

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.986/2018

DISTRICT: JALGAON

Archana Samadhan Patil,
Age : 30 years, Occu. : Household,
R/o: Palaskhede (Mirache),
Tq. Jamner, Dist. Jalgaon.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Principal Secretary,
Revenue Department,
Mantralaya, Mumbai – 32.
- 2) The District Collector,
Jalgaon, Dist. Jalgaon.
- 3) The Sub Divisional Officer,
Jalgaon, Tq. & Dist. Jalgaon.
- 4) Sunita Jagannath Shirsath,
Age : Major, Occ : Household,
R/o. Palaskhede (Mirache),
Tq. Jamner, Dist. Jalgaon.

...RESPONDENTS

APPEARANCE :Shri Vinod P. Patil, Advocate for the
Applicant.

:Shri D.R.Patil, Presenting Officer for the
respondent nos.1 to 3.

:Shri H.P.Randhir, Advocate for the
Respondent no.4.

CORAM : B. P. Patil, Acting Chairman

Reserved on : 05-09-2019

Pronounced on : 16-09-2019

J U D G M E N T

1. By filing the present O.A. the applicant has challenged the select list dated 30-09-2018 by which the respondent no.4 has been declared as selected candidate for the post of Kotwal of Palaskhede Sajja, Tq. Jamner, Dist. Jalgaon and her name has been kept at waiting list.

2. Respondent no.3 Sub Divisional Officer, Jalgaon, Tq. & Dist. Jalgaon published an advertisement no.2/2018 inviting applications for the post of Kotwal of different villages in Jalgaon Taluka including the village Palaskhede (Mirache). Post of Kotwal of village Palaskhede (Mirache) is reserved for Female Open candidate. In pursuance of the advertisement, the applicant filed an application for the post of Kotwal of village Palaskhede (Mirache). As per the conditions mentioned in the advertisement, it is mandatory for the candidates to submit the certificate regarding Non-Creamy Layer certificate issued by the competent authority before the concerned committee for verification at the time of oral examination. The applicant has also obtained necessary certificates from the competent authorities. The applicant as well the other candidates applied for the post of Kotwal and appeared for written examination.

Thereafter, the applicant, respondent no.4 and others were called for oral interview. The applicant secured 42 marks in written examination while the respondent no.4 has secured 45 marks in written examination. In oral interview, the applicant as well as the respondent no.4 have secured 9 marks each. Respondent no.4 secured 54 marks in aggregate while the applicant has secured 51 marks in aggregate. It is contention of the applicant that the respondent no.4 failed to file necessary certificates issued by the competent authority before the scrutiny committee at the time of scrutiny of the documents as per condition no.11 and 17 laid down in the advertisement. Respondent no.3 ought to have rejected her candidature on that ground but the respondent no.3 illegally allowed the respondent no.4 to appear for oral interview and consequently she was declared as selected candidate as she secured highest marks. Name of the applicant was kept on waiting list as she stood second in merit.

3. It is contention of the applicant that thereafter, the applicant approached the District Collector, Jalgaon as well as the respondent no.3, who was chairperson of the Kotwal selection committee by filing representation dated 02-11-

2018 with a request to reject the candidature of the respondent no.4 on the ground that she failed to produce the required certificate at the time of scrutiny of the documents in view of the condition nos.11 and 17 laid down in the advertisement. But the respondent no.3 has not taken any decision, and therefore, she approached the Tribunal by filing the present O.A. and prayed to quash the select list selecting respondent no.4 on the post of Kotwal of village Palaskhede (Mirache) and to declare that the applicant is the selected candidate.

4. Respondent nos.2 and 3 have filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact regarding publication of the advertisement and application filed by the applicant for the post of Kotwal of village Palaskhede (Mirache). They have admitted the fact that the applicant and respondent no.4 appeared for written examination and oral interview. They have not disputed the fact regarding marks secured by the applicant as well as the respondent no.4 in written examination and oral interview.

5. It is their contention that as per the advertisement and rules, the right was reserved with the chairperson of

the selection committee to make necessary changes in the selection process and further right was given to the chairperson to modify the rules. Respondent no.3 was the chairperson of the committee. In the meeting held on 31-10-2018, it was decided unanimously that to bring the process in consonance with the principles of natural justice and to make it fair and competitive, the condition nos.11 and 17 in the advertisement were modified and it was decided that at the time of interview if a candidate fails to submit any document then such candidate may submit the documents till finalization of the selection list or after the finalization of the selection list. Said fact has been orally brought to the notice of all the candidates at the time of interview. It is their contention that the said policy decision was taken by the chairperson on the basis of right conferred on him and in the interest of all the candidates. By the said policy decision maximum number of candidates were accommodated for interview. It is their contention that the applicant has given consent to it and agreed to modify the terms and condition. Therefore, she cannot challenge the same. It is their contention that the respondent no.4 accordingly filed Non-Creamy Layer certificate. It is their contention that the respondent no.4

secured highest marks and therefore, she was declared as selected candidate. The applicant's performance in the entire selection process was not on better footing as compared to selected candidate i.e. the respondent no.4. It is their contention that there was no illegality in the recruitment process conducted by the respondent no.3. Therefore, they have prayed to dismiss the O.A.

6. Respondent no.4 has also resisted the contentions of the applicant by filing her affidavit in reply. It is her contention that the grounds raised by the applicant are baseless and false. It is her contention that the post of Kotwal of village Palaskhede (Mirache) was reserved for Female Open candidate. In pursuance of the advertisement she filled the application form online. As per the condition no.3 of the advertisement, documents were not required to be attached alongwith the application. She appeared for the written examination and secured 45 marks in written examination and 9 marks in oral interview. She secured 54 marks in aggregate. She has secured highest marks and therefore, she was declared as selected candidate for the post of Kotwal of village Palaskhede (Mirache). It is contended by her that as per the condition no.11 and 17 of

the advertisement, the respondent authority made it mandatory to submit Non-Creamy Layer Certificate if the application form is filled from Open Female category. She has complied with all those conditions by submitting all necessary documents alongwith Non-Creamy Layer certificate issued by the Tahsildar on 31-10-2018. It is her contention that there was no illegality in the same and therefore she has prayed to reject the O.A.

7. I have heard Shri Vinod P. Patil Advocate for the Applicant and Shri D.R.Patil Presenting Officer for the respondent nos.1 to 3 and Shri H.P.Randhir Advocate for respondent no.4. I have perused the documents placed on record by the parties.

8. Admittedly, respondent no.3 Sub Divisional Officer, Jalgaon Division, Jalgaon published advertisement no.02/2018 inviting applications for the post of Kotwal in different villages in Jalgaon Taluka. In pursuance of the said advertisement, the applicant, respondent no.4 and other aspiring candidates filed application for appointment on the post of Kotwal of village Palaskhede (Mirache). Admittedly, the applicant and respondent no.4 appeared in the written examination. They secured 42 and 45 marks

respectively in written examination. They were called for oral interview and in the oral interview both of them secured 9 marks each. Respondent no.4 secured 54 marks in aggregate while the applicant secured 51 marks in aggregate. Admittedly, the respondent no.1 stood first in the merit and therefore she was declared as selected candidate while the applicant stood second in merit and she was kept on waiting list.

9. Admittedly, it was mandatory on the part of the candidates to produce original documents/certificates before the recruitment committee after result of the written examination and before the oral interview. Admittedly, the respondent no.4 had not produced Non-Creamy Layer certificate before the respondent no.3 on 31-10-2018. Admittedly, the oral interviews of the candidates had been conducted on 31-10-2018.

10. Learned Advocate for the applicant has submitted that the terms and conditions and procedure for recruitment process had been published in the advertisement. As per the condition no.17 it was mandatory that the candidates must produce Non-Creamy Layer certificate at the time of verification of the

documents. He has submitted that as per the further condition laid down in the said advertisement on failure to produce the said document/s by candidate his/her candidature shall be cancelled. He has submitted that if any of the candidates gives false information or produces false document then his/her candidature can be cancelled at any time.

11. He has submitted that the respondent no.4 filled the application form online. In the column no.14 of the application, she has submitted that she was possessing Non-Creamy Layer certificate issued by the competent authority but she failed to produce the said document before the competent authority appointed by the selection committee on 31-10-2018. Necessary endorsement has been made by the concerned officer in the checklist regarding non-submission of Non-Creamy Layer certificate. He has submitted that the oral interviews are conducted on 31-10-2018. Before appearing for oral interview, the applicant has not produced the said document. Therefore, it is in violation of the conditions laid down in the advertisement. Respondent no.3 ought to have rejected her candidature and should not have permitted her to appear

for oral interview but the respondent no.3 exceeded his power and permitted the respondent no.4 to appear for oral interview and thereafter declared her as selected candidate. He has submitted that the respondent no.3 took decision on 31-10-2018 to give time to produce required documents to the respondent no.4 after oral interview and after her selection in violation of the conditions mentioned in the advertisement only to favour the respondent no.4. Therefore, the act of the respondent is illegal. He has submitted that the respondent no.4 was not eligible to appear for oral interview and therefore she should not have been declared as selected candidate but the respondent no.4 illegally declared her as selected candidate. Therefore, he has prayed to quash the selection list. He has submitted that the applicant has secured 51 marks and she is the only eligible candidate. Therefore, she ought to have been declared as selected candidate by the respondent no.3 but the respondent no.3 kept her name in waiting list. Therefore, he has prayed to declare that the applicant is a selected candidate and to appoint her on the post of Kotwal of village Palaskhede (Mirache).

12. Learned P.O. and learned Advocate for respondent no.4 have submitted that there was no illegality in the

entire selection process. Respondent no.3 was chairperson of the selection committee and the selection committee was empowered to amend the rules as and when required as per the advertisement. Therefore, on 31-10-2018 in the meeting of the selection committee it was decided to give concession to the candidates to produce required documents before the declaration of the result or before the issuance of the appointment order. He has submitted that the said decision was taken by the selection committee in the interest of candidates appearing for examination and in view of the authority given to the respondent no.3 in that regard. They have attracted my attention towards clauses mentioned in the advertisement. They have submitted that in view of the said provisions, decision has been taken by the respondent no.3 and there is no illegality in the same. They have submitted that the respondent no.4 secured highest marks in aggregate and therefore she was declared as selected candidate. It is their contention that there is no illegality in the recruitment process, and therefore, they have prayed to reject the O.A.

13. I have gone through the documents placed on record by the parties. On perusal of the advertisement issued by

the respondent no.3 inviting applications from aspiring candidates for the post of Kotwal of different villages situated in Jalgaon Division, which is placed on record at paper book page 11 to 21, it is crystal clear that the conditions regarding appointment on the post of Kotwal are laid down at page no.14 and 15. Thereafter, the terms and conditions and procedure of selection process has been mentioned at page no.16 onwards. As per the condition no.11 mentioned at page no.15, it is mandatory on the part of the candidates applying for the post of Kotwal from Female Open category to produce the Non-Creamy Layer certificate before the competent authority at the time of verification of the documents and on failure to produce the said documents, candidature of such candidate/s will have to be rejected. Relevant provision i.e. condition no.11 at paper book page 15 is as under:

“११) खुल्या प्रवर्गातील महिलांकरिता ३० टक्के आरक्षणाच्या सवलतीसाठी उन्नत व्यक्ती/गट (किमीलियर) या मध्ये मोडत नसल्याबाबत सक्षम अधिका-याचे प्रमाणपत्र कागदपत्र छाननीचे वेळी जोडणे आवश्यक राहिल. असे प्रमाणपत्र छाननी वेळी सादर न केल्यास उमेदवाराचा अर्ज नाकारण्यास योग्य समजला जाईल.”

14. However, condition no.1 at paper book page 16 regarding procedure for selection has been provided as follows:

“निवडीसाठी कार्यपध्दती, अटी, शर्ती.

9. लेखी परिक्षेत प्राप्त केलेल्या गुणांच्या आधारे गुणवत्तेनुसार अंतिम निवडीसाठी उमेदवारांना शैक्षणिक व इतर संबंधित मूळ प्रमाणपत्रे तपासणीसाठी उपलब्ध करून द्यावी लागतील. अन्यथा तोंडी परीक्षा/अंतिम निवडीसाठी विचार केला जाणार नाही.”

15. Not only this but further condition no.4 laid down at page 18 is as under:

“ऑनलाईन अर्ज करण्याची पध्दत

8. उमेदवाराची लेखीपरिक्षा ही त्यांनी ऑनलाईन अर्जात नमूद केलेल्या गृहित पात्रतेनुसार कोणतीही कागदपत्रे पुर्वतपासणी / छाननी न करता घेतली जाणार असल्यामूळे या परीक्षेत मिळालेल्या गुणांच्या आधारे उमेदवाराला निवडीबाबतचे कोणतेही हक्क राहणार नाहीत. कागदपत्रांच्या पूर्ण छाननीनंतरच उमेदवारांची पात्रता निश्चित करण्यात येईल. लेखी परिक्षेच्या प्राथमिक चाळणी/ तोंडी परीक्षेनुसार गुणवत्तेच्या आधारे, उमेदवारांनी ऑनलाईन अर्जात नमूद केलेल्या गृहित पात्रतेनुसार अंतरिम यादी प्रसिध्द करून उमेदवारांच्या कागदपत्रांची सखोल छाननी केली जाईल. सदर प्रक्रियेत उमेदवार अपात्र आढळल्यास त्यास निवड प्रक्रियेतून बाद करण्यात येईल. पात्रता धारण न करणा-या उमेदवारांना भरतीच्या कोणत्याही टप्प्यावर अपात्र करण्याचे संपूर्ण अधिकार उपविभागीय अधिकारी, जळगांव भाग यांचे जवळ राखून ठेवण्यात आलेले आहेत व याबाबत उमेदवारास काणतीही तक्रार करता येणार नाही.”

16. On considering all these conditions, it is crystal clear that it was mandatory on the part of the candidates filing application for the post of Kotwal from Open Female category to produce Non-Creamy Layer certificate before the scrutiny committee at the time of verification of the documents. Such documents have to be produced after written examination and before commencement of oral

interviews. In case of failure to produce the required documents, candidature of the said candidate shall be declared invalid. Said provisions do not empower the respondent no.3 Sub Divisional Officer, Jalgaon to give concession to the candidates to produce the documents subsequently. Said provision has been made with an object to eliminate the candidates who do not possess the required documents and qualification from the recruitment process before the commencement of oral interview but the respondent no.3 has not followed the said procedure and granted concession to the candidates to file documents at the latter stage. Said act on the part of the respondent no.3 is illegal.

17. No doubt, as per the clauses mentioned in the advertisement, respondent no.3 is chairperson of the recruitment committee and he was empowered to stay, cancel or modify the recruitment process or to modify the total number of posts and to take decision regarding the dispute raised in respect of the recruitment process. Relevant provision is at paper book page 11 which reads as follows:

“भरती प्रक्रिया/परिक्षा स्थगित करणे किंवा रद्द करणे, अंशतः बदल करणे, पदांच्या एकूण व संवर्ग निहाय संख्येमध्ये वाढ किंवा घट करण्याचे अधिकार तसेच भरती

प्रक्रियेसंदर्भात वाद, तक्रारी बाबत अंतिम निर्णय घेण्याचा अधिकार अध्यक्ष निवड समिती तथा उपविभागीय अधिकारी जळगांव यांना राहतील. त्याबाबत कोणताही दावा सांगता येणार नाही.”

18. This provision also does not empower the respondent no.3 to allow the candidate to produce the required documents at latter stage that too after the completion of oral interview. Therefore, the decision taken by the respondent no.3 to grant time to respondent no.4 to produce Non-Creamy Layer certificate subsequently is illegal.

19. On perusal of the record, it reveals that the respondent no.4 filled the application form online. A copy of the same is on record. In column no.14 of the application, she has mentioned that she was in possession of the Non-Creamy Layer certificate issued by the competent authority. Relevant portion is reproduced as follows:

“१४. उमेदवाराकडे उन्नत व प्रगत गटात मोडत नसल्या बदलचे सक्षम अधिका-याने दिलेले विहित नमुन्यातील अद्ययावत (३१ मार्च २०१९ पर्यंत वैध असलेले) नॉन क्रिमी लेअर प्रमाणपत्र आहे काय ? **होय**”

20. Scrutiny sheet issued by the competent authority shows that at the time of verification of the documents, the applicant was not possessing the Non-Creamy Layer

certificate. The documents are verified on 31-10-2018 on which date oral interview of the candidates were conducted. It means at the time of verification of the documents respondent no.4 was not possessing the necessary documents i.e. Non-Creamy Layer certificate. Certificates produced by the respondent no.4 in that regard is at page 42. On perusal of the same it reveals that the respondent no.4 applied for issuance of Non-Creamy Layer certificate on 31-10-2018 and Tahsildar, Jalgaon issued the said certificate to her at very day. She produced the same before the Sub Divisional Officer, Jalgaon along with application dated 01-11-2018, which is at page 41. It shows that the applicant was not possessing the said certificate on the date of filing of the application as well as at the time of appearing for oral interview. It means she has given false information in the application submitted by her online and stated that she was possessing the said document at the time of filing the application form as mentioned in column no.14 of it. Therefore, her candidature ought to have been rejected on that ground by the respondent no.3 in view of the condition no.17 paper book page 20 laid down in the advertisement which is as follows:

“१७. निवड प्रक्रिया सुरु झाल्यानंतर किंवा नियुक्तीनंतर कोणत्याही क्षणी उमेदवाराने अर्जात दिलेली माहिती अगर कागदपत्रे खोटी सादर केल्याचे किंवा खरी माहिती दडवून ठेवल्याचे निदर्शनास आल्यास त्या उमेदवारांची उमेदवारी / नियुक्ती रद्द करण्यांत येईल व शासनाची दिशाभूल केल्यामुळे त्यांच्यावर कायदेशीर कारवाई करण्यात येईल.”

21. Respondent no.3 has not considered the said aspect also and allowed the respondent no.4 for oral interview. Said act on the part of respondent no.3 is illegal. It seems that the respondent no.3 acted malafide and arbitrarily to favour the respondent no.4. Since the respondent no.4 had not complied with the necessary conditions incorporated in the advertisement. She was not eligible for oral interview, and therefore, she could not have been declared as selected candidate. Respondent no.3 has illegally declared her as selected candidate. Applicant has secured 51 marks and she stood second in merit i.e. next to the respondent no.4. Therefore, she ought to have been declared as selected candidate. In view of these facts, the selection of the respondent no.4 on the post of Kotwal of village Palaskhede (Mirache) requires to be quashed and set aside by allowing the O.A.

22. In view of the discussion in the foregoing paragraphs, the O.A. is allowed and the selection list making selection of

respondent no.4 on the post of Kotwal of village Palaskhede (Mirache) is hereby quashed and set aside. The applicant is declared as selected candidate. Respondent no.3 is directed to issue appointment order in favour of the applicant if she is found eligible otherwise. There shall be no order as to costs.

(B. P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 16-09-2019.

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