

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.701 OF 2022

DISTRICT : SATARA

1. Sanjivani Abasaheb Karne,)
2. Shubhangi Madhukar Misal,)
3. Narale Dattatray Nana,)
4. Akshay Sudam Lohar,)
5. Pooja Vijay Narvekar,)
6. Chhaya Subhash Badiger,)
All Major, Occupation Nil,)
C/o Vishal S. Kadam, Advocate, MAT, Mumbai)..Applicants

Versus

1. The State of Maharashtra,)
Through its Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai 400032)
2. The Collector & District Selection Committee,)
Collector Office, Tq. & District Satara)..Respondents

Shri V.S. Kadam – Advocate for the Applicants

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

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

RESERVED ON : 16th December, 2022

PRONOUNCED ON: 9th January, 2023

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard Shri V.S. Kadam, learned Advocate for the Applicants and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. The applicants challenge their non selection for the post of Talathi vide communication dated 27.5.2021.

3. This matter pertains to selection of Talathi in District Satara. The advertisement was issued on 28.2.2019 for vacant post of Talathi. Pursuant to clause (1) on page no.6 and clause (6) on page no.8 of the advertisement dated 28.2.2019 it was mandatory for the candidate, who was participating in the process to submit the Non-Creamy Layer Certificate issued by the competent authority valid on 31.3.2019. The candidature of those candidates who failed to produce and comply with the conditions mentioned in the said advertisement relating to Non-Creamy Layer Certificate was rejected.

4. Ld. Advocate for the applicants argued that names of the applicant figured in the provisional select list for the post of Talathi in Satara District. All the applicants were directed to remain present for verification of their documents which was scheduled to be held from 6.1.2021 to 9.1.2021. He stated that though the applicants had fulfilled the criteria of belonging to Non-Creamy Layer Certificate their candidature was rejected on the ground that the Non-Creamy Layer Certificate was produced post the cut-off date of 31.3.2019. They stated that though they had submitted the Non-Creamy Layer Certificate beyond the cut-off date when a similar situation arose in the Raigad District while filling the post of Talathi in same year, the candidates were allowed to produce Non-Creamy Layer Certificate after the prescribed date in the advertisement. Similar view

was adopted by District Sindhudurg, Ratnagiri and Osmanabad. Ld. Advocate for the applicants argued that there should be uniform policy in the entire State which was not appreciated by respondent no.2. He further argues that applicants were disqualified without granting them opportunity as per principles of natural justice.

5. The applicants approached the Hon'ble High Court vide Civil Writ Petition No.2166 of 2021 and W.P. No.3643 of 2021 for setting aside the impugned order. The Hon'ble High Court by its order dated 13.7.2022 directed the applicants to approach this Tribunal as the matter is within the jurisdiction of this Tribunal.

6. Ld. Advocate for the applicants relied on the following judgments:

(i) Judgment and order dated 21.7.2016 passed by the Kerala High Court at Ernakulam in WA No.655 of 2016 in WP (C) No.39201 of 2015 (Union of India & Ors. Vs. Abdul Rasheed) wherein in para 10 it is held that:

“10. The land mark judgment of the Apex Court in Indra Sawhney v. Union of India [(1992)3 SCC Supple. 217] has explained the concept of reservation in its historical background and has laid down the principles for implementation. In Tej Pal Singh's case (supra), the Apex Court held that candidates belonging to SC and ST categories who submitted the community certificates belatedly were also eligible to be considered for appointment under the reserved category. In Pushpa v. Government NCT of Delhi & ors. [2009(2) Laws (Delhi) 278], with regard to the late submission of community certificate of an OBC candidate, the Apex Court held that a person belongs to OBC category by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by a competent authority to this effect is only an affirmation of the fact

which is already in existence. In Ram Kumar Gijroya's case (supra) the Apex Court considered the question of law as to whether a candidate who appears in an examination under the OBC category and submits the certificate after the last date mentioned in the advertisement is eligible for selection to the post under the OBC category or not. Deciding a batch of civil appeals, it was held that the judgment of the Division Bench setting aside the judgment and order dated 24.11.2010 wherein the learned single Judge had allowed the writ petition and directed the respondents to accept the OBC certificates produced belatedly was erroneous and the same was set aside. The direction to consider the appellant for selection in the reserved category was thus upheld. In the facts of this case as well, we are of the view that the certificate produced by the first respondent at the time of interview should have been accepted and acted upon by the appellants.”

(ii) Judgment and order dated 5.3.2018 passed by the Hon'ble High Court Bench at Aurangabad in W.P. No.8360 of 2016 Jyoti Nandkumar Shende Vs. The Chief Executive Officer, ZP, Ahmednagar & Ors.

(iii) Judgment and order dated 24.3.2015 passed by the Hon'ble High Court Bench at Aurangabad in W.P. No.11722 of 2014 Arvind Motiram Chavan Vs. The State of Maharashtra & Ors.

7. Ld. Advocate for the applicants refers to GR dated 31.1.2020 issued by Other Backward Classes, Socially and Educationally Backward Classes, De-notified Tribes, Nomadic Tribes and Special Backward Classes Welfare Department, pointing out that there is a committee headed by Divisional Commissioner for each Revenue Division and that the District Collector is authorized to take decision in the matter of deciding the validity of Non-Creamy Layer Certificate. He also refers to the affidavit

dated 20.10.2021 filed by Shri Sanjay Bankar, Deputy Secretary, Revenue & Forest Department, Mantralaya, Mumbai in W.P. No.2166 of 2021 filed in the Bombay High Court (Sanjivani A. Karne & Ors. Vs. The State of Maharashtra & Ors.) which states that as per circular dated 17.8.2013 if the candidate produces Non-Creamy Layer Certificate issued on the basis of the income certificate for prior years and for which the validity of the Non-Creamy Layer Certificate is up to 31.3.2019 or beyond this the Non-Creamy Layer Certificate can be taken into consideration for the claim of a candidate that he/she belongs to Non-Creamy Layer category.

8. Ld. CPO states that the applicants are not eligible for appointment to the post of Talathi as they have submitted their Non-Creamy Layer Certificate after the cut-off date. She refers to **judgment and order dated 22.4.2019 passed by the Aurangabad Bench of this Tribunal in OA No.813 of 2015 (Priyanka Sandipan Bane Vs. The State of Maharashtra & Ors.)**, which also relates to the selection of the post of Talathi in which Non-Creamy Layer Certificate was obtained by the applicant after the date prescribed in the advertisement. In this the Tribunal held that selection of private respondent no.4-Supriya Vinayak Gawande was held to be ineligible being contrary to the conditions mentioned in the advertisement. This Tribunal observed as under:

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.

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.”*

9. Being aggrieved by said order dated 22.4.2019, respondent no.4- Supriya Vinayak Gawande in OA No.813 of 2015 filed **W.P. No.5294 of 2019 in the Hon’ble High Court Bench at Aurangabad and the Hon’ble High Court by its order dated 2.8.2022** dismissed the writ petition and upheld the order passed by this Tribunal. The Hon’ble High Court observed as under:

“18. After perusal of specific condition in the advertisement for possession of Non Creamy Layer Certificate of the year 2015-16 issued after 01.04.2015, the petitioner ought to have procured such certificate before filling up the online application form and details of such certificate ought to have been stated in the form. Admittedly, the petitioner did not possess Non Creamy Layer Certificate issued after

01.04.2015 as on the date of filling up and uploading the online application form i.e. on 13.07.2015. Such certificate was issued to the petitioner only on 17.07.2015 i.e. after filling up of the online application form. Since the petitioner was not in possession of Non Creamy Layer Certificate issued after 01.04.2015, perhaps, she chose to mention the number of Non Creamy Layer Certificate being “7586” which was in her possession at the time of filling up of online application form. However, the certificate was valid only upto 31.03.2015. Thus, as on the date of filling up of the form on 13.07.2015 there was no valid Non Creamy Layer Certificate in her possession. To overcome this defect, the petitioner appears to have stated that the validity of the Non Creamy Layer Certificate no.7586 was upto 31.03.2016. This statement was false to her knowledge. Thus, the statement in the online application form that the certificate no.7586 was valid upto 31.03.2016 appears to have been consciously made by her with a view to circumvent the reality that as on the date of filling up of the online application form i.e. 13.07.2015 she was not in possession of any valid Non Creamy Layer Certificate. The validity of certificate no.7586 had already expired on 13.03.2015. The petitioner thus knowingly gave false information in her online application form. This conduct of the petitioner does not commend us.

25. We have already come to the conclusions that the petitioner, far from being eligible to apply for selection, in fact indulged in deplorable act of giving false information in the form. Besides, inconsistent with the requirement of the advertisement she was allowed to produce a certificate which was not mentioned in the application form and which was also of a future date. Therefore, no equities can be adjusted in her favour by reason of continuation of service during pendency of the proceedings before the Tribunal and this Court. Also,

mere fact of appointment of Respondent No.4 in another service cannot be a reason to condone the lapses committed by the petitioner.

26. In the result, we do not find any infirmity in the view taken by learned Tribunal in its order dated 22.04.2019. It is upheld and the petition is dismissed. The interim protection granted in favour of the petitioner is vacated. There shall be no order as to costs.”

10. In the present case it is clear that the applicants did not possess the Non-Creamy Layer Certificate as per the conditions stipulated in the advertisement dated 28.2.2019. The question for consideration in this matter is whether we should allow relaxation for non-production of Non-Creamy Layer Certificate by the applicants. We are of the opinion that the applicants were aware of the conditions mentioned in the advertisement and willing to participate in the said process. It is seen that majority of the applicants had complied with the conditions as laid down and respondent no.2 rightly took decision to disqualify the candidature of these applicants.

11. We are also bound by the ratio laid down by Aurangabad Bench of this Tribunal in *Priyanka Sandipan Bane* (supra) in which the facts are identically similar and the said judgment is upheld by the Hon'ble High Court Bench at Aurangabad in *Supriya Vinayak Gawande* (supra).

12. Another factor is that the applicants made a false statement that they possess the Non-Creamy Layer Certificate in order to circumvent the deadline. It is further to be noted that the applicants had not even made an application to the competent authority for getting Non-Creamy Layer Certificate. In this matter we would like to quota the observations made in para 3 sub para 6 of the Hon'ble Supreme Court in **Collector, Land**

Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. (1987) 2 SCC 107,
which reads as under:

“6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

13. We had also considered the GR dated 31.1.2020 issued by the Government of Maharashtra which has set up a committee under the Divisional Revenue Commissioner to examine the validity of the Non-Creamy Layer Certificate. However, in this case we are not examining the validity of the Non-Creamy Layer Certificate. Admittedly, the applicants produced the valid Non-Creamy Layer Certificate post cut-off date as mentioned in the advertisement. Merely possessing income certificate for the previous year is not sufficient and the applicants needed a valid Non-Creamy Layer Certificate issued before the cut-off date. Thus, in this matter it is very clear that the applicants are not eligible for appointment as they did not possess a valid Non-Creamy Layer Certificate before the cut-off date mentioned in the advertisement.

14. Considering all these factors and the ratio laid down in *Priyanka Sandipan Bane* (supra) and upheld in *Supriya Vinayak Gawande* (supra), the Original Application is dismissed. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
9.1.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
9.1.2023

Dictation taken by: S.G. Jawalkar.

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CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)
DATE : 9th January, 2023

ORDER

1. After the judgment and order dated 9.1.2023 was pronounced today, Ld. Advocate for the applicants prays for stay of the order.
2. Ld. CPO opposes grant of stay.
3. In view of the fact that matter is already decided and there is waiting list of candidates, we are not inclined to stay the order. Hence, prayer for stay is rejected.

Sd/-

**(Medha Gadgil)
Member (A)
9.1.2023**

Sd/-

**(Mridula Bhatkar, J.)
Chairperson
9.1.2023**

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