

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.882 OF 2019  
WITH  
MISCELLANEOUS APPLICATION NO.577 OF 2019**

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**ORIGINAL APPLICATION NO.882 OF 2019**

**DISTRICT : MUMBAI**

Smt. Kripali Kaushik Bangar, )  
Age 31 years, Assistant Block Development Officer (VP), )  
Gram Panchayat Division, Zilla Parishad, Thane )  
R/o 2A/103, Galaxy CHS, New MHADA Colony, )  
Kurla (W), Mumbai-70 )..Applicant

Versus

1. The State of Maharashtra, )  
Through Additional Chief Secretary (Services), )  
General Administration Department, )  
Mantralaya, Mumbai 400032 )
2. The Commissioner, )  
Women & Child Development Commissionerate, )  
28, Ranicha Bag, Near Old Circuit House, Pune-1)
3. The State of Maharashtra, )  
Through Secretary, )  
Women & Child Development Department, )  
Mantralaya, Mumbai 400032 )..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

**WITH**

**MISCELLANEOUS APPLICATION NO.577 OF 2019  
IN  
ORIGINAL APPLICATION NO.882 OF 2019**

1. The State of Maharashtra, )  
Through Additional Chief Secretary (Services), )  
General Administration Department, )  
Mantralaya, Mumbai 400032 )
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Women & Child Development Commissionerate, )  
28, Ranicha Bag, Near Old Circuit House, Pune-1)
3. The State of Maharashtra, )  
Through Secretary, )  
Women & Child Development Department, )  
Mantralaya, Mumbai 400032 )..Applicants  
(Ori.Respondents)

Versus

- Smt. Kripali Kaushik Bangar, )  
Assistant Block Development Officer (VP), )  
Gram Panchayat Division, Zilla Parishad, Thane )..Respondent  
(Ori. Applicant)

Smt. K.S. Gaikwad – Presenting Officer for the Applicants-original Respondents

Shri B.A. Bandiwadekar – Advocate for the Respondent-original Applicant

CORAM : Shri P.N. Dixit, Vice-Chairman (A)  
Shri A.P. Kurhekar, Member (J)

RESERVED ON : 7<sup>th</sup> November, 2019

PRONOUNCED ON : 19<sup>th</sup> November, 2019

PER : Shri P.N. Dixit, Vice-Chairman (A)

### **J U D G M E N T**

1. Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.
2. The applicant has been terminated as Non-Creamy Layer Certificate (NCLC) submitted by her is found invalid.

#### **Brief facts of the case:**

3. In response to the advertisement No.331/2013 published by MPSC the applicant participated in the same for the post of Assistant Block Development Officer Group B under horizontal reservation for women in open category. The relevant portion of the advertisement reads as under:

“२.३ महिलांसाठी असलेले आरक्षण शासननिर्णय महिला बालविकास व विभाग क्र.८२/२००९/म.से.आ २०००/प्र.क्र.४१५/का-२ दिनांक २५ मे, २००९ आणि तदनंतर शासनाने यासंदर्भात वेळोवेळी निर्गमित केलेल्या आदेशानुसार राहिल.”

(Quoted from page 40 of OA)

4. As the applicant cleared the same she participated in the Main Examination 2013 as per notification dated 7.7.2013. She enclosed a NCLC from the Tahsildar, Junnar, District Pune which reads as under:

“प्रमाणित करण्यात येते की, शासन निर्णय महिला व बाल विकास विभाग क्रं.८२/२००९/मसेआ-२०००/प्र.क्र. ४१५/का-२, दिनांक २५ मे २००९ अन्वये विहित केलेल्या खुल्या प्रवर्गातील महिलांकरीताच्या उन्नतव्यक्ती / गट (क्रिमिलेअर) प्रवर्गामध्ये कुमारी कृपाली कौशिराम बांगर, रा. वारुळवाडी (नारायणगांव) ता-जुन्नर, जि- पुणे यांच्या कुटुंबियांची लगतच्या मागील ३ वर्षांचे सर्व मार्गांनी मिळून एकूण उत्पन्न वार्षिक सरासरी, रुपये ४ लाखांच्या आत असल्याने त्या खुल्या प्रवर्गातील उन्नतव्यक्ती / गट (क्रिमिलेअर) मध्ये मोडत नाहीत.”

(Quoted from page 45 of OA)

5. This certificate has been issued on the basis of documents submitted by her and enclosing the income certificate of her father. The relevant portion of the same reads as under:

वर्ष	वार्षिक उत्पन्न ( ₹ )	अक्षरी (रुपये)
2010-2011	573539	पाच लाख «याह-तर हजार पाचशे एकोणचाळीस
2011-2012	690288	सहा लाख नव्वद हजार दोनशे अठ्ठ्याऐंशी मात्र
2012-2013	795947	सात लाख पंच्याण्व हजार नऊशे स-तेचाळीय मात्र

(Quoted from page 47 of OA)

6. The figures mentioned above as income are already corroborated by Form No.16 of the relevant period (page 51-53 of OA).

7. As the applicant completed the examination successfully and as her name was recommended by the MPSC, she was given ad hoc appointment on following conditions:

“३. उपरोक्त उमेदवारांना त्यांच्या वारिश्य तपासणी, वैद्यकीय तपासणी आणि जात प्रमाण पत्र पडताळणी वैधतेच्या अधीन राहून वनामती, नागपूर येथे दि. ९/६/२०१४ पासून सुरु करण्यात येणाऱ्या एकत्रित परिवीक्षाधीन

प्रशिक्षण कार्यक्रमासाठी तात्पुरती नियुक्ती देण्यात येत आहे. सदर उमेदवारांनी आयोगाकडे अर्ज पाठविताना सादर केलेल्या कागदपत्रांची तपासणी मूळ कागदपत्रांच्या आधारे दि. ६/६/२०१४ पासून दि.७/६/२०१४ पर्यंत कार्यालयीन वेळेत वनामती, नागपूर येथे करण्यात येईल.”

(Quoted from page 56 of OA)

8. On completion of her training she was given regular appointment on 4.8.2016. On 16.3.2019 Commissioner, Women & Child Development informed Deputy Secretary, GAD as under:

“प्राप्त एकूण २५ प्रस्तावासोबत जोडण्यात आलेल्या कागदपत्राची छाननी करता श्रीमती कृपाली कौशिक बांगर यांचे उत्पन्न हे नॉन क्रिमीलेअर प्रमाणपत्रासाठी शासनाने निश्चित केलेल्या उत्पन्नापेक्षा जास्त असल्याचे तपासात अंती आढळून आले आहे.

शासन निर्णय दि.२५.५.०१ मधील मुददा क्र.२(अ)(४) नुसार नॉन क्रिमीलेअर प्रमाणपत्राच्या पृष्ठयर्थ संबंधित महिला उमेदवाराने शासन निर्णयातील परिशिष्ट-२ मधील अर्जान्वये नॉन क्रिमीलेअर प्रमाणपत्र प्राप्त करून घेण्यासाठी जी महिती व कागदपत्रांच्या प्रती सादर केल्या होत्या ती माहिती व कागदपत्रे मुळ प्रमाणपत्रावरून प्रमाणपत्र निगर्मात करण्यापूर्वी तपासण्यात यावी त असे नमुद केले आहे.

त्यामुळे श्रीमती कृपाली कौशिक बांगर या उमेदवाराची नॉन क्रिमीलेअर दाखल्याची मर्यादा ही एक वर्षाची आहे. त्यामुळे हे नष्ट करण्यात आले आहेत. ज्या संदर्भामध्ये तहसिलदार जुन्नर याचे पत्र क्र.८४ दि.२७.०६.२०१८ नुसार कळविण्यात आलेले आहे श्रीमती बांगर यानी संदर्भ क्र-५ नुसार शपथपत्र दाखल केले आहे.

तथापि, नॉन क्रिमीलेअर प्रमाणपत्र दि.३.०१.१४ रोजीचे असल्यामुळे त्याचे उत्पन्न हे सन २०१०-११ सन २०११-१२ सन २०१२-१३ या वित्तीय वर्षांचे उत्पन्न ग्रहित धरणे आवश्यक आहे. तहसिलदार जुन्नर जिल्हा पुणे यांचा उत्पन्नाचे प्रमाणपत्रावरून त्यांचे सन २०१०-११ चे आर्थिक वर्षाचे उत्पन्न हे ५७३५३९/सन २०११-१२ चे आर्थिक उत्पन्न हे ६९०२८८८/सन २०१२-१३ चे आर्थिक उत्पन्न हे ७९५९४७/ असे असून मागील तीन वर्षांचे उत्पन्नाची सरासरी ६८६५९१/ इतकी असल्याचे दिसून येते. सदर प्रकरणी तहसिलदार जुन्नर यांनी दिलेले नॉन क्रिमीलेअर प्रमाणपत्रामध्ये उत्पन्न ४.०० लाखच्या आत असल्याचे आणि खुल्या प्रवर्गातील उन्नत व्यक्ती / गट क्रिमीलेअर मध्ये मोडत नाही असे प्रमाणपत्रामध्ये नमुद केले आहे.

शासन निर्णय दि. ११.१.१९ मधील मुददा क्र.१ नुसार शासन निर्णय दि.२५.५.०१ मधील ज्या तरतुदी मध्ये दि. १५. १२.१७ च्या शासन निर्णयान्वये सुधारणा करण्यात आलेल्या आहेत त्या सुधारणा करण्यात आलेल्या आहेत त्या

सुधारणा शासन निर्णय निर्गमित झाल्याच्या दिनांकापासून म्हणजे दि. १५.१२.१७ पासून लागू राहिल. त्यामुळे श्रीमती बांगर यांनी सादर केलेले नॉन किमीलेअर ग्राह्य धरता येणार नाही.

सबब, शासन निर्णय महिला व बाल विकास विभाग क.८२/२००१/मसेआ/२०००/प्र.क्र.४१५/का.२/मंत्रालय, मुंबई दि. २५.०५.२००१ नुसार मुददा क.(एक) (१०) नुसार खुल्या प्रवर्गातील त्या व्यक्तीचे / कुटुंबाचे सर्व मागणी येणारे एकूण वार्षिक उत्पन्न सलगच्या मागील वर्षामध्ये रु. ४.५० लाख रु किंवा त्यापेक्षा अधिक असेल ती व्यक्ती / कुटुंब उन्नत आणि प्रगत आणि प्रगत व्यक्ती / गट म्हणून समजण्यात येईल.

उपरोक्त तरतुद पाहता श्रीमती कृपाली कौशिक बांगर यांचे तीन वर्षांचे सरासरी उत्पन्न हे ४.५० पेक्षा अधिक असल्याने श्रीम. बांगर या महिला उमेदवार उन्नत व प्रगत गटात मोडतात त्यामुळे सदरचा प्रस्ताव फेटाळण्यात येवून या पत्रासोबत परत पाठविण्यात येत आहे.

(Quoted from page 63-64 of OA)

9. Accordingly, GAD informed the applicant that scrutiny of her NCLC reveals that she is not eligible for the same. The GAD therefore called for her explanation as to why her services should not be terminated.

10. The applicant has challenged the above mentioned impugned order dated 2.5.2019 and the communication from Commissioner, Women & Child Development dated 16.3.2019 and prayed that the same may be set aside.

11. In support of the same she has furnished the grounds which are summarized below:

(1) The NCLC issued to her on 3.1.2014 by Tahsildar is as per GR dated 25.5.2001.

(2) The GR dated 25.5.2001 needs to be read with subsequent GR dated 15.12.2017 which has amended earlier GR dated 25.5.2001 thereby giving retrospective effect which totally dispenses with limit of income to claim NCLC.

(3) The stipulation about NCLC for female candidates is available in clause 2.3 of the preliminary examination dated 23.1.2013. However, there is no mention about the same in the advertisement dated 7.9.2013 issued by MPSC for main examination.

(4) The scrutiny of the documents has been undertaken after 5 ½ years when the same should have been done before issuing the order of appointment on 8.5.2014 or 4.8.2016.

(5) In view of the lapse of 5 ½ years the applicant should be considered as permanent Government officer as she has completed probation of 2 years.

(6) The respondents have failed to follow the principles of natural justice and did not provide reasonable opportunity.

(7) In case there was any doubt about the original documents relied upon for providing NCLC the matter should have been referred to District Collector in terms of clause 9 of the GR dated 25.5.2001. This exercise has not been done and therefore the impugned order is invalid. Income limit of the applicant's father did not exceed rupees six lakhs in all the years financial years. Hence, the applicant is covered vide GRs dated 25.5.2001, 24.6.2013 and 17.8.2013.

(8) The respondents have failed to do proper interpretation of the GRs dated 25.5.2001, 24.6.2013 and 17.8.2013. This is in violation of the guiding principles laid down vide letter dated 24.6.2018 by respondent no.3.

(9) Respondent no.2 has failed to take into account provisions of the GRs dated 24.6.2013 and 17.8.2013.

(10) There is discrimination against the applicant as in case of two other open female category candidates, benefits of the GR dated 15.12.2017 have been provided to Ms. Priyanka Babar (Sales Tax Inspector, 2014) and Ms. Shweta Pawar (Tahsildar, 2016).

(11) The respondents should have followed similar view as she is identically placed and thus this is a case of discrimination and hit by the provisions of Articles 14 and 16 of the Constitution of India.

(12) The GR dated 15.12.2017 is based on GR dated 25.3.2013 which is based on Central Government guidelines dated 8.9.1993. Clause B(b) covers the case of the applicant, as father of the applicant was working as Class II gazetted officer and was not promoted before crossing 40 years of age.

12. The respondents have contested the claim of the applicants by filing affidavit in reply. The relevant portion of the same reads as under:

*“3. The Non Creamy Layer Certificate was submitted to the Directorate of Women and Child Development for verification. The Directorate vide letter dated 16.03.2019, informed the General Administration Department that as per clause 1(10) of the Government Resolution dated 25.05.2001 the Annual income of the Applicant of the period of 2010-2011, 2011-2012 and 2012-2013 comes to more than Rs.4,50,000/- while issuing the Non Creamy Certificate dated 03.01.2014. Therefore, Applicant falls under Creamy Layer category. Therefore, the General Administration Department issued a show cause notice to the applicant calling her to show cause as to why her services shall not be terminated.*”



4. *With Reference to Paragraph No.6.2, I say that vide Maharashtra Public Service commission recommendation dated 25.03.2014 the applicant came to be nominated for the post of Assistant Block Development officer under horizontal reservation for women in Open category subject to condition of the verification of Non Creamy Layer certificate of the Applicant dated 03.01.2014. The Government, vide letter dated 8th May, 2014, had temporarily appointed the Applicant on the post of Assistant Block Development Officer (Group-B) B for Combined Probationary Training Programme 1 subject to condition of the verification of Non Creamy Layer certificate of the Applicant dated 03.01.2014.*

5. *With Reference to Para No.6.3, I say that as per para 4.2.8 of the general instructions published by M.P.S.C female candidates belonging to unreserved category, claiming for the post which are reserved for female candidates of unreserved / open category, are required to submit non creamy layer certificate issued by Competent Authority of the previous financial year with respect to the financial year in which the advertisement had been published by the MPSC. In this case Preliminary examination advertisement issued on 23.01.2013. As per Social Justice and special Assistance Department Government Resolution Dated 13.01.2009 the income limit in January 2013 for grant of Non Creamy Layer certificate was Rs.4.50 lakhs. The Annual income of the Applicant for the year of 2010-2011 is Rs.573539, for the year 2011-2012 is Rs.690288 and for the year 2012-2013 is Rs. 795947. Considering these facts Applicants income limit exceeds more than Rs.4.50 lakhs as per Government Resolution dated 13.01.2009. Therefore Applicant falls under Creamy Layer category. The Government Resolution of Social Justice and special Assistance Department Dated 24.06.2013 not applicable to the applicant as the said GR implemented from the date of 16.05.2013 and Preliminary examination advertisement of MPSC was issued on 23.01.2013. The Government Resolution of Social Justice and special Assistance Department Dated 13.01.2009 is applicable to the applicant as Preliminary examination advertisement of MPSC was issued on 23.01.2013.*

6. *With reference to paragraph No. 6.4, I say that the Government Resolution dated 15.12.2017 is not applicable to the applicant at all decision is taken by the Respondent No.2 as per Government Resolution dated 13.01.2019 whereas the said Government Resolution is not at all superseded or modified by Government Resolution Dated 15.12.2017.*

7. *With Reference to Para No.6.5, I say that in response the advertisement dated 23.01.2013 issued by the M.P.S.C. applicant made application to compete for the said post in the vacancy of open female Candidate.*

13. *With Reference to Para No.6.12, I say it is not true that the applicant afforded full co-operation to the concerned authorities for verification of Non creamy layer certificate dated 03.01.2014. Vide Government letter dated it had been communicated to the applicant that she should submit all original documents on the basis of which she obtained non creamy layer certificate dated 03.01.2014 from competent Authority along with Annexure 2 of the Government Resolution dated 25.05.2001. However, Applicant has not co-operated to the Respondent No.2.*

15. *With Reference to Para No. 6.14, I say that as per Government Resolution dated 13.01.2009 Applicants income limit exceeds more than Rs.4.50 lakhs, therefore as per clause 1 (10) of the Government Resolution dated 25.05.2001 the Annual income of the Applicant of the period of 2010-2011, 2011-2012 and 2012-2013 comes to more than Rs.4,50,000/- while issuing the Non Creamy Certificate dated 03.01.2014. Therefore, Applicant falls under Creamy Layer category vide report 16.03.2019 of Respondent No.2.*

18. *With Reference to Para No.6.18, I say that as per para 4.2.8 of the general instructions published by M.P.S.C female candidates belonging to unreserved category, claiming for the post which are reserved for female candidates of unreserved / open category, are required to submit non creamy layer certificate issued by competent authority of the previous*

*financial year with respect to the financial year in which the advertisement had been published by the MPSC. In this case Preliminary examination advertisement issued on 23.01.2013. As per Social Justice and special Assistance Department Government Resolution Dated 13.01.2009 the income limit in January 2013 for grant of Non Creamy Layer certificate was Rs.4.50 lakhs. As per income certificate at page 47 in Original Application the Annual income of the Applicant for the year of 2010-2011 is Rs.573539, for the year 2011-2012 is Rs.690288 and for the year 2012-2013 is Rs. 795947. As per Government Resolution dated 13.01.2009 Applicants income limit exceeds more than Rs.4.50 lakhs, therefore as per clause 1 (10) of the Government Resolution dated 25.05.2001 the Annual income of the Applicant of the period of 2010-2011, 2011-2012 and 2012-2013 comes to more than Rs.4,50,000/- while issuing the Non Creamy Certificate dated 03.01.2014. Therefore, Applicant falls under Creamy Layer category. Hence for this reason show cause notice reply of the applicant dated 13.05.2019 is unsatisfactory. The said reason is assigned in the order dated 14.08.2019. Therefore it is not true that Respondent No.1 has not assigned any reason while rejecting show cause notice reply of the applicant.*

*20. With Reference to Para No. 6.20, I say that the Government Resolution dated 15.12.2017 is not applicable to the applicant at all decision is taken by the Respondent No.2 as per Government Resolution dated 13.01.2019 whereas the said Government Resolution is not at all superseded or modified by Government Resolution Dated 15.12.2017. Therefore the Non Creamy Layer certificate submitted by the applicant cannot be accepted.*

*25. With Reference to Para No.6.27, I say that vide Maharashtra Public Service commission recommendation dated 25.03.2014 the applicant recommended for the post of Assistant Block Development officer under horizontal reservation for women in Open category subject to condition of the verification of Non Creamy Layer certificate of the Applicant dated 03.01.2014. Thereafter vide Government letter dated 8th May, 2014 Applicant had temporarily appointed on the post of Assistant Block*

*Development Officer (Group-B) B for Combined Probationary Training Programme 1 subject to condition of the verification of Non Creamy Layer certificate of the Applicant dated 03.01.2014. Government has not completed / finished probation of the applicant due to non-verification of Non Creamy Layer Certificate of the applicant. Therefore applicant is not permanent Government Officer. Applicant falls under Creamy Layer category as per report dated 16.03.2019 of the Respondent No.2. Considering these facts the Department took a decision to terminate the services of the applicant as per rule and accordingly issued termination order on 14.08.2019.*

26. *With Reference to Para No.6.28, I say that the matter of the applicant had referred to the Tahasildar Junnar for verification from original documents. However Tahasildar Junnar vide letter dated 27.06.2018 communicated that the original documents which led to the grant of Non Creamy Layer Certificate had destroyed. Thereafter Respondent No.2 obtained affidavit from Applicant for further exercise. Therefore Respondent No.2 has done proper exercise before treating Non Creamy Layer Certificate of the applicant dated 03.01.2014 invalid.*

28. *With Reference to Para No.6.33, I say that the letter issued by Respondent No.3 regarding operation of that Government Resolution is not applicable in the present case as selection process is totally different.*

29. *With Reference to Para No. 6.34 to 6.38, I say that the Government Resolution dated 15.12.2017 is not applicable to the applicant at all decision is taken by the Respondent No.2 as per Government Resolution dated 13.01.2019 whereas the said Government Resolution is not at all superseded or modified by Government Resolution Dated 15.12.2017.*

(Quoted from page 79-95 of OA)

13. The respondents have therefore submitted that there is no merit in the OA and the applicant should not be given any relief and the OA be dismissed.

14. During hearing the Tribunal had given stay to the order dated 16.3.2019 on 16.9.2019. The stay was extended from time to time. Opposing the same the State has filed MA No.577 of 2019 praying to vacate the interim relief.

15. The learned PO has relied on the following judgments:

- (i) State of U.P. & Ors. Vs. Ram Sukhi Devi, (2005) 9 SCC 733.
- (ii) E.P.Royappa Vs. State of Tamil Nadu & Anr., (1974) 4 SCC 3.
- (iii) The State of Maharashtra & Ors. Vs. Dipak Pandurang Sawarkar, Writ Petition No.70 of 2011 decided by the Bombay High Court Bench at Nagpur on 29.11.2011.

16. Issues for consideration:

- (1) Whether the applicant is eligible to get the NCLC as furnished by her?
- (2) Whether applicant is exempted from the income limit, as she is the daughter of Government officer?
- (3) Whether the provisions of the GR of 2017 are applicable to the applicant?

Observations and findings:

17. We have examined the relevant GRs regarding the provisions of NCLC. As far as horizontal reservation for open category females is concerned the first GR has been issued by Women & Child Development Department on 25.5.2001. The relevant portion from the same reads as under:

“१) खुल्या प्रवर्गातील महिलांसाठी उच्चत आणि प्रगत व्यक्ती व गट ( क्रिमिलेअर) यामध्ये मोडत नसल्याबाबतचे प्रमाणपत्र देण्यासाठी तहसिलदार व नायब तहसिलदार यांना सक्षम अधिकारी म्हणून घोषित करण्यात येत आहे. याबाबतचा अर्जावर नमुना व प्रमाणपत्राचा नमुना परिशिष्ट २ व ३ म्हणून सोबत जोडला आहे.

(Quoted from page 27 of OA)

18. GR dated 13.1.2009 stipulated that the income limit to obtain NCLC is fixed at Rs.4.5 lakhs (page 109). The advertisement for the examination was issued in January 2013 (page 39) and the candidates were directed to follow the orders issued vide GR dated 25.5.2001 and thereafter.

19. On 25.3.2013 the Government issued GR clarifying that out of VJNT, DTNT, OBC and SBC categories the procedure for omitting Creamy Layer Persons. This particular GR is applicable to the creamy layer persons belonging to the reserved categories and mentions in clause B(b) that if either of the parent appointed in Class II category and who did not get promoted before the age of 40 years Class I officer, then the income of Rs.4.5 lakhs would not be applicable to his/her child and the child would continue to get NCLC. This GR was tendered by the Ld. Advocate for the applicant during final hearing.

20. On 24.6.2013 the GR was issued which enhanced the income limit from Rs.4.6 lakhs to Rs.6.00 lakhs. This GR also clarified that this will be applicable from 16.5.2013 (page 31).

21. On 15.12.2017 the Government issued resolution clarifying and amending certain provisions of the GR dated 25.5.2001. This GR clarifies that the procedure followed in respect of backward class and the criteria prescribed for the same would be similar in respect of open category NCLC as well as mentioned in the GR dated 25.3.2013. On 11.1.2019 Government issued further clarification that the GR issued on 15.12.2017 will be applicable from the date of issuing of the GR viz. 15.12.2017.

22. Examination of the above sequences of GRs issued from time to time clarify that the provisions of GR dated 25.3.2013 are only in respect of persons belonging to reserved category and their children while obtaining NCLC. Hence, the provisions of the same cannot be made applicable to persons belonging to open category such as the applicant and therefore the provisions in the same which stipulate that if the applicant is child of the Government servant the income limit is not applicable to the candidate.

23. As far as the provisions of GR dated 15.12.2017 are concerned, the Government has clarified in their GR dated 11.1.2019 that the provisions of the GR are applicable from 15.12.2017 when it was issued. As such these provisions cannot be made applicable to examination conducted in 2013 in which the applicant was selected.

24. It is thus obvious that NCLC issued by the Tahsildar stating that the income of the applicant is below Rs.4 lakhs and she does not fall in Creamy Layer Category is totally erroneous and invalid. Her parents average income for the year 2010-11, 2011-12 and 2012-13 was found Rs.6,86,591/- which was higher than the prescribed limit of Rs.6 lakhs. The GR dated 15.12.2017 has no retrospective effect and therefore her income was rightly considered on the basis of income of her parents

regardless of the status of her parents. Suffice to say at the relevant time she was not falling in NCL category and subsequently was not entitled to the appointment.

25. As far as the cases of two other women candidates is concerned, both did not appear along with applicant and their selection is based on examination which was conducted subsequent to the GR issued on 24.6.2013. Therefore, their cases cannot be compared with the applicants. As clarified by the respondents two women candidates viz. Ms. Priyanka Babar and Ms. Shweta Pawar had appeared for subsequent examination and at that time the provisions of GR issued on 15.12.2017 were applicable. Thus, there is no discrimination against the applicant who had appeared in the examination in January 2013 and the provisions applicable at that time were based on the GR issued in 2009.

26. As clarified by the Hon'ble Supreme Court in E.P. Royappa (supra), no malafide exercise of power is visible in the present case. The applicant has not alleged any malafide against the respondents in the action taken against her.

27. As far as the termination of the applicant for not furnishing valid documents is concerned, the Hon'ble Bombay High Court in the case of Dipak Pandurang Sawarkar (supra) has held that termination on the basis of verifying documents and finding them invalid is good and does not require any interference. This termination is not on account of her conduct but in exercise of the rights under the terms of appointment by the employer State Government.

28. The applicant has failed to demonstrate any good reasons to interfere in the orders issued by the respondents. We, therefore, record



negative finding on the points furnished for consideration in para 1`6 of the judgment. OA is without any merits.

29. As there is no merit in the OA and for the reasons mentioned above the OA is dismissed. Interim relief stands vacated. MA is also disposed off accordingly. No order as to costs.

**(A.P. Kurhekar)**  
**Member (J)**  
**19.11.2019**

**(P.N. Dixit)**  
**Vice-Chairman (A)**  
**19.11.2019**

Dictation taken by: S.G. Jawalkar.