Advocate h/f Mr.N.P.Bangar, Advocate
for the petitioner
Mr.N.T.Bhagat, AGP for the respondent/State

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.
DATED : 09.10.2018**

P.C. :-

The petitioner seeks appointment / absorption on the post of Senior Clerk in furtherance of her selection in the year 1999.

2. Mr. Deshpande, learned counsel submits that pursuant to selection process of the year 1999, the petitioner was selected from the project affected persons category but is not issued with the appointment order. Some of the candidates who were selected have been issued with the appointment orders. At the relevant time the judgment of Full Bench of this Court in case of Rajendra Pandurang Pagare and others Vs. State of Maharashtra and others reported in Mh.L.J.,2009(4)961 was not operating. No rule was in vogue that the post meant for project affected persons has to be filled in through competition. The rule existing as on the said date will have to be made applicable. The learned

counsel relies on the judgment of the Apex Court in the case of Md.Raisul Islam and Ors.Vs. Gokul Mohan Hazarika and Ors reported in AIR 2010 Supreme Court 3064. The learned counsel submits the representations were made. Similarly situated candidates have filed Writ Petitions and the same were under active consideration with the Government. The learned counsel submits that in a petition filed by similarly situated person bearing Writ Petition No.4150 of 2014, the State had filed an affidavit-in-reply clarifying that the appointment orders were issued in favour of 146 candidates out of 307 candidates recommended. It was not clear to them as to whether the judgment in Writ Petition No.5266 of 2008 is prospective or retrospective. The Deputy Secretary, Maharashtra State had issued communication received to Chief Executive Officer on 22.04.2016 that the selection process was conducted prior to the judgment of the Full Bench of this court and & when post of project affected persons become vacant, on that post persons like petitioners should be considered for appointment subject to decision in Writ Petition No.4441 of 2012. According to the learned counsel the petitioner is entitled for appointment.

3. The learned AGP submits that in view of judgment of Full Bench of this Court in a case of Rajendra Pandurang (Supra) the direct appointment now cannot be given to the petitioner. Even the communication to that effect is issued by the Secretary, Maharashtra State on 05.10.2018.

4. We have considered the submission. The petitioner claims to have been selected pursuant to the selection process of year 1999 from project affected persons category, however was not issued any appointment order. The Full Bench of this Court in case of Rajendra Pagare (Supra) has held that for appointments to the post, meant for project affected person category has to be made by competition and direct appointment cannot be made.

5. Even if we accept the contention of the petitioner that the rules as operating on the date the selection process has taken place should be considered still, the said request can not be considered after long slumber of 18 years. In view of the judgment of Full Bench of this Court it would not be possible to direct issuance of appointment order dehors competition.

6. In light of that the Writ Petition is disposed of. No costs.

[S.M. GAVHANE, J.]

[S.V. GANGAPURWALA, J.]