

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.396 OF 2023

**DISTRICT: PUNE
SUBJECT : SELECTION
PROCESS**

Priyanka P. Kulkarni,)
Aged about 30 years, Occ. Service)
Block No.3 Chatur Apartment)
Near Govindshri Mangal Karyalay)
Geeta Nagar Jule Solapur south Indiranagar)
Solapur South Solapur Maharashtra 413004)... **Applicant**

Versus

The Maharashtra Public Service Commission,)
8th Floor Cooperage Telephone Nigam Bldg.)
M.K. Road, 400021.)...**Respondents**

Shri Abhijit U. Pawar, learned Advocate for the Applicant.

Ms. Swati P. Manchekar, learned Chief Presenting Officer for the Respondents.

**CORAM : SMT. JUSTICE MRIDULA R. BHATKAR,
HON'BLE CHAIRPERSON
SMT. MEDHA GADGIL, HON'BLE MEMBER (A)**

DATE : 07.07.2023.

JUDGMENT

1. Heard Shri A.U. Pawar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. Learned Advocate for the Applicant submits that Applicant wants to appear for the Group 'A' and Group 'B' post issued by Respondent vide advertisement No.45/2022 dated 11.05.2022. The Applicant filed the application in open category. She appeared in the said examination and the Applicant was qualified for open general category and main examination was conducted in Jan 2023. The result of the main

examinations are not yet declared. However, it is submitted that before declaration of the result her case is to be considered in Non Creamy Layer (NCL), Female category. It is submitted by learned Advocate for the Applicant that earlier when the advertisement was issued i.e. 11.05.2022 the circular dated 25.03.2013 was in-force and as per that particular provision the candidate applying in the category of NCL is required to submit NCL certificate of that particular period of the preceding year. Learned Advocate for the Applicant also submitted that the Applicant was not possessing NCL certificate of that specific period as mentioned in Clause 2 (iii) of circular dated 25.03.2013, and therefore she did not apply in NCL category.

3. Learned Advocate for the Applicant further argued that recently the Respondent – Government issued corrigendum dated 17.02.2023 Exhibit 'A' by which the condition of specific period is mentioned and condition of NCL is modified and as per that corrigendum candidate having certificate of the current financial year is to be considered as valid certificate. Learned Advocate for the Applicant further submitted that benefit of this G.R. of 17.02.2023 is to be given to the Applicant as result of the examination are not yet declared. Learned Advocate for the Applicant also submitted that the Applicant today is having a NCL certificate of the current year and it is to be considered valid, and therefore the candidature of the Applicant to be considered in NCL category. He further relied on the Judgment of Hon'ble High Court, Bombay Bench at Aurangabad in ***Writ Petition No.393/2016, Mrs. Patil Vijaya Milind v/s. State of Maharashtra & Ors dated 22.01.2016.***

4. Learned C.P.O. for the Respondent pointed out that the Applicant did not apply in the category of Open Female Category. She further states that the decision in the Judgment of the Hon'ble High Court in ***Mrs. Patil Vijaya Milind (cited supra)*** is not applicable.

5. In ***Mrs. Patil Vijaya Milind (cited supra)*** case the issue was whether the Applicant was to be considered in the reserved category in Open Female or not. The facts disclosed that petitioner has written before the Clause and 'Open Female' and however inadvertently in further Clause she has written 'NO'. In the Clause No.13 she mentioned 'NO' and therefore it was rightly allowed by the Division Bench of Hon'ble High Court that inadvertence was obvious because she had mentioned that she wanted to apply in the open female category. In such circumstances facts of the ***Mrs. Patil Vijaya Milind (cited supra)*** and in the present case are different. The present Applicant unlike ***Mrs. Patil Vijaya Milind (cited supra)*** from the beginning has taken conscious decision of not applying for the Open Female Category. Learned Advocate for the Applicant submitted that on the ground of this corrigendum more candidates nearly about 7 to 8 candidates whose NCL certificates were invalid had been given an opportunity to produce NCL certificate of current financial year and that facilitated these 7 to 8 candidates to maintain their claim in NCL category. It is true that the Applicant did not choose NCL, because she was not in possession of NCL certificate which was specified as per Clause No.2 (iii) of circular dated 25.03.2013.

6. The Applicant was not holding NCL of the current year before this corrigendum dated 17.02.2023. The Applicant made application for NCL on 09.03.2023 and she got NCL certificate on the same day of the current year i.e 09.03.2023 after the issuance of the corrigendum. Thus, the submission that had this condition have been relaxed earlier, then the Applicant would have benefited. Such speculative submission cannot be considered. Moreover, the Applicant has appeared for the main examination and the results are yet to be declared and if at all this speculation is made applicable, then on that basis there will be a flood of the matters.

7. In view of the above facts and circumstance, the Original Application is dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula R. Bhatkar, J.)
Chairperson

Place: Mumbai
Date: 07.07.2023
Dictation taken by: N.M. Naik.

Uploaded on: _____