

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

WRIT PETITION NO. 5721 OF 2019

Sarla D/o. Madhukar Dhoke @
Mrs. Sarala W/o. Anil Farkade,
aged about 39 years, Occupation:
Service (Asst.Engr. Grade-I),
R/o. 301, Swapnapurti Apartment,
Janaki Nagar, NAGPUR – 440 034.

.... **PETITIONER.**

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1. The Maharashtra Public Service Commission,
through its Chairman/Authorised Officer,
3rd Floor, Bank of India Building, Hutatma
Circle, Mahatma Gandhi Road, MUMBAI.
2. The State of Maharashtra, through
the Secretary, Water Resources Department,
Mantralaya, MUMBAI.
3. Sonali Raosaeb Patil, aged major, Occ.Service,
4. Kshitija Sayajirao Suryawanshi, aged major,
Occ.: Service,
5. Anuradha Anandrao Jadhav, aged major,
Occ.: Service,
6. Mayura Subhash Joshi, aged major, Occ.Service,
7. Vinaya Dattatray Badani, aged major, Occ.:Service,
8. Surekha Bhimrao Rorke, aged major, Occ.:Service,

9. Prajakta Sanjay Patil, aged major, Occ.:Service,
10. Aparna Ashok Kapse, aged major, Occ.:Service,
11. Sonal Sanjay Patil, aged major, Occ.:Service,

Respondents No.3 to 11 C/o. Respondent No.2,
The State of Maharashtra, Water Resources
Department, Mantralaya, MUMBAI,
through its Secretary.

.... **RESPONDENTS.**

Shri Sayaji Jagtap, Advocates for Petitioner.
Shri A.S.Fulzele, Addl. G.P for Respondent Nos. 1 and 2.

CORAM : **SUNIL B. SHUKRE AND**
 ANIL S. KILOR, JJ.

DATED : **AUGUST 25, 2021**

ORAL JUDGMENT : (Per : Anil S. Kilor, J.)

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. In this petition, the challenge is raised to the order dated 15th March 2019 passed by the Maharashtra Administrative Tribunal in Original Application No. 660 of 2015, dismissing the Original Application preferred by the petitioner raising a grievance that the Maharashtra Public Service Commission (“MPSC” for short) illegally

denied selection of the petitioner in Open Category though found more meritorious than some Open Category candidates and wrongly considered her in Backward Category, contrary to the well settled principles of law.

4. The facts in brief which gave rise to the present petition are as follows:

5. The petitioner, who was working as Assistant Engineer Grade-I (AE-1) at Irrigation Project Investigation Sub-Division, Nagpur, had applied for the Maharashtra Engineering (Civil Services), Group-A examination under Other Backward Classes (OBC) in Water Resources Department ("WRD" for short) in Open Category to be appointed as Assistant Executive Engineer (AEE) with the respondent WRD. Consequently, she has cleared the Preliminary Examination and Main Examination, however, at the time of declaration of the results and recommendations, the petitioner was held not to be selected in Open Category though the petitioner scored 274 marks equal to two Open female candidates at Sr.Nos. 73 and 74 in the recommendation list of WRD and more marks than 9 female Open Candidates recommended to WRD from Sr.No.75 onwards and the petitioner was considered in

OBC category which gave cause for filing Original Application No.660 of 2015 before the Maharashtra Administrative Tribunal.

6. The Maharashtra Administrative Tribunal passed the impugned order on 15th March 2019, dismissing all the connected Original Applications including O.A. No.660 of 2015 preferred by the petitioner, the same is under challenge in this petition.

7. We have heard the learned counsel for the respective parties.

8. Shri Sayaji Jagtap, learned counsel for the petitioner points out that the common judgment dated 15/03/2019 was passed in the case of petitioner and in a matter of one *Seema Sudhakar Munjewar*, the same was challenged before this Court in Writ Petition No.3290 of 2019 at the instance of Seema Sudhakar Munjewar. It is further pointed out that in view of the judgment passed by the Hon'ble Supreme Court of India in the case of *Saurav Yadav and others vs.. State of Uttar Pradesh and others*, reported in **2020 Law Suit (SC) 784** and considered by this Court in *Lata Shyamrao Sangolkar ..vs.. State of Maharashtra and others*, reported in **2021(3) ABR 246**, the said writ petition was disposed of with declaration in favour of the petitioner in

that case. Hence, the learned counsel for the petitioner prays for similar order in this matter.

9. Learned A.G.P Shri A.S.Fulzele appearing for respondent Nos. 1 and 2 fairly accepts that this case is covered by the judgment of this Court in Writ Petition No. 3290 of 2019.

10. In the above facts and circumstances, the judgment in Writ Petition No. 3290 of 2019 is squarely applicable to the case of the petitioner herein. The relevant paras of the aforesaid judgment are as follows:

“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."

11. In the facts and circumstances, we pass the following order:

The impugned judgment and order dated 15/03/2019 to the extent, it affects the petitioner is hereby quashed and set aside. The respondent No.1 is directed to place the petitioner in the list of the recommended candidates, dated 24/09/2015, for the appointment on

the post of Assistant Executive Engineer (Civil) Group-A Water Resources Department in Open Category with all consequential benefits.

Rule accordingly. No costs.

(ANIL S. KILOR, J)

(SUNIL B. SHUKRE, J.)

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