

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

WRIT PETITION NO.3290/2019

Seema d/o Sudhakar Munjewar (now Seema w/o Nikhil Badole)

...Versus...

Maharashtra Public Service Commission, through its Chairman,
Mumbai - 400 021 and another

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

Court's or Judge's orders

Shri M.M. Sudame, Advocate for petitioner
Mrs. K.S. Joshi, I/c G.P for respondent nos.1 and 2

**CORAM : DIPANKAR DATTA, C.J. &
A.S. CHANDURKAR, J.**

DATE : JULY 28, 2021

1. The petitioner was an aspirant for the post of Lecturer in Mechanical Engineering, which had been advertised on 6/7/2013 by the Maharashtra Public Service Commission in the Scheduled Caste category.

2. The Commission considered the petitioner for appointment on a post reserved for the Scheduled Caste category. Although she obtained 91 marks, there were other candidates who had obtained higher marks and came to be appointed resulting in exhaustion of the quota for candidates

belonging to Scheduled Caste. However, in the category of Open Female candidates, appointment of a female candidate was made on the basis of recommendation of the Commission who had obtained 39 marks. Aggrieved by denial of appointment on the post for Open (Female) candidates, the petitioner had approached the Maharashtra Administrative Tribunal, Nagpur Bench by presenting an original application.

3. The Tribunal by the impugned order dated 15/3/2019 dismissed the original application, giving rise to this writ petition.

4. Shri Sudame, learned Advocate for the petitioner has referred to the decision of the Supreme Court in ***Saurav Yadav and others Vs. State of Uttar Pradesh and others***, reported in ***2020 Law Suit (SC) 784*** in support of his contention that despite the petitioner having failed to secure an appointment on a post reserved for Scheduled Caste category, she having secured more marks than general candidates who had applied for appointment on posts reserved for female candidates, the petitioner should have been offered appointment on one such post.

5. Mrs. Joshi, learned In-charge Government Pleader for the respondent nos.1 and 2 does not dispute the

position of law. In fact, in her usual fairness, she has also invited our attention to various paragraphs of the decision in ***Saurav Yadav and others*** (supra) to assist us in delivering a proper decision on the writ petition.

6. The decision in ***Saurav Yadav and others*** (supra) was considered by a co-ordinate Bench of this Court in ***Lata Shyamrao Sangolkar Vs. State of Maharashtra and others***, reported in **2021 (3) ABR 246**. The relevant paragraphs from such decision are quoted below :-

“10. Law is well settled that if a candidate belonging to a reserved category is entitled to be selected on the basis of his own merit, his selection cannot be counted against the quota reserved for the category for vertical reservation to which he belongs. The question as to whether such legal position would also apply to individuals selected on the basis of their own merit but belonging to reserved categories for which horizontal reservation has been provided, came up for consideration before the Supreme Court in Saurav Yadav (supra) and the question was answered in the affirmative.

12. Today, we have heard Mr. Kumbhakoni. He has, in his usual fairness, submitted that the contents of the reply affidavit filed by the State does not reflect the correct position of law and that the petitioner had

been illegally denied of appointment by not accommodating her in any of the 'unreserved' or 'open' category vacancies for women, regard being had to the fact that belonging to the OBC category and securing more marks than the candidates who have been appointed securing lesser marks, i.e., the respondents 2 to 7, she ought to have been offered appointment in preference to them.”

7. The aforesaid extract would reveal the submissions advanced on behalf of the State by Mr. Kumbhakoni, learned Advocate General for the State of Maharashtra who had, in similar circumstances, submitted that candidates like the petitioner ought to be accommodated on posts where horizontal reservation applies, subject to merit.

8. We share the same view as expressed in ***Lata Shyamrao Sangolkar*** (supra) and, accordingly, dispose of this writ petition with a declaration that the petitioner has been illegally denied appointment and that she is entitled to be appointed on the post of Lecturer in Mechanical Engineering. Having regard to the fact that one post has been directed to be kept vacant by the interim order of this Court dated 22/2/2021, appointment shall be offered to her on such post by the respondents as early as possible, but not later than a

fortnight from the date of receipt of a copy of this order.

9. There shall be no order as to costs.

(A.S. CHANDURKAR, J.)

(CHIEF JUSTICE)

Wadkar