



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 15028 OF 2023

Shilpa Maruti Sonawane,	]
Aged – 36 years, Occ. Nil,	]
Hindu, Indian Inhabitant,	]
Residing at – Flat No.002, “A” Wing,	]
Shree Anand Park, Opposite	]
Jai Malhar Hotel, Malang Gad	]Petitioner/Orig.
Road, Pisavali, Kalyan (East),	]Applicant No.37 in
Dist. Thane – 421 306.	]O.A. No.1180 of 2016

Versus

1. The State of Maharashtra	]
Through its Principal Secretary,	]
Higher and Technical Education,	]
Mantralaya, Mumbai-400 032.	]
2. The Director of Technical Education,	]
State of Maharashtra, 3 M.C. Road,	]
P.B. No. 1967, Near Cama Hospital,	]
Mumbai 400 001.	]
3. The Maharashtra Public Service	]
Commissioner, through its Secretary,	]Respondents/Orig.
Bank of India Building, 3rd Floor,	]Respondent Nos. 1 to
Mahatma Gandhi Marg, Hutatma	]3 in OA.No.1180 of 2016
Chowk, Mumbai - 400 001.	]
4. Roman Motiram Janbandhu,	]
Aged about 35 years, Occu. Private	]
Service, R/o. Arher Nawargaon,	]
Tehsil- Brahmapuri, Dist.-Chandrapur,	]

Pin Code-441 206 presently at C.S.]
Nandodaya, Plot No. 49, Gokulpeth,]
Nagpur.]
5. Vishal Prakash Khalane,]
Aged about 38 Years, Occ. Unemployed,]
R/o. Plot No.9 Durwankur Bangala,]
Goraksha Nagar, Near MERI, Dindori]
Road, Nashik, Pin Code-422004.]
6. Javedkhan Hafijkhan Pathan,]
Aged about 31 Years, Occ. Service,]
R/o. Macchi Lay Out W.N., 20, 1001]
Buldhana, Pin Code 443001.]
7. Kiran Ramanlal Totala,]
Aged about 34 years, Occ. Unemployed,]
R/o. C/o. S.R. Mungad, Flat No. 4,]
Kirshna Baug Apartment, Artilary]
Centre Road, Nashik Road, Nashik,]
Pin Code-422 101.]
8. Vishwas Kundalik Dhas,]
Aged about 35 years, Occu. Private]
Service, R/o. 201/B, Revati Apartment,]
Sanyukta Nagar, Achole Cross Road,]
Nalasopara, Pin code - 401 209.]
9. Sachin Shrikant Memane,]
Aged about 28 years, Occ. Unemployed,]
R/o. Shivtaradatta Society, Taradatta]
Park, Saswad, Tal. Purandar, Dist. Pune.]
10. Sachin Shankar Gadekar,]
Aged about 31 years, Occ. Unemployed,]
R/o. Rahata, A/p. Rahata, Tal. Rahata,]
District - Ahemadnagar.]
11. Ashok Kisan Amode,]
Aged about 33 years, Occ. Private Service,]
R/o. Bhota, At Post - Bhota, Kurha]
Tq. Muktainagar, District - Jalgaon.]
12. Govind Bhagwanrao Waghmare,]

Aged about 33 years, Occ. Private Service]
R/o. 101, Siddhivinayak Krupa,]
Near Ravi Patil Gym, Behind Vaishali]
Talkies, Badlapur, Dist. Thane,]
Pin Code-421 503.]
13. Santosh Ashok Relekar,]
Aged about 38 years, Occ. Private]
Service, R/o. A/356, Karnik Nagar,]
Solapur, Pin Code - 413 006.]
14. Jitendra Vasudeo Amritkar,]
Aged about 38 years, Occ. Private]
Service, R/o. 47 Professor Colony,]
Deopur, Dhule, Pin Code-424 002.]
15. Shriram Gangadhar Kavitate,]
Aged about 28 years, Occ. Unemployed,]
R/o. 160, Harsh Niwas, Shastri Chowk,]
At/Post/Taluka Indapur, Dist. Pune,]
Pin Code-413 106.]
16. Deshmukh Deepakkumar Panditrao,]
Aged about 36 years, Occ. Private]
Service, R/o. Patil Nagar, Basmat,]
Dist. Hingoli, Pin No. 431512.]
17. Nitin Sudam Kapadis,]
Aged about 38 years, Occ. Private Service,]
R/o. 46, Netradeep, Mahavir Housing]
Society, Malegaon Road, Dhule.]
18. Amolkumar Vasantrao Linghate,]
Aged about 31 years, Occ. Unemployed,]
R/o. Bhadshivani Post. Shaha Pahi,]
Tal. Karanja Lad, Dist. Washim,]
Pin Code-444105.]
19. Attadeep Dasharath Moksare,]
Aged about 27 years, Occ. Unemployed,]
R/o. Prabuddha, Vivekananda's Nagar,]
Majalgaon, Dist. - Beed,]
Pin Code-431 131.]

- 20.** Sandeep Samadhan Dutte,]
 Aged about 35 years, Occ. Private]
 Service, R/o. A/P - Ghodasgaon,]
 Tal. Muktainagar, Dist. Jalgaon.]
- 21.** Pramod Nimba Patil,]
 Aged about 34 years, Occ. Private]
 Service, R/o. A/P. Borkheda,]
 Tal. Dharangaon, Dist. Jalgaon,]
 Pin Code-425 104.]
- 22.** Soham Arunrao Gaikwad,]
 Aged about 27 years, Occ. Unemployed,]
 R/o. Kusum Nagar, Bhoom,]
 District - Osmanabad, Pin Code-413504.]
- 23.** Nilesh Somnath Metkar,]
 Aged about 29 years, Occ. Private]
 Service, R/o. Ujjwal Terrace, E Wing,]
 Flat No. 14, Raikar Nagar, Dhayari, Pune.]
- 24.** Viren Vijay Dixit,]
 Aged about 27 years, Occ. Unemployed,]
 R/o. Ganeshnagar, At/Post Akluj,]
 Tal. Malshiras, Dist. Solapur.]
- 25.** Amitkumar Pundlik Devhare,]
 Aged about 31 years, Occu. Private]
 Service, R/o. Shakti Mata Nagar, Nagpur.]
- 26.** Somnath Awadaji Pagar,]
 Aged about 38 years, Occ. Private Service,]
 R/o. Flat No. 1, Vaishnavi Vihar, Behind]
 Reshim Bandha Lawns, Near Thakkar]
 Row Houses, Kamal Nagar, Hirawadi,]
 Panchvati, Nashik, Pin Code - 422003.]
- 27.** Amit Namdevrao Bansode,]
 Aged about 32 years, Occu. Unemployed,]
 R/o. Yashwant Niwas, Bodhe Nagar,]
 Latur, Pin Code - 413 512.]
- 28.** Vidya Arjunrao Nagre,]
 Aged about 28 years, Occu. Unemployed,]

R/o. 602, D Wing, Mangeshi City]
 Ph. 1 Near Shree Complex, Adharwadi,]
 Kalyan West.]
29. Varsharani Shamrao Mane,]
 Aged about 30 years, Occ. Private Service,]
 R/o. a/P. Ashta (Near Madarasa),]
 Tal. Walva, Dist. Sangali.]
30. Rahul Ramesh Kale,]
 Aged about 28 years, Occ. Private]
 Service, R/o. 16/17, Shraddha Pride]
 Estate, Brij Nagar, Pawar Wadi,]
 Jail Road, Nashik Road, Nashik,]
 Pin No.422101.]
31. Kamalakar Madhukar Tidke,]
 Aged about 28 years, Occ. Private Service,]
 R/o. Mandwa, A/P. Mandwa (Parali),]
 Tal. Parali, District Beed.]
32. Siddharth Panduragrao Landge,]
 Aged about 32 years, Occ. Unemployed,]
 R/o. H/N 1-5-26, Near Panchasheel]
 High School, Labour Colony, Nanded,]
 Pin Code-431 602.]
33. Bhim Premdas Kunte,]
 Aged about 34 years, Private Service,]
 R/o. B-502, Vedangee Grand, Katrap,]
 Badlapur (E), Dist. Thane,]
 Pin Code 421 503.]
34. Yogeshwari Subhash Patil,]
 Aged about 29 years, Occu. Private]
 Service, R/o. 83, Ram Nagar,]
 Wadibhokar Road, Deopur, Dist.- Dhule,]
 Pin Code-424 002.]
35. Sharayu Omprakash Sonawane,]
 Aged about 33 years, Occ. Private]
 Service, R/o. B/5, Amrut Nagar,]
 Lasalgaon, Tal- Niphad, District-Nashik,]

Pin Code-422 306.]

36. Chandraprabha Prabhakar Pethkar,]
Aged about 30 years, Occu. Unemployed,]
R/o. C/o- Pukale, Sadguru Nagar,]
Behind Kalika Devi Temple, Old Ausa]
Road, Latur, Pin-413512.]

37. Nikita Prakash Kumble,]
Aged about 31 years, Occu. Private]
Service, R/o. Flat No. 105,]
Om Apartment, New Colony,]
Dastur Nagar, Amravati,]
Pin Code-444 606.]

38. Vikas Gangaram Chavan,]
Aged about 26 years, Occu. Unemployed,]
R/o. Shashikala Sadan, Naik Nagar,]
Degloor Road, Tal. Udgir,]
District - Latur, Pin Code-413 517.]

39. Pratibha Kashinath Patil,]
Aged about 31 years, Occu. Unemployed,]
R/o. Plot No 9, Janata Society,]
Bhadgaon Road, Shastri Nagar,]
Tal- Chalisgaon, District - Jalgaon.]

40. Amrita Siddharth Netkar,]
Aged about 25 years, Occu. Unemployed,]
R/o. Flat No. 8, Parijat Sankul,]
Opp. To Church, Ramanand Nagar Road,]
Suyog Colony, Jalgaon,]
Pin Code-425 001.]

41. Ashwini Madhukar Chaugule,]
Aged about 32 years, Occu. Private]
Service, R/o. 1/25, Ashirwad]
Niwas, Neharu Nagar, Kanjurmarg,]
Mumbai, Pin Code-400 042.]

42. Rupali Dhanraj Patil,]
Aged about 26 years, Occu. Unemployed,]
R/o. A/P Walki, Tal. Chopada,]

Dist. Jalgaon.	]	
43. Sangeeta Namdeorao Bhoyar,	]	
Aged about 40 years, Occu. Private	]	
Service, R/o. C/o. Rajendra B. Kurhadkar,	]	
Plot 21, Patel Nagar, Near Kamgar	]	
Colony, Subhash Nagar, Nagpur-	]	
Hingana Road, Pin Code-440022.	]	
44. Bhagwat Kushwarta Shivnath,	]	
Aged about 30 years, Occu. Unemployed,	]	
R/o. Bhagwat Niwas, H. No. 4-1-72,	]	
Supari, Hanuman Road, Kharakuwa	]	
Corner, Aurangabad.	]	
45. Rohini Panditrao Jadhav,	]	
Aged about 27 years, Occu. Unemployed,	]	
R/o. 25, A, Hasuai, Sector No. 02,	]	
Pramod Nagar, Nakane Road, Deopur,	]	
Dhule, Pin Code - 424 002.	]	Respondent Nos. 4
46. Ramkrishna Baburao Kolhe,	]	to 46 are the
Aged about 31 years, Occu. Unemployed,	]	Original Applicant
R/o. A/P - Vitave, Tal. - Chandwad,	]	Nos. 1 to 36 and 38 to
District - Nashik, Pin Code - 423 101.	]	44 in O.A.No.1180 of 2016

APPEARANCES

For the Petitioner	Ms. Siddh Vidya a/w Ms. Mansi Sahani, Ms. Akshata Morye, Ms. Rohini Kaushal, Ms. Shivani Gosavi, Ms. Shweta Kate and Mr. Bhuvan Vikram i/b Siddh Vidya and Associates, for the Petitioner.
For the Respondents-State	Mr N.C. Walimbe, Addl G.P. a/w Mr. S.P. Kamble, AGP for the Respondents-State.

CORAM : SUMAN SHYAM &
GAUTAM A. ANKHAD, JJ.

RESERVED ON : 1st OCTOBER 2026.
PRONOUNCED ON : 30th OCTOBER 2026.

JUDGMENT: (Per Gautam A. Ankhad, J.)

1. Rule. Rule is made returnable forthwith, with the consent of the parties.

2. Heard Ms. Siddh Vidya, learned counsel for the Petitioner, and Mr. N. C. Walimbe, learned Additional Government Pleader for the Respondent-State.

3. The Petitioner challenges the judgment and order dated 21st September 2023 passed by the Maharashtra Administrative Tribunal (“**the Tribunal**”), rejecting her claim for appointment as a Lecturer in English. A total of 58 candidates had approached the Tribunal through a batch of Applications seeking directions upon the Respondent Nos.1 and 2 to issue orders of appointment and treat the Petitioners as employees of Respondent No.1 from the date of their selection. While Original Applications of several candidates were allowed by the Tribunal resulting in their appointment(s), the Writ Petitioner was denied relief by the Tribunal. Hence this Petition. Although the

pleadings in this Writ Petition refer to various rounds of litigation and collateral proceedings, the controversy in this Petition actually lies in a narrow compass and for brevity, we are referring to only the relevant facts necessary for adjudicating this Writ Petition.

4. On 6th July 2013, Respondent No. 3 - Maharashtra Public Service Commission (“MPSC”), issued an advertisement inviting applications for 92 posts of Lecturer, Group A, in English, Chemistry, Physics and Mathematics. The Petitioner, who belongs to the Scheduled Caste (Female) category, applied for the post of Lecturer in English. After she cleared the written examination and the interview, Respondent No. 3 published its recommendation list on 8th July 2014. Out of the 92 posts, 87 candidates were recommended for the posts in question, as five posts earmarked for the Scheduled Tribe (ST) category could not be filled up for want of eligible candidates. Out of the 11 posts reserved for Scheduled Caste (SC) candidates,

- (i) three were earmarked for female candidates;
- (ii) seven for male candidates; and

(iii) one for the sports quota.

5. The Petitioner's name appeared at sr. no. 74 in the overall list, with the category-wise recommendation recorded as "SC-Female-2". The relevant portion of the MPSC list is extracted as under:-

<i>Sr. No.</i>	<i>Roll No.</i>	<i>Name</i>	<i>Sex</i>	<i>Applied Category</i>	<i>Valid Category</i>	<i>NC L</i>	<i>Other Res.</i>
46	MB00529	Smruti Suresh More	F	SC Reco: OPEN-Female-4	SC	N	Female
47						...	
to			...			...	
58							
59	MB00538	Chandrashekhar Varsha Prabhakar	F	SC Reco: OPEN-Female-8	SC	N	Female

64			...			...	
to			...			...	
70							
71	MB00313	Kamble Nikita Prakash	F	SC Reco: SC-Female-1	SC	N	Female
72	MB00542	Chavan Gangaram	Vikas M	DT(A) Reco: DT(A)-2	DT(A)	Y	

73	MB00327	Patil Pratibha Kashinath	F	OBC Reco: OPEN-Female-1	Y	Female
74	Mb00513	Sonawane Shilpa Maruti	F	SC Reco: SC-Female-2	N	Female
75	MB00520	Amrita Siddharth Netkar	F	SC Reco: SC-Female-3	N	Female

6. In August 2014, the Petitioner's documents were verified by the Higher and Technical Education Department. Thereafter, the State issued Government Resolutions on 16th July, 2015, 31st March, 2016 and 7th September, 2017, appointing 20, 2 and 1 candidate(s) respectively thus appointing 23 candidates. The Petitioner was, however, not appointed. Hence, the Petitioner approached the Tribunal by filing an Original Application, which was subsequently transferred from the Nagpur Bench to the Mumbai Bench. By the impugned judgment, the Tribunal, while expressing sympathy towards the plight of the Applicants, including the present Petitioner, had refrained from passing any direction on the prayer made in the original Application by observing that the State would be expected to take an appropriate policy decision in the matter for creation of a

supernumerary post, so as to accommodate the Applicants. There were 39 original Applicants, who had approached the Tribunal, but the Petitioner is the one who has approached this Court by filing the present Petition assailing the decision of the Tribunal.

7. Ms. Vidya, the learned counsel for the Petitioner, submits that, although 23 candidates were appointed as Lecturers for English through the aforesaid Government Resolutions, the Petitioner was arbitrarily excluded. Her principal contention is that two candidates, whose MPSC recommendations were recorded under the Open category at sr. no. 46 and 59, were adjusted against vacancies reserved for Scheduled Caste female candidates. She relies on the corresponding entries at sr. nos. 13 and 17 of the Government Resolution dated 16th July 2015 and submits that the Open Category candidates were appointed against reserved vacancies despite having been recommended in the Open category. The Third post was filled by the candidate at sr. no.71 who was shown as 'SC-Female-1'. The learned counsel submits that such adjustment of Open Category candidates denied the Petitioner an appointment, who is ranked as 'SC-

Female-2'. The adjustment made by the State Government is illegal, without any justification and violates the Petitioner's rights under Articles 14, 16 and 19 of the Constitution of India. Reliance is placed on the judgment of the Hon'ble Supreme Court in *R.K. Sabharwal Vs. State of Punjab*¹ and *Ritesh Sah Vs. Dr. Y.L. Yamu*² in support of the submission that a reserved-category candidate selected on merit cannot be adjusted against the reserved quota merely because they had applied as reserve category candidates.

8. Ms. Vidya further contends that the error committed by Respondent no.1 ought to be rectified and the Petitioner ought to be appointed as Lecturer for English at any available location in Maharashtra and, if no vacancy exists, Respondent no.1 be directed to create a supernumerary post, together with consequential benefits including seniority and monetary benefit from the date of recommendation by Respondent No.3 i.e. from 8th July, 2014. It is prayed that the impugned order be set aside/modified accordingly.

1 (1995) 2 SCC 745

2 (1996) 3 SCC 253

9. On the other hand, Mr. Walimbe, learned AGP appearing for the Respondent Nos.1 and 2, relies on reply affidavits dated 6th May 2024 and 4th August 2026 to oppose the Petition. He submits that, pursuant to an order dated 19th October 2013 in Writ Petition No. 2046 of 2010, ***Sachin Ambadas Dawale v. State of Maharashtra***, services of contractual lecturers in Government Polytechnic Colleges were regularised under Government Resolutions dated 23rd January 2015, 13th March 2015 and 21st March 2016. Consequently, out of the 87 recommended candidates, 22 candidates were appointed against the available vacant posts. As regards the specific issue as to why the Petitioner was denied appointment, the learned AGP has relied upon paragraph no.5 of the affidavit dated 4th August 2026, which reads as under:-

“5. I say and submit that, in response to issue as to whether there was any cogent reason for denying appointment to the petitioner, who belongs to SC category, on ground that certain candidates who had applied under SC category were accommodated against open category vacancies, it is stated that following the regularization of 66 contractual lecturers in the subject of English across various Government Polytechnic Colleges, only 26 posts remained vacant at the material time. The category-wise distribution of these 26 vacant posts was as follows: Open-6; SC-5; ST-6; VJ A-2; NT B-1;

SBC-1; OBC-5.

I further say and submit that the recruitment and appointment process against these vacant seats was conducted strictly in accordance with the merit-based recommendation list provided by the Maharashtra Public Service Commission (MPSC), as detailed below:

- I. Open Category (6 Posts): All 6 vacant Open category posts were filled strictly on the basis of merit from the MPSC recommendation list. No. candidate belonging to the SC category secured a high enough rank on merit to qualify for appointment against these Open category seats.
- II. Scheduled Caste (SC) Category (5 posts): All 5 vacant SC posts were fully filled strictly on merit as per the MPSC recommendation list, resulting in the appointment of three (3) SC male candidates and two (2) SC female candidates.”

10. Mr. Walimbe further submits that no vacancy presently exists for a Lecturer in English. According to the affidavit, under the revised staffing pattern approved by Government Resolution dated 11th February 2025, based on an AICTE student-faculty ratio of 1:25, the sanctioned strength of English Lecturers has been reduced to 51 posts, leaving 37 posts in excess. Finally, the learned AGP relies on the advertisement’s stipulation that the number of posts and the reservation particulars were subject to change in accordance with Government directions. It is also

contended that a recommendation by MPSC does not, by itself, confer an indefeasible right to appointment. Hence, the Petition deserves to be dismissed with costs.

Reasons and conclusion

11. We have heard the learned counsel for the parties and have perused the record. While it is correct that mere inclusion in a select or recommendation list does not confer an absolute right to appointment, the issue in this case is whether the State could exclude the Petitioner, while adjusting candidates recommended in the Open category against vacancies in the reserved category, thus meting out an unfair and discriminatory treatment to her.

12. It is not in dispute that the Petitioner secured rank no. 74 in the over all list and secured second rank in the Scheduled Caste Female Category. The MPSC list records the three Scheduled Caste female candidates, i.e, Kamble Nikita Prakash at sr. no. 71, the Petitioner at sr. no.74, and Amrita Siddharth Netkar at sr. no. 75. In normal course, all three aforementioned candidates ought to have been appointed in the three reserved posts. Instead, under the Government Resolution dated 16th

July, 2015 (which appointed 20 candidates), Respondent no.1 had appointed Smruti Suresh More and Chandrashekhar Varsha Prabhakar appearing at sr. nos.46 and 59 of the MPSC recommendation list with the recommendation “OPEN-Female”. The affidavits filed by the Respondents do not explain as to why the Petitioner was excluded, nor does it identify any disqualification or deficiency in her eligibility or suitability. Despite the opportunity, even the second affidavit dated 4th August 2026 only states that the five Scheduled Caste vacancies were filled on merit by three male and two female Scheduled Caste candidates. That response does not address the core issue raised by the Petitioner.

13. The law on the adjustment of candidates as per the mandate of Article 16(4) of the Constitution of India is well settled. In *R.K. Sabharwal* (supra), a Constitution Bench of the Hon’ble Supreme Court has held that reserve posts are to be filled amongst members of the reserve categories and the candidates belonging to open categories, who are selected on their own merit, cannot be considered for the posts of the reserved category. A vacancy earmarked for a reserved category

cannot be interchanged and/or set-off with a candidate from open category merely because a reserved-category candidate is appointed in that vacancy. The same principle was reiterated and followed by the Hon'ble Supreme Court in *Ritesh R. Sah* (supra), the relevant portion of which reads as under:

“13. There cannot be any dispute with the proposition that if a candidate is entitled to be admitted on the basis of his own merit then such admission should not be counted against the quota reserved for Scheduled Caste or Scheduled Tribe or any other reserved category since that will be against the constitutional mandate enshrined in Article 16(4).”

“14. In a case *Indra Sawhney v. Union of India* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] commonly known as *Mandal case* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] , this Court held thus: (SCC p. 735, para 811)

“In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.”

“15. In *R.K. Sabharwal v. State of Punjab* [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] the Constitution Bench of this Court considered the question of appointment and promotion and roster points vis-à-vis

reservation and held thus: (SCC p. 750, para 4)

“When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State if not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of

appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition.”

“16. In *Union of India v. Virpal Singh Chauhan* [(1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] (SCC at p. 705) it has been held that while determining the number of posts reserved for Scheduled Castes and Scheduled Tribes, the candidates belonging to reserved category but selected/promoted on the rule of merit (and not by virtue of rule of reservation) shall not be counted as reserved category candidates.”

“17. In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The

aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.....”

14. Considering the well settled legal position, as noted above, in our view, the Respondent No.1 could not have appointed the open category candidates (Smruti Suresh More and Chandrashekhar Varsha Prabhakar) against the posts reserved for SC-Female. Merit-based selection in the open category does not reduce the number of opportunities available to candidates under the reserved category. In other words, if a reserved category candidate secures more marks on merit and is appointed against the vacancy meant for open category, then in that event the same would not diminish the quota of the reserve

category candidates. Therefore, the Respondents could not have excluded the Petitioner on such count.

15. A candidate may not have an indefeasible right to being appointed, but Article 14 certainly guarantees a fair and non-discriminatory treatment by State. The State has not been able to justify as to why, candidates recommended on merit in the open category were adjusted against Scheduled Caste female vacancies by acting in a manner which is contrary to the judgments of the Hon'ble Supreme Court. No explanation is also forthcoming as to why, the Respondent Nos. 1 and 2 deviated from the recommended list published by Respondent No.3. Thus, in our view, the Respondent no.1 had acted in a completely illegal and arbitrary manner by denying order of appointment to the Writ Petitioner.

16. We also cannot accept Mr. Walimbe's contention that the advertisement stipulated that the number of posts and reservation particulars were subject to change, as such a stipulation cannot override the settled law as pronounced by the Hon'ble Supreme Court. In our view, the advertisement only preserves the Government's ability to make lawful changes in

accordance with the governing rules and directions. It does not permit the State to arbitrarily disregard or depart from the order of merit within a reserved category or to count a candidate selected on merit against a reserved vacancy. While a recommendation does not, in every case, create a vested right to appointment, the State must act fairly, consistently in a non-discriminatory manner and in accordance with Articles 14 and 16 of the Constitution, when it proceeds to fill up the advertised vacancies. That has not been done in the present case.

17. On the material before us, we are satisfied that the Petitioner was wrongly excluded despite being second in the Scheduled Caste female category. The adjustment of open category Scheduled Caste candidate against the reserved Scheduled Caste Female candidate is *ex facie* illegal, arbitrary and cannot be sustained. The Petitioner has been denied appointment for more than 11 years. She cannot be penalized for the errors committed by the Respondent Nos. 1 and 2. Therefore, in exercise of our powers under Article 226 of the Constitution of India, we modify the impugned order dated 21st September, 2023 passed by the Tribunal and direct Respondent

Nos. 1 and 2 to issue an appointment order to the Petitioner appointing her to the post of English Lecturer anywhere in the State of Maharashtra, wherever vacancy is available. In the event no such vacancy is presently available, Respondent Nos. 1 and 2 are directed to create a supernumerary post to accommodate the Petitioner. We however, hasten to add herein that the effect of this judgment for all practical purposes, will be prospective in nature and the Petitioner cannot claim any benefit for the period prior to her appointment, provided the order of appointment is issued to her within the period prescribed by this order. This is because the Petitioner did not actually discharge the duties of Lecturer during the period in which she was denied appointment. The State's contention that no vacancy is presently available cannot be a legitimate ground to deny relief to the Petitioner. The non-availability of vacancies is said to result from the revised staffing pattern introduced in 2025, i.e. more than a decade after the selection process. The State cannot rely on a subsequent reduction in sanctioned posts to support a wrongful exclusion of a candidate from the earlier recruitment.

18. The appointment of the Petitioner to the vacancy or

alternately, to a supernumerary post shall be made within three months from the date on which this judgment is uploaded.

19. The Writ Petition is disposed of in the above terms. Rule is partly allowed. However, there shall be no order as to costs.

(GAUTAM A. ANKHAD, J.)

(SUMAN SHYAM, J.)

BHARAT
DASHARATH
PANDIT

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BHARAT
DASHARATH
PANDIT
Date: 2026.10.30
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