

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

WRIT PETITION NO. 4497 OF 2018

Monika d/o Mhatardeo Dhayatadak,
Age : 24 years, Occu. Service as
Assistant Engineer Grade II,
Presently working with P.W.D. Pusad,
Dist. Yavatmal.

...Petitioner

Versus

1. The State of Maharashtra,
through its Principal Secretary,
General Administration Department,
Mantralaya, Mumbai.
2. The Maharashtra Public Service Commission,
Through its Deputy Secretary,
Floor 5-8, Cooprej MTNL Building,
Maharshi Karve Road, Cooprej,
Mumbai.

...Respondents

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Mr. S. S. Thombre – Advocate for the petitioner
Mrs. R. P. Gour - AGP for respondent no. 1/State
Mr. M. B. Kolpe – Advocate for respondent no. 2

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**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ.
AND
ARUN R. PEDNEKER, J.**

DATED : 13TH OCTOBER, 2023

PER COURT : -

1. Heard learned counsel for the petitioner – Mr. S. S. Thombre, counsel for respondent no. 2 – Mr. M. B. Kolpe and the Additional Government Pleader for respondent no.1/State.

2. By means of this petition under Article 226 of the Constitution of India, petitioner seeks direction to the Maharashtra Public Service Commission [hereinafter referred to as the "MPSC"] to consider her claim for the post of Assistant Engineer Grade-I / Assistant Executive Engineer from general category female candidate.

3. Pursuant to the interim order dated 04.05.2018, the petitioner's case has been considered for the appointment to the post in question as a candidate from general category female candidate. On consideration, her claim has been found to be successful and presently having been appointed, she is working as well.

4. Pursuant to the advertisement no. 67/2017 published by the MPSC for holding Maharashtra Civil Engineering Services Examination - 2017, the petitioner had applied as a woman candidate and claimed reservation as open category woman candidate. While making the application she indicated that she belongs to Nomadic Tribe - D category, however, the advertisement was not for the said category and accordingly her candidature was not being considered as a

candidate from general category female candidate.

5. The submission of the learned counsel for the petitioner is that the issue raised in this writ petition is no more *res integra* and it has been settled by the Hon'ble Supreme Court in various judgments including the judgment in the case of **Saurav Yadav and Ors. Vs. State of Uttar Pradesh and Ors.** reported in AIR 2021 SC 233. He has further submitted that the judgment in the case of Saurabh Yadav (supra) has been followed in the subsequent judgment in the case of **Bharat Sanchar Nigam Limited and Ors. Vs. Sandeep Choudhary and Ors.** reported in AIR 2022 SC 2975. The Hon'ble Supreme Court in the case of Saurabh Yadav (supra), has clearly held that in case a person participates in selection process, indicates his/her category to be reserved category and also claims horizontal reservation available to female candidate, his/her claim cannot be rejected against the post meant for general category female candidate. Similar view has been taken by a coordinate bench of this Court in the case of **Charushila Tukaram Chaudhari and others Versus The State of Maharashtra and Another** reported in 2019 (5) AIR Bom R 561.

6. In view of undisputed position of law, we are of the opinion that the claim of the petitioner ought to have been considered for selection to the post in question by giving her the benefit of horizontal reservation available against woman candidate from open category. As a matter of fact, in case the petitioner would be disallowed to be considered for appointment in this case, such an act on behalf of the MPSC would result in providing reservation to the open category candidate which is not the purpose for which the reservation to the reserved category candidates has been provided under law.

7. For the reasons aforesaid, the writ petition is allowed. We, thus, also hold that the selection of the petitioner and subsequent appointment made pursuant to the interim order passed by this Court dated 04.05.2018, is lawful. She shall be entitled to all the benefits attached to her post.

8. Pending Applications, if any, stand disposed of.

[ARUN R. PEDNEKER, J.]

[CHIEF JUSTICE]