

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 530 OF 2021

DISTRICT: - AURANGABAD.

Priya d/o Rajeev Awhad,,
Age -25 years, Occu. : Nil,
R/o: Bajirao Peshave Nagar,
Plot No. 4, Gut No. 95,
Satara Parisar, Beed Bypass Road,
Behind Padmavati Lawn, Aurangabad

..APPLICANT

V E R S U S

- 1. The State of Maharashtra,**
Through its Principal Secretary,
Department of Home Affairs,
Maharashtra State, Mantralaya,
Mumbai 400 032.
- 2. Maharashtra Public Service Commission,**
Through its Chairman / Secretary,
5 ½ 7, 8th floor, cooperation Telephone
Building, Maharshi Karve Road,
Mumbai – 400 021.
- 3. The Commissioner of Transport,**
MTNL Building, fountain 2,
Building, 5th floor, M.G. Road, Fort,
Mumbai-400001. **.. RESPONDENTS.**

APPEARANCE : Shri Avinash S. Deshmukh, learned
counsel for the applicant.

: Shri M.S. Mahajan – learned Chief
Presenting Officer for the respondents.

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

DATE : **01.02.2022**

ORAL ORDER**[Per :Justice Shri P.R. Bora, Member (J)]**

Heard Shri Avinash S. Deshmukh, learned counsel for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.

2. On 17.1.2020 the advertisement was published inviting applications to fill in 240 posts of Assistant Inspector of Motor Vehicles. In the advertisement itself the break-up was provided of the seats reserved for each of the social Backward Class, as well as, of the horizontal reservation provided within each of the Social Class. In the horizontal reservations 19 seats were shown reserved for Open Female candidates, whereas 17 seats were shown reserved for O.B.C. Female candidates.

3. The present applicant claims to be from the OBC class. It is the contention of the applicant that on the date of uploading applications meant for preliminary examination, the applicant had in her possession the Caste Validity Certificate, as well as, Non-Creamy-Layer Certificate. It is the further contention of the applicant that when she was attempting to fill the application form online, because of some technical glitch the application form was not getting uploaded with answer 'Yes' to the information against the particular column "whether belongs to Non-Creamy-Layer" and in the circumstances, according to the applicant, she was

constrained to record an answer against the said column as “No” and only thereafter her form got uploaded. The applicant then appeared in the preliminary examination. The results were declared of the said preliminary examination but having regard to the marks secured by the applicant, she was not held qualified from either of the categories i.e. Open Female or OBC General and her name was not, therefore, included in the merit list published on 24th August, 2021 on the basis of which the candidates were to be held eligible to appear in the main examination.

4. It is the contention of the applicant that had she been able to record answer ‘No’ against the Column ‘whether belongs to Non-Creamy-Layer’ she was having chance to be considered in the O.B.C. Female category. She, therefore, made representation on 30th August, 2021 and immediately thereafter approached this Tribunal. Since interim relief as was prayed by her was not granted in her favour by this Tribunal, she approached the Hon’ble High Court by filing Writ Petition No. 10574/2021 and the Hon’ble High Court was pleased to direct the M.P.S.C. to allow the applicant to upload form and it was further directed that same shall be subject to the decision by this Tribunal in the present Original Application. It was also observed by the Hon’ble High Court that petitioner shall not be entitled to appear for the examination without further orders of this Tribunal. This Tribunal

vide order passed on 27th October, 2021 granted permission to the applicant for appearing in the main examination. It has been further ordered by the Tribunal that the result of the applicant should not be declared and should be withheld and it would be subject to the final decision in the present Original Application. Accordingly, the applicant appeared for the main examination and in view of the order passed by this Tribunal the result of the present applicant has been kept in the sealed envelope. We are informed that the entire result of the said main examination is not yet declared.

5. In the aforesaid background today final arguments are heard. It is the contention on behalf of the applicant that the technical glitch, because of which the applicant was compelled to record the information that she does not belong to Non-Creamy-Layer when in fact she belongs and was also possessing the said certificate on the date of uploading application form, she should not be deprived from considering her candidature for the seats reserved for OBC Female candidates.

6. Learned Counsel for the applicant in support of his contentions has placed reliance on two judgments of the Hon'ble Bombay High Court; first judgment is in the case of **SHAPOORJI PALLONJI & COMPANY PRIVATE LIMITED AND ORS. VS. STATE OF MAHARASHTRA AND ORS. (Writ Petition (L) No.**

2070/2017 decided on 28.9.2017); wherein the Hon'ble Division Bench of the High Court after having recorded findings that there was a technical glitch, permitted the tender submitted by the petitioner therein to be considered ignoring the information submitted in the form because of which tender could not have been considered.

7. The other judgment which has been relied upon by the applicant is in the case of **SHASHI SARASWAT VS. THE STATE OF MAHARASHTRA AND ORS. (Writ Petition St. No. 19728/2018 decided on 18.7.2018)**. In this case, the petitioner who was desiring admission for M.B.B.S. course, wrongly clicked and selected the College of Nursing. It was her contention that after opening the website page which she sought to enter after using the code allotted to her, reflected 21 Colleges which all were Nursing Colleges. Petitioner was eligible for the admission to M.B.B.S. Course from the seats reserved for Defence-3 category, but because of mistake committed by her in selecting the option in online process, she was likely to lose the said admission. She therefore filed the Writ Petition in the Hon'ble High Court. Hon'ble High Court accepted the contention of the petitioner that mistake had inadvertently occurred in selecting the option and she was not likely to intentionally commit such mistake which was detrimental to her interest and directed the respondent to consider the

candidature of Petitioner on the basis of State Merit List of NEET for Health Science Courses.

8. The learned Counsel for the applicant submitted that it was most unlikely that the applicant would fill the information that she does not belong to Non-Creamy-Layer, but for the technical glitch. The learned Counsel in the circumstances prayed for allowing the application.

9. The submissions so made on behalf of the applicant are opposed by the learned Chief Presenting Officer. He submitted that the excuses put forth by the applicant, after about one and half year that too after declaration of the result of the preliminary examination and after realizing that she is not likely to be considered for the seats reserved for OBC Female category, are all afterthought. The learned Chief Presenting Officer submitted that about 150 OBC candidates recorded "Yes" answer against the column "whether do you belong to Non-Creamy-Layer" and their forms have been appropriately uploaded. According to the learned Chief Presenting Officer, had there been any technical glitch as argued on behalf of the applicant, forms of around 150 other OBC candidates would not have been uploaded. According to the learned Chief Presenting Officer, the fact as aforesaid falsifies the plea raised by the applicant. On the aforesaid grounds the learned Chief Presenting Officer has prayed for rejecting the application.

10. We have carefully considered the submissions made on behalf of the applicant and the respondents. We have perused the documents filed on record. It is not in dispute that the applicant belongs to O.B.C. category. The applicant has placed on record the copy of her Caste Certificate dated 10.9.2012, copy of Caste Validity Certificate dated 14.3.2013 and the copy of Non-Creamy-Layer Certificate issued by the S.D.O., Aurangabad dated 9.5.2018 valid up to 31.3.2021. The correctness of the documents is also not in dispute. It is thus evident that the applicant belongs to O.B.C. category and also falls in the Non-Creamy-Layer category. The further inference therefore reasonably can be drawn that had no mistake occurred in filling the online application form, the candidature of the applicant is certainly liable to be considered in order of merit for the seats reserved for O.B.C. Female candidates.

11. It is the contention of the applicant that she could not fill the required information more particularly as about her falling in the category of Non-Creamy-Layer category and possessing the Caste Validity Certificate because of the technical glitch. In the rejoinder filed by the applicant to the affidavit in reply submitted on behalf of the respondent no. 2, the applicant has reiterated the complaint of technical glitch with certain more particulars as well as the documents. As noted earlier, it is the contention of the learned C.P.O. that about 150 applications of OBC candidates wherein the

candidates who filled the information and answer column in affirmative as about their status whether they belong to Non-Creamy-Layer category are appropriately uploaded and as such there was no reason for not getting the application uploaded of the applicant.

12. Considering the conflicting submissions made on the issue of 'technical glitch', it appears to us that, it may not be possible for us to record any conclusion with reasonable certainty either in favour of the applicant or accepting the contentions of the respondents. However, after considering the overall facts involved in the matter, it appears to us that, even if it is assumed that there was mistake on the part of the applicant in filling the correct information in her application form, even then the fact remains that the applicant belongs to O.B.C. class and also falls in the category of Non-Creamy-Layer. Assuming that it was mistake on the part of the applicant, the question is whether the mistake committed by the applicant is so irretrievable that she is to be thrown out of the entire process. In the case of **SHASHI SARASWAT** (cited supra) similar facts were involved. Though the petitioner in the said matter was having all other circumstances in her favour in terms of the eligibility criteria prescribed for her admission to the seat reserved for Defence-3 quota for M.B.B.S. course, the mistake was committed by the said petitioner in

selecting the option online. Their Lordships after considering the fact that the petitioner was fulfilling the eligibility criteria in all respect, directed the respondent No. 2 to consider her candidature on the basis of the State Merit List of NEET in the second round of counseling.

13. In the present matter, it appears to us that no prejudice is likely to be caused to anyone, if ignoring the mistake allegedly committed by the applicant in filling the correct information as about her Non-Creamy-Layer status in the online application form, her candidature is considered in order of merit. In the circumstances, we are inclined to allow the present application. In the result, the following order is passed :-

ORDER

(i) The respondents and more particularly the respondent no. 2 - the Maharashtra Public Service Commission, Mumbai - is directed to hold the present applicant, Smt. Priya d/o Rajeev Awhad, eligible for to be considered from the category of O.B.C. Female and declare her result of Main Examination with all other candidates. Needless to state that, if the applicant secures the position in order of merit, she will be entitled for appointment on the seats reserved for O.B.C. Female candidates.

(ii) The Original Application stands allowed in the aforesaid terms without any order as to costs.

MEMBER (A)

MEMBER (J)

PLACE : AURANGABAD.

DATE : 01.02.2022

ARJ-HD O.A.NO.530-2021(DB-) (EXAMINATION RTO)