

Shakuntala

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 220 OF 2009**

SMT. BHARATI SADRE, working as  
LDC, Corporation of the  
City of Panaji, Panaji, Goa. ....PETITIONER

VERSUS

1. THE COMMISSIONER, Corporation  
of the City of Panaji, having office at  
Municipal Building, Panaji, Goa.

2. SHRI GIRAPPA TALWAR, presently  
working as Municipal Inspector,  
Corporation of the City of Panaji,  
Panaji, Goa.

3. SHRI DILIP DHARGALKAR,  
presently working as Municipal Inspector,  
Corporation of the City of Panaji,  
Panaji, Goa.

4. SMT. BLANCHE PEDNEKAR,  
presently working as Municipal Inspector,  
Corporation of the City of Panaji,  
Panaji, Goa.

5. SHRI NARAYAN KAVLEKAR,  
presently working as Municipal Inspector,  
Corporation of the City of Panaji,  
Panaji, Goa. ....RESPONDENTS

Mr. Parikshit Sawant, Advocate for the Petitioner.

Mr. Aamir Jamadar, Advocate for Respondent No. 1.

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**CORAM: PRAKASH D. NAIK &**

**BHARAT P. DESHPANDE, JJ.**

**RESERVED ON: 27<sup>th</sup> October, 2023**

**PRONOUNCED ON: 10<sup>th</sup> November, 2023**

**JUDGMENT: Per BHARAT P. DESHPANDE, J.**

1. The Petitioner being aggrieved by not considering her candidature for the promotional post of Upper Division Clerk (UDC) as well as the post of Municipal Inspector, preferred the present petition amongst other grounds as disclosed in prayers as under:-

*(a) Pass an appropriate writ, order or direction to quash and set aside the appointment of the Respondent No. 2 to the post of Municipal Inspector;*

*(b) Pass an appropriate writ, order or direction to quash and set aside the appointment of the Respondent Nos. 2 to 5 to the post of UDC;*

*(c) Pass a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, commanding the Respondent No. 1 to consider the case of the Petitioner to the post of Municipal Inspector in the Reserved Category;*

*(d) Pass a writ of mandamus or a writ in the nature of*

*mandamus or any other appropriate writ, order or direction commanding the Respondent No. 1 to fill up the vacancy, which has arisen upon the retirement of Smt. Sunita Maralkar in the Reserved Category for Scheduled caste to the post of UDC by considering the case of the Petitioner as a Scheduled Caste candidate;*

*(e) Stay the promotion of the Respondent No. 2 to the post of Municipal Inspector and the Respondent Nos. 3 to 5 to the post of UDC, pending the hearing and final disposal of the present petition;*

*(f) Grant ad-interim ex-parte relief in terms of prayer clause (e) herein above;*

*(g) Pass such other and further reliefs as this Honourable Court deems fit and proper;*

2. Rule was issued on 09.02.2010 and thereafter, Respondent No. 1 filed its reply/affidavit. Additional affidavit on behalf of Respondent No. 1 was also placed on record.

3. Heard Mr. Parikshit Sawant, learned Counsel for the Petitioner and Mr. Aamir Jamadar, learned Counsel appearing for Respondent No. 1. No one appeared for private Respondents though duly served.

4. The Petitioner being the member of Schedule Caste basically claimed that while calling for promotion to the post of UDC as well

the post of Municipal Inspector, the Departmental Promotion Committee, did not consider her as eligible, though the vacant post for which, Departmental Promotional Committee was constituted, was earlier held by a member of the schedule caste.

5. The Petitioner was initially appointed as a sweeper in the year 1991. She was then promoted to the post of Supervisor in the year 1997. Since Respondent No. 1 failed to consider her for the post of Lower Division Clerk (LDC), she filed a Writ Petition before this Court and consent terms were filed in the year 2003 wherein Respondent no. 1 agreed to appoint Petitioner to the post of LDC. Accordingly, the Petitioner was appointed as LDC in Schedule Caste category somewhere in the year 2004.

6. One Ms. Sunita Maralkar, UDC being member of Schedule Caste retired somewhere in April, 2004 on medical grounds and a clear vacancy arose in the cadre of UDC of reserved category. Similarly, the post of Municipal Inspector in reserved category also became vacant. The Departmental Promotional Committee constituted by Respondent No.1 in somewhere 2007 prepared common seniority list and failed to prepare the seniority list amongst the Schedule Caste candidates for both the posts. The

Departmental Promotional Committee filled the post of UDC as well as the Municipal Inspector's post without considering the Petitioner, which resulted in filing of the present petition.

7. Mr. Sawant appearing for the Petitioner would submit that it was the duty of Respondent No. 1 to prepare a separate list of the candidates amongst the Scheduled Caste community since the UDC working on the said post retired on medical grounds who was belonging to Scheduled Caste category. The Departmental Promotional Committee failed to consider the candidature of the Petitioner though she was coming within the zone of consideration being Scheduled Caste candidate amongst the LDCs that is the feeder post. He submits that by denying such opportunity to the Petitioner, the Departmental Promotional Committee committed illegality as well as discrimination amongst the Schedule Caste candidates. He submitted that the Recruitment Rules show that a candidate having three years service in the post of LDC is entitled to be considered for the post of UDC. Since the Departmental Promotional Committee was convened somewhere in the year 2007, the Petitioner was eligible and by not considering her, Respondent no. 1 committed illegality.

8. Mr. Sawant would submit that similar is the case with post of Municipal Inspector. One post out of three was reserved for the schedule caste candidate, however, no separate list of the scheduled case candidate eligible for promotions was prepared. The common seniority list was prepared thereby depriving the Petitioner from being considered for the post of Municipal Inspector. In this respect he placed reliance on the following decisions.

*(i) R.K. Sabharwal and Others V/s State of Punjab and Others* reported in *(1995) 2 Supreme Court Cases 745 ;*

*(ii)Mr. Ashok Redkar & 2 others V/s State of Goa & 37 others in Writ Petition no.272/1996* decided by this Court on *25<sup>th</sup> September, 1998;*

*(iii)Smt. Baby Anumanta Chandawa V/s The State of Goa & 2 others in Writ Petition No. 237/2006 and Writ Petition No. 238/2006* decided by this Court *on 12<sup>th</sup> June, 2013* and

*(iv)Union of India V/s N. R. Banerjee* reported in *(1997) 9 Supreme Court Cases 287.*

9. Per contra, Mr. Jamadar, learned Counsel for Respondent no.1 would submit that the Departmental Promotional Committee correctly applied procedure as well Recruitment Rules and carried

out the promotions. He submits that roster point program was observed as per the directions of Goa Government and according to the said roster, the post which was supposed to be filled in was not coming within the category of reserved category. He submitted that the roster point programme show that the vacancy which was scheduled for the post of UDC was to be filled from the common seniority list and not by separately preparing the list amongst the scheduled caste candidates.

10. He submits that no illegality or any discrimination, as alleged, is carried out by Respondent no. 1. He submits that subsequently the Petitioner was promoted to the post of Municipal Inspector and thus there is no question of granting reliefs as claimed in the petition.

11. Mr. Jamadar, further claimed that on the date of creation of vacancy for the post of UDC, the Petitioner was not entitled since she did not complete the period of three years.

12. Rival contentions fall for determination.

13. Respondent no. 1 contended that in order to maintain roster point programme the post of UDC was considered as post for open category and as per the roster point programme, the post for filling

up of SC candidate would be considered at a later stage. In this respect Mr. Jamadar has placed reliance on an office memorandum dated 02.07.1997 issued by Government of India, Ministry of Personnel, Public Grievances and Pensions, New Delhi. Annexure-III of this office memorandum deals with reservation on the basis of promotion and model roster and the reservation with reference to the post. It also refers to objective of roster point that representation of each of the reserved category should at no point of time exceed the reservation prescribed for it.

14. The office memorandum dated 02.07.1997 was issued by Government of India on the basis of the observations of the Constitutional Bench of the Supreme Court in the case of ***R. K. Sabharwal V/s State of Punjab*** and ***J.C. Mallick v/s Ministry of Railways*** wherein it was held that reservation of jobs for the backward classes, SC/ST/OBC should apply to posts and not to vacancies. It was further observed that vacancy based rosters can operate only till such time as the representation of persons belonging to the reserved categories, in a cadre, reaches the prescribed percentage of reservation. Thereafter the rosters cannot operate and vacancies released by retirement, resignation,



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promotion, etc. of the persons belonging to general and reserved categories are to be filled by appointment of the person from respective category so that prescribed percentage of reservation is maintained.

15. The office memorandum dated 02.07.1997 further refers to bringing the policy of reservation in line with the law laid down by the Supreme Court and accordingly, it was decided that the existing 200-point, 40-point and 120-point vacancy based roster shall be replaced by post based rosters. All ministries/departments and concerned authorities were therefore directed to prepare respective rosters based on principles elaborated in the explanatory notes given in Annexure-I to the said office memorandum and illustrated in model rosters annexed to the said office memorandum as Annexures II, III and IV.

16. Para four of the above office memorandum shows principles for preparing rosters elaborated upon in the explanatory note. Such principles as found in para four reads that :

*a) Since reservation for OBCS does not apply in promotions, there shall be separate rosters for direct recruitment and for promotions;*

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*b)The number of points in the roster shall be equal to the number of posts in the cadre. In case there is any increase or decrease in the cadre strength in future, the rosters shall be expanded/contracted correspondingly;*

*c) Cadre, for the purpose of a roster, shall mean a particular grade and shall comprise the number of posts to be filled by a particular mode of recruitment in terms of the applicable recruitment rules. Thus, in a cadre of, say, 200 posts, where the recruitment rules prescribe a ratio of 50:50 for direct recruitment and promotion, two rosters -- one for direct recruitment and one for promotion (when reservation in promotion applies) -- each comprising 100 points shall be drawn up on the lines of the respective model rosters;*

*d)Since reservation does not apply to transfer on deputation/transfer, where the recruitment rules prescribe a percentage of posts to be filled by this method, such posts shall be excluded while preparing the rosters;*

*e)In small cadres of upto 13 posts, the method prescribed for preparation of rosters does not permit reservation to be made for all the may three categories. In such cases, the administrative Ministries/Departments may consider grouping of posts in different cadres as prescribed in this Department's O.M. No. 42/21/49-NGS dated 28.1.1952 and subsequent orders reproduced at pages 70 to 74 of the Brochure on Reservation for Scheduled Castes & Scheduled Tribes (Eighth Edition) and prepare common rosters for such groups.*

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*In the event it is not possible to resort to such grouping, the enclosed rosters (Appendices to Annexures-II, III & IV) for cadre strength upto 13 posts may be followed. The principles of operating these rosters are explained in the explanatory notes.*

17. Mr. Jamadar, then placed the notification number 13-14 -90 -SWD/(Vol-II)/3049 issued by Department of social welfare and published in the Official Gazette of Government of Goa on 24.12.2004. By this notification Government of Goa published 100-point roster to be maintained both for direct recruitment and promotion for all categories of posts separately as indicated there in.

18. For the post of scheduled caste since the percentage is 2%, according to the roster point, point no. 2 and point no. 51 is reserved. This notification applies to the State Government departments, autonomous bodies, local bodies, State Government undertakings and all other organisations/offices in the State for which reservation policy is applicable. Thus above notification is also applicable to respondent no. 1 which is otherwise a local body.

19. Mr. Jamadar placed on record the roster points (100) as per the office memorandum dated 02.07.1997 and claimed that for the post of schedule caste the roster point is 47 and 97 respectively.

According to him only two posts are available for schedule caste. He therefore submitted that the D.P.C conducted on 02.08.2007 considered the said roster point reservation and found that the posts which became vacant due to retirement of Ms. Sunita Maralkar was at serial number 8 of the roster. Though Ms. Maralkar was from reserved category, roster point programme shows the post for schedule caste at point number 50 and therefore, the D.P.C correctly evaluated the names of candidates who were eligible at the relevant time and appointed the person found most suitable. According to Mr. Jamadar, the contention of the Petitioner that the post held by Sunita Maralkar ought to have been filled only by SC candidate even though roster point shows otherwise, would completely disturb the said roster which is binding as per the office memorandum dated 02.07.1997.

20. Mr Sawant appearing for the petitioner by placing reliance in the case of *R K Sabharwal* (supra) more specifically paras 5, 6 and 7 would submit that the procedure adopted by Respondent no. 1 is erroneous. It is his contention that when Sunita Maralkar, a candidate from schedule caste category retired, the DPC was supposed to prepare separate list of the candidates belonging to

schedule caste category and was duty-bound to consider only such candidates. He submits that by filling up post of UDC, which was vacated by the retirement of Ms. Sunita Maralkar, a schedule caste candidate, by open category candidate, Respondent no. 1 committed breach of settled law laid down by the Apex Court.

21. In order to understand the difference between a 'post' and a 'vacancy', it will be beneficial to refer to observations of the Apex Court in the case of **R.K. Sabharwal** (supra) in para six wherein, the Apex Court observed thus:

*“The expression ‘posts’ and ‘vacancies’, often used in the executive instructions providing for reservations, are rather problematical. The word post means an appointment, job, office or employment. A position to which a person is appointed. ‘Vacancy’ means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a ‘post’ in existence to enable the ‘vacancy’ to occur. The cadre-strength is always measured by the number of post comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which forms the cadre-strength. The concept of vacancy has no relevance in operating the percentage of reservation.”*

22. Keeping in mind the above observations of the Apex Court and applying it to the matter in hand, one thing has to be absolutely clear that the post which Ms. Sunita Maralkar was occupying was a reserved post whereas on her retirement on medical grounds from the said post, becomes creation of vacancy in the post reserved for SC candidate. Besides, it is not the claim of Respondent no. 1 that the post Ms. Sunita Maralkar was holding, is not a reserved post. Accordingly, when a vacancy is created to a post which is already reserved, the consequence is that a percentage of reservation has to be worked out in relation to the number of posts which forms the cadre strength and while doing so the concept of vacancy has no relevancy in operating the percentage of reservation.

23. In *RK Sabrawal* (supra), the reservation policies were challenged basically on two grounds. Ground number one is that the object of reservation is to provide adequate representation to the scheduled caste/scheduled tribe and backward classes in services and as such, any mechanism provided to achieve that end must have access to the object sought to be achieved. The argument is that on working out the

percentage of reservation, the promotees/appointees belonging to scheduled caste and backward classes whether appointed against the general category post or against the reserved post are to be counted. In other words if more than 14% of scheduled caste candidates are appointed/promoted in a cadre on their own merit/seniority by competing with the general category candidates, then the purpose of reservation in the said cadre having been achieved, the government instructions providing reservations would become inoperative.

24. The second ground of challenge was when one of the post earmarked for schedule caste/scheduled tribes and backward classes on the roster are filled, the reservation is complete and roster cannot operate any further and it should be stopped. Any post falling vacant in a cadre thereafter is to be filled from the category - reserved or general - due to retirement etc. of whose member the post fell vacant.

25. As far as both grounds raised in ***R. K. Sabharwal*** (supra), the Supreme Court observed in para no. 5, as under;

*“We see considerable force in the second contention raised by learned counsel for Petitioners. The reservations provided*

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*under the impugned Government instructions are to be operated in accordance with the roster to be maintained in each department. A roster is implemented in the form of a running account from year to year. The purpose of “running account” is to make sure that the Schedule Castes/Scheduled Tribes and Backward Classes get their percentage of reserved posts. The concept of “running account” in the impugned instructions has to be so interpreted that it does not result in excessive reservation. “16% of post...” are reserved for members of Schedule Castes and Backward Classes. In a lot of 100 posts those falling at Serial Numbers 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87 and 91 have been reserved and earmarked in the roster for Schedule Castes. Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 post earmarked in the roster are to be filled from amongst the members of the Schedule Castes. To illustrate, first post in a cadre must go to Schedule Caste and thereafter the said class is entitled to 7<sup>th</sup>, 15<sup>th</sup> 22<sup>nd</sup> and onwards up to 91<sup>st</sup> post. When the total number of post in a cadre are filled by the operation of a roster and the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts in the post earmarked in the roster for Scheduled Castes and Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The “running account” is to*



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*operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of post is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Backward Classes in the State Services and is consistent with the demographic estimate based on proportion worked out in relation to their population. The numerical quota of posts is not a shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity to Backward Classes and general category is to permit the roster to operate till the time respective appointees/promotees occupy the post meant for them in the roster. The operation of roster and the "running account" must come to an end thereafter. The vacancies arising in the cadre, after initial posts are filled, will pose no difficulty. As and when there is vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belongs in the roster. For example, a Scheduled Caste person holding the post at roster point 1, 7, 15, retire then these slots are to be filled from amongst the persons belonging to Scheduled Castes. Similarly, if the person is holding the post at point 8 to 14, or 23 to 29 retires, then these slots are to be filled from amongst the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation.*

26. The Apex Court in *R. K. Sabharwal* (supra) and more specifically in para 10 further explained as under :

*“ We may examine the likely result if the roster is permitted to operate in respect of vacancies arising after the total post in a cadre are filled. In a 100-point roster, 14 posts at various roster points are filled from amongst Schedule Caste/Scheduled Tribe candidates, 2 posts are filled from amongst the Backward Classes and the remaining 84 posts are filled from amongst general category. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with roster by 31-12-1994. Thereafter in the year 1995, 25 general category posts( out of the 84) retired. Again in the year 1996, 25 more persons belonging to general category retire. The position which would emerge would be that Schedule Castes and Backward Classes would claim 16% share out of 50 vacancies. If 8 vacancies are given to them then in cadre of 100 post the reserve categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the roster is permitted to operate till the total posts in a cadre are filled*

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*and thereafter the vacancies falling in the cadre are to be filled by the same category or persons whose retirement etc. caused the vacancies then the balance between the reserve category and the general category shall always be maintained. We make it clear that in the event of non-availability of reserve candidate at the roster point it would be open to the State Government to carry forward the point in a just and fair manner.”*

27. Above observations of the Apex Court is a clear answer to the submissions of Mr. Jamadar in connection with roster point.

28. Admittedly, Ms. Sunita Maralkar was from the reserved category and she retired on medical grounds in April 2004. It is not the case of Respondent No. 1 that as per the roster point, the post occupied by Ms. Sunita Maralkar was not of schedule caste. Thus, when Sunita Maralkar retired holding the post of reserved category, the same ought to have been filled by considering the candidates from same reserved category and not by preparing a list of general category.

29. The next contention of Mr. Jamadar that the Petitioner was not eligible for considering her candidature for the post of UDC

when Ms. Sunita Maralkar retired, is again needs to be rejected. The Recruitment Rules for filling up the post of UDC shows the feeder cadre on the basis of promotion from LDCs having 3 years standing in the grade failing transfer of UDC from Collectorate of Goa or any other Government Department. The criteria for eligibility is 3 years standing in the grade of LDC. The Petitioner was admittedly promoted/appointed to the post of LDC w.e.f 01.04.2004. Her appointment order to the post of LDC is at page 34. This appointment order was issued on the basis of consent terms filed in Writ Petition No. 136/1998. Besides, it is clear that the Petitioner was notionally appointed for the post of LDC from 01.04.2003 and was on probation for the period of two years.

30. Sunita Maralkar, the UDC from schedule caste category retired w.e.f. 24.04.2004. Her order is placed at page 36 in connection with retirement on medical grounds. Thus considering the above dates on which the Petitioner was appointed as LDC and the post which fall vacant in UDC, the Petitioner was not having 3 years standing as LDC which is the minimum requirement as per the Recruitment Rules.

31. However, it is an admitted fact that no DPC was convened by Respondent No. 1 for filling up of the post of LDC which fall vacant on the retirement of Ms. Sunita Maralkar, in the year 2004, 2005 and 2006. The DPC was convened only on 02.08.2007. Minutes of the DPC held on 02.08.2007 are placed on page 48 onwards. Thus on the date of conveying DPC, the Petitioner had experience/standing of 3 years in the post of LDC.

32. Mr. Jamadar claimed that the eligibility of the candidate needs to be considered on the day of post becoming vacant and not on the date of holding of DPC. This submission of Mr. Jamadar is in the teeth of Apex Court decision in the case of *Union of India and others V/s N. R. Banerjee and others, 1997 9 SCC 287*. In the said case the question was the year upto which DPC should have considered the eligible candidates and the year up to which the DPC should have taken into consideration the ACRs of the candidates for preparing panel for the year 1994-95 for promotion was under consideration. In that matter the Apex Court observed that the authorities must be required to anticipate in advance the vacancies for promotion on regular basis including long term deputation post and additional post created and then to take an

action plan in finalising the ACRs, preparation of the select list and place necessary material before the DPC for consideration of candidate within the zone of consideration as are found eligible for relevant years. The Apex Court further observed in para 11 that the claims of the candidates eligible have to be considered for promotion objectively and dispassionately with the sense of achieving manifold purpose -(i) Affording an opportunity to the incumbent to improve excellence, honesty, integrity, devotion to public duty; (ii) inculcating discipline in the service, (iii) Afford opportunity to every eligible officer within the zone of consideration for promotion to a higher post or office and (iv) ensuring that the committee regularly meets and considers their claim objectively, impartially with a high sense of responsibility in accordance with the procedure and finalisation of the list in advance so as to fill up vacancies arising in the year from the approved panel without any undue delay. There are salutary principles and form the purpose and policy behind above rules and the Government must follow them. Finally in para 13, the Apex Court observed that when there are clear vacancies the same are to required to be finalised as early as possible and all confidential reports should have

been approved. So also all the eligible candidates within the zone of the consideration as on the date of DPC were entitled to be considered. Thus in the present matter, the fault of conducting DPC belatedly cannot deprive the Petitioner who becomes eligible in the meantime to be considered for the post of UDC i.e. on completion of 3 years qualifying service. The DPC was held on 02.08.2007 and by that day, the Petitioner had already qualified to be considered as she had three years standing in the post of LDC. Similarly, the Petitioner being appointed as scheduled caste was also entitled to be considered for the said post.

33. Thus as observed by the Apex Court in the case of ***R.K. Sabarwal*** (supra) the way to assure equality of opportunity of the backward classes and the general category is to permit the roster to operate till the time respective appointees/promotees occupy the post meant for them in the roster and the vacancies arising in a particular post, the same has to filled from amongst the category to which the post belongs in the roster, needs to be followed in this matter. Thus when the post held by Ms. Sunita Maralkar became vacant and since she was belonging to the schedule caste category, as per the roster point, such post ought to have been filled by the

candidate belonging to schedule caste only. In case no candidate is available in the schedule caste category, the said post is required to be carried forward for the next year.

34. The contentions of Mr. Sawant that separate list of eligible candidates from schedule caste category ought to have been prepared, is supported by the observations of this Court in the case of *Baby Anumanta* (supra). The Division Bench of this Court by referring to Office Memorandum dated 11.07.1968 observed that it has been specifically provided that there shall be reservation to the promotions to the post by selection in group C and D appointments and it has been laid down that the select list of SC/ST candidates should be drawn up separately to fill up reserved vacancies and that the officers belonging to these classes should be adjudged separately and not along with other officers and if they are fit for promotion, they will be included in the list irrespective of their merit as compared to other officers. It was further observed that the officers not belonging to schedule caste and schedule tribes would not be considered while drawing a separate list for schedule caste and schedule tribes.



35. Admittedly no separate list of the candidates of SC was prepared to fill up the post on the retirement of Sunita Maralkar.

36. As far as the post of Municipal Inspector is concerned again above flaws are apparent on the face of record. No separate list of the candidate belonging to schedule caste was prepared. Admittedly, both these posts are coming in the category of C and D. Thus, by not considering the petitioner, Respondent no. 1 admittedly deprived her which is again considered to be discrimination.

37. It is well settled that the Petitioner cannot claim the post without considering her candidature including suitability. At the most the Petitioner is entitled to be considered to the post of UDC or Municipal Inspector as the case may be by the Departmental Promotion Committee of 2007 and that too by creating separate list of the candidates belonging to such caste.

38. We therefore direct the Respondent no. 1 to conduct a revised DPC of 2007 on the basis of observations made above and to consider the Petitioner for the said post if found eligible. We direct Respondent No. 1 to carry out such exercise within a period of 3 months from the date of communication of order and act

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accordingly. The petition stands disposed off in above terms. The parties shall bear their own cost. Rule is made absolute in above terms.

**BHARAT P. DESHPANDE, J.**

**PRAKASH D. NAIK, J.**