IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.813 OF 2015

(Subject :- Appointment)

DISTRICT : LATUR

Priyanka D/o. Sandipan Bane,	)
Age : 23 years, Occ: nil,	)
r/o. Radhamohan Niwas,	)
Shree Colony, M.G. Road,	)
Ahmedpur, Tal. Ahmedpur,	)
Dist: Latur.	)…**Applicant**

V E R S U S

1.	**The State of Maharashtra**,	)
	Through its Secretary,	)
	Revenue and Forest Department,	)
	Mantralaya, Mumbai.	)
2.	**The Collector,**	)
	Nanded, Dist: Nanded.	)
3.	**The Principal Secretary and**	)
	Residential Deputy Collector,	)
	District Selection Committee,	)
	Nanded, Tal & Dist: Nanded.	)
4.	**Supriya D/o. Vinayak Gawande**	)
	Age: 24 years, Occ: Service,	)
	r/o. Petur, Tal: Wani,	)
	Dist: Yevatmal.	)…**Respondents**

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APPEARANCE :- Shri K.G. Salunke, learned Advocate holding for Shri V.D. Gunale, learned Advocate for the Applicant.

Smt. Sanjivani K. Deshmukh-Ghate, the learned Presenting Officer for the Respondent Nos.1 to 3.
Shri S.S. Pandit, learned Advocate for the Respondent No.4.

CORAM : JUSTICE A.H. JOSHI, CHAIRMAN
Shri ATUL RAJ CHADHA, MEMBER (A)

RESERVED ON : 02.04.2019.

PRONOUNCED ON : 22.04.2019.

O R D E R

1. Heard Shri K.G. Salunke, learned Advocate holding for Shri V.D. Gunale, learned Advocate for the Applicant, Smt. Sanjivani K. Deshmukh-Ghate, the learned Presenting Officer for the Respondent Nos.1 to 3 and Shri S.S. Pandit, learned Advocate for the Respondent No.4.

2. The Applicant has approached this Tribunal with present Original Application for prayers as follows:

> "(C) The selection of the Respondent No.4 to the post of Talathi and consequent appointment order issued by the Respondent No.2 appointing the Respondent No.4 to the post of Talathi be quashed and set aside.
>
> (D) This Hon'ble Court may please to direct the respondents no.2 and 3 to appoint the applicant on the post of Talathi from the category of NT-C Female.
>
> (quoted from page no.14 of the O.A.)

3. The grounds on which selection and appointment of the Respondent No.4's appointment is challenged are scattered in various paragraphs.

4. The Applicant has summarized the challenge through oral submissions which read as follows:-

On showing by the Respondent No.4, her creamy-layer certificate did not conform to mandatory requirement prescribed/laid down in the advertisement and hence her candidature was liable to be rejected.

5. Applicant has drawn attention to the advertisement, mandatory requirements namely:-

> "**इतर अटी व शर्ती**:— अनुसूचित जाती/अनुसूचित जमाती/खुला प्रवर्ग वगळून अन्य सर्व मागासवर्गीय उमेदवारासाठी सन २०१५—१६ या वर्षाचे म्हणजे दिनांक ०१.०४.२०१५ नंतर निर्गमित केलेले उन्त व प्रगत गटात मोडत नसल्याबाबतचे सक्षम अधिकारी यांचे प्रमाणपत्र असणे आवश्यक राहील."
>
> (Quoted from page no.28 of O.A.)

> (२) भरलेल्या माहितीच्या आधारेच निवड करण्यात येईल तसेच निवडीनंतर माहिती चूक आढळल्यास त्यांची निवड रद्द करण्यात येईल व पुढील गुणानूक्रमे असलेल्या उमेदवारास संधी देण्यात येईल. तसेच अर्ज करताना आपल्या सर्व शैक्षणिक व इतर बाबींची पूर्ण माहिती नमूद करावी. भरलेल्या माहिती व्यतिरिक्त इतर गुणवत्ता व माहितीची प्रमाणपत्रे/अभिलेखे नंतर सादर केल्यास विचारात घेतले जाणार नाहीत.
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> (Quoted from page no.26 of O.A.)

> (३ सत्यता पडताळणीच्या वेळेस उमेदवाराने online भरलेल्या अर्जात नमूद केलेल्या माहितीव्यतिरिक्त सादर केलेल्या इतर कागदपत्रांचा विचार केला जाणार नाही. तसेच पडताळणी करताना उमेदवाराने online भरलेल्या अर्जात नमूद केलेल्या बाबीचे प्रमाणपत्र/अभिलेख तो सादर करण्यास असमर्थ ठरल्यास त्याला भरती प्रक्रियेतून बाद करण्यात येईल.)"
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> (Quoted from page no.34 of O.A.)

6. Applicant has further shown that in the application form submitted by the Respondent No.4 she had furnished information relating to creamy-layer certificate as "नॉनक्रीमीलेअर प्रमाणपत्र क्र.७५८६ वैधता: 31/MAR/2016. (Quoted from page 36, Exh. A-7).

7. In the scrutiny form relating to candidature of the Respondent No.4, the column no.10 contains a text which is as follows:-

१०.	प्रगत —उन्नत गटाचे चालू प्रमाणपत्र (वैधता दि.३१/०३/२०१६ पर्यंत किंवा त्यापुढे) (आहे/नाही)	अर्जात नमूद केलेले प्रमाणपत्र वैध नाही. (दिनांक ३१.३.२०१५ चे आहे.) (नवीन काढलेले आहे दिनांक १७.७.२०१५ रोजी वैधदिनांक ३१.३.२०१८

(quoted from page no. 41 of the O.A.)

8. Since the certificate of Non-Creamy Layer was obtained by the applicant after the date prescribed in the advertisement, her candidature did not qualify for

inclusion/continuation in the context being in violation of conditions prescribed in the advertisement.

9. Since, the Respondent No.4 whose candidature was liable to be rejected had continued in the selection process and she had got the opportunity to be selected.

10. The Respondent No.4 has filed affidavit-in-reply and defended her candidature on the ground that one of the conditions contained in the appointment order was to have the non-creamy layer certificate scrutinized, it was scrutinized and the Respondent No.4 was found eligible and she was to be legally appointed.

11. The Respondent No.4 however, did not answer in the affidavit in reply as to what is the effect of failure to comply with the stipulation contained in the advertisement, and how said defect could be or was actually overcome by the Respondents.

12. The Respondent Nos.2 and 3 have filed their affidavit and admitted the fact that Non-creamy layer certificate furnished by the Respondents No.4 at the time of scrutiny was later date, than the date prescribed in the advertisement.

13. The learned Advocate for the Applicant has placed reliance on the judgment of this Tribunal rendered in O.A.No.502/2018 (decided by Hon'ble Chairman while at Aurangabad Bench).

14. It transpires from the record that the Applicant claims that the Non-Creamy layer Certificate relied upon/ furnished by the Respondent No.4 violated three mandatory conditions quoted in foregoing paragraph no. 5. Thus, the Applicant has demonstrated that the selection of the Respondent No.4 was in gross violation of mandatory conditions prescribed in the advertisement, and hence was impermissible.

15. It is settled legal position that the variation and modification cannot be done/allowed after the advertisement is issued nor relaxation to any individual can be granted.

16. Hence, the Original Application succeeds. Participation of the Respondent No.4 and her selection in the process of contest is held to be ineligible being contrary to the conditions

contained in the advertisement. Selection in favour of the Respondent No.4 is contrary to the law being contrary to various mandatory provisions.

17. Hence, Original Application is allowed in terms of prayer clause (C) and (D), which read as follows:-

> "(C) The selection of the Respondent No.4 to the post of Talathi and consequent appointment order issued by the Respondent No.2 appointing the Respondent No.4 to the post of Talathi be quashed and set aside.
>
> (D) This Hon'ble Court may please to direct the respondents no.2 and 3 to appoint the applicant on the post of Talathi from the category of NT-C Female.
>
> (quoted from page no.14 of the O.A.)

18. In the fact and circumstances of the case, parties are directed to bear their own costs.

(ATUL RAJ CHADHA)
MEMBER (A)

(A.H. JOSHI)
CHAIRMAN

Place:- Aurangabad
Date :- 22.04.2019

SAS. O.A.No.813/2015. Appointment.