

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
AURANGABAD BENCH AURANGABAD**

ORIGINAL APPLICATION NO. 604 OF 2014

DISTRICT :DHULE

Vaishali Prakash Kadam,)
Age:26 years, Occu: Unemployed,)
318, Ram Peth Bhoite Galli,)
Near Old Ram Temple,)
Jalgaon 425 001.)...**Applicant**

VERSUS

1. The State of Maharashtra,)
Through: Secretary,)
Water Resources Department,)
Mantralaya, Mumbai – 32.)
(Copy to be served on the C.P.O.,)
MAT, Aurangabad))

2. The Member Secretary,)
Regional Selection Committee &)
Superintending Engineer (Doors))
Central Plans Organisation &)
Circle Officer, Nasik Circle,)
Nasik.)....**Respondents**

Shri S.D. Dhongde, learned Advocate for the Applicant.

Shri M.P. Gude, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal, Vice-Chairman
Shri J.D. Kulkarni, Member (J)**

DATE : 18.10.2016

PER : Shri Rajiv Agarwal, Vice-Chairman

ORDER

1. Heard Shri S.D. Dhongde, learned Advocate for the Applicant and Shri M.P. Gude, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant seeking appointment to the post of 'Kalva Chokidar' from Open-Female category in the selection process of 2012.

3. Learned Counsel for the Applicant argued that the Respondent No.2 had issued advertisement no.3 of 2011 to fill Group 'D' posts in various offices of the Water Resources Department in Nasik Division. The Applicant had applied for the post of 'Kalva Chowkidar' from Open-Female category and she was selected for the post and informed by letter dated 13.6.2014 to bring original documents for verification on 25.6.2014 by the Respondent No.2. Earlier the present Applicant had filed O.A.No.344 of 2012 as the Applicant's claim for selection to a post in Dhule District was not considered. By order dated 30.8.2013, this Tribunal directed the Respondents to call all the Applicants (including the present Applicant) for interview regardless of the district

from which they had applied. The Applicant was called for interview and was informed that she was selected for the post. Learned Counsel for the Applicant contended that the Applicant had submitted Non-Creamy Layer (NCL) certificate dated 27.12.2013, issued by Tahsildar, Chalisgaon. However, by letter dated 5.7.2014, the Applicant was informed to produce NCL certificate issued after 31.3.2011 and before 1.2.2012 failing which her candidature was threatened to be cancelled. Learned Counsel for the Applicant stated that as per advertisement no.3 of 2011, latest Non-Creamy Layer Certificate was required to be submitted. As such, there was no reason for the Respondents to ask for NCL certificate issued after 31.3.2011 and before 1.2.2012. In fact, there was no condition in the advertisement that NCL certificate issued after 1.2.2012 will not be held valid. Learned Counsel for the Applicant argued that she had produced NCL certificates dated 27.12.2013 and 2.7.2014 and is clearly eligible to be appointed.

4. Learned Presenting Officer (P.O.) argued that the Applicant had not enclosed NCL Certificate while filling the application forms. She was, therefore, not eligible to be considered from Open- Female category for the post of Kalva Chowkidar. The Applicant had submitted NCL certificates issued after the last date of filing application form i.e. after 1.2.2012, which can not be considered. Learned P.O. for the Respondents argued that the Applicant is not eligible to be selected for the post of Kalva Chowkidar from Open-Female category.

5. The Applicant has placed a copy of the advertisement no.3 of 2011 issued by the Respondent No.2 on record at Annexure –A (page 11 of the Paper Book). Under the column (ब) सूचना व अटी- the sub-clause (4) is reproduced below:-

“(४) नियुक्तीसाठी अंतिमतः पात्र ठरलेल्या उमेदवारांची शैक्षणिक अर्हता प्रमाणपत्रे, शाळा सोडल्याचा दाखला, अनुभवाचा दाखला, जात वैधता प्रमाणपत्र, आवश्यक असल्यास अद्यावत नॉन क्रीमिलेअर दाखला, वाहन-चालक पदासाठी जड /हलके वाहन चालविण्याचा परवाना, तसेच आवश्यक ती कागदपत्रे/ साक्षांकित प्रमाणपत्रे (स्वाक्षांकन हे केंद्र / राज्य शासनाचे राजपत्रित अधिकारी/ पोष्ट मास्टर/ प्राचार्य व याबाबत प्राधिकृत व सक्षम अधिका-यांनीच केलेले असावे) इ. ची छाननी संबंधीत नियुक्ती प्राधिकारी यांच्या स्तरावर केली जाईल. तसेच त्यावेळी मूळ प्रमाणपत्रे दाखविणेही बंधनकारक राहिल. उमेदवारांना प्रमाणपत्र मिळण्याकरीता सादर केलेल्या अर्जाच्या पावत्या ग्राह्य धरल्या जाणार नाहीत. छाननी अंती वरील प्रमाणपत्रामध्ये त्रुटी आढळल्यास/ माहिती खोटी आढळल्यास निवड रद्द केली जाईल.”

This condition states that latest (अद्यावत) Non-Creamy Layer certificate was required to be produced by a candidate finally selected.

6. Sub Clause (6) is regarding candidates from vertical reservation category, and such candidates belonging to O.B.C. etc. categories were required to produce NCL certificate issued after 31.3.2011. The Applicant does not belongs to any of these categories. For these categories, NCL certificate was required to be enclosed with the Application Form. There were no such requirements for enclosing NCL certificate along with the Application Form for Open-Female candidates. Sub- Clause 11 reads as follows:-

“(११) महिला आरक्षण हे शासन निर्णय महिला व बालकल्याण विभाग क्र. ८२/२००१/मसेआ २०००/प्र.क्र.४१५/का-२, दिनांक २५ मे २००१ मधील तरतूदीनुसार राहिल. खुल्या प्रवर्गातील महिलांना उन्नत व प्रगत व्यक्ती व गट यामध्ये मोडत नसल्याबाबतचे सक्षम अधिकारी यांचे दिनांक ३१-३-२०११ नंतरचे (नॉनक्रीमिलेअर) प्रमाणपत्र आवश्यक राहिल.”

It only states that NCL certificate issued after 31.3.2011 will be necessary. It is nowhere mentioned that such a certificate will be required to be appended to the Application Form. For all other certificates, it is specifically mentioned that certificates should be enclosed with the Application Form.

7. The Applicant has produced a copy of letter dated 24.12.2013, issued by Command Area Development Authority, Jalgaon asking her to remain present for interview on 26.12.2013. At Sr.No.10, the Applicant was asked to produce a NCL certificate issued after 31.3.2012. This annexure 'A-4' is mentioned in para 6(g) of O.A. which is replied to in para 12 of the affidavit-in-reply of the Respondents dated 15.6.2015. It is stated in reply that as per Clause B-11 of the advertisement, the Applicant was required to attach a NCL certificate obtained after 31.3.2011 to which was to be submitted along with the Application Form, last date of which was 1.2.2012. This is factually incorrect as Clause B-11 of the advertisement no.3 of 2011 did not require appending NCL certificate with the Application Form for Open Female category. The Respondents themselves asked the Applicant by letter dtd 24.11.2013 to produce NCL certificate issued after 31.3.2012. The Applicant in para 6(g) has stated that she submitted NCL certificates dated 27.12.2013 and 2.7.2014. The fact that NCL certificate dated 27.12.2013 is admitted in para 12 of the affidavit-in-reply.

8. It is evident that the Applicant had produced NCL certificate in conformity with the conditions in this regard in the advertisement no.3 of 2011. The action of the Respondents asking her to produce NCL certificate issued after 31.3.2011 and before 1.2.2012 is clearly wrong and on this ground appointment can not be denied to the Applicant.

9. Having regard to the aforesaid facts and circumstances of the case, the Respondents are directed to take action on their letter dated 13.6.2014 wherein the Applicant was selected for the post of Kalva-Chowkidar, subject to production of necessary certificates, and give appointment to the Applicant on the said post within one month from the date of this order. This Original Application is allowed accordingly with no order as to costs.

(J.D. Kulkarni)
(MEMBER) (J)

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 18.10.2016

Place : Mumbai

Dictation taken by : SBA

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