

manali/arati/rajshree/ashish

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12074 OF 2023**

Swapnil Kisan Patil ... Petitioner
Versus
The Municipal Corporation of
Greater Mumbai & Ors. ... Respondents.

**WITH
INTERIM APPLICATION NO. 6897 OF 2024
IN
WRIT PETITION NO. 12074 OF 2023**

The Municipal Corporation of
Greater Mumbai ... Applicant
Versus
Swapnil Kisan Patil & Ors. ... Respondents.

Mr.K.S. Bapat, Senior Advocate i/b Wasim Samlewale and
Ms.Priyanka Babar for Petitioner.

Mr. Pralhad Paranjape a/w Smt. Shilpa Redkar, Santosh Parad,
Shivprasad Borade, Anand Khairnar, Rushikesh Bhagwat, i/by
Komal Panjabi Adv for the Respondent /BMC.

Adv. B. V. Samant Addl. GP for the Respondent/ State.

Adv. Ashutosh Kulkarni a/w Adv. Siddharth Shitole for the
Respondent/MPSC .

Mr. Tejas Deshmukh a/w. Mr. Suhas Deokar, Adv for Respondent
No 4.

Mr. Pramod N. Patil a/w. Mr. Amit A. Karande, Mr. Ashish
Gaikwad, Mr. Anirudh Rote, Adv for Respondent No 5.

Adv. Gaurav Bandiwadekar for the Respondent No. 6.

WITH
WRIT PETITION NO. 963 OF 2024

Anup Limbraj Dure. ... Petitioner
Versus
The State of Maharashtra & Ors. ... Respondents.

Mr. S. C.Naidu a/w. Mr. Vishal P.Shirke, Adv for Petitioner.

Mr. Pramod N. Patil a/w. Mr. Ashish Gaikwad, Mr. Anirudh Rote,
Ms. Prerana Agavekar, Ms. Anjali Kolapkar, Ms. Savita Gaikwad,
Ms. Bhavana Khichi, Ms. Sufiya B. Siddiqui for Respondent No 5.

Adv. M. M. Pable, AGP for the Respondent/ State.

Adv. Ashutosh Kulkarni a/w Adv. Siddharth Shitole for the
Respondent MPSC.

Mr. Pralhad Paranjape a/w Smt. Shilpa Redkar, Santosh Parad,
Shivprasad Borade, Anand Khairnar, Rushikesh Bhagwat, i/by
Komal Panjabi Adv for the Respondent /BMC.

Mr. Tejas Deshmukh a/w. Mr. Suhas Deokar, for Respondent No 4.

Adv. Gaurav Bandiwadekar for the Respondent No. 6.

Mr. Nikhil Wable a/w Parita Mashruwala i/by Jayakar and
Partners for Respondent No. 9.

WITH
WRIT PETITION NO. 3893 OF 2024

Rohit Shriram Phad. ... Petitioner
Versus
The Municipal Corporation of
Greater Mumbai & Ors. ... Respondents.

Mr. Abhijeet Desai a/w. Ms. Mohini Rehpade, Vijay Singh, Digvijay
Kachare, Karan Gajra, Sanchita Sontakke, Daksha Punghera,
Pratishtha Mandal i/b. Desai Legal LLP for Petitioner.

Mr. A. V. Bukhari, Sr. Counsel a/w Smt. Shilpa Redkar, Santosh
Parad, Shivprasad Borade, Anand Khairnar, Rushikesh Bhagwat,
Burhan Bukhari i/by Komal Punjabi, Adv for the Respondent
/BMC.

Adv. V. M. Mali, AGP for the Respondent / State.

Adv. Ashutosh Kulkarni A/W Adv. Siddharth Shitole for the Respondent MPSC.

WITH

WRIT PETITION NO. 6534 OF 2024

Priyanka Pralhad Tonge. ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents.

Mr.Nikhil Wable a/w Ms.Praita Mashruwala i/b Jayakar & Partners for Petitioner.

Mr. Pramod N. Patil a/w. Mr. Ashish Gaikwad, Mr. Anirudh Rote, Ms. Prerana Agavekar, Ms. Anjali Kolapkar, Ms. Savita Gaikwad, Ms. Bhavana Khichi, Ms. Sufiya B. Siddiqui for Respondent No.5.

Mr. A. V. Bukhari, Sr. Counsel a/w Smt. Shilpa Redkar, Santosh Parad, Shivprasad Borade, Anand Khairnar, Rushikesh Bhagwat, Burhan Bukhari i/by Komal Punjabi, Adv for the Respondent / BMC.

Mr. Ashish Gaikwad with Mr. Anirudh Rote, Prerana Agavekar, Anjali Kolapkar, Savita Gaikwad, for Respondent No. 5..

Adv. Ashutosh Kulkarni A/W Adv. Siddharth Shitole for the Respondent MPSC.

WITH

WRIT PETITION NO. 12317 OF 2023

WITH

INTERIM APPLICATION ST. NO. 13074 OF 2024

Supriya Tapase. ... Petitioner

Versus

The Municipal Corporation of Greater Mumbai & Ors. ... Respondents.

WITH

**INTERIM APPLICATION NO. 6895 OF 2024
IN
WRIT PETITION NO. 12317 OF 2023**

The Municipal Corporation of
Greater Mumbai ... Applicant
Versus
Supriya Tapase. & Ors. ... Respondents.

Mr. Mihir Desai, Sr. Adv. a/w Ms. Devyani Kulkarni for Petitioner.
Mr. Pralhad Paranjape a/w Smt. Shilpa Redkar, Santosh Parad,
Shivprasad Borade, Anand Khairnar, Rushikesh Bhagwat, i/by
Komal Panjabi Adv for the Respondent / BMC.
Mr. Anil V. Anturkar Sr. Adv. a/w. Mr. Vaibhav P. Bajpai, Dhawal
Giri, Ms. Krati Sharma, i/b. Bajpai & Associates for Respondent
No. 3.
Adv. Ashutosh Kulkarni A/W Adv. Siddharth Shitole for the
Respondent MPSC.

**WITH
WRIT PETITION NO. 12318 OF 2023
WITH
INTERIM APPLICATION NO. 8608 OF 2024**

Ankush Jadhav. ... Petitioner
Versus
The State of Maharashtra & Ors. ... Respondents.

**WITH
INTERIM APPLICATION NO. 6900 OF 2024
IN
WRIT PETITION NO. 12318 OF 2023**

The Municipal Corporation of
Greater Mumbai ... Applicant
Versus
Ankush Jadhav. & Ors. ... Respondents.

Mr. Mihir Desai, Sr. Adv. a/w Ms. Devyani Kulkarni for Petitioner.

Mr. A. V. Bukhari, Sr. Counsel a/w Smt. Shilpa Redkar, Santosh Parad, Shivprasad Borade, Anand Khairnar, Rushikesh Bhagwat, Burhan Bukhari i/by Komal Punjabi, Adv for the Respondent /BMC.

Mr. Anil V. Anturkar Sr. Adv. a/w Mr. Vaibhav Bajpai, Dhawal Giri, Ms. Krati Sharma, i/b. Bajpai & Associates for Respondent No. 3.

Adv. Induparakash Tripathi a/w Adv. Bhagyashri Gawas and Madhavan i/by C. K. Tripathi for the Respondent No. 4.

Mr. Abhijeet Desai a/w. Ms. Mohini Rehpade, Vijay Singh, Digvijay Kachare, Karan Gajra, Sanchita Sontakke, Daksha Punghera, Pratishtha Mandal i/b. Desai Legal LLP for Respondent No. 5..

Mr. Abhijeet Desai a/w. Mr. Mohini Rehpade, Vijay Singh, Digvijay Kachare, Karan Gajra, Sanchita Sontakke, Daksha Punghera, Pratishtha Mandal i/b. Desai Legal LLP for Respondent No 5.

Adv. P. M. Joshi-Deshpande, AGP for the Respondent/ State.

Adv. Ashutosh Kulkarni A/W Adv. Siddharth Shitole for the Respondent MPSC.

WITH

WRIT PETITION NO. 15780 OF 2023

Rohini Vilas Dhumal.

... Petitioner

Versus

The Commissioner, Municipal

Corporation of Greater Mumbai & Ors. ... Respondents.

WITH

INTERIM APPLICATION NO. 6894 OF 2024

IN

WRIT PETITION NO. 15780 OF 2023

The Commissioner, Municipal

Corporation of Greater Mumbai

... Applicant

Versus

Rohini Vilas Dhumal & Ors.

... Respondents.

Mr. Pralhad Paranjape a/w Smt. Shilpa Redkar, Santosh Parad, Shivprasad Borade, Anand Khairnar, Rushikesh Bhagwat, i/by Komal Panjabi Adv for the Respondent /BMC.

Ms. Vaishali Jagdale, Adv for the Petitioner.

Mr. Anil V. Anturkar Sr. Adv. a/w. Mr. Vaibhav P. Bajpai, Ms. Krati Sharma, i/b. Bajpai & Associates for Respondent No. 3 & 4..

Adv. Ashutosh Kulkarni A/W Adv. Siddharth Shitole for the Respondent MPSC..

WITH

WRIT PETITION NO. 16761 OF 2023

Anirudha s/o GopalKrishna Kulkarni. ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents.

WITH

INTERIM APPLICATION NO. 6902 OF 2024

IN

WRIT PETITION NO. 16761 OF 2023

The Municipal Corporation of
Greater Mumbai

... Applicant

Versus

Anirudha s/o GopalKrishna Kulkarni & Ors. ... Respondents.

WITH

INTERIM APPLICATION (ST) NO. 36092 OF 2024

IN

WRIT PETITION NO. 16761 OF 2023

Anirudha s/o GopalKrishna Kulkarni & Ors. ... Applicant

vs.

The Municipal Corporation of
Greater Mumbai

... Respondent

Mr. Abhijeet Desai a/w. Ms. Mohini Rehpade, Vijay Singh, Digvijay Kachare, Karan Gajra, Sanchita Sontakke, Daksha Punghera, Pratishtha Mandal i/b. Desai Legal LLP for Petitioner.

Mr. Pralhad Paranjape a/w Smt. Shilpa Redkar, Santosh Parad, Shivprasad Borade, Anand Khairnar, Rushikesh Bhagwat, i/by Komal Panjabi Adv for the Respondent / BMC.

Mr. Tejas Deshmukh a/w. Mr. Suhas Deokar, Adv for Respondent No 4.

Mr. Pramod N. Patil a/w. Mr. Amit A. Karande, Mr. Ashish Gaikwad, Mr. Anirudh Rote, Adv for Respondent No 5..

Adv. Gaurav Bandiwadekar for the Respondent No. 6..

Mr. K. S. Bapat, Sr. Adv. i/by Wasim Samlewale a/w Ms. Priyanka Babar for Respondent No. 7.

Mr. S. C.Naidu a/w. Mr. Vishal P.Shirke, Adv for Respondent No 8.

Mr. Nikhil Wable a/w Parita Mashruwala i/by Jayakar and Partners for Respondent No. 10.

Adv. Ashutosh Kulkarni a/w Adv. Siddharth Shitole for the Respondent MPSC.

WITH

WRIT PETITION NO. 16764 OF 2023

Bhagwat Narayanrao Panzade. ... Petitioner

Versus

The Maharashtra Public Service

Commission.

... Respondents.

Mr. Abhijeet Desai a/w. Ms. Mohini Rehpade, Vijay Singh, Digvijay Kachare, Karan Gajra, Sanchita Sontakke, Daksha Punghera, Pratishtha Mandal i/b. Desai Legal LLP for Petitioner.

Mr. Pralhad Paranjape a/w Smt. Shilpa Redkar, Santosh Parad, Shivprasad Borade, Anand Khairnar, Rushikesh Bhagwat, i/by Komal Panjabi Adv for the Respondent /BMC.

Mr. Arshad Shaikh, Sr. Adv. a/w. V. S. Kapse, Freddy Bhadha, Adv for Respondent No. 3.

Adv. Ashutosh Kulkarni A/W Adv. Siddharth Shitole for the Respondent MPSC.

WITH

WRIT PETITION NO. 14072 OF 2024

Vaishali Kashinath Thorat ... Petitioner

Versus

State of Maharashtra & Ors. ... Respondents.

Mr. Pramod N. Patil a/w. Mr. Ashish Gaikwad, Mr. Anirudh Rote, Ms. Prerana Agavekar, Ms. Anjali Kolapkar, Ms. Savita Gaikwad, Ms. Bhavana Khichi, Ms. Sufiya B. Siddiqui for Petitioner.

Adv. Ashutosh Kulkarni A/W Adv. Siddharth Shitole for the Respondent / MPSC.

WITH

WRIT PETITION NO. 839 OF 2025

Aniruddha Kulkarni ... Petitioner

Versus

M.C.G.M. & Ors. ... Respondents.

Mr. Abhijeet Desai a/w. Mr. Mohini Rehpade, Vijay Singh, Digvijay Kachare, Karan Gajra, Sanchita Sontakke, Daksha Punghera, Pratishtha Mandal i/b. Desai Legal LLP for Petitioner.

Mr. Tejas Deshmukh a/w. Mr. Suhas Deokar, Adv for Respondent No No. 3.

Smt. Shilpa Redkar, Santosh Parad, Shivprasad Borade, Anand Khairnar, Rushikesh Bhagwat, Adv for the Respondent/ BMC in WP 839/2025.

Adv. Ashutosh Kulkarni A/W Adv. Siddharth Shitole for the Respondent/ MPSC.

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1488 OF 2024

Yogesh Annasaheb Kendre. ... Petitioner

Versus

Brihan Mumbai Municipal Corporation & Ors. ... Respondents.

Mr.N.V. Bandiwadekar, Senior Counsel i/b Sarthak Diwan and Snehal Jadhav for the Petitioner.

Mr.Himanshu Takke, AGP for State-Respondent No.1..

Mr.Ashutosh Kulkarni a/w Siddharth Shitole, for Respondent-MPSC.

Ms.Shilpa Redkar a/w R.Y. Sirsikar i/b Shivprasad Borade for Respondent/BMC.

**CORAM : BHARATI DANGRE &
ASHWIN D. BHOBE, JJ**

**RESERVED ON : 21st JANUARY, 2025.
PRONOUNCED ON: 13th MARCH, 2025**

JUDGMENT (PER BHARATI DANGRE, J) :-

1. The Maharashtra Public Service Commission on 24/06/2021 issued an Advertisement inviting Applications for filling up 16 posts of Assistant Commissioner (Group A) on the establishment of the Municipal Corporation of Greater Bombay ("MCGM"). The Advertisement 004/2021 for the 16 posts included 11 posts for general category, out of which 7 posts were reserved for backward classes including SC/ST/NTD, OBC and EWC, whereas one post was reserved for women.

The said Advertisement set out the eligibility criteria including citizenship, minimum and maximum age limit, education qualification etc.

For being eligible, the following educational qualifications were prescribed :-

3.3.1 : *Candidate must possess a degree in Arts, Science, Law, Commerce, Medicine or Engineering of recognized University or an equivalent qualification.*

3.3.2 : *Sufficient knowledge of Marathi language.*

The experience required for the said post was stipulated in clause 3.4 as below

3.4 : *Experience*

3.4.1 : *Have administrative, executive or supervisory experience in a responsible capacity for not less than five years in Government, Semi-Government or any big industrial or commercial concern.*

3.4.2 : *The experience of ex-armed force officers will be considered as supervisory experience for the duration they served in armed forces as commissioned officers.*

3.4.3 : *Candidate should mention all details and submit evidence regarding administrative experience, supervisory experience or executive experience on responsible post.*

Clause 3.4.4 defined the term 'responsible capacity' as below :-

(1) *Responsible post means, a post in Government Institute or Government Sector or Semi Government, in pay band M-23 Rs.41800-132300 or the higher pay band and a Gazetted Officer in grade pay.*

In addition, if it is permissible to have equivalence in the aforesaid pay band and grade pay of any post in other field shall also deserve consideration.

2. *The experience of Senior Managerial post in a private institution would also be entitled to be counted as a 'responsible post' and shall be considered eligible.*

3. *'Big Industrial Institute' means such Private/Government Institute where more than thousand people are working.*

2. The Eleven Petitions before us pertains to the aforesaid Advertisement and specifically involve Clause 3.4 and 3.4.4. and

involve 8 vacant posts for which the MPSC has to recommend the candidates, as on 7 posts advertised, the candidates on being selected have already joined.

On the basis of challenge raised, to the recommendation of the persons impleaded as Respondents to the post, the challenge can be primarily divided into four categories ;

I) Whether the post of 'Sub Engineer' is a responsible post as per clause 3.4.4 and whether it involves discharge of administrative, supervisory or administrative functions.

II) Whether training/probationary period should be included or excluded from the desired experience for the post;

III) Whether the Respondents who are recommended by the MPSC are entitled to claim category of EWS

IV] Whether the Respondents possess five year experience, since there was delay in their joining.

3. Since the Advertisement prescribed the procedure for recruitment which involve conduct of interview of those candidates who were found to be eligible on conduct of written examination of 200 marks and upon securing 40% of the marks, a person was held eligible for interview and minimum marks to be acquired for interview was prescribed as 41%.

The written examination was held on 31/10/2021 and list of 90 eligible candidates was published on 23/03/2022. The candidates were, thereafter, required to submit the documents online and out of the list of 90, 26 candidates were held to be ineligible and the revised merit list was published on 11/08/2023. The candidates were thereafter called for interview and on 08/09/2023 a provisional merit list was published .

4. The grievance of the Petitioners who claim themselves to be qualified for being appointed on the post of Assistant Commissioner (Ward Officer) in each of the Petition is about the ineligibility of the candidates who have been recommended by MPSC and in each Petition there are different set of Respondents with different grounds for challenge being raised to their recommendation.

MCGM and MPSC are the common Respondents in all the Petitions.

5. We have heard the respective counsel for the contesting parties which include the counsel for the petitioners who raise challenge to the selection of the respondents to the post of Assistant Commissioner. We have also heard respective counsel for the MCGM and the MPSC.

At the outset, we would like to consider the common stand adopted by MCGM which is led by learned senior counsel Mr. Bukhari, who raised an objection to the maintainability of the Writ Petitions, based on a presumption that the private respondents, who are either appointed or recommended by MPSC for the post of Assistant Commissioner do not satisfy the eligibility criteria. It is urged that in all the cases filed by the petitioners, they have secured less marks as compared to the private respondents in the selection process, as per the provisional general merit list submitted by MPSC.

The second serious objection raised is about the settled position of law laid down by the Apex Court that once the candidate participate in the selection process and do not find himself to be selected by the expert body, it is not open for the candidates to turn back and challenge the process of selection.

Reliance is placed upon the decision in case of *Madan Lal & ors Vs. State of Jammu and Kashmir*,¹ which has pronounced upon the locus standi to impugn the selection on the the ground of unfairness of the interview process or defect in constitution of select Committee by an unsuccessful candidate, who had taken a

¹ (1995) 3 SCC 486

chance to get themselves selected in the process.

Reliance is also placed upon the decision in case of **Vijendra Kumar Verma Vs. Public Service Commission**, and the observations in paragraph no.24 in specific:-

“24 When the list of successful candidates in the written examination was published in such notification itself, it was also made clear that the knowledge of the candidates with regard to basic knowledge of computer operation would be tested at the time of interview for which knowledge of Microsoft Operation System and Microsoft Office operation would be essential. In the call letter which was sent to the appellant at the time of calling him for interview, the aforesaid criteria was reiterated and spelt out. Therefore, no minimum benchmark or a new procedure was ever introduced during the midstream of the selection process. All the candidates knew the requirements of the selection process and were also fully aware that they must possess the basic knowledge of computer operation meaning thereby Microsoft Operation System and Microsoft Office operation. Knowing the said criteria, the appellant also appeared in the interview, faced the questions from the expert of computer application and has taken a chance and opportunity therein without any protest at any stage and now cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction.”

In addition, for the very said proposition, the observations of the Apex Court in **Ramesh Chandra Shah and Ors Vs. Vaishali Joshi and ors**,² holding that having participated in the process of selection with full knowledge that recruitment was being made as per prevailing Rules, respondent no.1 had waived their right to question advertisement or methodology adopted in making the selection.

2 (2013) 11 SCC 309

It is also urged by Mr.Bhukari that unless and until glaring or patent illegality is noticed in the selection process, the Court exercising writ jurisdiction shall refrain itself from showing any indulgence and in the wake of the settled principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded and the question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated as h/she cannot subsequently turn around and contend that the process was unfair or that there was some lacunae therein, merely because the result is not palpitary.

Apart from the above stand, MCGM has also contested every petition on merits by filing their affidavits.

6. As far as MPSC is concerned, Mr.Kulkarni representing the body has filed distinct affidavits in each petition, by stating that MPSC is the authority to recommend the candidate for being appointed to the post specified in the requisition received by it from the concerned Department of the State Government. It is stated that MPSC conducts examination and interview for selecting candidates and therefore, it has a well defined limited role in the process of appointment. A categorical statement is also

made in the affidavit that as far as the eligibility criteria for recommendations to be made by MPSC is concerned, it strictly follows the recruitment rules (RR) applicable to the concerned post framed by the Department of the State Government.

While highlighting the process adopted by the MPSC, the Under Secretary of MPSC has deposed that the entire selection process has been conducted by MPSC strictly in compliance with the recruitment rules and for scrutinizing and verifying the correctness of the respective claims qua educational qualification and experience by the candidates, MPSC had appointed panel of two experts and every application was scrutinized and verified by them which was also in accordance with the recruitment rules.

7. For the sake of convenience, we have divided the Petitions in four categories, as indicated above, while we heard the learned counsel for the Petitioners as well as the Respondents.

(A) CATEGORY I

Whether post of 'Sub Engineer' in BMC is a responsible post and whether the incumbent working on this post has work experience as per clause 3.4.1 of the advertisement.

Three Writ Petitions in the Group raise challenge to the recommendation of the Respondents on the ground that they do not hold the responsible post either because they are not holding a

Gazetted Post or because the functions discharged by them is not supervisory/administrative/executive.

i) **ARGUMENTS ADVANCED in WP No.12317/2023 (Supriya Tapase vs. MCGM & Ors.), WP no.12318/2023 (Ankush Jadhav vs. MCGM & Ors.) and WP No.15780/2023 (Rohini Dhumal vs. MCGM & Ors.)**

8. We have heard the senior Advocate Mr.Mihir Desai, in first two petitions, whereas in the third petition filed by Smt.Rohini Dhumal we have heard Adv. Vaishali Jagdale. MCGM, i.e. Respondent No.1 is represented by Adv. Pralhad Paranjape, and Senior Counsel Mr. Bukhari.

Respondent No.3 IN WP No.12317/2023 in first Petition as well as Respondent No.3 in WP 12318 are represented by the Senior Advocate Mr. Anturkar.

We have also heard Mr. C.K. Tripathi representing Respondent No.4 in WP NO.12318/2023 and Mr.Abhijeet Desai representing Respondent No.5 in WP 15780/2023.

9. Mr.Mihir Desai representing the Petitioners would urge before us that the First Petition is concerned with the reservation of 30% female (General) and the Petitioner Supriya Tapase is working on the post of Director Business Excellence at Defence Security Solutions Pvt. Ltd. and she has raised challenge to the

appointment of Rupali Shinde, working as Sub Engineer in Class II.

10. By placing reliance upon the Manual of Brihanmumbai Mahanagarpalika for the Post of Assistant Engineer, Water Work Department, Mr.Desai would submit that the Sub Engineer do not possess any administrative or financial power and the duties of the Sub Engineer as per the Manual are highlighted below :

1. To carry out fieldwork such as repairs, maintenance of water main upto 300 mm dia.
2. Overall control on maintenance labour staff, to carry out the above repair work.
3. To carry out work of making new connections upto 50 mm dia.
4. Execution of disconnection orders for nonpayment of water charges and Sewerage charges bills, wastages etc.
5. To maintain various records of new water connections, meters, preparation of O.T. of maintenance staff.

It is, therefore, his contention that the duties of the Sub Engineer by no stretch of imagination can be described as supervisory/ executive/administrative and moreover, a Sub Engineer is not conferred with any financial powers.

11. Relying upon the common Affidavit of MPSC it is the submission of Mr. Desai that MPSC received various complaints from many candidates having experience on the post of Sub Engineer and Assistant Engineer and therefore, a letter was addressed to the Commissioner of MCGM on 13/09/2023 seeking

clarification as to whether this experience should be considered and MCGM had forwarded a reply on 03/01/2023 stating that as per 7th Pay Commission, the candidates working on the post of Assistant Engineer were in the pay scale of RS.56,100/- to 177500/- and the candidates working in the post of Sub Engineer were in the pay scale of Rs.44900 to 141400/- and they had administrative, executive or supervisory experience and therefore, they were eligible as per clause 3.4 of the Advertisement.

The MPSC has thus responded by stating that finding them to be eligible, they were considered for appointment to the said post. But according to him, MCGM has referred the matter to the expert committees which were constituted at various levels for verification of the candidature of the candidates and the scrutiny committee-1 has held that Respondent No.3 is not eligible, but Committee (C) found Respondent No.3 to be eligible and out of four committees two committees i.e. Panel of Experts and Committee (C) had declared her to be eligible.

Mr.Desai would submit that the Court should call for the reports from these panel of Experts in a sealed envelope.

Relying upon the Manual of the MCGM it is the submission of Mr.Desai that the post of Sub Engineer do not prescribe any supervisory duties and merely because they are in a particular pay scale, which make them eligible as per clause 3.4.4. itself is not sufficient to qualify Respondent No.3 Rupali Shinde for being recommended for the said Post.

According to Mr. Desai, the Petitioner secured 136 marks as per the Merit List, whereas, Respondent No.3 has secured 137 marks and since there is only one post for SC woman, if Respondent no.3 is recommended and appointed, the Petitioner loses her chance for an appointment.

12. Representing Respondent No.3 Rupali Shinde, the learned senior counsel Mr. Anturkar has submitted before us that there are many posts of Sub Engineer in the Corporation and reliance is placed upon the duty list of Sub Engineers (Maintenance) (Water works) is not applicable to the Petitioner, as according him, Rupali Shinde is working as Sub Engineer (School Infrastructure Cell) and the duty list of the Sub Engineer is placed by him before us, which includes discharge of various functions which are in the nature of supervisory duties/executive duties in addition to the administrative functions.

13. Mr.Anturkar has also placed before us the Experience Certificate issued in favour of his client by the Deputy Engineer (SIC), who happens to be her immediate superiors who has certified that Rupali Ashok Shinde is working in the Organization holding the post of Sub Engineer, in the executive cadre in the pay scale of Rs.44,900 - Rs.1,42,400.

The experience gained by her is given in the certificate to be executive in nature and it is certified that she was holding the post of Sub Engineer from 04/05/2012 to 24/03/2022

Contesting the eligibility of the Petitioner Supriya, it is urged by Mr. Anturkar that she is not qualified for being recommended for the post of Ward Officer as she has produced the certificate of experience of a Company Trimax IT Infrastructure & Services Ltd., which is in fact wound up, being placed under the IBC and, therefore,, the said certificate is a fraudulent one.

Mr.Anturkar would submit that the Petitioner in the Rejoinder filed has specifically admitted this lapse and made a statement that the Petitioner can produce the said certificate from the said Company , if required, at the documents scrutiny stage.

Alongwith the compilation of documents, the certificate from the Ministry of Corporate Affairs is placed before us which is dated 17/01/2022 which has certified that the name of the Company Trimax IT Infrastructure & Services Ltd., is already changed to EBIXCASH Mobility Software India Limited w.e.f. the date of issuance of the certificate. It is, therefore, submitted that the Petitioner has submitted a Certificate of an ineligible Company, which was not authorized to issue the certificate.

14. Another Petition in the very same group where a cloud is raised about the nature of duties of Sub Engineer is the Petition filed by Ankush Jadhav, who had raised objection to the recommendation of Respondent Nos.3, 4 and 5.

As far as Respondent No.3 is concerned, he is working as Sub Engineer in the Corporation and is represented by Mr.Anturkar. Respondent No.4 working as Programme Executive in Prasar Bharati is represented by Adv. C.K. Tripathi, whereas, Respondent No.5 Bhagwatrao Panzade working as Assistant/Executive Engineer in Maharashtra Transmission Company is represented by Abhijeet Desai.

Raising an objection about the eligibility of Respondent No.3, Mr. Anturkar would adopt the same arguments advanced in

the earlier case. However, while referring to the experience certificate, he would submit that it is nowhere the requirement that the Experience Certificate should be given by the Appointing Authority and when we asked Mr.Desai whether this is the specific requirement in the Advertisement, he do not answer in the affirmative.

15. As far as Respondent No.4 is concerned, the objection raised is, that he was working on non gazetted post which did not involve any administrative or supervisory experience.

Mr.Tripathi has relied upon the Affidavit in Reply and has submitted that the Petitioner has scored less marks than the Respondent and, therefore, on merits he is found to be better suited than the Petitioner. Reflecting upon Clause 3.4.4, it is the specific stand adopted in the Affidavit that he has experience of working as Programme Executive in All India Radio since

27/04/2015 and the copy of the duty performed by him in the said capacity clearly reflect that he has requisite experience.

Fitting himself in Clause 3.4.4 by relying upon Exhibit D which is Experience Certificate issued by the Senior Administrative Officer of A.I.R., it is urged that he is in the pay band 2 Level 7 (44900-142400) with grade pay of Rs.4600/-

which correspond with the Maharashtra Government pay level of M-25 at the time of filing of Application. Reliance is placed upon the Certificate of Experience where he is certified to be working on a non technical post in executive capacity and the nature of post is described as 'Supervisory', with the basic pay of Rs.53,600/-.

On behalf of Respondent No.5 represented by Advocate Abhijeet Desai, working in Maharashtra Transmission Company, our attention is invited to the Certificate of Experience issued by Executive Engineer, 400 KV Receiving Station Division MSCTCL on 20/03/2022 certifying that Shri Bhagwatrao Panzade was working as Assistant Engineer (Trans) in supervisory capacity in the pay scale of Rs.61830-2515-74405-2730-139925.

The objection raised is the pay band set out in the Experience Certificate is the pay scale of Junior Engineer as per the Administrative circular issued by the Chief Manager of MSCTCL.

However, the contention is that Respondent No.5 working as Assistant Engineer has experience of executive, administrative as well as supervisory capacity working in Maha Transco. And in any case it is the submission of the learned counsel that it is for

the Appointing Authority to judge the eligibility and suitability of the candidate.

16. In the first two Writ Petitions, Corporation is represented by Mr. Bukhari, has relied upon the Affidavit filed by the Chief Personal Officer in General Administration Department of BMC where it is categorically stated that there are 24 administrative wards in the limit of Municipal Corporation and each ward is headed by Assistant Municipal Commissioner /Ward Officer, who is administrative head of the Ward and play an important role on day to day basis in the administration of Corporation and is responsible for developing and maintaining civic infrastructure of the city like water supply, road, drainage, taking action against unauthorized constructions etc.

As per Section 80-B of the MMC Act, the appointment on the said post is to be made after consultation with the MPSC and since 16 posts of Assistant Commissioner were vacant, a requisition was received from MCGM and an Advertisement was published.

A very categorical statement is made in the Affidavit on behalf of Municipal Corporation to the following effect :-

“a. The Respondent No. 1 is BMC, whereas respondent No.2 is the MPSC. The BMC from time to time passed several

resolution ranging from the Corporation Resolution no 183 dated 12th May 1964, Corporation Resolution no. 1475 dated 1st march 1965, Corporation Resolution no 368 dated 24th June 1965 which prescribes the qualification/eligibility criteria for appointment as assistant commissioner of BMC. The said resolution is in force till date. These respondents crave leave to refer to and rely upon the said resolutions with the leave of the court. The Corporation Resolution No 47 dated 25th April 1997, Corporation Resolution No 398 dated 10th August 2000, Corporation Resolution No 1079 dated 8th January 2010, Corporation Resolution No 716 dated 28th August 2012 & Corporation Resolution No 1272 dated 14th December 2018 clearly show that from time to time several officers serving on the post of sub engineers have been considered to be eligible and have been selected and promoted to assistant municipal commissioners by following the required method under law from time to time.”

The Corporation has offered a clarification that there are 50 departments working under its aegis where engineers are posted and in all such Departments different duties are assigned and the duty list annexed to the Petition is merely illustrative in nature and not exhaustive, as Sub Engineers have to perform various duties assigned to them from time to time by the Respondent-Corporation and the duties vary from department to department, may be in the nature of administrative, executive or supervisory duties.

17. In the said group, one more Petition is filed by Rohini Dhumal who is represented by Advocate Mr.Vaishali Jagdale and she has raised objection to the recommendation of Respondent No.3 Arti Golekar, working as Sub Engineer in the Corporation

and Respondent No.4 Vrushali Ingule, working as Deputy Manager in Maha Distribution Company. As far as the Sub Engineer is concerned, she would adopt the arguments of Mr. Desai in WP No.12317/2023.

She has produced before us a chart reflecting that candidature of some of the candidates has been rejected, because they are non gazetted, but it is her specific objection that Sub Engineer, is a non gazetted post, and the persons working on the said post are still selected and appointed.

She has contended before us that there are no recruitment rules for the post of Ward Officer and in this regard she has placed reliance upon the decision of learned Single Judge of this Court, in Municipal Mazdoor Union vs. Municipal Commissioner & Ors. 1996 SCC OnLine Bombay 699, wherein, the Court pronounced upon the position Ward Officer and observed thus :-

“The pay scale of the post of Ward Officer is Rs.3930-5730 and the total initial emolument including allowance is around Rs.9900/- . The appointment to the post of Ward Officer is made for promotion from Assistant Engineer , Office Superintendent, Assistant Medical Officer in BMC, which are in the pay scale of minimum which is not less than Rs.2600/-.”

It was thus contended that BMC employees who intended to apply for the post of Ward Officer, the requirement of promotion to the post is taken as a guide line, for deciding the responsible post in BMC and any Officer drawing the pay in the pay scale which is below Rs.2600/- in BMC is considered not to possess the prescribed experience.

18. We specifically raised a query to Ms.Jagdale, whether at any point of time the Petitioner has raised challenge to the Advertisement, which had fixed the criteria for selection by prescribing clause 3.4.4 and her answer obviously is in the negative.

We are also conscious of the fact that once the Petitioner had participated in the process, it is not open for her to raise challenge eligibility criteria. Her challenge to the recommendation of Respondent No.4, Deputy Manager in Maha Distribution Company is that she do not fall in the pay scale i.e. prescribed in the Advertisement.

II ANALYSIS OF THE RIVAL CONTENTIONS IN GROUP A PETITIONS :-

19. While appreciating the the contentions in the three Petitions, we have noted that not only the Petitioners have challenged the eligibility of the Respondents, but by filing Affidavit

in Reply even the Respondents have raised a challenge to the eligibility of the Petitioners themselves.

The question for consideration in the three Petitions is whether the Respondents who were working as Sub Engineers, were holding a responsible post and, therefore, satisfied the stipulations in Clause 3.4.4 of the Advertisement.

20. As far as the Respondent in WP No.12317/2023 is concerned, she is working as Sub Engineer (Civil) with BMC since 04/05/2012 and the details of her employment and duration of work are mentioned in the extract provided by BMC, which is annexed alongwith her Affidavit issued by her immediate Superior from the City Engineer Department and this certificate has been validly accepted as a proof of her qualifications.

The Corporation has filed an Affidavit, opposing the contention raised in the Petitioner and categorically stated that it has 56 departments, where engineers have been posted and they are rotated, throughout their service and different duties are assigned to them and relying upon the Chart annexed alongwith the Affidavit enlisting the duty list, it is submitted that the duty list is illustrative and not exhaustive, as the Sub Engineers perform the duties assigned from department to department,

which may be administrative, executive or supervisory. It is also categorically stated in the Affidavit that from time to time, when the advertisements were issued for filling the post of Assistant Commissioner, Sub Engineers were found to be eligible and they have been appointed and have served the post of Assistant Municipal Commissioner and even promoted to higher post.

In the wake of above, we do not find substance in the contention raised on behalf of the Petitioner since we also find that a serious objection is raised to the eligibility of the Petitioner too herself, but in any case we do not intend to indulge into this exercise, as we find Respondent Smt.Rupali Shinde to be qualified for being recommended for the post of Assistant Commissioner (Ward Officer).

Since there is only one post reserved for women scheduled caste, the Respondent NO.3 has rightly been recommended to fill up the said post. In any case, Respondent Rupali Shinde has secured 137 marks whereas the Petitioner has secured 136 marks. Writ Petition No. 12317 OF 2023 is dismissed.

21. The Petitioner Ankush Jadhav in Writ Petition No.12318 of 2023 is aggrieved by inclusion of name of Respondent Nos.3, 4 and 5 in the provisional general merit list and he allege that it is

in violation of the eligibility criteria prescribed in the Advertisement, in particular clause No.3.4.1.

At the outset, we must note that Ankush Jadhav, the Petitioner, who claim the post as belong to ST category has scored 149 marks, whereas, Respondent Nos.3, 4 and 5 have scored more marks than him. Their eligibility is called in question by the Petitioner by submitting that the qualifications possessed by them of having five years experience in a responsible category including administrative, executive and supervisory capacity is not fulfilled.

The stand of MCGM in WP No. 16764/2023 applies to him.

22. As far as Respondent No.4 is concerned, he is working as Programme Executive with Prasar Bharati, which is is non gazetted and technical post , which according to the Petitioner do not include any administrative, executive or supervisory functions and, therefore, it do not fall within the ambit of “Responsible Capacity”.

This stand is contested by Respondent No.4 by categorically submitting that he was working in the pay band 2, Level 7 (44,900-142400) with grade pay of Rs.4600/- which is corresponding to Maharashtra Government pay level of M-25. It

is submitted that the definition of “Responsible Capacity” in Clause 3.4.4 of the Advertisement clearly stipulated the service rendered in government organization or public sector undertaking or similar organization, wherein the Payband of M-023 i.e. 41800-1,32,200 or above payband or any gazetted post in pay grade shall be considered.

Since this Respondent was working as Programme Executive , Group B Officer in Prasar Bharati, which is a statutory autonomous body set up under the Act of Parliament and he is presently posted in All India Radio, Mumbai, apart from the fact that he is placed in pay level which is equivalent to the Maharashtra Government pay level of M-25, he is discharging the functions which are administrative, executive and supervisory in nature. He has been placed in the provisional general merit list after passing of the written examination and personal interview.

Respondent No.4 has placed on record the Experience Certificate issued by the Senior Administrative Officer of Prasar Bharati, clearly describing his duties of supervisory level involving planning, proposal supervision etc. In any case, we are not inclined to go beyond the said certificate, which has categorically described the nature of duties described by

Respondent No.4 to be supervisory in nature and we find no fault in the inclusion of his name in the select list and even the Petitioner has scored less marks than him.

Respondent No.4 has also raised objection to the eligibility of the Petitioner who has stated his experience to be of 5 years and 2 months and 24 days, but according to him, this include the training period of two years, which should be excluded from the total experience of the Petitioner, which would be thus 3 years, 2 months and 24 days, which we need not get into since we do not find any illegality in inclusion of name of Respondent No.4 in the provisional merit list.

23. As far as Respondent No.5 Bhagwat Narayanrao Panzade, who is working as Assistant Engineer (Pay Group 2) in Maharashtra State Electricity Transmission Company Limited, is concerned, the objection of the Petitioner is that his post do not fit into the criteria of "Responsible Capacity".

The Affidavit in Reply filed by Respondent No.5 categorically state that he was appointed to the post of Assistant Engineer which has received a specific connotation in the Advertisement itself. According to Respondent No.5 he was drawing salary in the pay scale of 61,830-141925 and the post of

Assistant Engineer in Class II is a class post and definitely would fall within the scope of “Responsible Post”. The nature of duties discharged by him as Assistant Engineer include operation, maintenance and testing of electrical installations and lines; planning, designing and supervision over construction and erection activities of electrical installations, ensuring safety of men and material working under supervision and control of Assistant Engineer, are clearly indicative of supervisory duties, discharged by him.

Alongwith the Affidavit, a certificate issued under the signature of Executive Engineer MSETCL dated 28/03/2022 is placed on record, which certify that Bhagwat Panzade is working in the organization as Assistant Engineer (Trans) technical post in supervisory capacity in the pay scale of 61830-139925.

The Affidavit in Rejoinder filed by the Petitioner has annexed an Administrative Circular No.411 dated 08/07/2014, issued by the Chief Manager (HR) which has revised the pay scale of various posts in the department and as far as Junior Engineer is concerned, it is shown to be revised to the post of Assistant Engineer.

24. The contention advanced on behalf of Mr. Desai representing the Petitioner that the pay scale given in the Certificate dated 28/03/2022, is the pay scale of the Junior Engineer, is not the submission worth consideration since the post has now received a revised nomenclature as Assistant Engineer and what is worth to note is that the Advertisement clause 3.4.3 require administrative, supervisory or executive experience on a responsible post and the responsible post is defined as post in Government or Semi Government Institution or any other body in the pay band of M-23 or more and a gazetted post in grade pay. The pay scale of Assistant Engineer in MSCTCL, after 2014 is in the pay band of 19110-46320, which is definitely higher than the one prescribed in the pay band of the State. Therefore, we are not at all satisfied with the said objection as we have found that the MPSC as well as the Corporation has acted on the Certificate of Experience issued by the Executive engineer of Maha Trans Co admitting that Respondent No.5 has the experience in supervisory capacity.

We do not, therefore, find any merit in the contention raised on behalf of the Petitioner and finding no fault in inclusion of the name of Respondent Nos.3, 4 and 5 in the provisional select list,

Writ Petition No.12318/2023 is dismissed.

25. In Writ Petition No. 15780, the Petitioner, a candidate belonging to open (woman) category is aggrieved by the inclusion of name of Respondent No.3 Smt.Aarti Golekar and Smt.Vrushali Ingule at Sr.No.10 and 17 in the merit list.

About the selection of Respondent No.3, the objection raised is , she was working as Sub Engineer at Sea Bridge project, whereas, Respondent No.4 is working as Deputy Manager (HR) at Mahavitaran. Admittedly, the Petitioner has secured 151 marks , whereas Respondent Nos.3 and 4 have secured 157 and 152 marks respectively and they compete against the Petitioner for the post reserved for SC female category.

Ms.Vaishali Jagdale insisted in submitting that when she sought information under the RTI, she was informed that the post of Sub-Engineer is a non gazetted post. She has also placed reliance upon the duty chart to show that Sub Engineer do not discharge supervisory duties. In absence of the recruitment rules to the post of Ward Officer, she has placed reliance upon the decision of the Bombay High Court in case of Municipal Mazdoor Union vs. Municipal Commissioner & Others, wherein it is held that employees who want to apply for the post of Ward Officer, the

requirement of promotion to the post is taken as a guideline for deciding the responsible post of BMC for calculating prescribed experience by the Commission. We, however, are unable to agree to as much water has flown after the decision was delivered on 20.09.1996 and thereafter various advertisements are published, as per the Municipal Corporation when it has found the Sub Engineers to be qualified to be appointed as Assistant Commissioners and accordingly they have been selected and even promoted further.

Arti Golekar, Respondent NO.5 who is holding the post of Sub Engineer, therefore, cannot be said to be disqualified on that count. As far Vrushali Ingule - Respondent No.4 is concerned, she has produced Experience Certificate dated 17/08/2022 issued by Mahavitaran which certify that she was holding an administrative/supervisory post from 05/12/2012 and since we cannot, in exercise of our power under Article 226, go beyond the said certificate, which is issued by an Authorized Officer, the eligibility of Respondent no.4 cannot be questioned.

26. In any case, since Respondent No.3 and 4 have secured more marks in the selection process than the Petitioner, we do not find substance in the contention raised by the Petitioner, once she

has participated in the selection process and now finding that she may not fill up the SC female category post, which will go either to Respondent Nos.3 or 4 based upon their position in merit, Writ Petition No. 15780/2023 being without any merit and substance is dismissed.

B) CATEGORY II

Whether Probation Training should be included or excluded from the required experience as per the advertisement.

i. WP NO.16764 OF 2023 Shri Bhagwat Panzade vs. MPSC.

27. This Writ Petition is filed by Bhagwat Panzde, who is represented by Advocate Abhijeet Desai, where challenge is raised to the recommendation of Respondent No.3, Sachin Panzade for the post of Ward Officer, who is represented by the senior advocate Mr. Arshad Shaikh a/w Ms.V.S. Tapase.

Mr. Desai the learned counsel for the Petitioner by inviting our attention to the Advertisement issued for the said post contemplating experience of not less than 5 years in the Government, Semi Government or any big industrial or commercial concern of administrative, executive or supervisory capacity has urged that, as far as Respondent No.3 is concerned, he is shown to have 5 years 2 months and 24 days of experience

and in the merit list prepared, he is placed at Sr. No.18 whereas the Petitioner with an experience of 6 years 5 months and 17 days is placed at Sr. No.20.

28. It is the contention of Mr. Desai that pursuant to the recommendation of name of Respondent No.3 by MPSC for Group A services, and on being issued a temporary appointment letter on 13/04/2016, for the period mentioned in the order dated 04/08/2016, he has been placed at 2 years probationary training period on the post of Deputy Chief Officer, Group A. It is his contention that on placing him on the probationary training period of 2 years from 02/05/2016, he had furnished a bond of Rs.5,00,000/-.

According to him, he was placed in regular posting of Block Development Officer, Panchayat Sammittee Nandura, District Buldhana by an order issued by the Rural Department Department on 16/08/2018.

Relying upon the curriculum of the combined probationary training programme of 2 years, it is the submission of Mr. Desai that the training involves the basic training of 8 weeks, technical training of 8 weeks, the department-wise district affiliation of 7 weeks and a review training of 2 weeks.

Out of this, according to him, only from 02/04/2018 to 30/04/2018 the Respondent actually worked with an independent charge for 4 weeks, which might amount to gaining of experience.

He has also placed reliance upon the Government Resolution dated 11/11/2014 placed on record alongwith his Rejoinder, which contain general guidelines for the combined probationary training period of 66 weeks issued by the General Administration Department. He has also relied upon Government Resolution of 24/04/2015, making it mandatory for such trainees to furnish a bond and the objective in furnishing the bond. By relying upon clause 2 of the Maharashtra Civil Services (General Condition of Services) Rules, 1981, he has invited our attention to the term 'duty' as he would submit that though the period of training/probation would be considered as duty, it cannot be counted as experience gained.

Contesting the said submission, the learned senior counsel Mr. Arshad Shaikh has invited our attention to some important facets of the appointment of Respondent No.3, as he would submit that the date of appointment of Respondent No.3 is computed as date of his initial appointment and from the very date of this

appointment, he was conferred the pay scale applicable to group A post.

It is his specific contention that probationary period is included as duty period for all those candidates who are appointed for the post of Ward Officer, then why should he be deprived of the same, and in any case it is the submission of Mr. Shaikh that Petitioner has not sought an appointment for himself, but has prayed for a negative mandate for not selecting Respondent No.3 to be appointed to the post of Ward Officer.

He would place reliance upon the decision of the Apex Court in case of **NTPC Ltd. vs. Piyush Kumar Singh**³ where a distinction is drawn between the period of probation and training period and it is contended that appointment of a candidate being on probation, he is entitled to have it counted from the date of he being placed on probation/training and unless and until the Advertisement specifically provide for exclusion of this period, as he has gained necessary experience by working on the said post and, therefore, he cannot be kept away from the selection process.

Mr. Desai has placed reliance on the decision of **Food Corporation of India vs. Manoj Kumar**⁴, a decision delivered by

3 2023 SCC Online SSC 1516

4 2016 SCC Online Del 5445

Delhi High Court and another decision of Punjab and Haryana High Court in *Food Corporation of India vs. Babu Lal Yadav (LPA NO.69/2017 (O&M) in CWP No.9649/2011.*

29. The Petitioner Bhagwat Narayanrao Panzade, is placed at Sr.No.20, whereas, Sachin Kerba Panzade, Respondent No.3 in the Petition is placed at Sr.No.18, both are contenders for a post reserved for scheduled caste (SC) category.

The Petitioner has passed his graduation in Electrical Engineering in the year 2013 and was appointed as Assistant Engineer in Maharashtra State Electricity Transmission Company Ltd. (for short, "MSETCL") and, therefore, he claimed that he fulfilled the criteria, as contained in the advertisement dated 24/06/2021 for being appointed to the post of Assistant Commissioner.

30. The Petitioner through Mr.Abhijeet Desai, raised a challenge to the inclusion of Respondent No.3 and his placement in the seniority list, as it is his grievance that he is placed at Sr.No.20 in order of merit and there are six candidates, who belong to scheduled caste category. However, as far as candidates at Sr.Nos.1 and 2 amongst scheduled caste category are concerned, they having secured high ranking in order of merit, they deserve

an appointment against the unreserved female posts on their own merit. Therefore, the Petitioner, who is listed at Sr.No.6 in scheduled caste category would shift to Sr.No.4 and the candidate at Sr.No.3, who is Respondent No.3, do not possess the experience qualification in terms of clause 3.4.1 in the advertisement, his name should be deleted.

According to Mr.Desai, as far as Respondent No.3 is concerned, he appeared for the General State Civil Services Examination in the year 2015 and came to be appointed on probation training for a period of two years under the office order dated 04/08/2016 of the General Administration Department (for short, “GAD”), on being selected to the post of Deputy CEO/BDO, Group-A, he was placed at Sr.No.17 in the list of 21 successful candidates. He underwent the probation training and came to be regularly appointed on the post w.e.f. 16/08/2018.

It is, therefore, the submission of Mr.Desai that pursuant to the Respondent No.3 being placed on probationary training w.e.f. 02/05/2016, for a period of two years, and his regular posting w.e.f. 16/08/2018 do not make him eligible for appointment of the post, which requires five years experience of administrative, supervisory or executive in a responsible capacity in

Government, Semi Government or any big industrial or commercial concern.

Mr.Desai has placed before us the chart, which forms part of the probation training curriculum, which has divided it into distinct categories, including the basic training programme of eight weeks, technical training of eight weeks, Departmental District affiliation programme of seven weeks, Delhi tour of one week, Maharashtra Darshan of one week, Review Programme of two weeks and independent charge handling for four weeks from 02/04/2018 to 30/04/2018. It is the contention of Mr.Desai that combined probationary training programme, which is conducted at Yashwantrao Chavan Academy of Development Administration (YASHADA), commenced from 02/05/2016.

We have perused the training programme placed on record, which has spread over seven phases, covering foundation training, compulsory attachment, technical training, Departmental District Attachment, Delhi Exposure, Maharashtra Exposure, De-Briefing Training and remaining District Independent Charge. The Class training, consumed five months, whereas field training has consumed nine months, which is only to be undergone after the probationary training,

The Respondent No.3 was appointed on regular post of Block Development Officer and his actual service commenced from 06/09/2018 at Panchayat Samiti Nandura, District Buldana, and therefore the actual experience gained by him, according to Mr.Desai, is only of 2 years 10 months and 15 days.

31. This contention is opposed by the learned senior counsel Mr.Shaikh, representing Respondent No.3, who has filed a detailed affidavit alongwith the necessary documents. In paragraphs 7 and 8 of the affidavit, a specific stand is adopted to the following effect :-

“7) It is submitted that; as per the Maharashtra Development Service rules it is the prerogative of the government either to direct the selected candidates to undergo probationary training period or the government may exempt from such a probationary training period. That as per the standard practice and procedure, the candidates used to be appointed on a two-year probation period and upon completion combined probationary/training period the services are regularized from the date of initial appointment i.e from the date of probationary period term. That during the probationary period, the government has sent the present respondent number three and all other candidates who have been finally selected and recommended for the post of deputy chief executive officer/Block development Officer as a compulsory attachment to the different departments of the government as a part of probation period and under the combined probationary training program the probationers have also require to perform different tasks like day officer, escort officer and hence it is administrative, executive or supervisory in service experience. Furthermore, during the probation period, the Respondent No. 3 was also holding as in charge post and as well as independent posts of block development officer and has acted and worked on the side post during the probation period. Hereto annexed and marked as **Exhibit R-3 collectively** are the Copies of documents depicting the post on which the present Respondent has worked during the probation period.

8) The present Respondent has duly discharged his duties and responsibilities on the post during the probation period. It is also pertinent to note that the responsible capacity as defined under clause 3.4.1 under the said advertisement requires that the candidate should be Gazetted officer and must have worked on post having a pay band of Rs.41,800 to 1,32,300 and as far as the present Respondent No. 3 is concerned, his pay scale is more than the said pay Band prescribed under the said advertisement and he's getting the salary under the said pay band since the first date of appointment that is including the period of probation. That the present Respondent has also got the difference in pay for the services during probation period. Hereto annexed and marked as **Exhibit R-4** is the Copy of Documents pertaining to payment of difference amount to the present Respondent for the services rendered during probation period.”

32. Reliance is placed upon the Maharashtra Development Service Probation Rules, 1984 framed under Article 309 of the Constitution of India, where the ‘probationer’ is defined to mean a person appointed to the service on probation and, according to Mr.Shaikh, a candidate appointed by nomination, as per the the Rule, shall be appointed on probation for a period of two years, which indicate that the probation period is post appointment of the service and not pre- appointment. It is, therefore, submitted that the probationer is appointed in service as Deputy Chief Executive Officer from the date of his appointment as probationer and,therefore, a candidate working on the said post from the initial date of appointment is said to have been gained experience.

In addition, reliance is also placed upon the Maharashtra

Civil Services (General Conditions of Services) Rules, 1981 and, in particular, the clause which defines 'Duty' to include (a) service as probationer, (b) joining time and (c) course of instructions or training authorized by or under the orders of Government. In addition, reliance is also placed upon Rule 9(43) Note 3 of the said rules, which reads thus :-

"Note 3 : the status of probationer is to be considered as having the attributes of a substantive status, except where the rules prescribe otherwise".

In addition, reliance is also placed upon the Experience Certificate annexed to the affidavit by the competent authority, which has certified that Sachin Panzade is working as Administrative/ Executive from 02/05/2016 and the certificate annexed at Exhibit R-8 issued by the Chief Executive Officer, Zilla Parishad, Bhandara, has computed the total experience of the probationer in the following manner :-

Sr. No.	Period From -to	Post held	Nature of appointment	Nature of Post	Pay Scale	Last Net pay drawn
1	02-05-2016 to 31-08-2018	Probationary Dy. CEO / BDO (Group-A) at Yashada Yavatmal & Gondia	Permanent	Administrative/ Executive	6 th Pay (15600-39100) Grade Pay 5400	
2	06-09-2018 to 04-02-2020	Block Development Officer (Group-A) Nandura Dist. Buldhana	Permanent	Administrative/ Executive	6 th Pay (15600-39100) Grade Pay 5400	
3	04-02-2020 to 16-09-2020	Officer on Special Duty of Hon'ble Speaker, Mah. Legislative Assembly, Mumbai	Permanent	Administrative/ Executive	S-20 (56100-177500)	
4	16-09-2020 to till today	Dy. Chief Executive Officer (Gen.), (Group-A) Zilla Parishad, Bhandara	Permanent	Administrative/ Executive	S-20 (56100-177500)	Approx. 72500/-

33. Mr. Shaikh has placed the reliance upon the decision in the

case of *NTPC Ltd. Vs. Piyush Kumar Singh*⁵ and he has also placed on record the Food Corporation of India (Staff) Regulations, 1971, so as to appreciate the arguments of Mr.Desai.

Learned senior counsel Mr.Shaikh has also placed on record the Government Resolution dated 23/09/2011 issued by GAD, on the subject of “State Training Policy of Maharashtra”.

34. The question that arises for consideration before us is, whether the period spent by Respondent No.3 in “Combined Probation Training Programme-3” (CPTP-3) from 02/05/2016 before he received regular appointment on 16/08/2018 is to be computed as “experience in a responsible capacity for not less than five years”, as contemplated in clause 3.4.1 of the advertisement.

Maharashtra Civil Services (General Conditions of Services) Rules, 1981, which apply to all members of services and holders of post whose conditions of service, the Government of Maharashtra is competent to prescribe, has defined the following terms:-

5 2024 SCC OnLine SC 1516

“9(3). **Apprentice** means a person deputed for training in a trade or business with a view to employment in Government service, who is paid at monthly rates by Government during such training but is not employed in or against a substantive vacancy in the cadre of a department.”

9(14). **Duty** - duty includes.-

- (a) service as a probationer;
- (b) joining time;
- (c) a course of instructions or training authorised by or under the orders of Government;
- (d) course of instruction or training authorised by....”

9(18). **First appointment** means the appointment of a person under the Government by recruitment process:

Provided that, if a person is holding a post previously in the Government and he/she is selected by direct recruitment for another post in the Government that new appointment is also a first appointment.

Note.-“recruitment process” means as per the provisions of Recruitment Rules, the selection by Maharashtra Public Service Commission or Competent Selection Authority or appointed on compassionate ground.)”

9(43). **Probationer** means a Government servant employed on probation in or against a substantive or temporary vacancy in the cadre of a department.

Note 1.- No person appointed substantively to a permanent post in a cadre is a probationer, unless definite conditions of probation have been attached to his appointment, such as the condition that he must remain on probation pending the passing of certain examination.

Note 2.- A Government servant (other than one who holds substantively a permanent post) appointed on promotion to a temporary post will be treated for all purposes as a temporary Government servant.

Note 3. The status of a probationer is to be considered as having the attributes of a substantive status except where the rules prescribe otherwise.”

35. There cannot be any quibble over the issue that a 'Probationer' is a Government servant employed on probation in or against a substantive or temporary vacancy in the cadre of a department and the status of the probationer is to be considered as having the attributes of a substantive status. On completion of satisfactory period of probation, a Government servant is considered to be appointed on the said post from the date of his first appointment. However, in the present scenario, we are called upon to deal with 'Combined Probationary Training Programme' and when we have perused the curriculum of CPTP-3, spread over seven phases, we have noticed that except the district attachment in the last phase, most of the phases are to be completed in YASHADA, the training institute at Pune and this includes the foundation training as regards the judicial work, legislature etc. It also includes technical programme spread over a period of eight weeks, both to be conducted in the institute. Then one week each is assigned for Delhi visit and Maharashtra visit. It is only in the last phase of four weeks, when there is independent charge, to be handed over to a candidate.

36. When we have perused the curriculum of the probationer training programme, a concept floated by the GAD by order dated

04/08/2016, which include the name of the probationer, who is enlisted in the class of Chief Executive Officer-A, it has stipulated that the Combined Probationary Training Programme will be of a period of two years. Condition No.4 of the same prescribe that it will be necessary for a candidate to satisfactorily complete the probationary training programme. It is also specified that for the first fourteen weeks of the probation period, the candidate will be paid Rs.30,000/- consolidated pay, but when he present himself for technical training, he will be entitled for regular pay and also the difference between the consolidated payment mode and the payment which is due and payable to him.

37. One more stipulation prescribed is that during the probationary training period, the candidate will have to clear departmental examination and if he fails to do so, the period shall be extended for maximum period of one year and even if in the extended period, the departmental examination is not cleared, his/her services shall be liable to be terminated. Any misbehaviour or misdemeanor would entail putting an end to the service. What is more relevant is clause 14 of the said Resolution, which stipulate that as per the Government Resolution of the GDA dated 22/04/2015, it will be imperative to conduct an examination

of 200 marks of the curriculum that has undergone during the probationary training, with the minimum passing marks. The seniority of the candidate in the cadre would be determined based upon the marks obtained in the said examination and in the main examination (written and interview) and this would determine his placement in the seniority list.

38. From reading of the clauses in the order dated 04/08/2016, when the Respondent No.3 was placed on probationary training for a period of two years, with the stipulations stated above, it is evident that it was not a normal period of probation, when an employer evaluates the appointee's performance, suitability and his fitness to be confirmed in the employment. It is a normal rule in service jurisprudence that on satisfactory completion of the probationary period, the employee is entitled to absorb on a permanent post, by giving effect to his appointment from a date, when he has resumed the post and that period is counted in his length of services, which shall determine his pension, seniority etc. In the present situation, it is not that the Respondent No.3 was placed under probation, but he was undergoing 'probationary training' and undisputedly, on successful completion of the probationary training, on clearing the examination conducted, he

will be entitled to have his service counted from 02/05/2016, but the issue before us is, whether while under probationary training period, he has acquired administrative, executive or supervisory experience in a responsible post and according to us, the clear answer is in the negative.

39. As per the subject advertisement, the requirement is of experience of five years in the administrative, executive or supervisory capacity and not merely the length of service. The government order dated 04/08/2016, in respect of 57 officers, who were selected in Group A, for various posts reflect that they were placed under probationary training for a period of two years. The recitals of the order, which we have reproduced above, is clearly indicative of the fact that whatever training is offered in the two years, will be decided through examination to be conducted at the end of the period and if this period is not satisfactorily completed or the examination is not cleared, the appointees are not entitled for being appointed. Not only this, the marks secured in the examination would be computed for determining the seniority of the candidate.

The curriculum of the “Combined Probation Training Programme”, which covered a period from 02/05/2016 to

30/04/2018, which was offered in YASHADA, involved lectures being delivered on various topics so as to make them acquainted with various subjects like law, legislation, departments etc. During this period, they are in the learning process and are not discharging any duty except in the last phase, when some duties are entrusted to them. Therefore, we do not find any substance in the submission of Mr. Shaikh that the candidates actually gained the administrative, executive, supervisory experience in the said post, as despite the fact that they were the probationers, they were not entrusted with any independent duty/responsibility, but they continued to be under training, so as to make them equipped to take up responsible post, once they cleared the examination conducted at the end of the probationary training period.

40. The reliance by Mr. Shaikh on the decision of *NTPC Ltd.* (supra) is of no succour to him, since we find that the advertisement involved stipulated the experience required as minimum three years post qualification/supervisory cadre in the relevant area. It is in this background, what is held is that the advertisement nowhere stipulated that the probationary period or the training period is to be excluded for the purpose of computing the total period of experience, for any candidate.

Therefore, the Respondent No.3 according to us who was placed under probationary training fails to meet the requirement of the experience as per the advertisement.

41. Mr.Desai has relied upon the decision of Delhi High Court in **Food Corporation of India vs. Manoj Kumar Singh** (*supra*), where the question arose whether the essential qualifications for the post of Assistant Railway Manager (Technical) through direct recruitment requiring five years experience in the storage of food grains and maintenance of stock or in the examination, inspection and analysis of food grains in the Government or public private limited undertaking, would include the experience acquired as Junior/Senior research fellows while pursuing higher studies.

The Respondents were working as Managers (Quality Control) with the Appellant Corporation and they were inducted as Management Trainees in terms of the Scheme approved by the Board of Directors of the Appellant Corporation.

The Training Programme indicated that it was broken into four phases i.e. A, B, C and D with number of working days earmarked in each phase being stipulated.

The training envisaged visit to training locations in order to enable the Trainees to familiarize themselves with different aspects such as siding depot loading and unloading, goods shed loading etc. The three different phases, provided therein in different fields, when the trainees were attached to specific operational centres for a prescribed period.

The practical training was to be conducted under the supervision and control of Centre Training Institute, New Delhi and the Scheme also envisaged evaluation of performance of management training during and at the end of the course.

42. When the Advertisement was issued inviting applications for the post of Assistant General Manager (Technical), which stipulated the necessary experience, the question that arose was, whether the training or study period was or was not to be included as work experience. In Para 12, the Division Bench of Delhi High Court recorded thus :

“12. In these circumstances, we do not think that the practical or on-the- job training included in the period of training as Management Trainees undergone by the respondents can be treated as qualifying experience under the advertisement. The experience stipulated was specific and particular to storage of food-grains and maintenance of stocks, or in the examination, inspection and analysis of food grains in Government or Public/Private Ltd. Undertakings.”

The attention of the Court was invited to Sub Rule 6 (b), Fundamental Rule 9, which determined as to when government servant shall be treated as on duty and the Rule prescribed as below :

“F.R. 9. (6) (b) A Government servant may be treated as on duty-
(i) during a course of instruction or training in India, or
(ii) in the case of a student, stipendiary or otherwise,
who is entitled to be appointed to the service of the Government on passing through a course of training at a University, College or School in India, during the interval between the satisfactory completion of the course and his assumption of duties.”

In the backdrop of the above Rule, a pertinent observation reads thus :-

“Sub Rule (6) of Fundamental Rule 9, when it deems and treats a trainee as on duty during the training or during the induction course, has a different purpose and import than treating the period of training as work experience. It ensures that candidates selected for Government service undergoing training, adhere to and follow the rules and regulations applicable to Government servants while on duty. Obviously Fundamental Rule 9 would not apply for it relates to and postulates a different and distinct situation. The mandate is different. The trainee must adhere to, and follow rules applicable to the Government servants on duty.”

43. To savour the aforesaid situation, the Respondent relied upon the O.M. dated 08/03/1983, which by a deeming fiction stated that service rendered by an employee before his regular employment shall be counted as qualifying service for purposes of eligibility for department examination, even if during the training period, the Trainee is not given the scale of pay equivalent to that

of the post and was paid only a nominal allowance. However, the Court did not find favour in extending the benefit of O.M. to the benefit of the Respondents as it held that the office memorandum gave a limited and restricted concession to government employees by treating the training period as qualifying service, solely for the purpose of departmental examination and it would apply equally to all government servants inducted to a post after the training course and entitled to be considered for promotion on clearing of qualifying in the departmental examination. But the eligibility or relaxation granted by counting the training period as experience would not as a equator, mandate that training or course period would be counted as work experience for all purposes.

As a result, the Appeals filed by the Food Corporation of India were allowed, by setting aside the decision of the learned Single Judge.

44. We find the facts of the case involved before the Delhi High Court somehow identical with the facts placed before us and since training was construed as pre service training, despite the fact that it would subsequently be counted as qualifying service, definitely would not entail to the benefit of Respondent No.3.

Another decision of High Court of Punjab and Haryana High Court at Chandigarh, in case of ***Food Corporation of India and Ors. vs. Babu Lal Yadav & Ors. (supra)*** which is upheld by the Apex Court in the SLP preferred was dismissed, also is somehow based on similar lines. The Petitions came to be filed before the learned Single Judge by the Petitioners claiming that they are eligible for the post of Assistant General Manager, (Technical) as they had qualified the written test and had 5 years experience in storage of food grains and maintenance of stock or in the examination, inspection and analysis of food grains in Government or public/private limited undertaking. The learned Single Judge directed that the experience of the Petitioner as management trainees be also counted towards experience in storage of food grains.

When the order passed by the learned Single Judge was impugned, it was canvassed that the training only sessions/classes are held, but responsibilities are not assigned to the person to work independently which is the experience required.

Despite the fact that Respondent No.3 has been confirmed in the service from the date of appointment and on the

same pay scale, since the question before us is whether the Respondent had gained experience in administrative, supervisory, executive capacity, we find that he did not, since he was only undergoing training and not handled any duty of any post independently and what was required as per the Advertisement was the experience in executive, supervisory, administrative nature for last five years.

Since we find that Respondent No.3 has failed to meet this criteria, we allow the Writ Petition by declaring that inclusion of name of Respondent NO.3 in the list at Exh.C and D is improper as he failed to meet the criteria experience qualification as prescribed in clause 3.4.1 of the Advertisement. In the wake of the aforesaid discussion, name of Respondent No.3 shall be deleted from the selection list/ recommendation list.

Writ Petition is made absolute in the aforesaid terms.

GROUP - C CATEGORY III

(Economically Weaker Section)

45. In this group, we find Petitions raising challenge to the selection/ recommendation of private Respondents under Economically Weaker Section (EWS) category.

In the advertisement published by MPSC on 24/06/2021, to fill up 16 posts of Assistant Commissioner, 5 posts are for open category out of which 2 are reserved for women (30%) and 3 are for general. Two posts are reserved for EWS of which one post goes to female and one is for general.

For claiming benefit of reservation under EWS category, parameters laid down in the Government Resolution dated 12/02/2019 are to be applied which stipulate that in order to be qualified for reservation, the person applying shall have his annual family income, within the limit of Rs.8,00,000/- in previous financial year of the date of Application.

46. In the present case, the financial year 2020-2021 is considered as the last date of Application as the post was advertised on 26/07/2021.

The Government Resolution also defined the term “Family” to include the Applicant/Applicant’s mother, father and siblings below 18 as well as the Applicant’s children below 18 years and his/her spouse. Thus, the total annual family income includes income of all family members from all sources like salary, agriculture, income, business income and income from any other source for previous financial year prior to the date of Application

and in no case it shall exceed more than Rs.8,00,000/-.

The Government Resolution also set out the mechanism for issuance of the Eligibility Certificate and as per clause 2D, Tahasildar is authorized as the competent Officer to give a declaration of EWS and the manner in which the application shall be made and it shall be processed, is specifically set out in the Government Resolution.

The Government Resolution is appended with Annexure A, which is format of "Eligibility Certificate for Economically Weaker Section", which certify that the person is within the category of Economically Weaker Section as his/her gross family annual income from all source is less than Rs.8,00,000/-.

Appendix B to the said Government Resolution has enlisted the list of documents to be submitted for obtaining the Certificate, with a declaration that the information supplied is true and correct and if it is found to be false, his application shall be liable to be rejected and if any job is secured on the basis of the certificate, a person shall be entitled to face adverse consequences and or the admission gained is liable to be cancelled.

Appendix C has also enlisted the documents to be supplied as a proof or identification/address, age and as a proof of income.

A declaration in Appendix D make it imperative for the candidate to give the details of the earnings from various sources.

47. It is in this background, we are called upon to decide the challenge to the Respondent's candidature at the instance of the Petitioners, a claim being raised that they are not eligible to be considered from EWS category.

I) WRIT PETITION NO.16761 OF 2023

48. The Petitioner Anirudha s/o GopalKrishna Kulkarni applied for the subject post and qualified himself to attend the interview and thereafter general merit list of 63 candidates was published and name of the Petitioner appeared as Sr.No.3.

Since the petitioner was working as Assistant Engineer Grade II in Water Resources Department of Government of Maharashtra and was placed in pay band of S-15, his gross annual income from salary for the financial year 2020-2021 according to the Income Tax returns for the Assessment year 2021-2022 was Rs.8,35,617/-. Admittedly, the Petitioner do not fall within the EWS category. The contention is that neither of the Respondent Nos.4 to 9 are entitled to claim benefit of CWS since their income is more than Rs.8,00,000/-.

49. However, on publication of the General merit List on 08/09/2023 the Petitioner gained knowledge that Respondent Nos.4 to 10 were included in General merit List under EWS category and, therefore, he preferred a representation to Respondent No.2 pointing out to their ineligibility, but there was no consideration of his grievance which constrained him to seek information under RTI as regards the income of the Respondents and he has placed the entire material before us through the Petition claiming that the Respondents are ineligible to claim the general (EWS) seat.

Mr.Desai has placed on record a Chart giving description of Respondent Nos. 5 to 10 and objection raised by him as regards they being categorized as belonging to EWS.

1	2	3	4	5
Sr.No.	Post Held	Family Member Income Source Information	Annual Family Income for F.Y. 2020-21 as per EWS Certificate	Actual Annual Family Income of Respondents
Respondent No.5	Assistant Director Group A in Maharashtra Finance and Accounts Department in Payband Rs.56100-177500	Her Husband works as Tahsildar Group A	Claims her family annual gross income from all sources for F.Y. 2020-21 to be less than 8 lakh	As per RTI reply her gross salary is Rs.78,194/- per month which translated annually her annual gross income for F.Y. 2020-21 is Rs.9,38,328/- Moreover her husband's income is not

				considered in this. Exh."A-1" Pg. No.260,261.
Respondent No.6	Assistant Engineer Group A in Municipal Corporation of Greater Mumbai in Pay band Rs.56100 - 177500		EWS Certificate shows his family annual gross income from all sources for F.Y. 2020-21 is Rs.49,987/- Exh "AR-5" PG No.118	His Form-16 mention gross annual income for F.Y. 2020-21 is Rs.12,27,176/- Exh.A-2 Pg.No.262
Respondent No.7	Sub Engineer Group B in Municipal Corporation of Greater Mumbai in Payband Rs.41800-132300		EWS Certificate shows his family annual gross income from all sources for F.Y. 2020-21 is Rs.7,77,098/- Exh "AR-6" Pg No.119	His Form-16 mention gross annual income for F.Y. 2020-21 is Rs.8,46,840/- Exh."A-3" Pg No.265
Respondent NO.8	Chief Officer Group B in Urban Development Department in Payband Rs.41800-132300	Suppressed information regarding Business Income of his wife Mrs.Bhagyashri Kamalakar Pawar and Agricultural Income of his Father Mr.Lambaji Vishwanath Dure	EWS Certificate shows his family annual gross income from all sources for F.Y. 2020-21 Rs.6,30,000/- Exh."AR-7" Pg No.120	Copy of Satbara (7/12) extract in the name of Mr.Limbaji Vishwanath Dure Exh."A-4" Pg.No.268,269
Respondent No.9	Food Safety Officer Group B in Food and Drugs Administration in Payband Rs.41800-132300	Her Husband MR.Nandkumar Bhombe works as Chief Officer Group B	EWS Certificate shows his family annual gross Income from all sources for F.Y. 2020-21 Rs.5,10,000/- Exh.AR-8 Pg.No.121	As per RTI reply her gross salary is Rs.65,103/- per month which translated annually her annual gross income for F.Y. 2020-21 is Rs.7,46,914/- Moreover her husband's income is not considered in this

				Exh"A-6" Pg.No.273-276
Respondent No.10	Chief Officer Group B in Urban Development Department in Payband Rs.41800- 132300	Her Father Mr.Prahlad Vishwanath Tonge is Registered Government Contractor registered with Public Works Department	EWS Certificate shows his family annual gross income from all sources for F.Y. 2020-21 Rs.6,60,900/- Exh-AR-9 Pg.No.122	Her EWS certificate is cancelled by SDM, Hingoli by order dated 07.01.2025 on account of suppression of income obtained by her father.

50. As far as respondent no.4 Sayyad Samrin Salim is concerned, it is argued by Mr.Desai that the eligibility certificate issued in her favour has incorrectly described her gross family annual income from all sources as Rs.7,14,118/- which is less than Rs. Eight lakhs and therefore, she is awarded the EWS category. The response of respondent no.4 in this regard is, that she had applied for EWS Certificate on the basis of Form 16 which was last updated on 23/6/2021 which is issued under Section 203 of the Income Tax Act, and as per Part-B of the said Form, her gross total annual income is mentioned as Rs.7,14,118/- for the A.Y. 2021-2022, and since the EWS Certificate was based upon Form No.16, it cannot be faulted with.

51. We have perused Exhibit-C produced by respondent no.4 along with her affidavit. The certificate indicate the Assessment Year 2021-2022 and the amount credited to her account is shown

to be Rs.7,76,136/- and the amount of tax deducted is Rs.27,410/-.

52. Thus, the case of respondent no.4, the EWS Certificate is based on Form No.16, and we fail to find any disparity.

53. The submission of Mr.Desai is contested by learned senior counsel representing respondent nos. 5 to 9. Mr.Amit Karande who represent respondent no.5 failed to mark his appearance. However, we have perused the affidavit filed by respondent no.5 working as Chief Accountant, wherein she has adopted a stand that she was armed with the eligibility certificate for economically weaker section dated 3/12/2021 which was based on income of previous final year which was valid for one year. She assumed that the application could not have been submitted without filing the column of date and number of EWS Certificate and she has an objection to the fact that concept of non-creamy layer certificate is not applicable to the EWS Category, and when on 11/1/2023, when her candidature was rejected on the ground that the eligibility certificate submitted by her was not to be considered and she was declared ineligible, she filed a Writ Petition which was dismissed on 9/2/2023.

There is no denial to the assertion by the petitioner that the husband of respondent no.5 work as Tahsildar, which is group 'A'

post. As per RTI, reply received by the petitioner, the respondent no.5's gross salary per month is Rs.78,194/0 which gets translated annually as her gross income for Financial Year 2020-21 as Rs.9,38,328/-. The information obtained under RTI is placed on record along with the affidavit rejoinder filed by the petitioner on 8/12/2024. Admittedly, since gross salary of respondent no.5 is above Rs.Eight Lakhs, she cannot belong to EWS category.

54. As far as respondent no.6 Suresh Patil is concerned, the objection raised is that he is working as Assistant Engineer Group A in MCGM in the pay band of Rs.56,100 - Rs.1,77,400 and his family annual gross income for F.Y.2020-21 is reflected as Rs.49,987/-. The eligibility certificate produced by him is annexed as Exhibit 'AR' issued by the Tahsildar which has certified as below:-

"His gross family annual income from all sources is 49,987/- which is less than Rupees Eight lakhs. Therefore, it is certified that he is within category of economically weaker section."

Along with the rejoinder filed by the petitioner, he has placed on record Form No.16 which is a certificate under Section 203 of the Income Tax Act, 1961, for tax deducted source on salary and in this certificate, the gross salary of respondent no.6 for the A.Y. 2021-22 is shown as Rs.12,27,176/-.

55. Respondent no.7 Patil Swapnil Kisan is represented by Mr.Bapat who would submit that the EWS Certificate has shown his family annual gross income as Rs.7,77,098/- but admittedly, the document collected by the petitioner and annexed in the rejoinder i.e. Form No.18 is mentioned as 'Annual Income for F.Y 2020-21 as Rs.8,46,840/-. He has also filed WP No.12074/2023. In addition, the objection raised by Mr.Desai that the application for EWS is preferred by his mother is met with vehemence by Mr.Bapat by submitting that in Covid times, his mother has filed an application and we do not find that there is any legal flaw in the application being preferred on his behalf by his mother as long as the necessary information was supplied. However, since the gross annual income for the Financial Year as per Form No.16 is shown to be Rs.8,46,840/- which is more than Rs.Eight lakhs, he do not become eligible to claim the benefit of EWS.

56. As far as respondent no.8 who is represented by Mr.Naidu, the allegation faced by him is that he has suppressed information regarding business income of his wife Mrs. Bhagyashree Pawar, an agricultural income of his father. The EWS Certificate issued in his favour has shown his family annual gross income from all sources as Rs.6,30,000/-.

By relying upon the affidavit filed, Mr.Naidu would submit that the EWS Certificate issued in his favour was challenged by the petitioner before the First Appellate Authority i.e. the Sub-Divisional Authority, Chhatrapati Sambhaji Nagar and therefore, it was cancelled by order dated 5/7/2024, but it was challenged by his client before the Second Appellate Authority which has quashed the order of the Sub-Divisional Magistrate and restored the EWS Certificate. As far as this respondent is concerned, merely annexing 7/12 extract of the agricultural land of his father would not suffice, as what would have some relevance is the income/earning from the said land. Though Mr.Naidu admit that Respondent No.8 was married in the year 2022, in absence of any evidence to show that his wife had some independent income, which ought to be included in the annual income of the family and since the petitioner had already challenged the EWS Certificate in favour of respondent no.8, before the appropriate forum and now the Collector has restored the certificate, we do not find any reason to show any indulgence as against candidature of respondent no.8 is concerned.

57. Respondent no.9 is a Food Safety Officer, Group B and his EWS Certificate has shown his income as Rs.5,10,000/- but

according to the petitioner, her husband Nandkumar Bombe is working as Chief Officer, is working as Chief Officer, Group B, there is no denial to the said assertion as respondent no.9 has not filed any affidavit in reply.

The petitioner under the RTI Act sought information that gross salary of respondent no.9 is Rs.65,103/- per month which is translated to Rs.7,46,914/-. The necessary documents to that effect are placed on record from page nos.273 to 276. There is no denial that the husband of respondent no.9 is working as Chief Officer and therefore, his income will have to be included in the family income before the EWS Certificate is conferred. However, it appear that the EWS Certificate has failed to consider her actual income for F.Y 2020-21 as well as the income of her husband.

Respondent no.10 is also working as Chief Officer, Group B in Urban Development Department and EWS Certificate has shown the gross income from all sources for F.Y. 2020-21 as Rs.6,60,900/-. However, her EWS certificate is cancelled on 7/1/2025 and as such, the grievance of the petitioner against respondent no.10 do not survive.

58. On examining the case of respondent nos.4 to 9, we find that as far as respondent no.4 is concerned, her certificate

corresponds with Form No.16 and her income is less than Rs.Eight lakhs, which make her eligible for being categorised in economically weaker class. As far as respondent nos.5, 6, 7 and 9 are concerned, their EWS Certificate is based upon incorrect reflection of the income which necessarily include the income of the family as defined in the G.R dated 12/2/2019 and therefore, the EWS Certificate is flawed one. We are conscious of the fact that a remedy would lie against issuance of the said certificate in form of an Appeal if a person is aggrieved, as Clause 2(d) contemplate an Appeal if a certificate is refused or if the certificate is wrongly granted to a competent authority prescribed. However, since Form 16 is a statutory document which is reflective of the annual income of an assessee and as the G.R contemplate that while issuing the certificate for economically weaker section, the total income of the entire family shall be taken into consideration, we find the EWS Certificates to be incorrect.

59. Though it is vehemently urged before us by the learned counsel for the respondents that this court shall not sit as an Appellate Authority to examine the validity of the EWS Certificate and unless and until it is cancelled, it shall remain in force, we do not agree with the said submission. Prima facie, we find that EWS

Certificates are procured by respondent nos.5, 6, 7 and 9, and they have not furnished the appropriate information resulting into issuance of the EWS Certificate in their favour without considering the parameters prescribed in the Government Resolution and therefore, we grant liberty to the Corporation to treat their cases as 'doubtful' and advised to follow a further procedure for scrutinizing its truthfulness and veracity. In any case, at this stage, we must indicate that the candidature of respondent nos.5, 6, 7 and 9 shall not be considered from EWS Category.

The Writ Petition filed by the petitioner therefore is partly allowed. However, as far as respondent no.4 and 8 are concerned, they are held entitled to compete from EWS category by rejecting the contention advanced by the petitioner in this behalf.

(II) Writ Petition NO. 839/2025

60. This Petition is also filed by Anirudh Kulkarni, a candidate from open category raising a challenge to the inclusion of Sayyad Samrin and Anil Dure, respondent nos.3 and 4 in the general merit list dated 8/9/2023 published by MPSC on the ground that they do not hold the valid experience as per advertisement.

Since in the first Writ Petition No. 16761/2023 filed by him, we have found Smt. Sayyad Samrin, the respondent no.4 and Shri Anup Dure, Respondent No.8 to be eligible to hold EWS Certificate, the prayer made by the petitioner, that in absence of the availability of EWS candidate, the post should be converted into open category as per clause 11 of G.R. and that he should be considered for appointment, cannot be entertained. Writ Petition is therefore, dismissed.

(III) Writ Petition No. 12074 of 2023.

61. The present Petition is filed by Swapnil Patil, the respondent no.7 in Writ Petition No.16761 of 2023, who has raised an objection to inclusion of 3 respondents; namely Sayed Samreen Salim, Vaishali Thorat and Suresh Patil, in the selection list as according to him, they are not qualified for selection and appointment to the post of Assistant Commissioner.

We have heard Mr. Wasim Samlewale for the petitioner, Mr. Suhas Deokar for respondent no.4 and Mr. Amit Karande for Vaishali Thorat.

The objection of the petitioner is that, he stood at Serial No.4 in EWS category and over all 50th in General merit list, whereas Respondent No.4 stood at Serial No.1 and Respondent No.5, stood

at Serial No.2 and Respondent No.6, stood at Serial No.3 in the EWS category. It is not disputed by the petitioner that he secured 137 marks, whereas respondent no.4, 5 and 6 secured 146, 138, and 138 marks respectively. He is constrained to challenge their inclusion in the list as according to him they cannot claim the benefit of EWS category, a constitutional reservation, which has resulted into reservation of 10% seats in the recruitment procedure.

62. By relying upon the Government Resolution of 12/02/2019, challenge is raised to the categorization of respondent no.4, as Sayed Samreen along with a ground that she has experience of 3 years and 23 days on the date of advertisement as she was serving as Assistant Regional Transport Officer (Group B), her appointment on the post being made on 1/06/2018. It is thus urged that, her period of two years as trainee would not be counted in her total experience, and even if that period is included she do not fulfill the experience qualification of 5 years.

It must be noted that, as far as Smt. Sayed Smareen is concerned, we have tested the objection raised in respect of her candidature that she do not belong to EWS category in the petition filed by Shri Anirudh Kulkarni (WP) 16761/2023, and we have

repelled the contention.

63. Mr. Deokar, representing Respondent No.4 has invited our attention to the Affidavit affirmed by her stating that she joined as Assistant Regional Transport Officer on 2/05/2016, and discharging functions and duties under the Motor Vehicles Act, 1988, and the Rules made thereunder. She has justified her entitlement to claim EWS certificate. As far as the experience is concerned, she submit that she had assumed her duties and the duty include service as well as probation period since she was appointed on substantive vacancy and the service rendered during probation should be considered as experience.

We, therefore, find that Smt.Sayed Samreen possess the requisite experience, as she continued to hold the post since 2016.

64. As far as Respondent No.5 Vaishali Thorat, is concerned, the objection raised in the Petition is about her EWS certificate and similar is the objection in respect of Respondent No.6, which we have already dealt with in WP No.16761 of 2023 and have found their eligibility for EWS to be doubtful based on basis of Form No.16, which was procured by the Petitioner in the said writ petition and perused by us.

65. There being no substance in the petition objecting to the inclusion of respondent no.4 to respondent no.6 in the list, it is dismissed.

(IV) WRIT PETITION No.963 of 2024

66. This petition is filed by Anup Dure, the respondent no.8 in WP No.16761 of 2023, a petition filed by Anirudha Kulkarni, who has alleged that Anup Dure, the respondent no.8 is not eligible to avail the benefit of EWS category.

67. We have heard learned counsel Mr. Naidu, for the petitioner before us. According to him, there is no prayer for cancellation of his EWS certificate in Mr. Desai's petition and it is urged by him that he has gone through two tire of appeals, where his EWS certificate has been upheld.

While deciding the petition filed by Anirudh Kulkarni, WP No.16761 of 2023, above we have already recorded that the certificate of EWS in favour of Anup Dure, which is restored by the Collector, do not warrant any interference at the instance of the candidate, who has secured less marks.

68. In the present Writ Petition a prayer is made to quash selection of respondent nos.4 to 9 and hold them to be ineligible for being appointed for the post of Assistant Commissioner and

prepare the revised list after their exclusion.

As far as the petitioner is concerned, his EWS certificate has been restored to him by the Additional Collector, when the order of the SDM was set aside and this order is not challenged by anyone. The petitioner is a contender of a post reserved for EWS. In the petition Smt. Sayed Samreen, Smt. Vaishali Thorat, Shri. Suresh Shivaji Patil, Shri. Swapnil Patil, Smt. Jyotsana Jadhav and Smt. Priyanak Pralhad Tonge are impleaded as respondent nos.4 to 9, and it is alleged that they have been wrongfully selected, and as far as twofold challenge is raised to their selection, firstly on the ground that they do not have administrative, executive or supervisory experience as contemplated in terms of Clause 3.4.4 of the advertisement and their annual income is beyond Rupees Eight lakhs.

As far as the second part about their eligibility to hold EWS certificate, we have pronounced upon the same in Writ Petition No.16761 of 2023, in the petition filed by Anirudh Kulkarni, who had also impleaded Vaishali Thorat, Suresh Patil, Swapnil Patil and Jyotsana Jadhav as respondents. Anup Dure was impleaded as respondent no.8 and we have found the issuance of EWS certificate by the Tehsildar in favour of respondent no.5 Vaishali

Thorat, respondent no.6 Suresh Patil, respondent no.7 Swapnil Patil and respondent no.9 Jyotsana Jadhav to be not compliant with the Government Resolution since the income reflected in the certificate clearly contradicted the income of these candidates shown in form no.16, a statutory form. Therefore, we need not again delve into this challenge qua the respondent nos.4 to 8. As far as Priyanka Tonge is concerned, her EWS certificate is already cancelled and challenge against her is, that her annual income is beyond Rs. 8 lakhs, the challenge do not survive.

69. As far as the eligibility criteria based on Educational qualification and experience is concerned, we shall deal with the rival contentions qua each of the respondent.

As far as Samreen Sayed is concerned, it is alleged by the petitioner that she was holding the post of ARTO, which is purely a technical post and she do not satisfy the criteria of having administrative/executive/supervisory experience.

The respondent no.4 has denied this contention by filing an affidavit and she has placed on record a copy of her service book indicating that she was selected and appointed in the pay-band of Rs. 9300-34800, with grade pay of Rs.4600 and she joined the said post on 2/05/2016. Except making a bald allegation that the

post of ARTO is a technical post will not suffice for the petitioner as the burden lies on the petitioner to establish that respondent no.4 do not exercise administrative functions. In common parlance an Assistant RTO, which is a significant post in the Regional Transport Officer, which implements the provisions of the Motor Vehicle Act, and the Rules thereunder, calling for discharge of statutory functions and this includes a supervisory duty in inspecting the vehicles, grant of its registration and therefore it cannot be said to be a mere technical authority. We are therefore not satisfied with the contention of the Petitioner that the duty discharged by Samreen Sayed is purely technical.

70. In respect of Suresh Patil and Swapnil Patil, the objection raised in the petition is that they were working as Sub-Engineer on the establishment of MCGM, which is not a responsible post with administrative, executive or supervisory duties and is merely a technical post.

We have already dealt with the said issue with reference to the specific stand adopted by the MCGM about the post of Sub-Engineer and that in the previous past the candidates working as Sub-Engineer have been held eligible for promotion to the post of Assistant Commissioner, and therefore we find no merit in the

said contention.

As far as Vaishali Thorat respondent no.5 is concerned, objection is only raised in respect of her categorization as belonging to economically weaker section and when on being declared ineligible, when she approached this Court by filing WP No.1245 of 2023, claiming that the advertisement issued was not in consonance with the Government Resolution dated 12/02/2019, as EWS certificate may be valid upto 6 months from the date of application pursuant to the advertisement and she obtained EWS certificate on 3/12/2021, and there was no option to upload the EWS certificate, her application was valid. An argument was also canvassed that a distinction be made between non-creamy layer certificate and EWS certificate. The petition was heard and by recording that the petitioner has applied for a responsible post should not fill up false information, her petition was dismissed, by declaring that she must be armed with an EWS certificate if she claims the seat falling within the said category.

71. As far as Jyotsana Jadhav is concerned, who is working as Food Inspector in the Food and Drug Administration Department, the objection raised is also about her income and though it is pleaded that she do not satisfy educational qualification

prescribed under clause 3.4.4 of the advertisement, no material is brought on record by the petitioner to establish that she do not possess the educational qualification and as far as the objection about her eligibility to hold EWS certificate is concerned, we have already rendered a finding in WP No.16761 of 2023.

72. In the wake of the aforesaid discussion, we do not find merit in the submission of the petitioner, as regards the objection raised in respect of respondent nos.4 to 8, on the ground that they do not possess requisite administrative, supervisory or executive experience for that they are not entitled to claim EWS category. Hence, Writ Petition is dismissed.

IV) WRIT PETITION NO. 6531/2024

73. Challenging the communication dated 12/10/2022 issued by MPSC, stating that Vaishali Thorat was recommended for the post, Smt.Priyanka Tonge had filed the Petition alleging that she is not eligible to be selected.

We have heard Advocate Ashish Gaikwad for the petitioner who is aggrieved by the decision of the MPSC as regards respondent no.5, who was initially declared ineligible, but thereafter she was found to be eligible. The petitioner, compete

herself from EWS category, but we are informed that her own certificate is cancelled and there is no challenge to the cancellation of the EWS Certificate, making her ineligible to compete from EWS female category.

In the light of the above, we are not inclined to examine her challenge raised to the candidature of respondent nos.4 and 5 who also claim to be in possession of EWS Certificate. Petition is dismissed.

D) CATEGORY IV

Non completion of five years experience

I) Civil WP No.3893 of 2024 a/w (Ordinary Original Civil Jurisdiction) WP No.1488 of 2024

74. The aforesaid two writ petitions filed by Rohit Shriram Phad and Yogesh Annasaheb Kendre respectively, has called in question the inclusion of respondent no.3 Vijay Trimbak Palve in the General (Provisional list) published by MPSC.

Rohit Phad, petitioner in WP 3893 of 2024 is placed in general merit list at serial no.12 and whereas the respondent no.3 has secured ranking no.4 in NT-D category. If Vijay Palve is not found to be eligible, the petitioner Rohit Phad may take the seat reserved for NT-D category. As far as the other petitioner, Yogesh Kendre is concerned, he is placed at general merit list rank no. 5,

represented by learned senior counsel Mr. Bandiwadekar, is also a contender from NT-D category and he was declared as non-eligible, but he filed a writ petition challenging the decision of MPSC and by way of interim order passed in Writ Petition (L) No.22847 of 2023, he was permitted to participate in the interview process, but the result of interview is directed to be kept in sealed cover.

As a consequence, the results were kept in sealed but opened by MPSC, pursuant to the permission sought, but he was not found to have secure qualifying marks to be included in the categorywise merit list. The petitioner therefore now contend that though his name was appearing at serial no.5, he is not likely to be considered for the post, reserved for NT (D) category and therefore, even he is aggrieved by inclusion of name of respondent no.3 in the select list for a post reserved for NTD category.

75. The objection as regards respondent no.3 is to the effect that he appeared for Indian Forest Service through UPSC in the year 2014, and on 28/12/2015, he joined as Indian Forest Service Officer. He was sent to the Indira Gandhi National Forest Academy for 16 months mandatory induction training program, which according to the petitioner was a classroom training program at

Dehradun, which information is collated by the petitioner through RTI.

The counsel for petitioners Mr. Abhijeet Desai and Mr. Bandiwadekar, representing the petitioners, have relied upon the daywise training calender received from Indira Gandhi National Forest Academy, Dehradun, which cover the following phases:-

- (i) classroom coaching for various subjects,
- (ii) study tours/hill tours,
- (iii) academey games,
- (iv) Ministerial Conferences,
- (v) Examination
- (vi) weapon training
- (vii) Sports meet etc

76. As far as respondent no.3 is concerned, extension of joining time was granted for 477 days as per the gazette published by Government of Assam on 5/10/2022. The probation period was completed by respondent no.3 on 27/12/2017, and he was confirmed in IFS cadre on 28/12/2017.

It is thus contended that the total experience shown by respondent no.3 as on 28/12/2015 to 26/07/2021 of 5 years 7 months and 29 days include the training period and also extension of joining period.

77. In support of the contention raised on behalf of Rohit Phad, Mr. Desai has placed reliance upon the Gazette of India dated

23/11/2023, which has set out the nature of the training and the curriculum of 20 months, which include 13 months curriculum of teaching 4 months curriculum of internship/job training and again 3 months academy training. A copy of the Gazette notification published by the department of personnel and trainee has categorically set out the training format content and curriculum and this include 16 months of curriculum component at academy and 4 months of internship/ on the job training in cadre, States and Union Territory. The notification specifically set out that the curriculum framework of training may comprise of core elective courses as set out in the schedule and the details syllabus, contents and inputs in the course shall be determined by the director for each batch at the commencement of the training program. What is most relevant to note is the following statement in the said notification:-

“5. The training inputs and engagements shall consist of theoretical and practical studies, exercises, hands on learning, tours, excursions, internship or attachments related to the prescribed areas and shall be dealt with in the 4 course, elective course and project and courses of independent studies or other similar academic or training module as may be determined by the Director on the recommendation of the Academic council”.

78. The notification also contemplate that every probationer shall be evaluated during training through written and practical

examination, assignment and project work, qualifying test and internal assessment, which shall be held at the academy. The final evaluation of performance in terms of the marks is also specifically set out with reference to core courses in the subject area and the exercises, tours, and excursions as well as the internal assessment of 250 marks awarded by the academy based on general discipline and personality development during the training in Phase- I A and II and evaluated as per the standards determined by the academy. It is pertinent to note that attendance in the training program is mandatory as it is prescribed that every probationer shall attend and participate in all components of training program and all assessment tests and examinations for evaluation as specified and attend such non-evaluated training items as may be decided by the Director. It is imperative for every probationer to obtain a minimum 50% of marks in assessment or written and practical examination in the courses of studies, exercises and tours.

79. Relying upon the said notification, it is the contention advanced on behalf of the petitioners, as against the common respondent Mr. Vijay Trimbak Palve, that the period undergone by him in the academy is not from 20/12/2015 to 27/12/2017, though

described as probation period was infact a training period, which could not be counted as an experience, which is contemplated for the post which is advertised and for the petitioners and the respondents are competing.

Our attention is also invited to the Indian Forest Service (Probation) (Amendment), Rules, 2009, when sub-rule 3 is substituted by prescribing as below:-

“(3) A Probationer referred to in sub-rule (3) of rule (3), shall, within the period of probation or the extended period of probation, as the case may be, undergo such training in the Academy or in the State Training Institutions or in any other recognized training institution in the country for such period as the Central Government may consider necessary:

Provided that where a probationer does not undergo such training within the period of probation or the extended period of probation, as the case may be, he shall be reverted to his substantive post in the State Forest Service”

80. The notification dated 22/06/2021, issued confirming the appointment of 48 RR IFS Officers of 2015 batch in the Indian Forest Service, 2015 batch in the Indian Forest Service, reflect their confirmation from the date set out therein and as far as Vijay Palve, who is placed at serial No.29, his date of joining in IFS is reflected as 28/12/2015 and the date of completion of 2 years probation is shown as 27/12/2017, and his date of confirmation is reflected as 28/12/2015.

81. As far as the requirement in the advertisement for the experience criteria is concerned, it is expected that an incumbent should have worked on the said post and discharge administrative, executive/supervisory duties and training, where the candidate was in learning process and not assigned with any duties nonetheless executive, supervisory or administrative duties definitely cannot be held to have gained experience.

We had already referred to the decision of Delhi High Court in case of FSI vs. Manoj Kumar, as well as the decision of the Chandigarh High Court, which has been upheld by the Apex Court, where this very issue has been decided and in the earlier Writ Petition No.16764 of 2023, filed by Bhagwat Panzade, we have already deliberated upon this issue.

In the wake of the above, since we are satisfied that the respondent no.3 Vijay Palve in both cases, do not satisfy the criteria of experience as prescribed in clause no.3.4.1, since the period of his training cannot be computed as experience gained and falling short of the experience of 5 years, he do not deserve consideration for recommendation for the post advertised, the petitions are therefore, allowed.

As far as Writ Petition Nos.3893/2024 and WP 1488/2024, as the petitioner Rohit Phad and Yogesh Kendre are concerned, who claim the post of NT-D category, obviously, while making the choice, MPSC shall consider the candidature of the candidate, who has secured higher mark, and we leave it to the best discretion of the MPSC to consider their candidature.

WRIT PETITION NO. 14072/2024

82. This Petition is filed by Vaishali Thorat, where she has raised a challenge to clause 2 (C) 2 of GR dated 12/02/2019, and in the petition she has sought the following relief:-

“(i) To hold and declare the same is bad in law, unconstitutional, ultra vires to extend of impugned clause 2(C) (2) G.R. dtd 12.02.2019 regarding EWS.

(ii) To direct the respondents to modify alter amend the impugned clause 2 (C) (2) of the G.R. dtd 12.02.2019 regarding EWS and thereby make equal provisions for the terms, conditions and definition of the “Family” and the “Income Criteria” reserved for E.W.S. Women category as like and treat to them at par the Women from category other Backward Class such as OBC, VJ(NT), NT (D) and changes made time to time as all women are socially, educationally and economically backward.”

83. In the wake of the aforesaid relief in the petition, since it will have to be dealt with upon consideration of the stand of the respondent nos.1 to 4 and in specific the resolution of EWS issued

by General Administration Department, we deem it appropriate to segregate the petition from the group of petition and direct it to be listed after 8 weeks.

84. In the wake of the aforesaid, we direct MPSC to finalise the select list prepared by it and make the recommendation for appointment to the post of Assistant Commissioner (Group A) on the establishment of MCGM, within a period of four weeks from uploading of this Judgment.

(ASHWIN D. BHOBE, J.)

(BHARATI DANGRE, J.)