

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 779 OF 2018

1. Surekha N. Satardekar
Major of age, service
2. Velcia R. D'Cruz
Major of age, service
3. Shubhangi Phalgaonkar
Major of age, service
4. Shamal Raganata Xete Gauncar
Major of age, service
5. Shamal S. Natekar
Major of age, service
6. Sierra Effie De Souza
Major of age, service
7. Sabina C. Pereira
Major of age, service
8. Rajeshree R. Naik
Major of age, service
9. Helena J. Cardozo e Antao
Major of age, service
10. Fatima Henriquetta N. Rodrigues
Major of age, service
11. Maria V. Silveira
Major of age, service

12. Sarita J. Surlakar
Major of age, service
13. Bharati B. Sathaye
Major of age, service
14. Maria M. Luciana Fernandes
Major of age, service
15. Flory B. Cristo
Major of age, service
16. Damiana Fernandes e Dias
Major of age, service
17. Vatsala V. Chari
Major of age, service
18. Monica Effy Pereira
Major of age, service
19. Epifania Fernandes
Major of age, service
20. Conceicao Fernandes
Major of age, service
21. Sandhya Bandkar
Major of age, service
22. Agnela Sequeira
Major of age, service
23. Maria Genoveva F. A. Mascarenhas
Major of age, service

24. Dipti R. Mulgaonkar
Major of age, service
25. Rosario Noronha e Borges
Major of age, service
26. Geeta G. Naik / Raikar
Major of age, service
27. Henrietta Juliana Faria Saldanha
Major of age, service
28. Conceicao D. Carvalho
Major of age, service
29. Josephine Fernandes
Major of age, service
30. Larima L. Samanat
Major of age, service
31. Mangala Borkar
Changed to Ankita Anil Vaidya
Major of age, service
32. Della D'Souza
Major of age, service
33. Piedade C'Costa
Major of age, service
34. Bela D' Costa
Major of age, service

35. Angelina A. Rodrigues
Major of age, service
36. Emilia Victoria Picardo
Major of age, service
37. Sarita G. Naik
Major of age, service
38. Neha Kapileshwari
Major of age, service
39. Balbina Botelho
Major of age, service
40. Ida Filomena Telles
Major of age, service
41. Marina P.A. Pereira
Major of age, service
42. Maria Rufina Gurjao e Gracias
Major of age, service
43. Anjani Shetye
Changed to Snehal Santosh Naik
Major of age, service
44. Reosan Y. Khan
Major of age, service
45. Rajeshri Y. Surlakar
Major of age, service
46. Ben Bella Sequeira

Major of age, service

47. Sharad S. Dalvi

Major of age, service

48. Maria M. Lourenco Fernandes

Major of age, service

49. Manisha S. Pol Mirio

Major of age, service

50. Syloni Del M.P. Monteiro

Major of age, service

51. Auta Vaz e Mascarenhas

Major of age, service

52. Boadita M. Zena Rica

Major of age, service

53. Maria Augusta D'Souza

Major of age, service

54. Martha Almeida

Major of age, service

55. Velina Sunita Fernandes

Major of age, service

56. Silvina Nilda Fernandes

Major of age, service

57. Rita Sonia Xavier

Major of age, service

58. Natalina Borges
Major of age, service
59. Maria Marcelina Dias
Major of age, service
60. Maria Imaculada D'Costa
Major of age, service
61. Ermina Fizardo
Major of age, service
62. Vijaya Surlakar K. Dhargalkar
Major of age, service
63. Anisha J. Vaigankar
Major of age, service
64. Aurora Vaz
Major of age, service
65. Maria Rosa Fernandes
Major of age, service
66. Gokul Chari
Change to Aruna Ratnakar Chari
Major of age, service
67. Greta D'Sa
Major of age, service
68. Quiteria Almeida
Major of age, service

69. Shashwat Naik
Major of age, service
70. Sushma Arondekar
Major of age, service
71. Gautami Hadfadkar
Major of age, service
72. Shobha Madkaikar
Major of age, service
73. Antonette Botelho
Major of age, service
74. Oslinda Fernandes
Changed to Oslinda C.
Fernandes Vas
Major of age, service
75. Elvis Fernandes e D'mello
Major of age, service
76. Ulorica Silveira
Major of age, service
77. Prisa M. Rodrigues
Major of age, service
78. Hilda Do Socorro
Brito e Baretto
Major of age, service
79. Emelia Dias Pereira

- Major of age, service
80. Glenda Rodrigues
Major of age, service
81. Sangeeta S. Shet
Major of age, service
82. Catarina Serrao e Fernandes
Major of age, service
83. Bharati S. N. Borkar
Major of age, service
84. Maria Helena Rego
Major of age, service
85. Anuradha P. Shirgaonkar
Major of age, service
86. Brigida Texeira
Major of age, service
87. Veena Dumiana Pereira e Dias
Major of age, service
88. Alzira Vaz
Major of age, service
89. Shantu Gaonkar
Changed to Preeti Babu Raut Dessai
Major of age, service
90. Socorrinha Melba Godinho
Major of age, service

91. Sangeeta S. Naik
Major of age, service
92. Jenifa Afonso
Major of age, service
93. Inacio P.S. Fernande
Major of age, service
94. Felicidade J. Gracias
Major of age, service
95. Maya G. Kulkarni
Major of age, service
96. Nanda R. Tirodkar
Changed to Nanda V. Chopdekar
Major of age, service
97. Ana Felicia J. Mascarenhas e Noronha
Major of age, service
98. Sheilaja P. Naik
Major of age, service
99. Medha T. Parab
Major of age, service
100. Ana Ditosa Fernandes
Major of age, service
101. Elcy Fernandes e Raj
Major of age, service
102. Nanda R. Vanskar

Major of age, service

103. Shubhalaxmi Pauskar
Changed to Vaishali J. Naik
Major of age, service
104. Raquel Pereira e Barreto
Major of age, service
105. Harsha Narvekar
Major of age, service
106. Maria V. Fernandes
Major of age, service
107. Ratnamala Dalvi
Changed to Neha Aroskar
Major of age, service
108. Milan Bhatkurse
Major of age, service
109. Sangeeta Manerkar
Major of age, service
110. Chandrakala Dhawaskar
Changed to Kajol Quercar
Major of age, service
111. Sharmila Blanche D'Costa e Vaz
Major of age, service
112. Yogita P. Parab
Major of age, service

113. Quiteria Fernandes
Major of age, service
114. Maria D'Souza e Fernandes
Major of age, service
115. Pratap S. Parab
Major of age, service
116. Ana P. Rodrigues
Major of age, service
117. Medina Naik
Major of age, service
118. Farita Aureline Vaz
Major of age, service
119. Dorinda Boadita
Major of age, service
120. Josefine Cardozo
Major of age, service
121. Usha U. Umarye
Major of age, service
122. P. Vailankani Barreto Goes e Fernandes
Major of age, service
123. Gajanan K. Kalangutkar
Major of age, service
124. Reema Gulhermina Fernandes
Major of age, service

125. Ranjita N. Naik
Changed to Abhaya V. Naik
Major of age, service
126. Livia R. Rodrigues e Joao
Major of age, service
127. Jenifa D. Deniz
Major of age, service
128. Sandra Rodrigues
Major of age, service
129. Franky F. Carneiro
Major of age, service
130. Maria Sila C. e Fernandes
Major of age, service
131. Susan Fernandes e Almeida
Major of age, service
132. Pasciencia M. Gonsalves
Major of age, service
133. Viola Flory D'Souza
Major of age, service
134. Cheryl Saldanha
Major of age, service
135. Fernandes Mexcy Domnic
Major of age, service

136. Fernandes Julieth
Major of age, service
137. Prabha Girish
Major of age, service
138. Michelle Maria Da Costa Fernandes e Araujo
Major of age, service
139. Frieda Gomes e Mascarenhas
Major of age, service
140. Naik Jayanti Vithal
Major of age, service
141. Gaonkar Ujwala Chandrakant
Changed to Siddhi Gajanand Naik
Major of age, service
142. Stella V. Vimalan
Major of age, service
143. Naik Bhavana Purshottam
Major of age, service
144. Feona Texeira e Fernandes
Major of age, service
145. Fernandes Flaciana Caetano
Major of age, service
146. Sumitra L. Malik
Changed to Sanisha S. Kercar
147. Goes Clara Luizinha
Major of age, service

148. Sulaksha V. Dessai
Major of age, service
149. Pawar Brahmanand M.
Major of age, service
150. Narvenkar Ashvini T.
Changed to Ashvini Sushant Bhatikar
Major of age, service
151. Naik Tanuja B
Major of age, service
152. Bernadette B. J. D'Souza
Major of age, service
153. Naik Rajeshri Sujan
Changed to Rajeshri Rajesh Pokhare
Major of age, service
154. Joanes Kamiza
Major of age, service
155. Braganza Sintia
Major of age, service
156. Tomacinha Fernandes
Major of age, service
157. D'Souza Antonette
Major of age, service
158. Fernandes Janabi

Major of age, service

159. Aurola Neves Fernandes

Major of age, service

160. Netra V. Loliénkar

Major of age, service

161. Shivaji N. Bhaip

Major of age, service

162. Analuisa D'Mello

Major of age, service

163. Tomacinha S. L. D'Costa

Major of age, service

164. Cardozo Arcanja

Major of age, service

165. Yogita P Naik

Major of age, service

166. Rodrigues Sylvia e D'souza

Major of age, service

167. Fiona Henriquetta Mascarenhas e Gracias

Major of age, service

168. Carvalho Ana Piedade N.

Major of age, service

169. Maria Mita Baylon Coutinho Do Rosario

Major of age, service

170. Gomingos Selma Bosca
Major of age, service
171. Rodrigues Cecilia Angelica
Major of age, service
172. Shirodkar Kalpana K.
Changed to Kalpana Dnyaneshwar Parsekar
Major of age, service
173. Nidhi N. Bandodkar
Major of age, service
174. Majji Sushma S.
Changed to Sushma Chandrakant Amonkar
Major of age, service
175. Gomes Fatima
Major of age, service
176. Mierkar Deepali N.
Major of age, service
177. Gomes Blanche
Major of age, service
178. Socorrina Fernandes e Celho
Major of age, service
179. Dias Savitha Nirmala
Major of age, service
180. Dessai Shubhangi Y.
Major of age, service
181. Malina M. L. e Pereira

Major of age, service

182. Rosalina Silveira

Major of age, service

183. Dorothy M Mascarenhas

Major of age, service

184. Bhatikar Sushant S.

Major of age, service

185. Asha S. Naik

Major of age, service

186. Grao Sharon O.D.

Major of age, service

187. Luna D'Souza e Crasto

Major of age, service

188. Fernandes Louriana E.

Major of age, service

189. Rodrigues Rosaria

Major of age, service

190. Viona Loren Fernandes e Rodrigues

Major of age, service

191. Naik Gaonkar Sanjivkumar

Major of age, service

192. Siena V. Fenandes

Changed to Siena V. Quadros

Major of age, service

193. Naik Sujata S. Uskaikar
Changed to Sujata S. Uskaikar
Major of age, service
194. Jose Priya
Major of age, service
195. Loretta Lobo e Fernandes
Major of age, service
196. Gawas Deepali T.
Changed to Deepali R. Shet Gaunkar
Major of age, service
197. Manisha M. Shinde
Major of age, service
198. Serrao Maria Amelia A.
Major of age, service
199. Parab Mahesh Vasant
Major of age, service
200. Parab Prashilla
changed to Varsha Pednekar
Major of age, service
201. Dessai Rupa
Major of age, service
202. Macsimila E. Fernandes
Major of age, service
203. Ujwala V. Manjrekar
Major of age, service

204. Suvidya S. Naik
Major of age, service
205. Priya R. Dhupdale
Major of age, service
206. Queency S. D'Mello e Rodrigues
Major of age, service
207. Elvira Rebello
Major of age, service
208. Samiksha B. Kawlekar
Major of age, service
209. Harsha P. Gaonkar
Major of age, service
210. Deepali B. Pawaskar
Changed to Deepali
Jitendra Tirodkar
Major of age, service
211. Carneiro Liza Assumption
Major of age, service
212. Kalpita Pawaskar
Changed to Deepal P. Lotlikar
Major of age, service
213. Luzilandia Colaco
Major of age, service
214. Trupti Rohidas Naik

Major of age, service

215. Kiran Shrikrishna Sawant
Changed to Kiran Shrikrishna Sawant
Major of age, service
216. Maria G. J. R. e Rodrigues
Major of age, service
217. Suhashini S. Pednekar
Major of age, service
218. Vishnudas S. Parab
Major of age, service
219. Rosary Cardozo
Major of age, service
220. Smita Tendulkar
Major of age, service
221. Avita N. Gaonkar
Changed to Mrinali M. Mane
Major of age, service
222. Sunita Devdath Sirodcar
Changed to Sunita Devdath Sirodcar
Major of age, service
223. Loveleena Fernandes
Major of age, service
224. Lugam M. Ghadi
Changed to Siya P. Kavlekar
Major of age, service

225. Alka P. Salgaonkar
Changed Alka M. Redkar
Major of age, service
226. Kavita K. Sane
Changed to Aarati Ajay Phadte
Major of age, service
227. Rojarita D'Costa
Changed to Rojarita D'Costa
Major of age, service
228. Shilpa Malik Changed to
Shilpa S. N. Gaunkar
Major of age, service
229. Reshma K. Naik
Changed to Reshma K. Naik
Major of age, service
230. Nilima S. Gaonkar
Changed to Nilima Vinod Naik
Major of age, service
231. Jayanti Govind Naik
Major of age, service
232. Madhuri Ajay Oak
Changed to Madhuri Ajay Oak
Major of age, service
233. Maria Edna Noronha
Major of age, service
234. Geeta R. Naik Changed to
Mayuri Milind Onskar

Major of age, service

235. Sulaksha S. Naik

Major of age, service

236. Sarita Venkatesh Dessai

Major of age, service

237. Hazel Rozeta D'Costa

Major of age, service

238. Geeta Fernandes

Major of age, service

239. Ranjana D. Kubji

Major of age, service

240. Voilet Menezes

Major of age, service

241. Sunita T. Bhandari

Major of age, service

242. Simple P. Patil

Changed to Prajakta P. Naik

Major of age, service

243. Nilima D. S. alias Miraxi

Changed P. Nilima P. Gawas

Major of age, service

244. Prafulla U. Komarpant

Major of age, service

245. Suman M. Dhawaskar

Changed to Suman Sandeep Shetye
Major of age, service

246. Mumraj M. Sakli

Changed to Mumtaj M. Ismail
Major of age, service

247. Sweta S. Dessai

Changed to Sweta V. Gaonkar Dessai
Major of age, service

248. P. Gizey Jacob

Changed to Shradha P. Pawar
Major of age, service

249. Sucorine Dias

Major of age, service

250. Hombal Phalgunidevi Changed to
Nagaraju Phalgunidevi Suvarnalata Raju

251. Sangeeta Kalel

Changed to Sangeeta Teju Rathod

252. Vithobha Mhalkar

Major of age, service

253. Swati H. Sinai Malkarnekar

Changed to Swati Suraj Kamat
Major of age, service

254. Zenita Bothelo e Neto

Major of age, service

255. Sushma M. Laad Changed to

Sushma Sanju Naik Dessai

Major of age, service

All the Petitioners are Indian National,
presently working at GMC, Bambolim, Goa,
which is their office address.

... Petitioners.

V/S

1. State of Goa,
Through the Chief Secretary,
Government of Goa,
Secretariat, Porvorim, Goa
2. The Secretary Health,
Government of Goa,
Secretariat, Porvorim, Goa
3. The Secretary Social Welfare,
Government of Goa,
Secretariat, Porvorim, Goa.
4. The Dean,
Goa Medical College,
Bambolim , Goa, 403202
5. The Director,
Goa Medical College,
Bambolim, Goa, 403202
6. The Director,
Directorate of Social Welfare,
Government of Goa, Panaji, Goa.
7. Mrs. Cruzinha Borges
Major of age, service
8. Smt. Chudu Shirodkar
Major of age, service

9. Smt. Pobrina Colaco
Major of age, service
10. Smt. Raksha Parvatkar
Major of age, service
11. Smt. Lourdina Miranda
Major of age, service
12. Smt. Avelina Alvares
Major of age, service
(Respondents 7 to 12 are presently
working as Ward Sisters at
GMC, Bambolim, Goa)
13. Vandana Kowlekar,
major of age, service
(working as 'Staff Nurse' at Goa
Medical College, Bambolim, Goa).
14. Bharati M. Redkar,
major of age, service
15. Sulbha B. Naik,
major of age, service
16. Santana Vaz e Alvares,
major of age, service
17. Shanta Gulikar (Dhupdale)
major of age, service
18. Socorrina M. Dias,
major of age, service
19. Ciera Soares, (Deleted as per order dated 30/08/2019)
Major of age, service

20. Veronica Fernandes, (Deleted as per order dated 30/08/2019)
Major of age, service
21. Sharmila Fernandes,
Major of age, service
22. Pedrinha Monteiro,
Major of age, service
23. Blanca Mascarenhas,
Major of age, service
24. Daksha K. Tendulkar
Changed to Suvidha S. Thakur,
Major of age, service
25. Ranjita K. Wagurmekar,
Major of age, service
26. Catarina D'Souza,
Major of age, service
27. Zaira Ali Mohammad,
Major of age, service
28. Gauri J. Bhosle,
Major of age, service
(Respondent No.14 to 28 are
Indian National,
working as Staff Nurses at GMC
Bambolim-Goa which is their Respondents.
Official address.)

Mr. G. R. Sharma with Mr. S. J. Natekar and Mr. Deepak Gaonkar, Advocates for the Petitioners.

Mr. Pravin Faldessai, Additional Government Advocate for Respondent Nos.1 to 6.

Mr. Parikshit Sawant, Advocate for Respondent Nos.7 to 12.

***Coram : M.S. Sonak &
Smt. M.S. Jawalkar, JJ.***

Reserved on : 13th December, 2019.

Pronounced on : 18th December, 2019.

JUDGMENT : (Per M.S. Sonak, J.)

Heard Learned Counsel for the parties.

2. Heard Mr. G. R. Sharma, with Mr. S. J. Natekar, and Mr. Deepak Gaonkar, for the Petitioners, Mr. Pravin Faldessai, Additional Govt. Advocate for Respondents No.1 to 6 and Mr. Parikshit Sawant, Advocate for Respondents No.7 to 12.

3. The Petitioners who are staff nurses at the Goa Medical College by instituting this Petition question the promotions of Respondents No.7 to 13 to the post of Ward Sister vide two separate promotion orders dated 14th September, 2017 and corrigendum dated 6th October, 2017. These orders are placed on record as Exhibit A-colly and are to be found at pages 97 to 101 of the paper book.

4. Mr. G. R. Sharma, learned Counsel for the Petitioners has challenged the aforesaid impugned promotion orders on the following grounds:

(A) That Respondents No.7 to 13, in their applications seeking direct recruitment to the post of Staff Nurses, had nowhere indicated that they belong to the Scheduled Tribe category or that they were applying against the reserved posts in the Scheduled Tribe category. In this regard, Mr. Sharma took us through the actual applications or rather the extract of the actual applications containing the bio-data of these Respondents, which are found to be at Annexure H-colly, pages 199 to 205 of the paper book. Based upon this, Mr. Sharma submits that once there was no indication in these applications that these Respondents belong to the Scheduled Tribe category or once it is clear that these Respondents had never applied for recruitment to the Scheduled Tribe category, there was no question of considering the case of these Respondents for promotion to the next higher post of Ward Sisters. He submits that such consideration will be contrary to the law laid down by the Hon'ble Supreme Court in the case of J. and K. *Public Service Commission vs. Israr Ahmad and ors.*¹ and *Rajasthan High Court, Jodhpur and ors. vs. Neetu Harsh and ors.*².

¹ (2005) 12 SCC 498

² AIR 2019 SC 4038

(B) Respondents No.7 to 13 are much junior to the Petitioners in the cadre of the Staff Nurses. On this basis, Mr. Sharma submits that it is obvious that Respondents No.7 to 13 are much less efficient than the Petitioners. Relying upon the rulings in *M. Nagaraj & ors. vs. Union of India*³ and *Jarnail Singh and ors. vs. Lachhmi Narain Gupta and ors.*⁴ Mr. Sharma submits that the requirement of efficiency which Respondents No.1 to 6 were duty bound to take into consideration, has not been taken into consideration whilst promoting Respondents No.7 to 12. He, therefore, submits that the impugned promotion orders warrant interference on this ground, as well.

(C) Mr. Sharma submits that from the material on record, it is revealed that reserved vacancies have been carried forward beyond three years period, which is prescribed maximum. He submits that since such carrying forward is not at all appropriate, Respondents No.1 to 6 clearly erred in carrying forward such vacancies and thereafter promoting Respondents No.7 to 12, as against such illegally carried forward vacancies. He submits that this is yet another ground for interfering with the promotion orders in the present case.

³ (2006) 8 SCC 212

⁴ (2018) 10 SCC 396

(D) Finally, Mr. Sharma submits that in the present case, taking into consideration the seniority position of Respondents No.7 to 13, the Respondents fell neither within the original zone of consideration, nor within the extended zone of consideration. He points out that this fact is very specifically recorded in the minutes of the Departmental Promotion Committee which met on 19th January, 2016. He submits that in these circumstances, quite correctly a decision was taken in the said minutes not to recommend the promotion of Respondents No. 7 to 13. He, however, submits that for no valid reasons hardly 3 months thereafter a review DPC was held on 23rd April, 2016 in which, relying upon Swamy's guidelines, which were not at all applicable for making promotions on regular basis, the review DPC recommended the promotion of Respondent No.7 to 13 only, on ad hoc basis. Mr. Sharma points out that despite such recommendations, the impugned promotion orders purport to promote Respondents No.8 to 12 on officiating basis and Respondent No.7 on regular basis. He points out that in so far as Respondent No.13 is concerned, she has not accepted any promotion and, therefore, the challenge in so far as Respondent No.13 is concerned, really no longer survives. Mr. Sharma submits that there was no basis for holding this review DPC and, in any case, there was no basis for promoting Respondents No.7 to 12 thereafter

on officiating basis or on regular basis. For this reason also, he submits that the impugned promotion orders are required to be interfered with and set aside.

5. Mr. Faldessai and Mr. Sawant, defend the impugned promotion orders by pointing out that at the stage when Respondents No.7 to 13 applied for appointment to the post of Staff Nurse, the caste which they belong, was not even recognized as the Scheduled Tribe. They point out that such recognition came by way of Presidential Order, 2003 and, therefore, there was nothing wrong in the application forms made by Respondents No.7 to 13 at the stage of their initial recruitment as staff nurses. They point out that in the present case, we are not concerned with this initial recruitment, but we are concerned with the issue of promotions to the post of Ward Sister from the post of Staff Nurse. Accordingly, they submit that the decisions relied upon by Mr. Sharma are not at all attracted and there is no infirmity whatsoever in the issuance of the impugned promotion orders.

6. Mr. Faldessai and Mr. Sawant, point out that there is absolutely no breach of the efficiency test and merely because the Respondents No. 7 to 13 may be junior to the Petitioners, that does not render them any less efficient. They point out that there was absolutely no infirmity in the matter of carrying forward of the

vacancies and impugned promotion orders warrant no interference on this ground as well.

7. Mr. Faldessai was not quite clear as to whether the impugned promotion orders promote Respondents No.8 to 12 on ad hoc basis to the post of Ward Sister. However, Mr. Sawant, on the basis of the instructions from Respondents No.8 to 12 whom he represents, was quite clear in his submission that the promotions of Respondents No. 8 to 12 were, in fact, on ad hoc basis.

8. Mr. Faldessai and Mr. Sawant, however, pointed out that in such matters there was no wrong in scouting the eligible candidates in the seniority list, without being bound by any concept of zone of consideration. They pointed out that in such matters a separate seniority list is required to be prepared of the reserved category candidates. They pointed out that this exercise must be deemed to have been carried out in the present case and, therefore, there is no warrant of interference. They also referred to the Office Memorandum dated 11th July, 2002 in this regard. Mr. Faldessai referred to the decision of this Court in the case of *Ramdas Yesso Salelkar and ors. vs. State of Goa and ors.*⁵; *Ashok Redkar and ors. vs. State of Goa and ors.*⁶ and *Smt. Baby Anumanta*

⁵ 2018 (5) All M.R. 366

⁶ W.P. No.272 of 1996 decided on 25/9/1998

*Chandawa vs. The State of Goa and ors.*⁷ in support of the defence to the impugned promotion orders.

9. For all the aforesaid reasons, Mr. Faldessai and Mr. Sawant urge that this Petition be dismissed.

10. Rival contentions now fall for our determination.

11. In so far as the first ground urged on behalf of the Petitioners is concerned, we see no merit whatsoever in the same. Admittedly, Respondents No.7 to 13, in their applications made much prior to the year 2003, may have not stated that they belong to the Scheduled Tribe category. However, these applications related to direct recruitment to the posts of Staff Nurses. At the stage when such applications were made, the caste to which they belong had not even been notified by the Presidential order to be a Scheduled Tribe caste. The Presidential order came to be issued sometime in the year 2003. Accordingly, the alleged failure on the part of Respondents No. 7 to 13 to indicate in their applications made much prior to 2003, and that too for the purpose of direct recruitment to the post of Staff Nurses that they belonged to Schedule Tribe category, we cannot say that they were precluded from being considered for

⁷ W.P. No.237 of 2006 decided on 12/6/2013

promotion to the posts of Ward Sister against the reserved category, to which they admittedly belong.

12. Reliance on *Israr Ahmad* (supra) is entirely misplaced. In the said case, the Respondents had applied for direct recruitment to certain posts in the State. Such date for submitting the applications for preliminary examination was 16th March, 1999. The First Respondent in his application did not intimate that he was entitled to the benefit of SRO 126 dated 28th June, 1994 in terms of which certain posts were reserved for the residents of the backward area and the line of actual control. This was despite the fact that the First Respondent was actually resident of backward and the line of actual control. After the preliminary examination was concluded and the applications were invited for the main examination, the First Respondent indicated that he was entitled to the benefit of SRO 126 of 1994. Since such benefit was not granted, the First Respondent instituted a petition before the learned Single Judge of the Jammu & Kashmir High Court. The Petition was dismissed. However, the Division Bench, on appeal, granted the First Respondent relief on the basis that he in fact possessed eligibility for being considered against the reserved post and mere delay in submission of the proof, did not disentitle him to consider against the reserved post. The Public Service Commission appealed to the Hon'ble Apex Court

and the Apex Court reversed the Division Bench and restored the view taken by the learned Single Judge by observing that there were perhaps several candidates who, before such date for application, answered the preliminary examination, who may have been eligible, but had failed to indicate their eligibility in their application forms on or before the last date prescribed. In such circumstances, the Apex Court felt that grant of any relief to the First Respondent was not justified.

13. Taking into consideration the facts in the case of *Israr Ahmad* (supra), it is apparent that there can be no comparison between the aforesaid facts and the facts in the present case. In the first place, Respondents No.7 to 13 were not being considered against a post meant for direct recruitment, for which they had to file applications on or before some specified date. Secondly, when the applications were filed prior to 2003 and that too for the direct recruitment to the post of Staff Nurses, the caste to which Respondents No.7 to 13 belong, was not even recognized as the Scheduled Tribe caste. In these circumstances, the ruling in *Israr Ahmad* (supra) is clearly not attracted.

14. Secondly, in the case of *Neetu Harsh* (supra), the applicant Neetu, despite being eligible to apply for appointment under the physically challenged category, chose not to apply in this category,

but applied only in the general category. After she was not selected in general category, she instituted a petition before the High Court, in which, a direction was issued to consider her case against two vacancies reserved for the disabled candidates for the Rajasthan Judicial Service. Upon such relief being granted to her, Rajasthan High Court moved the Hon'ble Supreme Court by pointing out that in absence of the said Nitu seeking appointment to the reserved category, no direction could be issued to consider her case to the reserved category, more particularly after completion of the entire selection process. Disturbance of appointment of candidates who, in the meanwhile, were already appointed against the physically challenged category, would not be justifiable.

15. The facts in *Neetu Harsh* (supra) again are not at all comparable to the facts in the present case. In the first place, as noted earlier, we are not considering the case for direct recruitment to any post. Secondly, even in the case of *Neetu Harsh* (supra), the candidate despite being eligible to be considered for direct recruitment to the physically challenged category, chose not to apply in the said category and at a later stage wished to be considered under the said category. In the present case, we are really not concerned with any direct recruitment and further the caste to which Respondents No.7 to 13 belong, was not even recognized as a

Scheduled Tribe caste until 2003. For these reasons, the ruling in *Neetu Harsh* (supra) is clearly not attracted.

16. The second contention of Mr. Sharma, based upon the issue of efficiency, also cannot be accepted in the facts and circumstances of the present case. Secondly, Respondents No.7 to 13 may be junior to the Petitioners, that, by itself, does not render them inefficient or ineligible to be appointed to the promotional post. The reservation policy of the State cannot be frustrated on the basis of such considerations. There is really no breach of the rulings in *M. Nagaraj* (supra), or *Jarnail Singh* (supra) made out by the Petitioners. Accordingly, we are unable to accept the second contention raised by Mr. G.R. Sharma on behalf of the Petitioners.

17. The third contention as regards carrying forward of the vacancies, has also not been made out by the Petitioners. The Petitioners have not demonstrated as to how in the present case there was carrying forward of vacancies beyond permissible limits. The pleadings in the Petition, on this aspect, are far from clear. In these state of pleadings, it is really not possible to accept Mr. Sharma's third contention on the basis of the carrying forward of excess vacancies.

18. In so far as fourth contention of Mr. Sharma is concerned,

however, the same is required to be at least partly accepted. The reasons for the same are set out hereafter.

19. The minutes of the DPC held on 19th January, 2016, in terms, record that there were 7 backlog vacancies in so far as reserved ST Category is concerned. Further, as per roster, the points earmarked for ST are point nos. 9, 17, 25, 34, 42, 51 and 59. The minutes, thereafter, proceed to categorically record that there are no ST officials available in the normal zone of consideration/extended zone of consideration. Further, as pointed out at serial Nos. 9, 17, 34 and 51, are already filled by candidates of unreserved category. On this basis, certain recommendations were made to fill up the posts of Ward Sister from out of the candidates belonging to the general category only on ad hoc basis.

20. The minutes of the review DPC held on 23/4/2016, have also been placed on record. These minutes refer to Swamy's Guidelines on – Reservation and Concession in Government Services. The guidelines quoted, *inter alia*, provides that since the ad hoc promotions are made on seniority-cum-fitness, all the Scheduled castes/Scheduled Tribes candidates covered in the relevant seniority list from which the total number of such vacancies against which ad hoc promotions are to be made, should be considered in order of their general seniority as per the gradation list, on the principles of

seniority-cum-fitness and if they are not adjudged unfit, they should all be promoted on ad hoc basis. If, however, the number of SC/ST candidates found to be fit within the range of actual vacancies is less than the number of vacancies identified as failing to their shares, if the vacancies were filled on a regular basis vide (2) above, then additional SC/ST candidates to the extent required should be located by going down the seniority list, provided they are eligible and found fit for such ad hoc appointment. This procedure should be adopted on every occasion on which ad hoc appointment is resorted to.

21. On the basis of the aforesaid guidelines, the review DPC concluded that it was not justified on the previous occasion to restrict the candidates who fell within the zone of consideration or extended zone of consideration. The review DPC also referred to confirmation from the SC/ST Commission, Panaji, Goa that if the number of SC/ST candidates found fit within the range of actual vacancies is less than the number of vacancies identified as failing to their shares, if the vacancies were filled on a regular basis, the additional SC/ST candidates to the extent required should be located by going down the seniority list, provided they are eligible and found fit for such ad hoc appointment.

22. On the basis of the aforesaid, the review DPC deemed it appropriate to reconsider its earlier decision of promoting general category candidates on ad hoc basis instead of Scheduled Tribe candidates by going down the seniority list. Finally, on such basis, the review DPC recommended Respondents No.7 to 13 for promotion on ad hoc basis to the post of Ward Sister.

23. From the aforesaid, it is quite clear that the guidelines referred to by the review DPC were in relation to making of appointments on ad hoc basis. The review DPC, by relying upon such guidelines, recommended the promotions of Respondents No.7 to 13 only on ad hoc basis.

24. Despite the aforesaid, Respondent No.4, vide Order dated 14th September, 2017, has chosen to promote Respondents No.8 to 12 as Ward Sisters on '*officiating basis*'. At least in the present case it is not quite clear as to whether such promotions are on regular basis. Mr. Faldessai, learned Additional Govt. Advocate faintly suggests that this is nothing but regular promotions. But Mr. Sawant, learned Counsel for Respondents No. 8 to 12 is quite clear in his submission that even these promotions are on ad ho basis only. The second order which relates to the promotion of Respondent No.7 is quite clear inasmuch as the same refers to the promotion on '*regular basis*'.

25. Mr. Faldessai submits that there are guidelines which discourage promotions on ad hoc basis and, therefore, the impugned promotion orders came to be issued. He submits that the decisions in the case of *Ramdas Yesso Salelkar* (supra); *Ashok Redkar* (supra) and *Smt. Baby Anumanta Chandawa* (supra) also suggest that separate seniority list has to be prepared of the candidates belonging to the reserved category and promotions to the reserved category are required to be made on the basis of such separate seniority list. He submits that it is for these reasons possibly that Respondents No. 7 to 12 were promoted on regular basis and not merely on ad hoc basis.

26. As noted earlier, the promotions in the present case are on the basis of the recommendations of the Review DPC which met on 23rd April, 2016. The reason why the review DPC which met, was because on the first occasion the DPC had required guidelines relating to ad hoc promotions. Upon consideration of such guidelines, even the review DPC specifically made recommendations for promotion to Respondents No.7 to 13 only on ad hoc basis. There is nothing in the minutes of the review DPC to indicate that the promotion on regular basis was being considered or that the same was finally made.

27. In these circumstances, it is not possible to accept the

contention of Mr. Faldessai that Respondent No.4 despite the recommendation of the review DPC was entitled to order the promotions of Respondent No.7 to 13 on regular basis or on '*officiating basis*'. At this stage, it will not be appropriate for us to go into the position arising from the decisions referred to by Mr. Faldesai. This is because, there is nothing in the minutes of the review DPC to indicate that these were the parameters taken into consideration by the review DPC which, ultimately, recommended the promotions only on ad hoc basis.

28. Accordingly, whilst partly accepting the contention of Mr. Sharma, we hereby clarify that the promotions of Respondents No.7 to 12 (since Respondent No.13 was ultimately not promoted), are to be construed as promotions only on ad hoc basis and not either on officiating basis or regular basis, as stated in the impugned orders of promotions. The promotions of Respondents No. 7 to 12 will, therefore, have to be construed as promotions on ad hoc basis only, for all legal purposes and intent. The impugned promotion orders dated 14th September, 2017 in so far as Respondents No.7 to 12 are concerned, to stand modified accordingly.

29. Further, we agree with the contention of Mr. Sharma, learned Counsel for the Petitioners that necessary directions are liable

to be issued to Respondents No.1 to 6 to take steps to fill in the posts of Ward Sisters on regular basis. Accordingly, we direct Respondents No.1 to 6 to fill in posts of Ward Sisters on regular basis, including, *inter alia*, by considering the candidature of Respondents No.7 to 13 as against the reserved category, to which they belong. This exercise of making regular promotions should be completed as expeditiously as possible and in any case, within a period of 6 months from today. At that stage, Respondents No.1 to 6 will have to take into consideration necessary rules, regulations, guidelines or decisions of the Courts as may be applicable.

30. This Petition is, accordingly, disposed of by making the following Order :

(A) The impugned promotion orders dated 14th September, 2017 are hereby modified and it is made clear that promotions of Respondents No.7 to 12 to the post of Ward Sister shall be considered as promotions on ad hoc basis and not on officiating or regular basis;

(B) Respondents No.1 to 6 are directed to make promotion to the post of Ward Sister on regular basis within six months from today, in accordance with the rules, regulations, guidelines, as well as decisions of the Courts as may be applicable

(C) In the peculiar facts of the present case, there shall be no

order as to costs.

31. All concerned to act on the basis of an authenticated copy of this Judgment and Order.

M.S. Jawalkar, J.

M.S. Sonak, J.