

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 988 OF 2023

DIST.: PARBHANI

Venkatesh s/o Vijendra Mundhe,)
 Age 26 years, Occu. : Nil,)
 R/o C/o Shri Vijendra Mundhe,)
 Sujan Sadan, Near P.S. Quarters,)
 Yogeshwar Colony, Gangakhed,)
 Tq. Gangakhed, District Parbhani.) .. **APPLICANT**

V E R S U S

1. The Director and Chairman,)
 State Level Selection Committee,)
 Pune, Directorate of Town Planning)
 and Valuation Department,)
 Ground Floor,)
 Central Administrative Building,)
 Pune – 411 001.) .. **RESPONDENT**

 APPEARANCE :- Shri A.S. Shelke, learned counsel for
 the applicant.

: Smt. Deepali S. Deshpande, learned
 Presenting Officer for the respondent.

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

RESERVED ON : **19.03.2025**

PRONOUNCED ON : **25.03.2025**

ORDER

(Per : Justice V.K. Jadhav, Vice Chairman)

1. Shri A.S. Shelke, learned counsel for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for the sole respondent, are present.

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 directions to the respondent to consider the candidature of the applicant from NT-D category as per the non-creamy layer certificate issued by the competent authority dated 12.07.2023 and in consonance with the Government Corrigendum dated 17.02.2023. The applicant is also seeking directions to the respondent to issue appointment order in favour of the applicant on the post of Planning Assistant, Group-B from the NT-D category.

4. Brief facts giving rise to this Original Application are as under:-

(i) The applicant is having bachelor degree in Civil Engineering. The applicant is belonging to Vanjari Tribe, which is recognized as Nomadic Tribe - D (for short NT-D). In response to the advertisement no. 01/2023 dated

28.03.2023 issued by the Director, Town Planning, Maharashtra State, Pune and the Chairman of State Selection Committee, Pune for filling up the posts of Planning Assistant (Group-B) (Non-Gazetted), the applicant has submitted an online application for the post of Planning Assistant (Group-B) (Non-Gazetted) from the NT-D category. As per the said advertisement, total 177 posts are advertised, out of which 03 posts are reserved for NT-D category. From amongst said 03 posts for NT-D category, 01 post is reserved for Woman and 02 posts are for General. As per clause 10 of the said advertisement the candidate is required to submit non-creamy layer certificate (for short NCL certificate) issued by the competent authority valid till 31.03.2023 in the case of reserved categories including NT-D category. As the applicant was not in possession of NCL certificate at the time of filling in online application, he has filled up the particular column, which calls for the candidate to submit information as to whether he is having the NCL certificate or not, as "NO".

(ii) It is the further case of the applicant that the respondent authority conducted the online examination on 29.05.2023 and the applicant had secured 146.660 marks and placed at sr. no. 57 in the general merit list (Annexure A-5).

(iii) The applicant further contends that on 10.07.2023 he has submitted application/representation to the respondent pointing out therein that so far as clause 2(iii) of the Government Resolution dated 25.03.2013 issued by

the Social Justice and Special Assistance Department, Mumbai, the Government has issued a corrigendum dated 17.02.2023. In view of the said corrigendum dated 17.02.2023, NCL certificate of the current financial year can be considered at the time of verification of documents of the concerned candidate.

(iv) The applicant further contends that as per the advertisement, 02 posts of the Planning Assistant are reserved for NT-D (General) category. The respondent, however, selected 02 NT-D candidates from NT-D (Divyang) category. One Shri Amol Pandurang Aghav, who has secured 110.008 marks and another candidate namely Shri Shivaji Babasaheb Aghav, who has secured 94.081 marks are selected from NT-D (Divyang) category. However, the candidate namely Shri Shivaji Babasaheb Aghav was found not eligible for recommendation after document verification as he could not submit the necessary certificates of educational qualification.

(v) It is the further case of the applicant that in view of rejection of the claim of Shri Shivaji Babasaheb Aghav, the applicant immediately submitted an application dated 28.09.2023 pointing out therein that he has secured 146.66 marks and listed at sr. no. 57 in the merit list. As per the advertisement, 02 posts are reserved for NT-D category and there is no candidate above the applicant in the merit list. The applicant has, therefore, requested to appoint him on the advertised post. However, the respondent did not call upon the applicant for document verification. The applicant has further submitted

representation dated 06.10.2023 to the respondent to consider the Government corrigendum published prior to the advertisement. The respondent did not consider the said representation of the applicant nor called him for document verification. Hence, this Original Application.

5. The learned counsel for the applicant submits that the applicant belongs to NT-D category and he is in possession of the NCL certificate issued by the competent authority for the current financial year. The learned counsel submits that the applicant is in possession of NCL certificate issued by the competent authority dated 12.07.2023, which is valid up to 31.03.2026. As such, the applicant fulfills all the parameters of the Government Resolution. As per the Government corrigendum dated 17.02.2023, which is issued prior to issuance of an advertisement no. 01/2023 dated 28.03.2023, the NCL certificate for the financial year can be considered at the time of verification of documents.

6. The learned counsel for the applicant submits that in terms of the advertisement no. 01/2023 for filling up the posts of Planning Assistant, it was incumbent upon the candidate to submit the NCL certificate valid up to 31.03.2023. However, the Department of Other Backward Bahujan Welfare issued a corrigendum amending thereby clause 2(iii) of the

Government Resolution dated 25.03.2013 issued by the Social Justice and Special Assistance Department of the Government of Maharashtra, wherein the procedure of obtaining the validity of inter alia NCL certificates was regulated. The said corrigendum, however, enabled the candidates to submit the NCL certificate, which would have been valid in the current financial year as against the NCL certificate, which would have been valid as on last date of submission of application form i.e. 31.03.2023. The applicant, who was otherwise being eligible to apply under the reserved NT-D category, but for mandatory requirement of the valid NCL certificate as on 31.03.2023, subsequently obtained NCL certificate issued by the competent authority on 13.07.2023.

7. The learned counsel for the applicant submits that in view of issuance of corrigendum dated 17.02.2023, the earlier position of submission of NCL certificate that was valid as on last date of submission of the applications was changed and the applicant was eligible to furnish NCL certificate pertaining to the current financial year.

8. The learned counsel for the applicant has placed his reliance on the judgment in the case of **Priyanka Prakash Kulkarni Vs. Maharashtra Public Service Commission**, in Civil

Appeal No(s). _____ of 2024 (arising out of Special Leave Petition (Civil) No(s). 25347 of 2023) dated 29.01.2024 and submits that in the identical facts of the case the Hon'ble Supreme Court has quashed and set aside the order passed by the Maharashtra Administrative Tribunal, Mumbai so also the said order confirmed by the Hon'ble High Court of Bombay directing the respondent therein to forthwith treat the said candidate for appointment under the Reserved Female Category and allowed the appeal.

9. The learned counsel for the applicant has also placed his reliance on the judgment in the case of **Smt. Tejashree Kailas Pawar Vs. The Secretary, Maharashtra Public Service Commission, Mumbai, in O.A. No. 537/2024**, wherein the principal seat of this Tribunal at Mumbai by applying the ratio laid down by the Hon'ble Supreme Court in the case of **Priyanka Prakash Kulkarni Vs. Maharashtra Public Service Commission** (cited supra) by judgment dated 30.07.2024 in the identical facts of the case allowed the said O.A. The learned counsel submits that this Original Application deserves to be allowed.

10. The learned Presenting Officer on the basis of the affidavit in reply filed on behalf of respondent no. 01 submits that in terms of advertisement dated 28.03.2023 for recruitment

the financial year for this advertisement is w.e.f. 01.04.2022 to 31.03.2023. Hence as per the general instructions no. 10 in the said advertisement, for submitting the NCL certificate for this financial year which is valid up to 31.03.2023. The applicant, has however, submitted NCL certificate issued on 13.07.2023 by the Sub-Divisional Officer, Gangakhed, which is valid up to 31.03.2026, to the office of respondent vide representation dated 28.09.2023. The learned Presenting Officer submits that considering the date of validity of this NCL certificate, it is clear that this certificate is for the period from 01.04.2023 to 31.03.2024, from 01.04.2024 to 31.03.2025 and from 01.04.2025 to 31.03.2026. It is incumbent upon the applicant to upload the NCL certificate valid up to 31.03.2023 i.e. from 01.04.2022 to 31.03.2023. Instead of this, after declaration of the recommendation list, the applicant has submitted the above mentioned NCL certificate. It is a fact that the applicant was not having the NCL certificate at the time of submitting online application. The applicant was aware of the same and, therefore, has filled in relevant column as "NO". The applicant though applied from NT-D category, for want of NCL certificate, his candidature is obviously considered against Open (General) category and as he has secured less marks than the cut-off of

marks for Open (General) category, the applicant was not eligible to be recommended from Open (General) category.

11. The learned Presenting Officer submits that in terms the advertisement, 03 posts are reserved for NT-D category and out of said 03 posts, 01 post for NT-D (woman) and 02 posts are reserved for NT-D (General) category. As per G.R. dated 29.05.2019, necessarily 04% posts are reserved for the candidates having prescribed Divyang for all cadres recruitment by nomination. Thus, total 07 posts are kept reserved for Divyangs and in terms of said G.R. to fill up such reserved posts for Divyang, it is not necessary to keep any social reservation. Though available 07 Divyang candidates are recommended for accommodation in their social reservation, however, one Shri Shivaji Babasaheb Aghav, who is a Divyang candidate, has not submitted the requisite certificates of educational qualification and accordingly he was disqualified for being appointed to the post of Planning Assistant. Further, one another candidate namely Shri Harsh Sameer Khadatare is a person of Divyang category having 02 types of disabilities and, therefore, he was also not considered as he does not found eligible for appointing him on the post of Planning Assistant. The learned Presenting Officer submits that even though 02 posts are remained vacant

for Divyang candidates, those are being carried forward for the next recruitment and now cannot be filled in from any other socially reserved category.

12. The learned Presenting Officer has placed reliance on the judgment delivered by the principal seat of this Tribunal at Mumbai in the case of **Sanjivani Abasaheb Karne & Ors. Vs. The State of Maharashtra & Anr., O.A. No. 701/2022** dated 09.01.2023.

13. The learned Presenting Officer submits that there is no substance in the present Original Application and the same is liable to be dismissed.

14. The learned counsel for the applicant on the basis of the rejoinder affidavit submits that the contention of the respondent that the financial year of the advertisement is from 01.04.2022 to 31.03.2023 is not correct. The object of consideration of NCL certificate of the financial year, when the candidate submits his application is to ascertain his financial status for availing the benefit of reservation during the financial year. The corrigendum dated 17.02.2023 is prior to issuance of advertisement dated 28.03.2023. As such, as per the corrigendum dated 17.02.2023, the NCL certificate for the

financial year 2023-24 ought to have been considered by the authorities.

15. The learned counsel for the applicant submits that the judgment and order dated 09.01.2023 passed by the principal seat of this Tribunal at Mumbai in the case of **Sanjivani Abasaheb Karne & Ors. Vs. The State of Maharashtra & Anr., O.A. No. 701/2022** (cited supra) is delivered by the Tribunal prior to issuance of Government corrigendum dated 17.02.2023 and, therefore, cannot be made applicable to the facts and circumstances of the present case.

16. The learned counsel for the applicant submits that the applicant though possess NCL certificate of the financial year 2020-21, however, did not possess the NCL certificate for the financial year 2021-22 and, as such, he has filled up the particular column, which calls for the candidate to submit information as to whether he is having the NCL certificate or not, as "NO" to avoid any misleading information. However, as per clause 10 of the advertisement no. 01/2023, the applicant has informed by the communication dated 06.10.2023 about submission of NCL certificate of the year 2023-24.

17. The learned counsel for the applicant submits that as per G.R. dated 29.05.2019 the backlog of the Divyang category due to non-availability of the eligible candidates is to be forwarded to the next year. However, the advertised posts cannot be kept vacant. As such, the NT-D posts cannot be kept vacant for want of eligible Divyang category candidates. The posts reserved for social reservation are mandatorily required to be filled up and the same cannot be kept vacant for horizontal reservation for Divyang category.

18. The Director, Town Planning, Maharashtra State, Pune and the Chairman of State Selection Committee, Pune published an advertisement no. 01/2023 dated 28.03.2023 for filling up the posts of Planning Assistant (Group-B) (Non-Gazetted) from the eligible candidates. As per the said advertisement, total 177 posts are advertised and out of said 177 posts, 03 posts are reserved for NT-D category. From amongst said 03 posts for NT-D category, 01 post is reserved for Woman and 02 posts are for General. It is the further matter of record that as per the advertisement no. 01/2023 a facility of submitting online applications was made available from 01.04.2023 onwards with last date for submission of online applications as 30.04.2023. In the backdrop of these important

dates, clause 10 of the advertisement, however, prescribes that the candidates belonging to reserved categories to whom particularly creamy layer principle is applicable, they shall produce the non-creamy layer certificate valid up to 31.03.2023.

19. In this context, it is necessary to note here that the applicant, who is undisputedly belonging to NT-D category, has fairly stated in the online application in the relevant column, where it is asked to the aspiring candidate, “Do you want to apply under Non Creamy Layer Category?”, as “NO”. It is explained by the learned counsel for the applicant that the same was for the reason that the applicant do not possess the NCL certificate valid up to 31.03.2023 at the time of filling in the online application. Even in the representation dated 10.07.2023 submitted by the applicant before the concerned respondent (Annexure A-6), it is explained that even after filling of the online application no document verification of documents was done till filing of the said representation and he has filled up the said particular column about NCL certificate as “NO”, since he was not having the NCL certificate valid up to particular date on the date of filling in the online application. It is also stated that at the time of verification of documents, the applicant would submit the NCL certificate in terms of the

Government corrigendum dated 17.02.2023 to the Government Resolution dated 25.03.2013. It has also specifically stated in the said representation by the applicant that his online application should be treated as under NT-D category and in the merit list he is at sr. no. 57.

20. In this context, we have carefully gone through the G.R. dated 25.03.2013 particularly clause 2(iii) thereof, which is relevant for present discussion. It is reproduced herein below:-

“२. विमुक्त जाती, भटक्या जमाती, इतर मागासवर्ग प्रवर्ग आणि विशेष मागास प्रवर्गातील जातीच्या प्रमाणपत्राच्या वैधतेचा कालावधी आणि सदर प्रवर्गातील उन्नत आणि प्रगत व्यक्ति / गट यामध्ये मोडत नसल्याच्या नॉन - किमिलेअर प्रमाणपत्राच्या पडताळणीच्या वैधतेचा कालावधी याबाबत पुढीलप्रमाणे कार्यपद्धती अवलंबवण्यात यावी -

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(iii) एखद्या पदाकरीता अर्ज दाखल करावयाची / स्विकारण्याची अंतिम तारीख किंवा त्या पदाकरीता निश्चित करण्यात आलेली विशिष्ट निर्णायक (crucial) तारीख हीच संबंधित उमेदवार उन्नत आणि प्रगत व्यक्ति / गटात मोडत नसल्याबाबतची पडताळणी करण्यासाठी गृहित धरण्यात यावी.”

21. By way of corrigendum dated 17.02.2023 to the aforesaid G.R. dated 25.03.2013, the said clause 2(iii) is amended and reads as under:-

“(iii) संबंधित उमेदवार उन्नत आणि प्रगत व्यक्ति/गटात मोडत नसल्याबाबतची पडताळणी करण्यासाठी उमेदवाराचे त्या वित्तीय वर्षातील नॉनक्रिमीलेअर प्रमाणपत्र गृहित धरण्यात यावे.”

22. The learned counsel for the applicant submits that as per advertisement no. 01/2023, last date for filing in online application was 30.04.2023 and in terms of Government corrigendum dated 17.02.2023, the NCL certificate of that financial year is required to be considered. The learned counsel submits that the financial year in terms of the said corrigendum dated 17.02.2023 is 01.04.2023 to 31.03.2024. As against this, the learned Presenting Officer on the basis of the affidavit in reply filed on behalf of respondent no. 01 submits that the date of advertisement is 28.03.2023 and, as such, the financial year for the said advertisement is from 01.04.2022 to 31.03.2023. Thus, as per the general instruction no. 10 in the said advertisement dated 28.03.2023 for submitting the NCL certificate for this financial year, which is valid up to 31.03.2023, is the basic requirement.

23. It is not disputed that after publication of merit list of 177 candidates by the respondent on 21.07.2023 (Annexure A-5 page 34 of paper book) as per the merit, the applicant has submitted NCL certificate issued on 13.07.2023 by the Sub-

Divisional Officer, Gangakhed, which is valid up to 31.03.2026, to the office of respondent vide his representation dated 28.09.2023 (Annexure A-2).

24. In this context, it appears to us that the respondent no. 01 is misinterpreting the Government corrigendum dated 17.02.2023. The corrigendum dated 17.02.2023 enables the candidates to submit the NCL certificate, which would have been valid in the current financial year as against NCL certificate, which could have been valid as on last date of submission of the online application. In the instant case, last date for filling in online application is 30.04.2023 and current financial year would also commence from 01.04.2023. We agree with the submissions made on behalf of the applicant by the learned counsel that the applicant has fairly stated "NO" to the relevant column as he had no NCL certificate valid up to 31.03.2023.

25. Thus, in the light of the changed circumstances following issuance of corrigendum dated 17.02.2023, the applicant, who is otherwise being eligible to apply under reserved NT-D category, but for mandatory requirement of the valid NCL certificate as on 31.03.2023, subsequently obtained NCL certificate on 13.07.2023. The applicant, who was careful

in following the terms and conditions of the advertisement, was constrained to apply in Open General category only on account of limitation preventing him from obtaining valid NCL certificate. However, we find that the conduct of the applicant is *bona fide*, he cannot be deprived benefit of NT-D reserved category. The applicant is meritorious candidate, who has cleared the main examination and so far NT-D category is concerned, admittedly there is no other candidate above the applicant from NT-D category. So far the submission on behalf of the applicant that the posts reserved for social reservation are mandatorily required to be filled up and the same cannot be kept vacant for horizontal reservation for Divyang category is concerned, we do find substance in it. If in the recruitment process eligible candidate from Divyang category is not found, then the said reservation will be carried forward for the next recruitment, however, that does not mean that the respondent has been prevented from filling up the said post.

26. In this context further it is necessary to note here that even one Divyang candidate for want of educational qualification is already held ineligible and there is no hurdle as such to give appointment to the applicant from NT-D category. By interim order dated 20.11.2023 this Tribunal directed the

respondent to keep one post of Planning Assistant (Group-B) (Non-gazetted) meant for NT-D General category vacant and this order remained in force till disposal of the present O.A. In view of this, there is no hurdle to appoint the applicant on the post of Planning Assistant (Group-B) (Non-gazetted) of NT-D category.

27. In the case of **Priyanka Prakash Kulkarni Vs. Maharashtra Public Service Commission** (cited supra), the Hon'ble Supreme Court in paragraph Nos. 16, 17 & 19 in the identical set of facts has made the following observations.

“16. Admittedly, the Appellant i.e., a candidate who was scrupulously following the terms and conditions of the Impugned Advertisement was constrained to apply under the ‘Open General Category’ only on account of certain logistical limitations preventing her from obtaining a valid NCL Certificate. Consequently, in the absence of the requisite documents evidencing status as a person belonging to the NCL under the Impugned Advertisement read with the Circular i.e., a valid NCL Certificate as on the date of submission of the application form, the Appellant did not mark ‘yes’ against the specific question pertaining to her status as a person belonging to the NCL.

17. The aforementioned conduct of the Appellant is bona-fide. Accordingly, in our view the Appellant cannot be unfairly deprived of the benefit of female reservation merely on account of the Appellant's honesty and restraint which did not allow her to mark ‘yes’ against a column inquiring about a prospective candidates' status as a person belonging to the NCL, in the absence of the underlying supporting document. Additionally, other similarly situated candidates have been granted the benefit under the Corrigendum; and their otherwise defective applications have now been considered by the Respondent.

18. -- -- -- -- --

19. In light of the aforesaid, we find that the Impugned Order and resultantly, the Underlying Order ought to be set aside. Accordingly, taking note of the peculiar facts of the case; and that the Appellant is a

meritorious candidate who has cleared the main examination under the 'Open General Category' despite being deserving of the benefit of female reservation, we are inclined to balance the equities and do justice by exercising our power under [Article 142](#) of the Constitution of India. Accordingly, we direct the Respondent to forthwith treat the Appellant as a candidate under the 'Reserved Female Category'.

The ratio laid down by the Hon'ble Supreme Court in the aforesaid case of **Priyanka Prakash Kulkarni Vs. Maharashtra Public Service Commission** (cited supra) would squarely apply to the facts and circumstances of the present case.

28. In the case of **Smt. Tejashree Kailas Pawar Vs. The Secretary, Maharashtra Public Service Commission, Mumbai, in O.A. No. 537/2024** (cited supra), the Division Bench of the Principal Seat of this Tribunal at Mumbai by order dated 30.07.2024 in the identical set of facts decided the case in favour of the said applicant by relying upon the ratio laid down by the Hon'ble Supreme Court in the case of **Priyanka Prakash Kulkarni Vs. Maharashtra Public Service Commission** (cited supra).

29. So far as judgment cited by learned Presenting Officer in the case of **Sanjivani Abasaheb Karne & Ors. Vs. The State of Maharashtra & Anr., O.A. No. 701/2022** (cited supra) dated 09.01.2023 is concerned, the same has been decided by the Division Bench of the Principal Seat of this Tribunal at

Mumbai, when corrigendum dated 17.02.2023 was not issued. Thus, the view taken in the said O.A. No. 701/2022 may not be applicable to the facts and circumstances of the present case. In view of the discussion above, we pass the following order: -

ORDER

- (i) The Original Application No. 988/2023 is hereby allowed.
- (ii) The sole respondent is directed to consider candidature of the applicant from NT-D category as per the Non-Creamy-Layer certificate issued by the competent authority dated 13.07.2023 and in consonance with the Government corrigendum dated 17.02.2023 to G.R. dated 25.03.2013.
- (iii) The respondent is further directed to issue appointment order in favour of the applicant on the post of Planning Assistant (Group-B) (Non-Gazetted) within a period of 08 weeks from the date of this order.
- (iv) In the circumstances, there shall be no order as to costs.
- (v) The Original Application stands disposed of accordingly.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad
Date : 25.03.2025