

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.186 OF 2022

DISTRICT : RAIGAD

Ms. Aparna Anil Khedekar,)
Age 22 years, occ. Nil, R/o Gokul Nagar,)
Taluka Poladpur, District Raigad)..Applicant

Versus

The Deputy Commissioner of Police (HQ-2),)
Member, Mumbai Police Constable Recruitment, 2019,))
New Administrative Building, Second Floor,)
Office of Commissioner of Police, Mumbai,)
Dr. D.N. Road, Mumbai-1)..Respondent

Shri B.A. Bandiwadekar – Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondent

CORAM : Smt. Justice Mridula Bhatkar, Chairperson

Smt. Medha Gadgil, Member (A)

RESERVED ON : 6th February, 2023

PRONOUNCED ON: 21st February, 2023

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondent.

2. The applicant challenges the impugned order dated 21.1.2022 passed by the respondent by which the applicant was not included in the provisional select list of the candidates for the post of Police Constable pursuant to advertisement dated 3.9.2019. She was rejected on the ground that Non-Creamy Layer Certificate (NCL Certificate) dated 25.10.2016 of the applicant was valid up to 31.3.2019 when the cut-off date was 30.9.2019.

3. Brief facts of the case are as follows. The respondent had issued advertisement dated 3.9.2019 for filling up the post of Police Constable. Clause 16.2.1 of the said advertisement reads as under:

“खुला (महिला) आणि मागास प्रवर्गातील उमेदवारांनी महिलांसाठीच्या राखीव पदाकरिता अर्ज करताना उन्नत व प्रगत गटात मोडत नसल्याबाबतचे सक्षम प्राधिकाऱ्याने दिलेले लगतच्या आर्थिक वर्षाचे नॉन क्रिमीलेअर प्रमाणपत्र (Non Creamy Layer Certificate) प्राप्त करणे आवश्यक राहिल. तसेच, सदरहू प्रमाणपत्र कागदपत्र छाननीच्या वेळी सादर करणे आवश्यक आहे. अन्यथा, त्यांची निवड रद्द करण्यात येईल. महिला आरक्षणाच्या लाभार्थी उमेदवारांच्या प्रमाणपत्रांची तपासणी आयुक्त, महिला व बाल विकास, महाराष्ट्र राज्य, पुणे-१ यांचे मार्फत करणे आवश्यक राहिल.”

4. The applicant has applied from NT-B (Female) category pursuant to advertisement dated 3.9.2019 issued by respondent and for this purpose submission of Non-Creamy Layer Certificate (NCL Certificate) was necessary. Ld. Advocate for the applicant submits that the applicant appeared for the examination and her name figured at Sr. No.2151 in the provisional merit list and she secured 114 marks. There was also separate provisional select list of NT-B category candidates published by the respondent in regard to 16 vacancies where the name of the applicant

did not figure but the name of other candidates with less than 114 marks figured.

5. Ld. Advocate stated that while last date for filling up form was 30.9.2019 in the advertisement no cut-off date for submission of NCL certificate was mentioned. It was merely mentioned that the NCL certificate should be produced at the time of verification of documents. Therefore, he prayed that in view of the NCL certificate of the applicant dated 25.10.2016 which related to the period of 3 years up to 31.3.2019 conforms to the requirement set out by the respondents in examination notice dated 3.9.2019. He therefore, prayed that the name of the applicant should be included in the select list with all consequential benefits.

6. Ld. PO relied on the affidavit in reply dated 26.4.2022 filed by Kishore Vishwanath Gaike, Assistant Commissioner of Police, HQ-2, Mumbai. He stated that perusal of advertisement dated 3.9.2019 makes it clear that it pertains to vacancies for which applications are to be made from 3.9.2019 to 30.9.2019. Thus, income received in the FY 1.4.2018 to 31.3.2019 was to be considered to issue NCL Certificate after March, 2019. Clause 16.2.1 of the advertisement dated 3.9.2019 mentions that:

“ सक्षम प्राधिकाऱ्याने दिलेले लगतच्या आर्थिक वर्षाचे नॉन क्रिमीलेअर प्रमाणपत्र (Non Creamy Layer Certificate) प्राप्त करणे आवश्यक राहिल.”

7. He pointed out that the NCL certificate is issued on the basis of income received and not income accrued and therefore, income of the FY 1.4.2019 to 31.3.2019 was to be considered to issue the NCL certificate after March, 2019. Thus he said that the name of the applicant was rightly not included in the separate provisional select list of NT-B category

candidate published on 5.1.2022 as she did not possess the current NCL Certificate. She was however placed in the open category and was allowed to continue in the selection process and her selection/non-selection to the post was kept purely based on merit. He further clarified that the NCL certificate submitted by the applicant was not for the income of the previous FY and she was required to procure one by submitting the income details from 1.4.2018 to 31.3.2019. In the affidavit reference is made to the judgment and order dated 29.11.2011 passed by this Tribunal in OA No.821 of 2011 Shaikh Sohail Hamed Vs. State of Maharashtra & Ors. wherein it is observed as under:

“The candidature of all three petitioners who were not armed with requisite certificate procured before the cutoff date (although those were to be scrutinized at a later stage). We are unable to find any fault with rejection of candidature of these petitioners.”

8. Ld. Advocate for the applicant relied on the following judgments:

(i) Rashmi Metaliks Ltd. & Anr. Vs. Kolkata Metropolitan Development Authority & Ors. (2013) 10 SCC 95.

(ii) Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board & Anr. (2016) 4 SCC 754.

9. The ratio laid down in these two cases are not applicable to the present case, as the applicant did not possess valid NCL certificate as laid down under clause 16.2.1 of the advertisement dated 3.9.2019 before applying.

10. We have considered the submissions made by both the counsel. The matter revolves around the production of valid NCL certificate as laid

down in clause 16.2.1 of the advertisement dated 3.9.2019. The clause clearly states that the applicant needs to have a valid NCL certificate for the preceding Financial Year. Thus in order to obtain the NCL certificate for the previous FY i.e. from 1.4.2018 to 31.3.2019 the applicant could have applied only after 31.3.2019. Hence, NCL certificate dated 25.10.2016 cannot be considered a valid one.

11. In view of the facts and circumstances of the case, it is very clear that the OA is devoid of merit and deserves to be dismissed.

12. Original Application is dismissed. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
21.2.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
21.2.2023

Dictation taken by: S.G. Jawalkar.