

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 257 OF 2020

DIST. : BEED

Sambhaji s/o Shivaji Pawar,)
 Age 27 years, Occ. Nil,)
 R/o Samta Nagar, Kaij, Tq. Kaij,)
 Dist. Beed.) .. **APPLICANT**

V E R S U S

- 1) The Chairman,**)
 District Selection Committee, Beed)
 District Collector, Beed.)
 Having office at : Collector Office,)
 Beed.)
- 2) Pradip s/o Navnath Gunthal,**)
 Age : 29 years, Occ. Nil,)
 R/o at Post Malegaon, Tq. Kaij,)
 Dist. Beed – 431 113.)
- 3) Akshay s/o Chandrakant Lokhande,))**
 Age : 28 years, Occ. : Nil,)
 R/o Dwarkamai, Sector, 6,)
 Near New RTO Office, Santnagar,)
 Mulshi Pradhikaran,)
 Tq. Haveli, Dist. Pune - 412 105.) .. **RESPONDENTS**

 APPEARANCE :- Shri J.V. Patil, learned counsel for
 the applicant.
 : Shri V.G. Pingle, learned Presenting
 Officer for the respondent No. 01.
 : Shri H.P. Jadhav, learned counsel for
 respondent no. 02.
 : None appears for respondent No. 03.

CORAM : **Hon'ble Shri Justice V.K. Jadhav,**
Member (J)
AND
Hon'ble Shri Vinay Kargaonkar,
Member (A)

DATE : 02.12.2024

ORAL ORDER

[Per : Justice V.K. Jadhav, Member (J)]

1. Shri J.V. Patil, learned counsel for the applicant, Shri V.G. Pingle, learned Presenting Officer for respondent No. 01 and Shri H.P. Patil, learned counsel for respondent no. 02.

None appears for respondent No. 03 though duly served.

2. The matter is finally heard with consent of both the sides at the admission stage.

3. By filing this Original Application, the applicant is seeking quashing and setting aside the impugned selection list dated 10.07.2020 published by the respondent no. 01 and the selection and appointment of respondent nos. 02 and 03 and further seeking directions to respondent no. 01 to include the name of the applicant in the select list dated 10.07.2020 and issue appointment order in favour of the applicant for the post of Talathi from the category of Socially & Educationally Backward Class (hereinafter referred to as SEBC category).

4. Brief facts as stated by the applicant giving rise to this Original Application are as follows:-

(i) On 26.02.2019, the respondent No. 1 has issued an advertisement for the post of Talathi and total 11 posts are reserved for SEBC category. In terms of clause 12 of the advertisement, after publication of the final selection list, the candidates must produce for verification of documents caste certificates, domicile certificates and Non-Creamy-Layer certificates. In terms of clause 6 of the advertisement, the condition of producing Non-Creamy-Layer certificate is made applicable to the candidates belonging to VJ-A, NT-B, NT-C, NT-D, Special Backward Class and OBC. It is also prescribed in the said clause that, as the provisions of Maharashtra State Reservation (of seats for admission in educational institutions in the State and for appointments in the public services and posts under the State) for Socially and Educationally Backward Classes (SEBC) Act, 2018 are implemented and, therefore, Non-Creamy-Layer condition is made applicable to the SEBC Category candidates.

(ii) The applicant has filed his application for the post of Talathi from SEBC category. The competent authority

conducted the written examination of the candidates. As per merit list published by respondent No. 1, the applicant has secured 168 marks in the written examination and above him there are only 03 candidates, who have secured the marks 170, 168 and 168 respectively. Thus, the applicant was eligible for appointment for the post of Talathi as he has secured 2nd highest marks in the written examination conducted for the post of Talathi.

(iii) At the time of documents verification, the applicant has produced all the necessary documents for verification along with his caste certificate and non-creamy layer certificate issued on 02.10.2019. On 01.07.2020 (Annexure A-6) the respondent no. 01 has published the final select list and selected the respondent nos. 02 and 03 for the post of Talathi and rejected the candidature of the applicant. The respondent nos. 02 and 03 have secured 162 marks and the applicant has secured 168 marks. The respondent no. 01 did not select the applicant for the sole reason that he was not possessing non-creamy layer certificate valid up to 31.03.2019. Hence, this Original Application.

5. The learned counsel for the applicant submits that so far as production of the non-creamy layer certificate valid up to 31.03.2019 is concerned, this condition was not mentioned in the advertisement dated 26.02.2019. Learned counsel submits that the reservation of the SEBC category is made applicable on 30.11.2018 and, as such, it was not expected from the SEBC category candidates to produce the non-creamy layer certificate valid up to 31.03.2019, because the non-creamy layer certificate is being issued for 03 years period. Thus, no non-creamy layer certificate valid up to 31.03.2019 was available with the applicant and the same was also not required as per the advertisement.

6. The learned counsel for the applicant submits that the decision of the respondent no. 01 rejecting the selection of the applicant solely on the ground that he is not possessing the non-creamy layer certificate valid up to 31.03.2019 is manifestly arbitrary and not in accordance with the terms and conditions of the advertisement. Therefore, the decision of the respondent no. 01 selecting the respondent nos. 02 and 03 and refusing to select the applicant is liable to be quashed and set aside.

7. The learned counsel for the applicant submits that the non-creamy layer certificate is annexed to this O.A., which is at page 63 of the paper book. It is dated 02.10.2019. It is specifically mentioned in the said certificate that the income certificate issued for the last 03 years by the Tahsildar has been verified along with other documents. This certificate valid for the period up to 31.03.2022 from the date of issuance of said certificate. Learned counsel submits that the financial year starts from 1st April and ends on 31st March of each year. Thus, even though the non-creamy layer certificate is issued on 02.10.2019, the same is required to be considered for the entire financial year 2019.

8. The learned counsel for the applicant submits that the Division Bench of the Hon'ble High Court of Bombay, Bench at Aurangabad by order dated 24.03.2015 in **W.P.No. 11722/2014 & 01 Another (Arvind s/o Motiram Chavan Vs. The State of Maharashtra & Ors.)** along with connected writ petitions has dealt with the similar issue and held that the non-creamy layer certificates dated 01.07.2014 placed by both the petitioners therein have substantiated that on the date of application both were falling in the category of non-creamy layer.

9. The learned counsel for the applicant has also placed his reliance on the judgment and order passed by this Bench of the Tribunal dated 08.04.2022 in **Original Application No. 232/2020 (Ku. Rohini d/o Nagnath Charole Vs. the State of Maharashtra & Ors.)**, wherein this Tribunal has held that the non-creamy layer certificate dated 12.07.2018 issued by the competent authority is having regard to the income of the applicant's family in the preceding 03 years. There is no doubt that during all the relevant years, the applicant was falling in the category of non-creamy layer.

10. The learned counsel for the applicant further placed his reliance on the judgment and order passed by this Bench of the Tribunal dated 28.09.2022 in **O.A. No. 266/2020 (Suvarna d/o Goraksha Randhawane Vs. The State of Maharashtra & Ors.)**, wherein it is held that the non-creamy layer certificate dated 24.10.2019 is valid up to 31.03.2022 and the same is in consonance with the annual income of the applicant within outer limit prescribed by the Government.

11. The learned counsel for the applicant submits that the present O.A. deserves to be allowed in terms of the prayers made therein.

12. The learned Presenting Officer on the basis of the affidavit in reply filed on behalf of respondent no. 01 submits that production of non-creamy layer certificate by the SEBC category candidates has been mentioned in the advertisement dated 26.02.2019. It has been specifically mentioned that the non-creamy layer certificate valid up to 31.03.2019 issued by the competent authority is required to be submitted. In clause no. 06 of the advertisement dated 26.02.2019 it is specifically mentioned that the non-creamy layer certificate valid up to 31.03.2019 issued by the competent authority is required to be submitted by the candidates coming from SEBC category. As the applicant could not produce the non-creamy layer certificate valid up to 31.03.2019, he was not selected, though he secured 168 marks in the written examination. The learned P.O. submits that there is no substance in this Original Application and the same is liable to be dismissed.

13. The learned counsel for respondent no. 02 submits that the advertisement dated 26.02.2019 particularly clause 06 thereof prescribes the condition for production of the non-creamy layer certificate, which is valid till 31.03.2019. Further, this clause prescribes that Maharashtra State Reservation (of seats for admission in educational institutions in the State and

for appointments in the public services and posts under the State) for Socially and Educationally Backward Classes (SEBC) Act, 2018 is implemented and, therefore, production of non-creamy layer is also prescribed for the SEBC category candidates. This condition in the advertisement is very clear about production of non-creamy layer certificate valid up to 31.03.2019. The learned counsel submits that the decision of respondent no. 01 dated 01.07.2020 thereby rejecting the objection raised by the applicant is entirely based on advertisement clause no. 06. The applicant has received the non-creamy layer certificate on 02.10.2019 and thus the condition as mentioned in clause 06 of the advertisement is not fulfilled.

14. The learned counsel for respondent no. 02 submits that the respondent no. 01 after following the due procedure selected and appointed the respondent no. 02 by order dated 24.07.2020. The respondent no. 02 has joined his duties and working as Talathi at Sajja Naigaon Mayur, Tq. Patoda, Dist. Beed.

15. The learned counsel for the applicant in reply submits that the posts of Talathi from SEBC category are still

vacant and the present applicant can be accommodated on the said post.

16. On careful perusal of the advertisement dated 26.02.2019, it appears that, total 11 posts of Talathi as per horizontal reservation are reserved for SEBC category candidates and so far as SEBC (General) category is concerned, 03 posts are reserved out of the said 11 posts. Clause 06 of the advertisement dated 26.02.2019 on page 34 of the paper book is reproduced herein below:-

“६) महाराष्ट्र राज्य लोकसेवा अनुसूचित जाती, अनुसूचित जमाती, विमुक्त जाती, भटक्या जमाती, विशेष मागास प्रवर्ग, इतर मागासवर्ग यांचेसाठी आरक्षण अधिनियम, २००१ (सन २००४ वा महाराष्ट्र अधिनियम क्र.८) हा अधिनियम महाराष्ट्र शासनाने दि. २९ जानेवारी २००४ पासून अंमलात आणला आहे. त्यानुसार उन्नत व प्रगत गटाचे (क्रिमिलेअर) तत्त्व वि.जा.अ, भ.ज.ब., भ.ज.क, भ.ज.ड, वि.मा.प्र., इ.मा.व, यांना लागू आहे. सदर प्रवर्गातील उमेदवारांकडे दि. ३१ मार्च, २०१९ पर्यंत वैध असलेले नॉन क्रिमिलेअरचे सक्षम अधिकारी यांचेकडील प्रमाणपत्र असणे आवश्यक आहे. नॉन क्रिमिलेअरचे तत्त्व अनुसूचित जाती/ अनुसूचित जमाती व्यतिरिक्त इतर सर्व मागास प्रवर्गांना लागू राहिल. तसेच (राज्यातील शैक्षणिक संस्थामधील जागांच्या प्रवेशाचे आणि राज्याचे नियंत्रणाखालील लोकसेवांमधील नियुक्तीचे किंवा पदांचे) आरक्षण अधिनियम-२०१८ (सन २०१८ वा महाराष्ट्र अधिनियम क्रमांक ६२) नुसार उन्नत व प्रगत गटाचे (क्रिमिलेअर) तत्त्व एस.ई.बी.सी. यांना लागू आहे. व सामान्य प्रशासन विभाग दि. १२.०२.२०१९ च्या शासन निर्णयामधील तरतूदीनुसार ई.डब्ल्यू.एस (आर्थिक दृष्ट्या दुर्बल घटक) यांना आरक्षणाचा लाभ घेण्यासाठी पात्रता प्रमाणपत्र देणे गरजेचे राहिल.”

17. In terms of said clause 06 of the advertisement we have carefully perused the caste certificate/non-creamy layer certificate dated 02.10.2019 issued in favour of the applicant by

the competent authority. This is format of the non-creamy layer certificate to be issued to the SEBC candidates belonging to the State of Maharashtra. This certificate is valid up to 31.03.2022 from the date of issue. So far as verification of the documents is concerned, along with other documents the income certificates for the last 03 years issued by the Tahsildar also came to be verified. In our considered opinion, the aforesaid verification of the documents about the income of the applicant and his family clearly indicate that from years 2016-17 till 2018-19 the applicant was falling in the category of non-creamy layer. It appears to us that the respondent no. 01 has not correctly interpreted the clause no. 06 of the advertisement dated 26.02.2019 in its proper perspective and thereby arrived at a wrong conclusion.

18. In the case of **Ku. Rohini d/o Nagnath Charole Vs. the State of Maharashtra & Ors. (O.A. No. 232/2020)** this Tribunal by order dated 08.04.2022 in para 11 has made similar observations and held that the Scrutiny Committee has erroneously held that the applicant failed in producing on record the non-creamy layer certificate valid up to 31.03.2019.

19. In the case of **Suvarna d/o Goraksha Randhawane Vs. The State of Maharashtra & Ors. (O.A. No. 266/2020)**

this Tribunal has dealt with the similar issue and observed that the applicant therein did possess the non-creamy layer certificate dated 24.10.2019 valid up to 31.03.2022 and the documents on record in the years 2017-18, 2018-19 and 2019-20 the annual income of the parents of the applicant was within the outer limit fixed by the Government.

20. In view of above, we are inclined to allow this Original Application.

21. There are 03 posts reserved for SEBC (General) category out of total 11 posts reserved for SEBC category. In response to the notice issued by this Tribunal only respondent no. 02 has appeared and contested this O.A. However, despite due service, respondent no. 03 did not approach this Tribunal. Respondent no. 02 is already given appointment and he is working as Talathi. However, we do not find any document indicating that the respondent no. 03 has accepted the post of Talathi and joined the said post accordingly. Undisputedly, the applicant has secured 168 marks and respondent nos. 02 and 03 have secured 162 marks. Even if the respondent no. 03 is appointed on the post of Talathi, he is the last person in the select list. It need not be said the last selected candidate in the said category will have to be ousted by following the due

process. If any post is lying vacant, the present applicant can be accommodated on the said post without disturbing any other candidate. Hence, the following order:-

ORDER

- (i) The Original Application No. 257/2020 is hereby partly allowed.
- (ii) Respondent no. 01 is hereby directed to include the name of the present applicant in the select list dated 10.07.2022 and issue appointment order in favour of the present applicant for the post of Talathi from the category of SEBC (General).
- (iii) The aforesaid exercise shall be carried out by the respondent no. 01 within 08 weeks from the date of receipt of this order.
- (iv) In the circumstances, there shall be no order as to costs.
- (v) The Original Application is accordingly disposed of.

MEMBER (A)

MEMBER (J)

Place : Aurangabad

Date : 02.12.2024