

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4190 OF 2015

Hema Waman Gunjal & Ors.	Petitioners
Versus	
The Municipal Corporation of Pimpri Chinchwad & Anr.	Respondents

WITH

WRIT PETITION NO.4393 OF 2015

Roma Dilip Wakude Alias Roma N. Gaikwad	Petitioners
Versus	
The Municipal Corporation of Pimpri Chinchwad & Anr.	Respondents

Mr. A.P. Kulkarni, Advocate for the Petitioner in WP/4190/2015.
Mr. Tapan Thatte, Advocate for the Petitioner in WP/4393/2015.
Smt. M.S. Srivastav, AGP for the Respondent-State.
Mr. G.H. Keluskar, Advocate for Respondent No.1.
Mr. K.S. Bapat i/b. A.H. Fatangare, Advocate for Respondent Nos.3 & 5.
Mr. Saurabh Pakale i/b. S.M. Katkar, Advocate for Respondent No.4.

**CORAM : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.**

DATE : 26th JULY, 2019.

P. C. :

1. The two Writ Petitions i.e. 4190/2015 and 4393/2015 which involves the four petitioners seek similar reliefs, and therefore, we have heard the writ petitions together finally by consent of all the parties. Hence, we issue rule. Rule made returnable forthwith.

2. The Pimpri Chinchwad Municipal Corporation (for short "the

PCMC”) issued an advertisement on 02.02.2013 inviting applications for the recruitment of 53 posts of watchmen in the corporation. It is not in dispute that all the petitioners participated in the said selection process. It is also a common ground raised in both the petitions that though the petitioners belong to certain reserved category, they contested and participated in the selection process as open category candidates. Considering the merit of their performance in the selection process, they were accordingly placed in the select list. However, appointment orders were not issued to them on the ground that the petitioners belong to reserved category, and therefore, their candidature have been considered from open category.

3. With the assistance of the learned counsel for the petitioners as well as the learned AGP, we have perused the select list, which has been placed on record and we have noted that the names of the petitioners have secured placement in the select list. Against the remark column of each of the petitioners, the category was mentioned as open, which was followed by the caste of the respective petitioners like V.J.(A) and the category namely women. The stand taken by the respondents in refusing the claim of the petitioners is that they belong to reserved category, and therefore, they could not have been considered for appointment in the open category and in the affidavit filed by the corporation on 23.06.2015, reliance is placed on Government Resolution dated 13th August 2014

which contains guidelines pertaining to selection of the candidates belonging to the open category (other than SC/ST/OBC etc.) on the post allocated for such Horizontal Reservation (women, sports persons, ex-servicemen, project and earthquake affected etc.). The respondent corporation, therefore, taken a stand that they are bound to abide by the directions contained in the said Government Resolution and cannot fill post meant for open category.

4. We have perused the writ petitions as well as the annexures appended to it. We have also perused the affidavits-in-reply placed on record. Our attention has been invited to the position of law as set out by the Hon'ble Apex Court in **Indra Sawhney versus Union of India, 1992 Supp (3) SCC 217** and a subsequent judgment in case of **Rajesh Kumar Daria versus Rajasthan Public Service Commission and ors. (2007) 8 SCC 785**. We also had an opportunity to deal with the similar issue lately as on 18.07.2019 in Writ Petition No.6670/2019 and following the authoritative pronouncement of the Hon'ble Apex Court, we have held that if a reserved category candidate compete with the open category candidates and he takes a seat of open category candidate, then, the said candidature is to be considered on the basis of his merit and then he should not be considered to appoint against the reserved seat and his candidature is to be considered as an "open" category candidate and one more candidate from the reserved category may gain an entry against the

quota, as belonging to that category.

5. Though Mr. Keluskar, learned counsel for the Respondent No.1 has heavily relied upon a Government Resolution of 2004, we have taken said note of the Government Resolution, which had rectified the position in accordance with the law laid down by the Apex Court and we found the decision of the State Government perfectly in tune with the authoritative pronouncement of the Apex Court since it has binding effect and moreover, under Article 141 of the Constitution of India every civil and public authority is duty bound to give effect to the law laid down by the Apex Court.

6. In the light of the legal scenario, we have also perused the facts involved in the writ petitions and Mr. Keluskar, learned counsel for the respondent No.1 has invited our attention, which disclose that though 54 posts were advertised by the advertisement issued on 02.02.2013, subsequent posts came to be advertised on 01.12.2014, resultantly making the total posts of watchmen to be 70. Out of the said 70 posts, 59 candidates were appointed whereas 11 seats were remained vacant on account of non-joining of the candidates. The appointment orders were issued to the 11 candidates by applying the horizontal reservation namely ex-servicemen/woman; but none of the 11 candidates were joined the respective posts and resultantly, their appointments have been cancelled. The situation that emerges as on today is that 11 posts which are lying

vacant and we deem it expedient that instead of disturbing the entire selection process, which is already completed in the year 2014-15, the vacant posts that have been reserved from vertical reservation can accommodate the present petitioners, who have been wrongly kept out of the selection process on an erroneous interpretation of the Government Resolution and in defence of the law laid down by the Apex Court in case of **Indra Sawhney and Rajesh Kumar Daria (supra)**.

8. In such circumstances, we direct the respondent Municipal Corporation to forthwith issue appointment orders in favour of the petitioners appointing them on the post of watchmen against the open category seats since there is no dispute that they have already fulfilled the criteria in terms of the advertisement and have secured placement in the select list. The entire exercise is directed to be undertaken within a period of four weeks from today.

9. With the aforesaid directions, rule made absolute.

10. Writ petitions disposed off.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]