

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 232/2020

DIST. : BEED

Ku. Rohini D/o Nagnath Charole,)
 Age – 29 years, Occu. Nil,)
 At : Mogha, Post. Thirth,)
 Tq. Ahmedpur, Dist. Latur.)--

APPLICANT

VERSUS

- 1) **The State of Maharashtra,**)
 Through its Secretary,)
 Revenue and Forest Department,)
 Mantralaya, Mumbai – 32.)
- 2) **District Selection Committee,**)
 Through its Chairman & District)
 Collector, Beed, Dist. Beed.)
- 3) **The Sub Divisional Officer,**)
 Ahmedpur, Tq. Ahmedpur,)
 Dist. Latur.)
- 4) **Varshatai Sanjay Tummedwar,**)
 A/p. Kumtha, Tq. Ahmedpur,)
 Dist. Latur.)
- 5) **Asha D/o Wasudeo Sahare,**)
 Age : Majorj, Occu. Nil)
 A/p. Having Official address as)
 District Collector Office, Beed.)

.. RESPONDENTS.

 APPEARANCE : Shri B.R. Kedar, learned counsel holding for
 Shri S.K. Mathpati, learned counsel for
 applicant.

Smt. M.S. Patni, learned Presenting Officer for
 respondent nos. 1 to 3.

Shri B.S. Chondhekar, learned counsel for
 respondent no. 4.

Shri S.P. Salgar, learned counsel holding for
Shri N.V. Gaware, learned counsel for
respondent no. 5.

CORAM : **Hon'ble Shri Justice P.R. Bora, Member (J)**
AND
Hon'ble Shri Bijay Kumar, Member (A)
DATE : **8th April, 2022**

ORAL ORDER :

(Per : Justice P.R. Bora, Member (J))

Heard Shri B.R. Kedar, learned counsel holding for Shri S.K. Mathpati, learned counsel for applicant, Smt. M.S. Patni, learned Presenting Officer for respondent nos. 1 to 3, Shri B.S. Chondhekar, learned counsel for respondent no. 4 and Shri S.P. Salgar, learned counsel holding for Shri N.V. Gaware, learned counsel for respondent no. 5.

2. The present applicant, Kum. Rohini d/o Nagnath Charole, had applied for the post of Talathi in pursuance of the advertisement dated 26.2.2019. Total 66 posts were advertised. 6 out of said total 66 posts were shown to be reserved for O.B.C. (female) category. The present applicant online applied for the said post from the O.B.C. (female) category on 9.3.2019. Applicant secured 162 marks in the written examination held. The verification of original documents was scheduled on 16.11.2019. After verification of the documents provisional selection list was published on 17.6.2020 and objections were invited to the said

provisional selection list. The applicant since was not included in the said provisional selection list, raised an objection but it was rejected. In the final selection list published on 10.7.2020, name of the applicant therefore did not figure. In the circumstances, the applicant has filed the present Original Application taking exception to the rejection of her candidature by the respondents. The applicant has not been selected though she has secured 162 marks in the written examination for the reason that the applicant failed in producing the non-creamy layer certificate valid as on 31.3.2019 as was mentioned in the advertisement.

3. It is the contention of the applicant that at the time of scrutiny / verification of the documents held on 16.11.2019 she had produced before the Scrutiny Committee non-creamy layer certificate dated 19.9.2009, as well as, non-creamy layer certificate dated 12.7.2018, however, the Scrutiny Committee orally refused to accept the non-creamy layer certificate dated 12.7.2018. It is the contention of the applicant that the non-creamy layer certificate dated 12.7.2018 was valid up to 31.3.2019. It is the further contention of the applicant that even the certificate dated 19.9.2019 was also issued in her favour considering the past income of preceding three years, and as such, undoubtedly she was falling in the category of non-creamy layer on the date of filing the application and also on the date of

scrutiny of documents by the Scrutiny Committee. It is the further contention of the applicant that had Scrutiny Committee did not refuse to accept the non-creamy layer certificate dated 12.7.2018, no issue would have been arisen about the fact that the applicant falls in the category of non-creamy layer. According to the applicant, the Scrutiny Committee has erroneously held that the applicant failed in producing on record the non-creamy layer certificate valid up to 31.3.2019. It is the contention of the applicant that in O.B.C. (female) category, the applicant was at higher position in order of merit and was liable to be selected from the said category. The applicant has therefore, prayed for setting aside the impugned rejection and has also prayed for consequential orders for her appointment on the subject post in the quota meant for O.B.C.(female) category.

4. Respondent authorities, as well as, the private respondents have resisted the contentions made by the applicant in their respective affidavits in reply. The sum and substance of the contentions raised in the said affidavits in reply is that the non-creamy layer certificate dated 19.9.2019 has been rightly kept out of consideration by the Scrutiny Committee. It is further averred that when in the advertisement it was specifically mentioned that the candidate desirous of taking benefit of the reservation

prescribed for Open (female) or O.B.C. (female) category shall file the non-creamy layer certificate valid up to 31.3.2019, the applicant was under obligation to furnish the non-creamy layer certificate valid up to 31.3.2019. According to the respondents, since the applicant failed in producing on record such certificate was not considered for her appointment from the O.B.C. (female) category.

5. The respondents have also raised the objection that on the date of filing the application, the applicant was not holding a valid caste certificate certifying that she belongs to O.B.C. category. In the circumstances, according to the respondents, the applicant was not entitled to claim the appointment on the seat reserved for O.B.C. (female) category. According to the respondents, the candidature of the applicant was rightly rejected by the respondent authorities and no case is made out by the applicant for allowing her Original Application.

6. We have carefully considered the submissions advanced by the learned counsel appearing for the parties and have perused the documents filed on record by the parties.

7. It is not in dispute that the name of the applicant has not been recommended by the Scrutiny Committee on the ground that

she failed in producing on record the non-creamy layer certificate valid as on 31.3.2019 as mentioned in the advertisement. It is true that in the advertisement the candidates are required to produce on record non-creamy layer certificate for year 2018-19 - valid up to 31.3.2019. The certificate, which has been considered by the Scrutiny Committee is dated 19.9.2019 and as mentioned in the said certificate it is valid up to period of 31.3.2022. The non-creamy layer certificate dated 12.7.2018 issued in favour of the applicant is existing on record. As has been submitted on behalf of the applicant, at the time of scrutiny of documents the applicant had produced the said non-creamy layer certificate also on record along with the non-creamy layer certificate dated 19.9.2019, but the Scrutiny Committee refused to take on record said non-creamy layer certificate. In para 10 of present O.A. the applicant has specifically averred the said fact. In the affidavit in reply filed on behalf of respondent no. 2 the aforesaid contention has not been denied or disputed by the said respondent. It has to be, therefore, presumed that the non-creamy layer certificate dated 12.7.2018 was attempted to be produced on record by the applicant, but it was not accepted by the Scrutiny Committee.

8. It is the contention of the learned Presenting Officer, as well as, learned counsel for respondent nos. 4 & 5 that the non-creamy

layer certificate dated 12.7.2018 has been issued for claiming benefit available for Open (female), whereas the applicant is claiming the seat meant for O.B.C. (female). The learned Presenting Officer, as well as, learned counsel for respondent nos. 4 & 5 have further submitted that on the date of advertisement the applicant was not even holding a valid caste certificate certifying that she belongs to O.B.C. category.

9. We are, however, not convinced with the objection so raised. Though the rejection of the candidature of the applicant is only on the ground that she failed in producing on record the non-creamy layer certificate valid up to 31.3.2019, since now the objection also has been raised that the applicant was not holding a caste certificate on the date of examination, as well as, on the date of scrutiny of documents, we would first like to deal with the said objection.

10. The learned counsel for the applicant has brought to our notice that the applicant had applied for the caste certificate on 25.1.2019 and the said came to be issued on 24.4.2019. The learned counsel submits that the caste certificate was produced before the Scrutiny Committee on 16.11.2019. The applicant has also placed on record the document which evidences that she had preferred an application demanding caste certificate on 25.1.2019.

It is thus evident that prior to issuance of the advertisement the applicant had applied for the caste certificate. The documents on record further show that the real brother of the present applicant was already holding a caste certificate showing that he belongs to Other Backward Class. The applicant has placed on record two caste certificates; one, issued in favour of his real brother, which has been issued on 24.1.2019 and the other of one of her close relative issued on 24.12.2018. In view of the fact that the applicant had applied for caste certificate even prior to issuance of the advertisement and further that her real brother was also holding valid caste certificate certifying that he belongs to O.B.C. class, and also having regard to the fact that on the date of scrutiny of documents the applicant has produced on record the caste certificate issued by the competent authority in her favour certifying that she belongs to 'Wani' caste, which falls in Other Backward Class, according to us, there is no substance in the objection raised on behalf of the respondents that the applicant was not entitled or eligible for making an application claiming reservation for the O.B.C. category.

11. We would revert back to the main objection as about the non-creamy layer certificate. As discussed hereinabove, the applicant had also attempted to place on record the non-creamy

layer certificate of the earlier year dated 12.7.2018, but the same was not accepted. As mentioned in the non-creamy layer certificate dated 12.7.2018, the same was issued by the competent authority having regard to the income of the applicant's family in preceding 3 years. The certificate dated 19.9.2019 has also been issued on the basis of the income certificates for the preceding 3 years issued by the Tahsildar. Both these certificates, read conjointly there remains no doubt that during all the relevant years the applicant was falling in the category of non-creamy layer. The applicant has also placed on record non-creamy layer certificate dated 5.5.2017. The applicant has also placed on record the income certificate issued at the relevant time by the Tahsildar, Ahmedpur, which clearly indicate that from year 2015-16 till 2018-19 the applicant was falling in the category of non-creamy layer. It is thus evident that the Scrutiny Committee has erroneously held that the applicant failed in producing on record the non-creamy layer certificate, valid as on 31.3.2019.

12. The objection as has been raised on behalf of the respondents that non-creamy layer certificate dated 12.7.2018 was obtained by the applicant for claiming reservation in the Open (female) category, and as such, that cannot be considered by the applicant when she is now claiming the benefit for O.B.C. (female)

candidates, is liable to be rejected at the threshold. For certifying a person to be falling in the category of non-creamy layer it does not matter whether he belongs to Open Class or comes from Other Backward Class. What matters is the income of the family of the said person from all sources. The income limit, which has been prescribed to fall in non-creamy layer category is same for both, the Open and Backward Class / Other Backward class. The format in which the non-creamy layer certificates are being issued is also not different for the Open class or the Backward class. The learned counsel appearing for the applicant has provided the explanation that since at the relevant time the applicant had not obtained the caste certificate and was competing from the Open (female) category, she has obtained non-creamy layer certificate as required for claiming the seat in Open (female) category. The learned counsel submitted that after she got the caste certificate she applied for getting non-creamy layer certificate mentioning that she wants to take the benefit of seats reserved for O.B.C. In the circumstances, we reject the objection raised on behalf of the respondents that the non-creamy layer certificate dated 12.7.2018 was not liable to be considered in favour of the applicant.

13. In view of the facts and circumstances discussed hereinabove there remains no doubt that the Scrutiny Committee

has illegally rejected the claim of the applicant for her appointment on the ground that she failed in producing on record the non-creamy layer certificate valid up to date 31.3.2019. We must further mention that the Government has issued Circular dated 17.8.2013, which lays down the guidelines for issuance of non-creamy layer certificates. As said therein for issuance of non-creamy layer certificate, base should be preceding 3 years' income of the applicant / family of the applicant. It further provides that the income of the applicant in all last 3 preceding years if is less than the prescribed limit of income, the non-creamy layer certificate can be issued in his favour. It is further clarified that income of the applicant / his family, if is less than the prescribed limit of income in all the last 3 preceding years, the non-creamy layer certificate is to be issued, which may be valid for next 3 years. If aforesaid criteria is applied the applicant can be undoubtedly held to be falling in the category of non-creamy layer as on 31.3.2019 even on the basis of the non-creamy layer certificate dated 19.9.2019.

14. It is not in dispute that 6 posts have been shown reserved for O.B.C. (female) candidates in the advertisement published. It is further not in dispute that the applicant has received 162 marks in the written examination held. The list of candidates

recommended for their appointment is placed on record (page nos. 70 to 75 of paper book). Following are the candidates recommended for appointment from the category of O.B.C. (female) :-

प्रवर्ग - इमाव - महिला - निवड्यादी - ६					
Sr. No.	Application id	NAME OF CANDIDATE	Mark s	Date of Birth	Rem ark
1.	REV_TI_0233408	VARSHATAI SANJAY TUMMEDWAR	160	20/01/1991	
2.	REV_TI_0225473	SEEMA PRAKASH NANGRE	156	29/08/1992	
3.	REV_TI_0105396	SHITAL RAMKRUSHNA CHAUDHARI	156	30/09/1993	
4.	REV_TI_0275264	KIMAYA JANARDAN PANDE	156	12/02/1995	
5.	REV_TI_0099435	MONIKA ARVIND WASU	156	04/04/1996	
6.	REV_TI_0286917	ASHA WASUDEO SAHARE	154	13/10/1984	

From the aforesaid list it is quite evident that the applicant has received more meritorious position than all the recommended candidates. The applicant has, therefore, to be held entitled for the appointment on the subject post in the quota meant for O.B.C. (female) category.

15. There is no concrete information with us, whether all the O.B.C. (female) candidates recommended for their appointment have joined the duties or any of the post is vacant. If any post is lying vacant the present applicant can be accommodated on the said post without disturbing the candidates, who have been

already appointed, however, if all the posts are filled in, it need not be said that the last selected candidate in the said category will have to be ousted by following due process of law. For the reasons stated above the following order is passed :-

ORDER

- (i) The applicant is held eligible for the post of Talathi from O.B.C. (female) category on consideration of the documents on record and on the basis of 162 marks secured by her.
- (ii) The District Selection Committee shall include the name of the present applicant in the final select list for the post of Talathi from the O.B.C. (female) category and revised the list accordingly and issue the order of appointment to the applicant, within 6 weeks from the date of this order.
- (iii) The present Original Application stands allowed in the aforesaid terms without any order as to costs.

MEMBER (A)

MEMBER (J)