

## Sou. Bharati Tukaram Patil Vs Zillha Parishad (Thr. Chief Executive Officer) And Ors

**Court:** Bombay High Court

**Date of Decision:** Jan. 20, 2025

**Acts Referred:** Constitution of India, 1950 " Article 16

Code of Civil Procedure, 1908 " Section 80, 100(5)

Maharashtra Project Affected Persons Rehabilitation Act, 1999 " Section 2, 2(2), 5, 5(c), 6, 6(c)

Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 " Section 280

**Hon'ble Judges:** Gauri Godse, J

**Bench:** Single Bench

**Advocate:** Umesh Mankapure, Sushil A. Inamdar, S. R. Nargolkar, D. J. Haldankar, P. D. Dalvi

**Final Decision:** Partly Allowed

### Judgement

Gauri Godse, J.

1. This Second Appeal is preferred by the original plaintiff to challenge the concurrent judgments and decrees dismissing her suit. The plaintiff had

prayed for a declaration that she be held eligible for the post of "Supervisor" pursuant to the advertisement dated 5th March 2010

("Advertisement" published by defendant nos. 1 and 2. The plaintiff prayed for directing defendants nos. 1 and 2 to appoint her to the post of

"Supervisor" pursuant to the selection process held as per the Advertisement. The plaintiff further prayed for a restraining order against

defendant nos. 1 and 3 from appointing defendant no. 4 to the post of "Supervisor". Defendant no. 4 is the candidate selected by defendant nos.

1 and 2 in the selection process pursuant to the advertisement. During the pendency of the suit, defendant no. 4 was appointed to the post of

"Supervisor (Woman)" ; hence, by way of amendment, the plaintiff challenged the order dated 21st July 2011, appointing defendant no. 4.

**Brief Facts:**

2. Defendant nos. 1 and 2 is Zilla Parishad, Kolhapur, through the Chief Executive Officer. Defendant no. 3 is the State of Maharashtra, and

defendant no. 4 is the candidate selected and appointed by defendant nos. 1 and 2 to the post of Supervisor in the selection process conducted

pursuant to the advertisement.

3. The second appeal was admitted on the following substantial questions of law vide order dated 13th December 2016:

(i) Whether the application of the respondent no.4 could have been treated as valid though there was no certificate of the project affected person

having transferred in her name on the date of application filed by her on or before the cut-off date?

(ii) Whether filing of the certificate of project affected person by respondent no.4 transferred in her name after the cut-off date would revalidate the

application with retrospective effect?

4. Learned counsel for the appellant pointed out the following dates and events relevant to deciding the controversy in the matter:

(a) 5th March 2010: The District Selection Committee and Chief Executive Officer of the Zilla Parishad and the District Selection Committee and

District Collector, Kolhapur, published an advertisement in the newspaper to recruit Anganwadi Supervisor for the women category. The dispute in

the present Second Appeal is with reference to one post reserved for the project-affected person

(PAP).

(b) 20th March 2010: The appellant submitted an application along with a certificate in her name as PAP. The appellant also submitted all the relevant

documents as per the terms and conditions of the advertisement.

(c) 25th March 2010: On the last date of submitting the application, respondent no. 4 submitted her application.

(d) 2nd May 2010: The written examination was scheduled as per the advertisement.

(e) 25th May 2010: Certificate of PAP in the name of respondent no. 4's husband was transferred in the name of respondent no. 4.

(f) 6th June 2010: The written examination was conducted.

(g) 8th June 2010: Interviews of the eligible candidates were conducted.

(h) 8th June 2010: Final results were declared, respondent no. 4 was selected, and the appellant's name was kept on the waiting list.

(i) 20th July 2010: The appellant made an application seeking cancellation of respondent no.4's appointment and requested to appoint the appellant

on the post reserved for PAP.

(j) 2nd August 2010 and 30th August 2010: The appellant issued a reminder making a similar request to respondents nos. 1 to 3.

(k) 9th September 2010: Respondent no. 2 issued a reply justifying the appointment of respondent no.4.

(l) 25th October 2010: The appellant instituted a suit for a declaration regarding her eligibility and for an injunction restraining respondents nos. 1 and 2

from appointing respondent no. 4.

(m) 6th January 2011: Respondent nos. 1 and 2 filed the written statement and denied the suit claim.

(n) 21st July 2011: Respondent nos. 1 and 2 issued an appointment letter to respondent no. 4, appointing her to the post of Supervisor. The

appointment letter stated that the appointment was subject to the outcome of the decision in the suit.

(o) 14th December 2011: Respondent no. 4 filed her written statement and denied the suit claim.

(p) 16th April 2012: The appellant amended the suit to challenge the appointment of respondent no.4.

(q) 10th July 2012: Respondent no. 4 filed her amended written statement.

Submissions on behalf of the Appellant :

5. Learned counsel for the appellant relied upon condition no. 7 in the instructions published in the advertisement. He submitted that condition no. 7

required the applicant to submit the application along with the certificate of PAP. However, admittedly, respondent no. 4 had never submitted her

PAP certificate along with her application. Learned counsel for the appellant thus submitted that in view of condition no. 7 of the instructions in the

advertisement, respondent no. 4's application was invalid.

6. With reference to question no. 1, learned counsel for the appellant submitted that once in view of the terms and conditions of the advertisement,

respondent no. 4's application was invalid; filing the certificate on a subsequent date would not validate respondent no. 4's application. He

submits that the original PAP certificate was in the name of respondent no. 4's father-in-law. The said certificate was transferred in the name of

respondent no. 4's husband. However, he did not receive any benefit from the certificate. Hence, pursuant to the application filed by respondent

no. 4's father-in-law, the certificate was transferred in the name of respondent no. 4.

7. Learned counsel for the appellant submitted that condition no. 7 of the instructions in the advertisement clearly stated that the PAP certificate was

to be submitted by the applicants along with the application. He submitted that the last date for filing the application was 25th March 2010. He

submitted that admittedly, on the date of filing of the application, there was no PAP certificate in the name of respondent no. 4. Learned counsel for

the appellant thus submitted that the application filed by respondent no. 4 was invalid for want of PAP certificate in her name. He submitted that

respondent no. 4 applied for one post reserved for PAP. Thus, filing of the certificate along with the application was a mandatory requirement as per

the terms and conditions published in the advertisement.

8. Learned counsel for the appellant submitted that issuance of a PAP certificate under the provisions of The Maharashtra Project Affected Persons

Rehabilitation Act, 1999 [“Rehabilitation Act”] is not an empty formality. He submits that the certificate, though issued for the benefit of the

family of PAP, only the person named in the certificate is entitled to seek benefit for the purpose of employment. According to the learned counsel for

the appellant, the benefit of the certificate can be availed by the PAP only once. Thus, any other family member of the PAP who intends to take

benefit of the certificate is required to get the certificate transferred in the name of the family member desirous of availing the benefit. He submits

that the process of transferring the certificate is after due inquiry by the Collector that the benefit of the certificate is not availed. He thus submits that

the issuance of a certificate in the name of the person desirous of availing the benefit is a crucial aspect to avoid any misuse of the PAP certificate.

He thus submits that condition no. 7 on the instructions published in the advertisement is not an empty formality and thus is required to be followed as

stated in the instructions, i.e. the application cannot be accepted as a valid application without a PAP certificate in the candidate's name.

9. Learned counsel for the appellant relied upon the definition of the "affected person" defined under sub-section (2)(a) of Section 2 of the

Rehabilitation Act. Learned counsel for the appellant referred to the duties and functions of the project authority as contemplated under Section 6 of

the Rehabilitation Act. He submits that the explanation to the said section provides that the expression "Family" used in the Rehabilitation Act

includes a daughter-in-law of the affected person. Hence, respondent no. 4, who is the daughter-in-law of the PAP, though entitled to seek the benefit

of PAP, it was necessary for the project authorities to make the necessary inquiry and issue a certificate in the name of respondent no. 4 after

verification that the benefit under the PAP certificate is not availed by the original PAP or any of his family members as permitted under the Act.

10. Learned counsel for the appellant thus submitted that question no. 1 be answered in favour of the appellant by holding that for want of a PAP

certificate in the name of respondent no. 4, her application could not have been accepted as a valid application. Thus, if respondent no. 4's

application itself was invalid; the further process of selecting her and appointing her to the post of "Supervisor" is also invalid.

11. With reference to the second question, learned counsel for the appellant submitted that issuing a transfer certificate in the name of respondent no.

4 after the last date of filing the application would not revalidate respondent no. 4's application with retrospective effect. He submits that by

relying upon transfer certificate in the name of respondent no. 4 issued after the last date of filing the application would render condition no. 7 to be

redundant. He submits that the condition no. 7 in the instructions of the advertisement cannot be treated as an empty formality as the PAP certificate

promises the PAP person to avail the benefit only once. Thus, transferring the certificate in the name of family member of PAP cannot be accepted

as an empty formality as it requires necessary investigation as to whether the benefit under the PAP certificate is availed at a prior point in time.

Learned counsel for the appellant thus submits that even the second question be answered in favour of the appellant. He submits that the issuance of

a transfer certificate cannot validate the application with retrospective effect.

12. To support his submissions, learned counsel for the appellant relied upon the decision of the Hon'ble Apex Court in the case of Rekha

Chaturvedi vs. University of Rajasthan and Others 1993 Suppl (3) SCC 168, Bhupinderpal Singh and Others vs. State of Punjab and Others

(2000) 5 SCC 262, Ashok Kumar Sonkar vs. Union of India and Others (2007) 4 SCC 54 and Divya vs. Union of India and Others (2024) 1

SCC 448.

13. Learned counsel for the appellant submitted that by applying the legal principles and guidelines laid down by the Hon'ble Apex Court in the

decision of Rekha Chaturvedi, acceptance of the transfer certificate of respondent no. 4 after the date of application and the completion of the

selection process is illegal. Learned counsel for the appellant relied upon the decisions in the case of Bhupinderpal Singh and the case of Ashok

Sonkar and submitted that the relevant cut-off date for testing the eligibility qualification must be considered on the date of application.

14. Learned counsel for the appellant relied upon the legal principles settled in the case of Divya to point out the word 'eligible' interpreted by

the Hon'ble Apex Court. He submits that in view of the well-settled principles, the transfer certificate in the present case relied upon by

respondent no. 4 would not validate her application with a retrospective date. He thus submits that the entire selection process and appointment of

respondent no. 4 stands vitiated for non-compliance with condition no. 7 of the advertisement.

15. Learned counsel for the appellant thus submits that both the questions of law be answered in favour of the appellant and her suit be decreed as

prayed.

Submissions on behalf of Respondent no. 4 :

16. Learned counsel for respondent no. 4 argued on the point of maintainability of the suit for want of notice under Section 280 of The Maharashtra

Zilla Parishads and Panchayat Samitis Act, 1961 ('Zilla Parishad Act'). Learned counsel for respondent no. 4 pointed out the issues framed by

the trial court and the points for determination framed by the First Appellate court. He submitted that the defendants in their respective written

statements, raised a specific objection on the maintainability of the suit for want of notice under Section 280 of the Zilla Parishad Act.

17. Learned counsel for respondent no. 4 relied upon the admissions given by the plaintiff to support his contention that the suit was not maintainable

for want of notice under Section 280 of the Zilla Parishad Act. Learned counsel for respondent no. 4 submitted that the appellant relied upon waiver

of notice under section 80 of The Civil Procedure Code, 1908 (Ã¢â¬ÏCPCÃ¢â¬Ï) and submitted that the notice under Section 280 of the Zilla Parishad Act

was not necessary. Learned counsel for respondent no. 4 thus submits that contention about waiver of notice under Section 80 of the CPC would not

satisfy issuance of notice under Section 280 of the Zilla Parishad Act. Learned counsel for respondent no. 4 thus submitted that the suit itself was not

maintainable for want of notice under Section 280.

18. Learned counsel for respondent no. 4 submitted that the requirement of condition no. 7 of the advertisement only means that the PAP could apply

for the post. He submitted that sub-section (2) of Section (2) of the Rehabilitation Act defines the Ã¢â¬Ïaffected personsÃ¢â¬Ï, which includes the family

members, including the daughter-in-law of the PAP. He submits that, therefore, a candidate applying for the post is only required to be a member of

the affected family.

19. To support his submission, learned counsel for respondent no. 4 relied upon the explanation of sub-section (2) of Section 2 of the Rehabilitation

Act, which includes family members as project-affected persons. Learned counsel for respondent no. 4 further submitted that the instructions in the

advertisement did not specify that the certificate has to be in the name of the candidate making an application. He submits that the only meaning of

condition no. 7 is to submit the PAP certificate issued under the Rehabilitation Act. Learned counsel for respondent no. 4 submitted that, admittedly,

the name of respondent no. 4Ã¢â¬Ïs father-in-law appears as a PAP much prior to the advertisement. Hence, the plaintiffÃ¢â¬Ïs objection to the

application to be invalid has no substance.

20. Learned counsel for respondent no. 4 thus submitted that the requirement of condition no. 7 is only on the PAP certificate, which was submitted

by respondent no. 4 along with her application. He submitted that only for clarification purposes, a transfer certificate in her name was issued before

her appointment. Learned counsel for respondent no. 4 thus submitted that both the questions framed by this court must be answered in favour of

respondent no. 4.

Submissions on behalf of respondent nos. 1 and 2 (Zilla Parishad)

21. Learned counsel appearing for Zilla Parishad supported the submissions made on behalf of respondent no. 4. He submitted that the requirement as

per condition no. 7 is only to submit the PAP certificate. He submits that a family is treated as an affected person in view of sub-section (2) of Section

2 of the Rehabilitation Act. He submits that Section 6(c) is inclusive of the definition of a family, and therefore, the benefit is to be given to the

members of the family of PAP who are nominated by the PAP to take benefit of the certificate. He submits that there is no requirement to submit a

certificate in the name of the candidate. Hence, for want of a certificate in the name of respondent no. 4 her application could not have been treated

as invalid. He submits that even otherwise, the certificate transferred in the name of respondent no. 4 was submitted before appointing her. Hence, he

submits that there is no substance in the objection raised on behalf of the appellant.

22. Learned counsel for Zilla Parishad relied upon the date of submission of the certificate. He submits that, admittedly, the PAP certificate in the

name of respondent no. 4 was submitted before the interview was conducted. Hence, the requirement of submitting the PAP is only to show the

entitlement of the candidate to avail of the benefit of PAP. He submits that the certificate in the name of the head of the family, i.e., the main PAP

and the application made by the main PAP to transfer it to the name of the family member, amounts to satisfying the requirement as prescribed under

the conditions published in the advertisement.

23. Learned counsel for Zilla Parishad referred to the gazette notification dated 21st January 1980. He submitted that the documents submitted by

respondent no.4 clearly indicated that she was nominated as PAP being the daughter-in-law of the PAP. He submits that in view of clause(c) of

Section (6) of the Rehabilitation Act, a PAP is entitled to nominate any of the family members to avail the benefit of the PAP certificate. He submits

that clause (4) of the certificate provides for an obligation on the employer to inform the Rehabilitation Officer of availing the benefit. He, therefore,

submits that clause (5) of the certificate clearly shows the entitlement of the dependent family members of the PAP's family. He thus submits

that once there is no dispute that respondent no. 4 belongs to the family of PAP and a transfer certificate in her name is submitted before completion

of the selection process, it amounts to sufficient compliance with the terms and conditions of the selection process.

24. Learned counsel for Zilla Parishad submits that all the documents submitted by respondent no. 4 show that she is a family member of the PAP on

the date of filing the application. He submits that, thus, before the appointment process was completed, the scrutiny was already done by the

Rehabilitation Authority that the benefit of the PAP certificate was never availed by the family of PAP. He, therefore, submits that as per the

Government policy, respondent no. 4 is entitled to avail the benefit being family member of PAP.

25. Learned counsel for Zilla Parishad submitted that the plaintiff, i.e. appellant, participated in the selection process; therefore, she cannot challenge

the selection process by filing a suit. He submits that the appellant's attempt is actually on the ground raised to wriggle out the requirement under

Section 280 of the Zilla Parishad Act. He thus supports the submissions on behalf of respondent no. 4 that the suit itself was not maintainable for want

of notice under Section 280 of the Zilla Parishad Act.

26. With reference to the legal principles relied upon by the learned counsel for the appellant in the decisions of the Hon'ble Supreme court,

learned counsel for Zilla Parishad submitted that the said decisions are distinguishable on the ground that if the basic requirement of qualification is

absent only then the legal principles would apply. Learned counsel for the Zilla Parishad submits that in the present case, respondent no.4 was

qualified on the relevant date of filing the application, and only the document confirming the certificate transferred in her name was submitted at a

later stage. According to the learned counsel for the Zilla Parishad, once on the relevant date, respondent no. 4 was a member of the PAP and was

also nominated by the PAP to avail the benefit respondent no. 4's application cannot be invalidated on the ground that the PAP certificate in the

name of respondent no. 4 was not submitted on the date of filing the application.

27. Learned counsel for the Zilla Parishad submitted that the decision in the case of Divya relied upon by the learned counsel for the appellant is on

facts of the said case as the requirement on eligibility was based on year to year basis. He pointed out the facts referred to in paragraph 42 of the

judgment and submitted that the legal principles are with reference to the facts of that case, and, therefore, the same is not of any assistance to the

arguments raised on behalf of the appellant.

28. Learned counsel for Zilla Parishad relied upon the decision of the Hon'ble Apex court in the case of Charles K. Skaria and Others vs. Dr.

C. Mathew and Others (1980) 2 SCC 752. Learned counsel for Zilla Parishad submitted that over-stressing on literality undermines the substantiality

of the guidelines in the prospectus as held by the Hon'ble Apex Court. He thus submits that once the qualification / eligibility of respondent no. 4

on the date of application is not questionable, her application cannot be held to be invalid by making the condition mandatory on the date of filing the

application. He thus submits that in view of the legal principles settled by the Hon'ble Apex Court, the relevant date is to determine the actual

qualification on the relevant date, and thus, in the present case, submission of the transfer certificate after the date of application would not invalidate

the application.



29. Learned counsel for Zilla Parishad thus submitted that in the present case, the eligibility of respondent no. 4 was in existence, and only documents

were submitted later. Hence, he submits that condition no. 7 cannot thus be held to be mandatory to the extent of invalidating the application. Learned

counsel for Zilla Parishad also relied upon paragraph 11 of the decision in the case of Rekha Chaturvedi. He submits that the Hon'ble Apex Court

held that almost eleven years had elapsed from the date of selection, and thus, the Supreme Court refused to interfere in the selection process. He

submits that in the present case, almost fourteen years have passed since the date of the selection process, and at this stage, respondent no. 4's

application cannot be invalidated for want of submission of the PAP certificate in her name on the date of filing the application. Learned counsel for

Zilla Parishad thus submitted that both the questions framed by this court must be answered in favour of the respondents.

Submissions in rejoinder:

30. In response to the submissions made on behalf of the respondents, learned counsel for the appellant points out the interim order passed by the trial

court, which this court also continued. He submits that even the appointment order of respondent no. 4 states that it is subject to the final approval and

decision in the suit. He thus submits that issuance of transfer certificate in the name of the candidate who intends to avail of the certificate cannot be

termed as an empty formality. He submits that clause (c) of Section 5 of the Rehabilitation Act provides for issuing a certificate to a person who is

nominated by the PAP for being employed against the quota reserved for the nominee of the affected person. He submits that if such a certificate is

not provided at the time of filing the application, the selection would mean on account of a presumption that the benefit under the PAP certificate is

not availed by the PAP or any of his family members.

31. Learned counsel for the appellant relied upon the list of disqualified candidates annexed on page 292 of the private paper book. He submits that the

candidate mentioned at Serial No. 52 was declared ineligible by the Zilla Parishad for want of a PAP certificate in the name of the candidate. Learned

counsel for the appellant thus submits that Zilla Parishad has applied different criteria for different candidates, which clearly indicates that only to

favour respondent no. 4 her application was treated as valid even though there was no certificate in her name as it was required under condition no. 7

of the conditions published in the advertisement. He submits that, admittedly, there was no PAP certificate in the name of respondent no. 4. Thus, it is

difficult to understand how the scrutiny officer presumed that the son of the PAP who was nominated by the PAP had not availed the benefit of the

certificate.

32. Learned counsel for the appellant submits that the decision of the Hon'ble Apex Court relied upon by the Zilla Parishad would not be

applicable in the facts of the present case. He submits that the legal principles settled by the Hon'ble Apex Court are based on the facts referred

to in paragraphs 47 and 50 of the judgment. He thus submits that the legal principles relied upon by the learned counsel for the Zilla Parishad would

not be applicable to the facts of the present case.

33. With reference to the argument raised regarding want of notice under Section 280 of the Zilla Parishad Act is concerned, learned counsel for the

appellant submitted there was no specific pleading with reference to these objections. He submitted that there is no specific bar to the filing of the suit

without issuing notice. He submits that for want of any such specific objection, there was neither any issue framed in the trial court nor points of

determination framed in the First Appellate Court. He, therefore, submits that the Second Appeal was not admitted on any such question of law

regarding want of notice under Section 280. He, therefore, submits that there is no substance in the argument raised on behalf of the respondents on

the requirement of notice under Section 280.

Consideration of Submissions and Conclusions:

34. I have considered the rival submissions. There is no question of law framed on the maintainability of the suit. I do not find any substance in the

arguments on the non-maintainability of the suit for want of notice under Section 280 of the Zilla Parishad Act. A perusal of the written statement of

respondent no. 4 shows that respondent no. 4 had never raised any such objection. The Zilla Parishad has vaguely contented that necessary notice

under the Zilla Parishad Act is not served. The trial court held that the recruitment process was conducted through the selection committee established

under the government notification and not under the provisions of the Zilla Parishad Act; hence, notice, as contemplated under Section 280 of the Zilla

Parishad Act, was not necessary. The advertisement was issued in terms of the Government Notification dated 17th December 2009 by the member

(Chief Executive Officer of Zilla Parishad) and the chairperson of the District Selection Committee (the District Collector). The first appellate court

confirmed the trial court's findings, holding that the suit was maintainable. To substantiate their objection on the maintainability of the suit, nothing

was pointed out by the learned counsels for respondent no. 4 and the Zilla Parishad that the suit was for anything done in pursuance of the Act. I do

not find any illegality or perversity in the concurrent findings recorded by both courts on the maintainability of the suit. Hence, I do not see any reason

to invoke the power in terms of the proviso to sub-section (5) of Section 100 of the CPC.

35. The questions of law to be decided pertain to the controversy regarding the validity of the application of respondent no.4 for want of the certificate

of the project-affected person in her name. There is no dispute that respondent no.4 did not submit a certificate in her name along with her application.

Admittedly, the PAP certificate in the name of respondent no. 4 was submitted after the last date of submission of the applications. The advertisement

contains terms and conditions for filing applications. The relevant condition regarding the filing of the certificate is condition no. 7, which provides that

the project-affected candidates should attach the true copy of the certificate of the project-affected person from the concerned District Rehabilitation

Officer, along with the application, failing which, the application shall be treated as invalid. Thus, filing of such certificate is mandatory for a valid

application. Thus, the controversy to be resolved is whether the requirement is only filing a certificate of PAP or whether the certificate has to be in

the candidate's name, on the last date of the filing of the application.

36. The certificate of PAP is issued under the provisions of the Rehabilitation Act. The parties do not dispute that the certificate is issued for the

benefit of the family of PAP, as is defined under the relevant provisions of the Rehabilitation Act. The parties also do not dispute that the benefit

under the certificate can be availed by the PAP only once. Thus, either the PAP in whose name the certificate is issued or any one member of the

PAP's family can avail the benefit of employment.

37. The definition of the 'affected person' is provided in Section 2(2) of the Rehabilitation Act, which reads as under:

"2. 'affected persons' means—

(a) an occupant whose land in the affected zone (including land in the gaathan) is acquired under section 14 for the purposes of a project;

Explanation.—"For the purpose of this sub-clause, where any agricultural land is recorded in the relevant village records in the name of one of the brothers as a

Karta or Manager of a Hindu Joint Family, then every brother 1 [or sister] or [son or sons or daughter or daughters of each deceased brother or deceased sister

as one separate unit of such brother or sister] who has a share in the lands, whether his name is recorded in such village record or not, shall be treated as affected

person;

(b) a person who is a tenant in actual possession of land under the relevant tenancy law in the affected zone at the time of acquisition of land;

(c) an occupant whose land in the benefited zone is acquired for construction, extension, improvement or development of canals and their banks under irrigation

project or for establishment of a new gaothan within or outside the benefited zone for rehabilitation of persons from affected zone, and whose

(i) residual cultivable holding is reduced to less than one hectare after acquisition; or

(ii) residual holding stands divided into fragments which are rendered unprofitable for cultivation; or

(iii) residual holding is rendered uncultivable.

Explanation. "For the purposes of this sub-clause, the expression "occupant" includes a tenant in actual possession of land under the relevant tenancy law

in the benefited zone at the time of acquisition of land;

(d) a person who is an agricultural labourer;

(e) a person, not being an occupant or a person referred to in sub-clauses (a), (b), (c) and (d), who for a continuous period of not less than five years immediately

before the date of publication of the notification under section 4 of the Land Acquisition Act, 1894 (I of 1894) has been ordinarily residing or carrying on any

trade, occupation or calling or working for gain in a gaothan in the affected zone;

38. The duties and functions of the Collector are prescribed under Section 5. The relevant provision to issue a certificate is found in clause (c) of

Section 5, which reads as under:

"5. Duties and functions of Collector.- It shall be the duty of the Collector,-

.....

(c) to issue a certificate to a person who is nominated by the project affected person for being employed against the quota reserved for the nominees of the affected

persons;

39. The duties and functions of the project authority are prescribed under Section 6. The relevant clause for the present case is clause (c), which

reads as under:

"6. Duties and functions of project authority.- It shall be the duty of the project authority,-

!

(c) subject to any reservations validly made and subject to availability of posts, to give highest priority in Class III and Class IV category of service on the project

establishment, to one member of the affected family nominated by the affected person, if such member is eligible for such employment according to the recruitment

rules for such posts :

Provided that, while recruiting a member of the affected family, against such quota, the project authority shall, as far as possible, employ not less than fifty per

cent. of such nominees who are affected by the project under execution, as may be prescribed;

Explanation. "For the purpose of this clause the expression "family" means the spouse, son, married or unmarried daughter or brother or sister or

daughter-in-law or grandson, or grand-daughter (which includes son or daughter of the daughter also) of the affected persons, or adopted son or daughter who

is residing with and is dependent on such affected person.

40. Thus, Section 5(c) of the Rehabilitation Act empowers the Collector to issue a certificate to a person who the PAP nominates for being employed

against the quota reserved for the nominees of the affected person. The reference to the benefit of employment to PAP is seen in Section 6 of the

Rehabilitation Act, which prescribes the duties and functions of project authority. Section 6(c) deals with providing benefits of employment to one

member of the affected family nominated by the affected. The explanation to the said clause interprets the word "family" to mean spouse, son,

married or unmarried daughter, brother, sister, daughter-in-law, grandson, or granddaughter of the affected person or adopted son or daughter residing

with and dependent on such affected person. Thus, the conjoint reading of Sections 5 and 6 indicates that the employment benefit available to the PAP

can be availed by the nominee only upon receipt of such a certificate.

41. The aforesaid provisions make it clear that it is necessary to transfer the certificate in the name of the PAP's family member desirous of

availing the benefit. The purpose of issuing the certificate to a PAP and transferring the certificate in the name of the person desirous of availing the

benefit is a crucial aspect. Both the process of issuing and transferring the certificate is to avoid misuse of the PAP certificate; hence, it has to be

done after due inquiry. The intention of these provisions is clear that either the PAP or one member of the PAP's family nominated by the PAP

can avail of the employment benefit. Thus, the issuance of a transfer certificate in the name of PAP's nominee is not an empty formality. The

purpose of the issuance of a certificate is to ensure that the benefits available to the PAP are availed only once.

42. The purpose of reserving the post for PAP is to enable the PAPs to avail of the employment benefits. One of the important objectives of the

selection process through advertisement is to avoid favouritism. Hence, the selection process has to be impartial, fair, objective and equitable to every

competitor. The Hon'ble Full Bench of this court, in the case of *Rajendra Pandurang Pagare v. State of Maharashtra* 2009 SCC OnLine

Bom 955, decided the issue of whether the project affected persons can be appointed without advertising the posts. The Hon'ble Full Bench, held

in paragraph 41 as under:

"41. No doubt, that under the Government Circulars, the Collectors are also required to sponsor the names of eligible candidates to the recruitment authority.

However, since we have already held hereinabove, that the district-wise reservation is not permissible under the Constitution, the candidates from the other

districts, who are project affected persons, would also be entitled to compete with the candidates who are sponsored by the Collector. In the absence of the

advertisement, it will not be possible for them to get knowledge about recruitment process initiated in the areas beyond their district. We, therefore, find that in

order to ensure the equality of opportunity which is guaranteed in the matter of employment under Article 16 of the Constitution, it would be necessary that the

posts reserved for project affected persons are advertised so that all the eligible candidates can submit their applications and get an opportunity to compete with

others in their category.

emphasis applied

43. Thus, the terms and conditions prescribed in the advertisement for filing applications must be followed strictly. If any relaxations are tried to be

read in the terms and conditions, it will defeat the purpose of advertising the post to enable the candidates to compete for the post. Condition no. 7 is

self-explanatory and a self-operative condition; it says the application shall be invalid if not filed by the candidate with a PAP certificate. The

certificate enables the PAP to avail the benefit of employment. Thus, if the benefit is to be availed by any family member of the PAP, the certificate

is to be transferred in the name of the family member. There is no debate on the requirement of the PAP certificate in the name of the person

wanting to avail the benefit of employment. Therefore, as per condition no. 7, filing of the PAP certificate along with the application must be in the

name of the candidate. If the application is accepted as a valid application without the PAP certificate in the candidate's name, it will render the

condition futile and defeat the very object of the advertisement, permitting the candidates to compete with others in the same category. Thus, any

attempt to relax the self-explanatory and self-operative condition no. 7 of the advertisement would create room for favouritism.

44. In the present case, respondent no. 4 does not fall under the definition of 'affected person'. She has applied pursuant to the advertisement

by claiming the benefit as nominee of the PAP. Thus, she, being the daughter-in-law of the PAP, would be entitled to the benefit if she is nominated

by the PAP. There is no dispute that respondent no. 4's father-in-law is the PAP who had initially nominated his son, i.e. respondent no. 4's

husband. However, the son did not avail the benefit. Thus, on an application made by the PAP, the certificate was transferred in the name of

respondent no. 4. There is no dispute that the certificate was not transferred in the name of respondent no. 4 on the date she applied for the post.

Admittedly, respondent no. 4's application was not accompanied by a certificate in her name. Thus, on the date respondent no. 4 applied for the

post, there was no inquiry made by the Collector whether the PAP or any of his family members had availed the benefit. In the event any other

nominee of the PAP had already availed the benefit, the Collector would not have issued a certificate in the name of respondent no.4.

45. The Hon'ble Apex Court, in the case of Rekha Chaturvedi, held that the relevant date for verifying the qualification has to be treated as the

date specified in the application. It is held in the absence of a fixed date indicated in the advertisement, when the selection committee considers the

requisite qualification, the same has to be considered as on the last date of filing the application. In the decision of the Hon'ble Apex Court, in the

case of Bhupinderpal Singh, it is held that a candidate cannot be treated as qualified if, on the date of application, the candidate is found to be ineligible

and the relevant cut-off date for testing the eligibility qualification must be considered on the date of application. A similar proposition is laid down in

the decision of the Hon'ble Apex Court in the case of Ashok Sonkar.

46. In the case of Divya, the Hon'ble Apex Court interpreted the word 'eligible' to mean that when there are relevant rules prescribed for

the selection process, the candidate is required to be eligible, which would mean fit to be chosen on the date of application and not on any subsequent

date.

47. Thus, in view of the well-established legal principles, the relevant date to ascertain eligibility would be the date of application. In the present case,

there is no issue of any valid qualification. However, the issue is about eligibility for being considered for the appointment to the post reserved for

PAP. Therefore, condition no. 7 of the terms prescribed in the advertisement provide for a mandatory requirement of submitting a PAP certificate by

the candidate along with the application, failing which the application shall be treated as invalid. I have already recorded my reasons for holding that

the terms and conditions prescribed in the advertisement for filing applications must be followed strictly.

48. I have recorded reasons for holding that any attempt to relax the self-explanatory and self-operative condition no. 7 of the advertisement would

create room for favouritism. One important aspect is therefore necessary to be taken into consideration. It is brought on record that respondent no.

4's father-in-law was working as a teacher in Zilla Parishad School and her husband is working as Animal husbandry officer in Zilla Parishad.

There is no dispute upon the list of disqualified candidates annexed on page 292 of the private paper book. The candidate mentioned at Serial No. 52

was declared ineligible by the Zilla Parishad for want of a PAP certificate in the name of the candidate. Thus, it is clear that Zilla Parishad has applied

different criteria for different candidates. The learned counsel for the appellant submitted that only to favour respondent no. 4 her application was

treated as valid even though there was no certificate in her name as it was required under condition no. 7 of the conditions published in the

advertisement. It is difficult to understand how respondent no. 4's application was accepted as valid, when there was no power to relax condition

no. 7 or extend the time for submitting the PAP certificate in the candidate's name. Accepting respondent no. 4's application as valid without a

certificate in her name would amount to assuming that the PAP or any other family member has not availed of the benefit. Thus, the possibility of

favouritism cannot be ruled out.

49. I do not find any substance in the arguments of learned counsel for Zilla Parishad that, as held by the Hon'ble Apex Court in the decision of

Rekha Chaturvedi, this court should refuse to interfere in the selection process as almost fourteen years have elapsed from the date of selection.

There is no dispute that by the interim order passed by the trial court, which this court also continued, respondent no. 4's appointment was made

subject to the final approval and decision in the suit. Even the appointment order of respondent no. 4 states that it is subject to the final approval and

decision in the suit. Therefore, respondent no. 4 cannot claim any equity. Thus respondent no. 4's application cannot be validated on the ground

that the selection process was completed fourteen years back.

50. The legal principles settled by the Hon'ble Apex Court in the decision of Charles K. Skaria relied upon by the learned counsel for the Zilla

Parishad would not apply to the facts of the present case. In the facts of the decision of Charles K. Skaria, the issue was about submitting the

certificate of diploma before finalising the selection to post-graduate courses, as per the directions issued by the government to the selection

committee. In the facts of the present case, the issue is about the interpretation of condition no. 7 of the terms notified in the advertisement, which

provides that the application filed without a PAP certificate by a candidate applying for the post reserved for PAP, shall be invalid. Thus, in the

present case, there was no power to extend the time.

51. The following decisions relied upon by the learned counsel for respondent no. 4 are not applicable to the facts of the present case. In the decision

of this court in Gautam Jaideo Sarkar and Others vs. The State of Maharashtra and Other sWrit Petition No. 56 of 2019 the issue was about

claim of promotion under the Recruitment Rules framed under the Zilla Parishad Act. In the present case the selection process is through the selection

committee established under the Government Resolution dated 17th December 2009.



52. In the decision of Vithalbhai Pvt. Ltd. vs. Union Bank of India Civil Appeal No. 2390 of 2002 dated 11/3/2005 the Hon'ble Apex Court,

held that the Court shall not exercise its discretion in favour of decreeing a premature suit, in the cases when (i) there is a mandatory bar created by

statute (ii) institution of the suit before the lapse of a particular time or occurrence of an event would have the effect of defeating a public policy or

public purpose (iii) premature institution of the suit is patently void and is incurable (iv) it involves persons other than those arrayed as parties and (v)

leave of or any authority is mandatory. In the present case, none of the contingencies are applicable, in as much as the argument on maintainability of

suit for want of statutory notice is negated.

53. The decision of this court in the case of Kalpesh s/o. Ashok Kolte and Others vs. The State of Maharashtra and Others 2014 (1) ALL MR 80

was on the requirement of registration of the concerned person before the Collector as Project Affected Persons for seeking employment. In the

decision of this court, in the case of Deoram Tulshiram Patil vs. Zilla Parishad, Nasik and Others 1993 (2) Mh.L.J. 1392 the first appellate court

had allowed the question of maintainability of the suit for want of notice under Section 280 of the Zilla Parishads Act for the first time and dismissed

the suit only on that ground. This court set aside the first appellate court's decree and the trial court's decree was restored in favour of the

plaintiff. This court, held that the suit for undisputed claim for contractual work, was not for anything done in pursuance of the Act, as contemplated

under Section 280.

54. Hence, none of the decisions relied upon by the learned counsel for respondent no. 4 are of any assistance to the arguments raised on behalf of

respondent no. 4. In view of the different issues and facts involved in the present case, the decisions relied upon by the learned counsel for the

respondents are not applicable to this case.

55. Thus, for the reasons recorded above, I do not find any substance in the arguments raised on behalf of the respondents. In my view, the

application of respondent no.4 could not have been treated as valid without the certificate of the project-affected person having been transferred in her

name on the date of application. I have recorded my reasons for holding that the relevant date for deciding the eligibility for being considered for the

post would be the date of application. Hence, the certificate of the project-affected person transferred in the name of respondent no.4 after the cut-off

date, i.e. the date of application and submitting the same on a subsequent date, would not revalidate the application with retrospective effect.

Therefore, the selection of respondent no. 4 and her appointment stand vitiated. Thus, both the questions of law are answered accordingly in the

appellant's favour.

56. Hence, the second appeal is partly allowed by passing the following order:

(i) The impugned judgment and decree dated 9th October 2014 passed by the learned Civil Judge Senior Division, Kolhapur in Regular Civil Suit No.

780 of 2010 and the judgment and decree dated 24th November 2015 passed by the learned Adhoc District Judge-2, Kolhapur in Regular Civil Appeal

No. 380 of 2014 are quashed and set aside.

(ii) The order dated 21st July 2011 passed by respondent nos. 1 and 2 appointing respondent no. 4 is declared as illegal and thus quashed and set aside.

(iii) Respondent nos. 1 and 2 shall accordingly reconsider the appointment to the post of Supervisor (Women), pursuant to the selection process

conducted as per the advertisement dated 5th March 2010 and consider the appellant's application for the appointment to the said post in

accordance with law, pursuant to the selection process that is completed as per the said advertisement dated 5th March 2010.

(iv) Regular Civil Suit No. 780 of 2010 is partly decreed in the aforesaid terms.

57. The second appeal is partly allowed in the aforesaid terms with no order as to costs.

58. Decree in Regular Civil Suit No. 780 of 2010 to be drawn accordingly.