

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14222 OF 2024

RAMESHWAR LAXMAN DILWALE	Maharashtra Public Service Commission, Trishul Gold Field, Plot No.34, Sector-11, Opp. Sarovar Vihar, CBD Belapur, Navi Mumbai	} } } }
		...Petitioner

Digitally signed by RAMESHWAR LAXMAN DILWALE Date: 2025.05.03 13:12:39 +0530	Versus	1. Dr. Sanghamitra Kumari Phule @ Sanghamitra Mahendra Gawde, Age:52 Years, Occ: Service, Office at District Hospital Ratnagiri 2. State of Maharashtra, Through Principal Secretary, Public Health Department, Mantralaya, Mumbai-400 032. 3. State of Maharashtra, Through Principal Secretary, Women & Child Development Department, Mantralaya, Mumbai-400 032. 4. Dr. Babita Sonaji Kamlapurkar Age:53 years, Occ:Service, Assistant Director (Malaria & Filariasis), Arogya Bhavan, In front of Vishrantwadi Police Station, Yerawada, Pune-411 006. 5. Rekha Mudkhedkar Narayanrao Age: Adult, Occu: Service, R/o. Health and Family Welfare Training Centre, Bajrang Chowk, Income Tax Bhavan, CIDCO Sambhaji Nagar 431 003.	} } } } } } } } } } } } } } }
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.Respondents

WITH
WRIT PETITION NO. 1284 OF 2025

Maharashtra Public Service Commission, }
Head Office, Trishul Gold Field, plot No.34, }
Sector-11, Opp. Sarovar Vihar, Belapur CBD, }
Navi Mumbai-400614. }

...Petitioner
(Orig. Respondent No.3)

Versus

1. Sarswati d/o. Keshavrao Makne }
Age:26 years, Occ. Nil, }
R/o. Matoshri Nivas, Sawarkar Chouk, }
Shellal Road, Udgir, Dist. Latur. }

2. Naina d/o. Vrijendra Singh }
Age:30 years, Occ. Nil, }
R/o. Matoshri Nivas, Sawarkar Chouk, }
Shellal Road, Udgir, Dist. Latur. }
At present-54, Gokibar Maidan, Phaltan, }
Tq. Phaltan, Dist. Satara. }

(Orig. Applicants)

3. The State of Maharashtra, }
Through its Secretary, }
Ministry of Women and Child }
Development Division, }
New Administrative Building, }
3rd Floor, Madam Cama Road, }
Hutatma Rajguru Chowk, Mantralaya, }
Mumbai-400 032. }

(Orig. Respondent No.1)

4. The Secretary, }
Department of Animal Husbandry, }
Madam Kama Road, Hutatma Rajguru Chowk }

Nariman Point Churchgate,
Mumbai-400032.

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(Orig. Respondent No.2)
.Respondents

WITH
WRIT PETITION NO. 10150 OF 2024

Smt. Rekha Narayanrao Mudkhedkar
Age: 55 years, Occ: Deputy Director,
Health Services, Pune.
R/o. N-5, CIDCO,
Chhatrapati Sambhajanagar-431003.

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..Petitioner
(Org. Res. No.5)

Versus

1. The State of Maharashtra, }
Through Principal Secretary, }
Public Health Department, }
Maharashtra State, Mantralaya, }
Mumbai-400 032. }
 2. The State of Maharashtra, }
Through Principal Secretary, }
Women & Child Development Department, }
Maharashtra State, Mantralaya, }
Mumbai-400 032. }
 3. Maharashtra Public Service Commission, }
Having office at: }
Trishul Gold Field, Plot No.34, }
Sarovar Vihar Lake, Sector-11, }
CBD Belapur, Navi Mumbai-400614. }
- (Copy to be served on the Govt. Pleader, }

- High Court of Judicature of Bombay). }
4. Dr. Sanghamitra Kumari Phule @ }
 Dr. Sanghamitra Mahendra Gawde, }
 Age:52 Years, Occ: Service, }
 Office at District Hospital Ratnagiri }
 Dist. Ratnagiri-419 612. }
5. Dr. Babita Sonaji Kamalapurkar }
 Age:53 years, Occ:Service as }
 Assistant Director (Malaria & Filariasis), }
 Aarogya Bhawan, Opp. Vishrantwadi }
 Police Station, Yerawada, Pune-411 026. }

.Respondents

**(Res. No.4 is Org. Applicant &
 Res. No.5 is Org. Res. No.4)**

**WITH
 WRIT PETITION NO.15515 OF 2024**

1. The State of Maharashtra, }
 Through The Secretary, }
 Ministry of Women and Child }
 Development Division, }
 New Administrative Building, 3rd Floor, }
 Madam Cama Road, Hutatma Rajguru }
 Chowk, Mantralay, Mumbai-400 032. }
2. The Secretary, }
 Department of Animal Husbandry, }
 Madam Cama Road, }
 Hutatma Rajguru Chowk, }
 Nariman Point, Churchgate, }
 Mumbai, Maharashtra-400 032 }

Versus

1. Sarswati d/o. Keshavrao Makne }

- Age:26 years, Occ. Nil, }
 R/o. Matoshri Nivas, Sawarkar Chouk, }
 Shellal Road, Udgir, Dist. Latur. }
2. Naina d/o. Vrijendra Singh }
 Age:30 years, Occ. Nil, }
 R/o. Matoshri Nivas, Sawarkar Chouk, }
 Shella Road, Udgir, Dist. Latur. }
 At present-54, Gokibar Maidan, Phaltan, }
 Tq. Phaltan, Dist. Satara. }
3. Maharashtra Public Service Commission, }
 Head Office :5, 7 & 8th Floor, Kruprej, }
 Telephone Nigam Building, Maharshi }
 Karve Marg, Kruprej, Mumbai }
4. Pratiksha Ramchandra Patil }
 Age:25 years: Occ: Nil: }
 R/o. Udyog Aditya Apartment, }
 Aditya Nagar, Garkheda Parisar, }
 Chhatrapati Sambhajinagar }
5. Snehal Sharadrao Motegoankar, }
 Age:26 years: Occ: Nil }
 R/o. Ganesh Nagar, Ring Road }
 Ambejogai, Dist. Beed. }
- ..Respondents**

WITH
INTERIM APPLICATION NO.15085 OF 2024
IN
WRIT PETITION NO.15515 OF 2024

1. Aishwarya Sivaraman Nair, }
 Age:27 years, Occ: Nil, }
 Residing at D-302, Serenity Gardens, }
 Evershine City, Near St. Thomas }
 Church, Vasai (East), District: Palghar }

2. Mayank Diwakar Barde }
Age:27 years, Occ: Nil }
Residing at at Sainath Colony }
Vadsha Road, Lakhandur, Bhandara }
3. Sneha Shivaji Kale }
Age:28 years, Occ: Nil }
Residing at Survoday Hospital, }
Mauli Chowk, Akluj Road, }
Malshiras, District: Solapur }

..Applicants**IN THE MATTER OF:**

1. The State of Maharashtra }
Through Secretary, }
Ministry of Women and Child }
Development Division, }
New Administrative Building, }
3" Floor, Madam Cama Road, }
Hutatma Rajgur Chowk, }
Mantralaya, Mumbai }
2. The Secretary, }
Department of Animal Husbandry, }
Mantralaya, Hutatma Rajguru Chouk, }
Church Gate, Mumbai }
Mr. Purushottam Dadaso Kokare }

..Petitioners**Versus**

1. Sarswati d/o Keshavrao Makne }
Age: 26 years, Occ: Nil, }
R/o Matoshri Nivas, Sawarkar Chouk, }
Shella Road, Udgir, Dist. Latur. }
2. Naina d/o Vrijendra Singh }

- Age: 30 years, Occ: Nil }
 R/o Matoshri Nivas, Sawarkar Chouk, }
 Shella Road, Udgir, Dist. Latur. }
 at present 54, Golibar Maidan, }
 Phaltan, District: Satara. }
3. Maharashtra Public Service Commission }
 Head Office: 5,7, & 8th Floor, Cooperage }
 Telephone Nigam Building, Maharshi }
 Karve Marg, Cooperage, Mumbai. }
4. Pratiksha Ramchandra Patil }
 Age: 25 years, Occ: Nil, }
 R/o Udyog Aditya Apartment, }
 Aditya Nagar, Garkheda Parisar, }
 Chatrapati Sambhaji Nagar }
5. Snehal Sharadrao Mategonkar }
 Age: 26 Years, Occ: Nil }
 R/o Ganesh Nagar, Ring Road, }
 Ambejogai, Dist. Beed. }

..Respondents

WITH
INTERIM APPLICATION NO.15083 OF 2024
IN
WRIT PETITION NO.15515 OF 2024

1. Smt. Neha Vitthal Chikane, }
 Age-29 yrs., Occ.-Nil, }
 R/at. Vidyanagar, Bhore, }
 Pune-412 206. }
2. Smt. Rutuja Rambhau Jadhav }
 Age-30 yrs., Occ. Nil, }
 R/at. Ram Nagar Washi, Washi }
 At present R/at. A-7, 504 Mangal Bhairav, }
 Nanded City, Sinhagad Road, }
 Pune-411 068. }

3. Smt. Sharwari Ajay Sangwai }
 Age-28 yrs., Occ.-Nil }
 R/at B-404, Pentagon Towers }
 Shahu Colony, Lane No.1, }
 Karve Nagar, Pune }

..Applicants**IN THE MATTER OF**

State of Maharashtra }
 Through the Secretary }
 Ministry of Woman and Child }
 Development Division, New Administrative }
 Building, 3rd Floor, Madam Kama Road, }
 Hutatma Rajguru Chowk, }
 Mantralaya, Mumbai-400 032. }

..Petitioner**VERSUS**

1. Sarswati d/o. Keshavrao Makne }
 Age:26 years, Occ. Nil, }
 R/o. Matoshri Nivas, Sawarkar Chouk, }
 Shellal Road, Udgir, Dist. Latur. }
2. Naina d/o. Vrijendra Singh }
 Age:30 years, Occ. Nil, }
 R/o. Matoshri Nivas, Sawarkar Chouk, }
 Shellal Road, Udgir, Dist. Latur. }
 At present-54, Gokibar Maidan, Phaltan, }
 Tq. Phaltan, Dist. Satara. }
3. Maharashtra Public Service Commission, }
 Head Office :5, 7 & 8th Floor, Kruprej, }
 Telephone Nigam Building, Maharshi }
 Karve Marg, Kruprej, Mumbai }

4. Pratiksha Ramchandra Patil }
Age:25 years: Occ: Nil: }
R/o. Udyog Aditya Apartment, }
Aditya Nagar, Garkheda Parisar, }
Chhatrapati Sambhajinagar }
5. Snehal Sharadrao Motegoankar, }
Age:26 years: Occ: Nil }
R/o. Ganesh Nagar, Ring Road }
Ambejogai, Dist. Beed. }
6. The Secretary, }
Department of Animal Husbandry, }
Madam Cama Road, }
Hutatma Rajguru Chowk, }
Nariman Point, Churchgate, }
Mumbai, Maharashtra }

..Respondents

WITH
WRIT PETITION NO.15559 OF 2024

Dr. Rekha d/o Narayanrao Mudkhedkar }
@ Rekha w/o Govardhan Gaikwad }
Age: 55 years, Occupation: Service as }
Dy. Director of Health Services, Pune. }
Kutumb Kalyan Bhavan, Behind Pune }
Railway Station Pune (Naidu Hospital Compound), }
R/o Flat No.101, A-Wing, Sahil Heights, }
Kranti Nagar, Pimple Nilakh, Pune. }
Mobile No. 9588429551 }

..Petitioners**VERSUS**

1. The State of Maharashtra, }
Through the Secretary }

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| | Women & Child Development Division | } |
| | New Administrative Building, 3 rd Floor, | } |
| | Madam Kama Road, Hutatma Rajguru Chowk, | } |
| | Mantralaya, Mumbai-400 032. | } |
| 2. | The Secretary, | } |
| | Department of Animal Husbandry, | } |
| | Madam Kama Road, Hutatma Rajguru Chowk | } |
| | Nariman Point Churchgate, | } |
| | Mumbai-400032. | } |
| 3. | Maharashtra Public Service Commission, | } |
| | Trishul Goldfield Building, | } |
| | CBD, Belapur, Dist. Thane-400 614, | } |
| | (Maharashtra). | } |
| 4. | Pratiksha Ramchandra Patil | } |
| | Age:25 years: Occ: Nil: | } |
| | R/o. Udyog Aditya Apartment, | } |
| | Aditya Nagar, Garkheda Parisar, | } |
| | Chhatrapati Sambhajinagar | } |
| 5. | Snehal Sharadrao Motegoankar, | } |
| | Age:26 years: Occ: Nil | } |
| | R/o. Ganesh Nagar, Ring Road | } |
| | Ambejogai, Dist. Beed. | } |
| 6. | Sarswati d/o. Keshavrao Makne | } |
| | Age:26 years, Occ. Nil, | } |
| | R/o. Matoshri Nivas, Sawarkar Chouk, | } |
| | Shellal Road, Udgir, Dist. Latur. | } |
| 7. | Naina d/o. Vrijendra Singh | } |
| | Age:30 years, Occ. Nil, | } |
| | R/o C/o Matoshri Nivas, Sawarkar Chouk, | } |
| | Shellal Road, Udgir, Dist. Latur. | } |
| | At present-54, Gokibar Maidan, Phaltan, | } |
| | Tq. Phaltan, Dist. Satara. | } |

8. The Principal Secretary,
Public Health Department,
Mantralaya, Mumbai-400 032.

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..Respondents

WITH
INTERIM APPLICATION (ST.) NO.35124 OF 2024
IN
WRIT PETITION NO.15559 OF 2024

1. Dr. Sanghamitra Kumari Phule @
Sanghamitra Mahendra Gawde,
Age:53 Years, Occ: Service,
Office at: Regional Mental Hospital
Ratnagiri, Main Road, Jaisthamb,
Dist. Ratnagiri-419 612.

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..Applicants

IN THE MATTER OF

Dr. Rekha d/o Narayanrao Mudkhedkar
@ Rekha w/o Govardhan Gaikwad
Age: 55 yrs, Occu: Service, as Dy. Director
of Health Services, Pune.
Kutumb Kalyan Bhavan, Behind Pune
Railway Station Pune (Naidu Hospital Compound)
R/at: Flat No.101, A-Wing, Sahil Heights,
Kranti Nagar, Pimple Nilakh, Pune
Mobile No.9588429551.

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VERSUS

1. The State of Maharashtra,
Through the Secretary
Women & Child Development Division
New Administrative Building, 3rd Floor,
Madam Kama Road, Hutatma Rajguru Chowk,
Nariman Point, Churchgate, Mumbai

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- Maharashtra-400 032. }
2. The Secretary, }
 Department of Animal Husbandry, }
 Madam Kama Road, Hutatma Rajguru Chowk }
 Nariman Point Churchgate, }
 Mumbai-400032. }
3. Maharashtra Public Service Commission, }
 Trishul Goldfield Building, }
 CBD, Belapur, Dist. Thane-400 614, }
 (Maharashtra). }
4. Pratiksha Ramchandra Patil }
 Age:25 years: Occ: Nil: }
 R/o. Udyog Aditya Apartment, }
 Aditya Nagar, Garkheda Parisar, }
 Chhatrapati Sambhajnagar }
5. Snehal Sharadrao Motegoankar, }
 Age:26 years: Occ: Nil }
 R/o. Ganesh Nagar, Ring Road }
 Ambejogai, Dist. Beed. }
6. Sarswati d/o. Keshavrao Makne }
 Age:26 years, Occ. Nil, }
 R/o. Matoshri Nivas, Sawarkar Chouk, }
 Shellal Road, Udgir, Dist. Latur. }
7. Naina d/o. Vrijendra Singh }
 Age:30 years, Occ. Nil, }
 R/o C/o Matoshri Nivas, Sawarkar Chouk, }
 Shellal Road, Udgir, Dist. Latur. }
8. The Principal Secretary, }
 Public Health Department, }
 Mantralaya, Mumbai-400 032. }

..Respondents

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Mr. Ashutosh Kulkarni with Mr. Siddharth Shitole, Advocates for the Petitioner in WP Nos.14222/2024, 1284/2025 and for the Respondents in WP Nos.10150/2024, 15559/2024.

Mr. Nitin Gaware Patil with Mr. Divyesh Jain, Mr. Ajay S. Deshpande, Advocates for the Petitioner in WP Nos.10150/2024, 15559/2024.

Mr. Abhijeet Desai with Mr. Shrikant D. Patil, Mr. Digvijay Kachare, Ms. Daksha Punghera, Mr. Vijay Singh, Ms. Mohini Reh-pade, Mr. Karan Gajra, Ms. Sanchita Sontakke i/by Desai Legal LLP for the Applicants in IA(ST) No.35124/2024 in WP No.15559/2024 and for the Respondent No.1 in WP No.14222/2024.

Mr. Sanjay Kshirsagar, Advocate for the Applicants in IA No.15083/2024 in WP No.15515/2024.

Mr. B. V. Samant, Additional Government Pleader with Mr. A. R. Deolekar, Assistant Government Pleader and Mrs. Ashwini A. Purav, Assistant Government Pleader for the Petitioner-State in WP No.15515/2024 and for the Respondent-State in WP Nos.14222/2024, 10150/2024.

Mr. B. V. Samant, Additional Government Pleader with Mrs. Ashwini A. Purav, Assistant Government Pleader for the Respondent-State in WP/15559/2024.

Mr. B. V. Samant, Additional Government Pleader with Mr. N. K. Rajpurohit, Assistant Government Pleader for the respondent-State in WP/1284/2025.

Mr. Laxman S. Deshmukh, Advocate for the Applicant-Intervenor in IA No.15085/2024 in WP No.15515/2024.

Mr. S. G. Nandedkar, Advocate for the Respondent Nos.1 and 2 in WP No.15515/2024 and for Respondent Nos.6 and 7 in WP No.10150/2024, and for Respondent Nos.1 and 2 in WP No.1284/2025.

Mr. M. D. Lonkar i/by Mr. Om M. Lonkar, Ms. Advaita M. Lonkar, Advocates for the Respondent No.5 in WP/10150/2024.

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**CORAM : A.S. CHANDURKAR &
M.M. SATHAYE, JJ**

Date on which the arguments concluded : 05th MARCH 2025

Date on which the judgment is pronounced : 02nd MAY 2025.

JUDGMENT :(PER : A. S. CHANDURKAR, J)

1. Since all these writ petitions raise a challenge to the order dated 10/05/2024 passed by the Maharashtra Administrative Tribunal, (for short, 'The Tribunal'), Bench at Aurangabad in Original Application No.932 of 2023. Hence these writ petitions are being decided by this common judgment. Rule. Rule made returnable forthwith.

2. The facts in brief giving rise to these writ petitions are that on 14/02/2022, the Maharashtra Public Service Commission-MPSC issued Advertisement No.12 of 2022 inviting applications for filling in 212 posts of Live Stock Development Officer-Grade A. By a Corrigendum dated 11/05/2022, the number of posts was increased to 298. Ku. Sarswati Makne and Ku. Naina Singh-

Applicants participated in the said recruitment process. After clearing the written examination they were interviewed. Their names were shown in the preliminary merit list at Serial Nos. 135 and 181 respectively in the general category. The Applicants could not submit the Non-Creamy Layer Certificate and hence they made a representation to the MPSC to consider their candidature in the un-reserved women quota. The Applicants relied upon the Government Resolution-GR dated 04/05/2023 by which it was not necessary to submit such Non-Creamy Layer Certificate while claiming women reservation. According to the Applicants, though the merit list was published on 29/09/2022, the same was revised by taking into consideration GR dated 04/05/2023. The revised merit list was published on 25/05/2023 which affected the placement of the Applicants. Being aggrieved by the aforesaid, the Applicants approached the Maharashtra Administrative Tribunal by filing Original Application No. 932 of 2023.

3. The Tribunal took into consideration Clause 5 of GR dated 04/05/2023 and found that the benefit of the said GR in the matter of submission of Non-Creamy Layer Certificate was restricted to female candidates who had participated in the recruitment process conducted pursuant to Advertisement No.83

of 2021 and the recruitments which had commenced after 29/09/2022 when the results of the recruitment process under Advertisement No.83 of 2021 was completed. The Tribunal held that Clause 5 resulted in depriving those female candidates who had participated in the recruitment process which had commenced after issuance of Advertisement No.83 of 2021 but the results were declared prior to 29/09/2022. On that basis after recording a finding that there was violation of the provisions of Article 16 of the Constitution of India, it was held that Clause 5 of the GR dated 04/05/2023 to the extent it restricted its applicability to Advertisement No.83 of 2021 and the recruitment process that had commenced after 29/08/2022 was unconstitutional. It was declared that the benefit of the GR ought to be made applicable to all recruitments that had commenced after issuance of Advertisement No.83 of 2021. Consequently, the Applicants were held entitled to the benefit of the said GR and directions were issued to the statutory authority/ State Government to issue appointment orders in their favour as against seats reserved for open female candidates.

4. In Writ Petition Nos.10150 of 2024 and 14222 of 2024 challenge has been raised to the judgment of the Tribunal in

Original Application No.1139 of 2023. This Original Application was filed by Ku. Sanghamitra Phule-Applicant who had participated in the recruitment process pursuant to Advertisement No.107 of 2021 that was issued on 08/10/2021. By the said advertisement, nine posts of Deputy Director, Health Services-Group A were advertised. By a Corrigendum issued on 25/02/2022 these posts were increased to twelve. On 23/08/2023, the merit list pursuant to the said recruitment process was published and the name of the Applicant was shown at serial no.1 in the open female category. However, her name did not appear in the list of selected candidates and instead the name of Dr. Babita Kamlapurkar from the reserved category who had scored lessor marks than the Applicant was shown. According to the Applicant, the said candidate was not required to produce the Non-Creamy Layer Certificate and hence her name was shown in the select list. The Tribunal took into consideration the judgment passed in Original Application No.932 of 2023 dated 10/05/2024 wherein Clause 5 of the GR dated 04/05/2023 was held to be unconstitutional. In view of that judgment, Original Application No.1139 of 2023 was allowed and the MPSC was directed to recommend the name of the Applicant from the open female category in place of the earlier candidate as declared. The said

order dated 12/07/2024 has been challenged by the non-applicant No.5 Mrs. Rekha Mudkhedkar in Writ Petition No.10150 of 2024. The MPSC has also challenged the said order by filing Writ Petition No.14222 of 2024.

5. Mr. B. V. Samant, learned Additional Government Pleader for the petitioners in Writ Petition No.15515 of 2024-State of Maharashtra submitted the Tribunal committed an error in interpreting the GR dated 04/05/2023 and thereby granted benefit of that interpretation to the case of the Applicants. The said GR was issued in light of the policy decision taken by the State Government in view of grievances received from candidates who had participated in the recruitment process pursuant to Advertisement No. 83 of 2021. The said recruitment process had commenced on 17/09/2021 while the Applicants had participated in the recruitment process pursuant to Advertisement No. 12 of 2022, which was issued on 14/02/2022. The Applicants were bound by the terms and conditions of Advertisement No. 12 of 2022 and it was not permissible for them to take a contrary stand after commencement of the recruitment process and contend that it was not necessary to furnish the Non-Creamy Layer Certificate. Since it was the intention of the State Government that the rules

of the game ought not to be changed during the process of recruitment, the GR dated 04/05/2023 was made applicable only to Advertisement No. 83 of 2021 as well as those advertisements published after 29/09/2022 when the select list pursuant to Advertisement No. 83 of 2021 was published. Reference was made to the pleadings of the parties before the Tribunal and it was submitted that the Tribunal was not justified in holding that Clause 5 of the GR dated 04/05/2023 was arbitrary. To support his contentions, the learned Additional Government Pleader relied upon the decisions of the Supreme Court in *Gursharan Singh and Others vs New Delhi Municipal Committee and Others* 1996 INSC 166 and *State of Bihar and Others vs Kameshwar Prasad Singh and Another* (2000) 9 SCC 94 and *connected matters*. It was thus submitted that the impugned judgment of the Tribunal was liable to be set aside and the Original Application preferred by the Applicants ought to be dismissed.

6. Mr. Ashutosh Kulkarni, learned Counsel appearing for the MPSC adopted the contentions raised on behalf of the State Government and further submitted that the choice of the cut-off date in the GR dated 04/05/2023 was a matter of policy and the scope for interference in that regard was limited. The GR dated

04/05/2023 was required to be considered as a whole and a conscious decision was taken in so far as its applicability was concerned. It was stated in clear terms that the said GR was applicable only to Advertisement No. 83 of 2021 and advertisements published after 29/09/2022. There was no basis whatsoever for the Tribunal to have altered its applicability and directed that the said GR would be applicable also to Advertisement No. 12 of 2022. Between the period from 17/09/2021 when Advertisement No. 83 of 2021 was issued till 29/09/2022, about 285 to 300 advertisements had been issued. If the interpretation of the Tribunal as regards Clause 5 of the GR dated 04/05/2023 was applied, the same would result in creating confusion amongst candidates who had participated in the recruitment process between the aforesaid two dates. Further, if the interpretation of the Tribunal was upheld, the recruitments that had taken place after issuance of Advertisement No. 83 of 2021 would have to be either re-worked or cancelled. This was likely to affect the administration and functioning of various Government offices. The Tribunal failed to consider these relevant aspects while allowing the Original Application preferred by the Applicants. In support of his submissions, the learned Counsel placed reliance on the decisions in cases of *Dr. Ami Lal Bhat vs.*

State of Rajasthan and Others 1997 INSC 537, *Government of Andhra Pradesh & Ors. vs. N. Subbarayudu and Others* 2008 INSC 514, *Hirandra Kumar vs High Court of Judicature at Allahabad and Another* 2019 INSC 111 and *Mohammad Ali Imam and Others vs State of Bihar through its Chief Secretary and Others* 2020 INSC 129. It was thus submitted that the impugned judgment of the Tribunal was liable to be set aside and the Original Application ought to be dismissed.

7. Mr. Nitin Gaware Patil, learned counsel appearing for the petitioner in Writ Petition No.10150 of 2024 submitted that the Tribunal was not justified in holding Clause 5 of the GR dated 04/05/2023 to be unconstitutional. Besides adopting the submissions made on behalf of the State of Maharashtra and the MPSC, it was submitted that the Tribunal committed an error in causing interference with Clause 5 of the GR dated 04/05/2023. Relying upon the judgments in *M. P. Oil Extraction & Anr. Vs. State of M. P. & Ors.* 1997 INSC 557, *Dr. Ashwani Kumar Vs. Union of India & Anr.* (2020) 13 SCC 585, *State of H. P. Vs. HP Nizi Vyavsayik Prishikshan Kendra Sangh*, (2011) 6 SCC 597 it was submitted that the scope for judicial interference in policy matters was limited. It was further submitted that candidates who had

participated in the recruitment process pursuant to Advertisement No.107 of 2021 dated 08/10/2021 were governed by the terms and conditions stated therein. It was not permissible to change “the rules of the game” after commencement of the recruitment process. The Tribunal failed to take into consideration this material aspect. To substantiate this contention, reliance was placed on the decisions in *Bedganga Talukdar Vs. Saifudaullah Khan & Ors.* (2011) 12 SCC 85 and *Rekha Chaturvedi Vs. University of Rajasthan & Ors.* 1993 Supp (3) SCC 168. It was also submitted that determination a cut-off-date was within the ambit of the executive and that its choice could not be said to be arbitrary merely because some hardship was caused to some parties. Reference was made to the decision in *Mohammad Ali Imam & Others Vs. State of Bihar Through Its Chief Secretary & Others* 2020 INSC 129. On the aspect of giving retrospective effect to the operation of the GR dated 04/05/2023, it was submitted that the Tribunal was not justified in expanding the sphere of its operation. Reference was made to the decisions in *Goan Real Estate and Construction Ltd. Vs. Union of India & Ors.* (2010) 5 SCC 288 and *Commissioner of Income Tax Vs. Vatika Township Pvt. Ltd.* (2015) 1 SCC 1. It was thus submitted that the order passed by the Tribunal be set aside and the Original Application

as preferred be dismissed.

8. Mr. S. G. Nandedkar, learned Counsel appearing on behalf of the Applicants, supported the impugned judgment of the Tribunal. According to him, after considering all relevant aspects, the Tribunal rightly found that Clause 5 of the GR dated 04/05/2023 was arbitrary. There was no basis whatsoever for granting benefit of the said GR only to candidates, who had participated pursuant to the recruitment process under Advertisement No. 83 of 2021 and advertisements published after 29/09/2022. Since the Applicants had participated in the recruitment process after 17/09/2021, they were rightly found eligible for benefit of the GR dated 04/05/2023. Referring to the minutes of the meeting of the State Cabinet dated 19/04/2023, he submitted that the same did not indicate restricted application of the benefit of the said decision. The Tribunal therefore rightly passed an interim order on 19/10/2023 and directed two posts of Live Stock Development Officer-Grade A to be kept vacant. Referring to the judgment of the Supreme Court in case of *Jacob Puliyel vs Union of India and Others* 2022 INSC 503 it was submitted that there was no case made out either by the State Government or by the MPSC to interfere with the impugned judgment of the Tribunal. The writ

petitions as filed therefore were liable to be dismissed.

9. Mr. Abhijeet Desai, learned counsel appearing for the applicant who had preferred Original Application No.1139 of 2023 opposed aforesaid submissions and supported the order passed by the Tribunal on 12/07/2024. According to him, the Tribunal rightly found that Clause 5 of the GR dated 04/05/2023 was unconstitutional as it created sub-classes amongst one common class. According to him, the MPSC itself was not justified in raising a challenge to the adjudication of the Tribunal as it was merely the recruiting agency. Referring to the decision in *Sub-Inspector Rooplal & Anr. Vs. Lt. Governor Through Chief Secretary, Delhi & Others* (2000) 1 SCC 644 it was submitted that it was expected that the MPSC would play an impartial role without taking any sides whatsoever. The Appointing Authority was the State Government which had issued GR dated 04/05/2023 and hence there was no cause for MPSC to challenge the order passed by the Tribunal. It was then submitted that the Tribunal did not interfere with any policy decision of the State Government. It only considered the challenge to the GR dated 04/05/2023. As Clause 5 was found to be unconstitutional it was set aside. Reference was made to the decisions of the Constitution Bench in *State of Punjab*

& Others Vs. Davinder Singh & others 2024 INSC 562 and *All Manipur Pensioners Association by its Secretary Vs. State of Manipur & others* 2019 INSC 748. It was thus submitted that the Tribunal rightly granted benefit of its interpretation to the Applicant and there was no case for interfering in exercise of writ jurisdiction. The impugned order passed by the Tribunal was liable to be confirmed.

10. Interim Application No.15083 of 2024 has been preferred by three applicants seeking permission to intervene in Writ Petition No.15515 of 2024 on the premise that the adjudication of the said writ petition would affect their prospects. Mr. Sanjay Kshirsagar, learned Counsel for the intervenors supported the impugned judgment of the Tribunal and submitted that after considering all relevant aspects, it was held that Clause 5 of the GR dated 04/05/2023 was arbitrary in nature. He referred to the affidavit-in-reply filed by the Divisional Deputy Commissioner for Women and Child Development, Aurangabad Division, Aurangabad in Original Application No. 932 of 2023 to submit that as per the policy decision taken by the State Cabinet, the requirement of submission Non-Creamy Layer Certificate by candidates from the women category had been done away with.

The intervenors were therefore also entitled to the benefit of the adjudication by the Tribunal and no interference with the same was called for.

11. Considering the fact that the above applicants had filed Original Application Nos. 563 of 2024, 564 of 2024 and 937 of 2024 before the Tribunal and by the order dated 13/08/2024 relief was granted to the said applicants in view of the impugned judgment of the Tribunal dated 10/05/2024 passed in Original Application No. 932 of 2023, the Intervention Application is allowed and the said applicants are also heard on merits.

12. Interim Application No.15085 of 2024 has been preferred by three applicants who contend that they had responded to Advertisement No.12 of 2022 dated 14/02/2022 and had applied for the post of Live Stock Development Officer. According to them, after the select list was published the candidates were called for document verification. The first three candidates were absent for document verification and therefore by communication dated 15/04/2024 the candidature of said candidates was cancelled. As the applicants were on waiting list, their names were recommended for document verification. The applicants thereafter

submitted all the necessary documents. However, in view of the interim order dated 19/08/2024 passed by the Aurangabad Bench in Writ Petition No.8735 of 2024 preferred by the State of Maharashtra and others challenging the judgment of the Tribunal in Original Application No.932 of 2023, the applicants have not been issued appointment orders. The applicants therefore seek clarification that the interim order dated 19/08/2024 would not affect their appointment. Mr. Laxman S. Deshmukh learned counsel appeared for the applicants.

13. With the assistance of learned Counsel for the parties, we have perused the documentary material on record. We have thereafter given due consideration to the rival submissions. As regards the factual aspects, it is not in dispute that Advertisement No. 83 of 2021 had been published on 17/09/2021. Before the said recruitment process could be completed, Advertisement No. 12 of 2022 was issued on 14/02/2022 in which the Applicants participated. The recruitment process pursuant to Advertisement No. 83 of 2021 was completed on 29/09/2022 but prior thereto, the recruitment pursuant to Advertisement No. 12 of 2022 was already completed. It is thus clear that though the process of recruitment pursuant to Advertisement No. 12 of 2022

commenced after Advertisement No. 83 of 2021 was issued, it was completed prior to the merit list of recruitment process of Advertisement No.83 of 2021 could be published. In the meeting of the State Cabinet held on 19/04/2023, a policy decision was taken that on posts that were reserved for women from the open category as well as women from the reserved category, the requirement of submitting a Non-Creamy Layer Certificate would be dispensed with. The said decision was taken with regard under the Department of Women and Child Welfare. Pursuant to that decision of the State Cabinet, the GR dated 04/05/2023 came to be issued. While dispensing with the requirement of furnishing a Non-Creamy Layer Certificate by candidates seeking appointment on the post reserved for women from the open category as well as of backward class category, the manner in which the said decision was to be applied was indicated. As per Clause 5 of the said GR it was stated that the provisions of the GR dated 04/05/2023 would be applicable to Advertisement No. 83 of 2021 published by MPSC as well as for the advertisements that were published after completion of the recruitment process pursuant to Advertisement No. 83 of 2021. In other words, the GR dated 04/05/2023 was to apply only to the recruitment that was undertaken vide Advertisement No. 83 of 2021 and advertisements published after

29/09/2022 on which date the recruitment vide Advertisement No. 83 of 2021 was completed. The benefit of the said GR was not made applicable to any advertisements published after Advertisement No. 83 of 2021 till 29/09/2022.

14. The Tribunal while considering the challenge to Clause 5 of the GR dated 04/05/2023 found that the said Clause created three sub-classes from the broader class of females. The first sub-class was female candidates who had participated in the recruitment process pursuant to Advertisement No. 83 of 2021. The second sub-class was of female candidates, who had participated in the recruitment process that commenced after publication of Advertisement No. 83 of 2021 but the results of such recruitment were declared prior to 29/09/2022. The third sub-class created was of female candidates who had participated in the recruitment process which commenced after 29/09/2022. The benefit of Clause 5 was extended to the first and third sub-classes while such benefit was not granted to candidates in sub-class two. The Applicants fall in sub-class two. The Tribunal found that there was no rationale in creating such sub-classes within a common class and that Clause 5 of the GR dated 04/05/2023 was discriminatory in nature. On that basis, the Tribunal proceeded to

hold that Clause 5 of the said GR to the extent its restricted its applicability limited to Advertisement No. 83 of 2021 and the recruitment process that commenced after 29/09/2022 was unconstitutional. Benefit of Clause 5 was made applicable to all recruitments that commenced from 17/09/2021 when Advertisement No. 83 of 2021 was issued.

15. Perusal of the GR dated 04/05/2023 indicates that the decision to do away with the submission of Non-Creamy Layer Certificate by women candidates seeking appointment from the open category as well as from the reserved category has been done away with. This decision though taken on 04/05/2023, has been made specifically applicable only to Advertisement No. 83 of 2021 and to advertisements published after completion of the recruitment process under Advertisement No. 83 of 2021. This process was completed on 29/09/2022. In effect therefore, the GR has a retrospective operation from the publication of Advertisement No. 83 of 2021 on 17/09/2021 and thereafter from 29/09/2022 onwards. There does not appear any justification whatsoever for excluding the application of this GR to advertisements issued alongwith or shortly after the Advertisement No. 83 of 2021 was published.

While there is no challenge to the retrospective applicability of this GR, the issue pertains to excluding advertisements issued after 17/09/2021 and where the recruitment process was completed prior to 29/09/2022. It was incumbent upon the Department of Women and Child Welfare to have placed on record some material to indicate as to why such distinction in the applicability of the said GR was made. In the matter of choice of a cut-off date, it is well settled that such choice is within the domain of the executive authority and that the choice of a cut-off date should not be interfered with unless the decision appears to be blatantly discriminatory or arbitrary. It is only if a violation of Article 14 of the Constitution of India is found that there would be a scope for interference. If it is found that a cut-off date has been arbitrarily fixed or that it has been fixed without any rational basis whatsoever, the same could be a reason for interference. At the same time, merely on the ground that certain degree of arbitrariness may appear to have resulted, the same by itself cannot be the basis for the Court to interfere. Even if no particular reason is given for the choice of a cut-off date, such choice cannot be held to be arbitrary unless it is shown to be totally capricious or whimsical.

16. In the present case, however, the issue is not so much about the choice of a cut-off date but it is with regard to creating various sub-classes within a specified class so as to exclude one sub-class fully from the benefit of the said GR. The applicability of the GR dated 04/05/2023 from 17/09/2021 on which date Advertisement No. 83 of 2021 was issued is not seriously challenged. On the contrary, the Applicants before the Tribunal were more aggrieved by the exclusion of benefit of the said GR despite the fact that Advertisement No. 12 of 2022 was issued after Advertisement No. 83 of 2021. It is therefore not necessary for this Court to dwell further on the aspect of choice of a cut-off date since the same has not been the subject matter of contest.

17. Another aspect on which there was considerable debate was the aspect of changing “the rules of the game” after it had commenced. It was urged that the Applicants were bound by the terms and conditions stipulated in Advertisement No. 12 of 2022 and therefore on the commencement of said recruitment process on 14/02/2022, the requirement of submitting a Non-Creamy Layer Certificate could not have been dispensed with. It is well settled that the selection process has to be conducted strictly in accordance with the terms and conditions stated in the

advertisement unless the power of relaxation of any terms and conditions is specifically reserved. The Constitution Bench in case of *Tej Prakash Pathak and others (supra)* has held that the eligibility criteria that has been notified at the commencement of the recruitment process cannot be changed midway through the recruitment process unless the concerned rules so permit or if permissible under the advertisement. Even if the change is permissible, such change would have to meet the requirement of Article 14 of the Constitution of India and satisfy the test of non-arbitrariness.

18. In the present case however, this aspect need not detain us for the reason that the State itself by issuing the GR dated 04/05/2023 has dispensed with the requirement of a Non-Creamy Layer Certificate in respect of recruitment that had commenced much earlier on 17/09/2021 vide Advertisement No.83 of 2021. In fact, the said recruitment process concluded on 22/09/2022 after which the said GR was issued. As a result of this GR, the Applicants sought parity and claimed benefit of the same which had been denied as their recruitment process had concluded prior to 22/09/2022. Before the Tribunal, there was no challenge to the GR dated 04/05/2023. Even before this Court, the GR dated

04/05/2023 is not under challenge and it is only the judgment of the Tribunal holding Clause 5 thereof to be arbitrary that is under challenge. For these reasons therefore the Applicants cannot be denied the relief which has been granted by the Tribunal.

19. Coming to the finding recorded by the Tribunal that Clause 5 of the GR dated 04/05/2023 was unconstitutional being violative of Article 16 of the Constitution of India, it can be seen that the GR does create sub-classes in one class without any rationale behind it. There is also no nexus of dispensing with furnishing of a Non-Creamy Layer Certificate by candidates who had responded to Advertisement No.83 of 2021 while not granting similar latitude to candidates under subsequent advertisements issued up to 22/09/2022. In this regard, useful reference can be made to the decision of the Constitution Bench in *Davinder Singh and others (supra)*. It has been observed as under:-

“85. The Constitution permits valid classification if two conditions are fulfilled. First, there must be an intelligible differentia which distinguishes persons grouped together from others left out of the group. The phrase "intelligible differentia" means difference capable of being understood. The difference is capable of being understood when there is a yardstick to differentiate the class included and others excluded from the group. In the absence of the yardstick, the differentiation would be without a basis and hence, unreasonable. The basis of

classification must be deducible from the provisions of the statute; surrounding circumstances or matters of common knowledge. In making the classification, the State is free to recognise degrees of harm. Though the classification need not be mathematical in precision, there must be some difference between the persons grouped and the persons left out, and the difference must be real and pertinent. The classification is unreasonable if there is "little or no difference". Second, the differentia must have a rational relation to the object sought to be achieved by the law, that is, the basis of classification must have a nexus with the object of the classification.

93. The test that the Court must follow to determine the validity of the sub-classification of a class is as follows:

(a) Whether the class is "homogeneous" or "similarly situated" for the purpose of the specific law;

(b) If the answer to (a) above is in the affirmative, the class cannot be sub-classified;

(c) If the answer to (a) above is in the negative, the class can be sub-classified upon the fulfilment of the following standard:

(i) There must be a yardstick (or intelligible differentia) further classifying the class; and

(ii) The yardstick must have a rational nexus with the object of the statute."

20. Examined in the aforesaid context, we do not find that the Tribunal committed any error in finding that there was no basis whatsoever for excluding the recruitments that commenced after 17/09/2021 and were completed before 22/09/2022 from the purview of Clause 5 of the GR dated 04/05/2023. No justifiable reason has been put forth by the State to deny benefit

of the said GR to the recruitments which it sought to exclude from its purview. The recruitment pursuant to Advertisement No.83 of 2021 is also not shown to be of such nature for it alone to be granted the benefit of the GR dated 04/05/2023 to the exclusion of other recruitments. Thus, seen from any angle, Clause 5 of the GR dated 04/05/2023 has been rightly found to result in discriminatory sub- classification within one homogeneous class of women candidates and hence unconstitutional. The said finding therefore does not deserve to be interfered with.

21. According to the State of Maharashtra and the MPSC, the effect of declaring Clause 5 of the GR dated 04/05/2023 unconstitutional would affect all recruitments that commenced from 17/09/2021. In other words, the recruitments that had taken place from 17/09/2021 other than Advertisement No.83 of 2021 would have to be re-worked thus causing administrative difficulties and inconvenience to the appointees.

In our view, this submission warrants consideration. It is seen that before the Tribunal, it was only the present applicants who participated in the recruitment process vide Advertisement Nos.83 of 2021, 107 of 2021 and 12 of 2022 had raised a grievance regarding the applicability of Clause 5 of the GR dated

04/05/2023. No other candidates who had participated in various recruitments that commenced from 17/09/2021 and thereafter raised any grievance in this regard. According to the MPSC, about 285 to 300 advertisements had been issued from 17/09/2021 till 29/09/2022. We are therefore of the considered opinion that the effect of the interpretation of Clause 5 of the GR dated 04/05/2023 ought to be restricted only to the cases of the applicants who had raised a grievance in that regard and had approached the Tribunal by filing Original Application Nos.932 of 2023, 1139 of 2023, 563 of 2024, 564 of 2024 and 937 of 2024. This is for the reason that declaring Clause 5 of the GR dated 04/05/2023 to be unconstitutional would definitely affect recruitments that were undertaken after 17/09/2021. Since it is only the Applicants who had approached the Tribunal by filing their respective proceedings, it is clear that they alone were aggrieved by the manner in which Clause 5 was being implemented. It can thus be assumed that candidates who had participated in the other recruitments from 17/09/2021 were not so aggrieved by the operation of that Clause as they did not seek any legal redress in that regard.

Thus, while upholding the finding recorded by the Tribunal that Clause 5 of the GR dated 04/05/2023 was unconstitutional,

the recruitments other than those that were the subject matter of dispute before the Tribunal need not be disturbed or re-opened. The consequential effect of such declaration therefore would operate only qua Advertisement Nos.83 of 2021, 107 of 2021 and 12 of 2022 and limited to parties to the proceedings before the Tribunal.

22. For aforesaid reasons, the following order is passed:-

- i) The impugned judgments of the Tribunal in Original Application No.932 of 2023 dated 10/05/2024, Original Application No.1139 of 2023 dated 12/07/2024 and Original Application Nos.563 of 2024, 564 of 2024 and 937 of 2024 dated 13/08/2024 holding Clause 5 of the GR dated 04/05/2023 to be unconstitutional is upheld.
- ii) In the facts of the case, the declaration as granted by the Tribunal shall operate only qua the parties to the present proceedings with regard to Advertisement Nos.83 of 2021, 107 of 2021 and 12 of 2022. The other recruitments that commenced from 17/09/2021 and thereafter which were not the subject matter of proceedings before the Tribunal shall not be re-opened by virtue of the judgments of the Tribunal.

iii) As the judgment of the Tribunal in Original Application No.932 of 2023 dated 10/05/2024 has been upheld, the order of status quo passed in Writ Petition No.8735 of 2024 by the Aurangabad Bench on 19/08/2024 stands vacated. The consequences of the same would follow as regards the applicants in Interim Application No.15085 of 2024 are concerned.

iv) This judgment shall operate on the expiry of a period of four weeks from today.

v) Rule in all the writ petitions is disposed of in aforesaid terms with no order as to costs.

[M.M. SATHAYE, J.]

[A.S. CHANDURKAR, J.]