

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NOS 1479/2023 & 691/2024**

DISTRICT : SANGLI

Shri Bukeshwar P. Godage)
R/o: Sunanda Apartments, Tadsar Road,)
Kadegaon, Dist-Sangli.)...**Applicant**

Versus

1. The State of Maharashtra & Ors)
Through Principal Secretary,)
Agriculture, Animal Husbandry,)
Dairy Development and Fisheries)
Department, Mantralaya,)
Mumbai 400 032.)
2. The Secretary,)
G.A.D, Mantralaya,)
Mumbai 400 032.)
3. The Secretary,)
M.P.S.C.,)
Cooperage Telephone Exchange Bldg)
M.K Road, Cooperage,)
Mumbai 400 021.)
4. Tahsildar,)
Tahsil Office, Madha,)
Dist-Solapur.)
5. D.A Jagtap,)
At Post-Pargaon, Tal-Purander,)
Dist-Solapur.)...**Respondents**

WITH**2) ORIGINAL APPLICATION NO. 691 OF 2024**

1. Mr Rahul Popal Sabale,)
R/o Flat No 10, Shri Ganesh Apt,)
Near Taran Talav, Ghadge Nagar,)
Nasik Road, Nasik-103.)
2. Mr Shubham Umesh Kirmirwar,)
R/at Shree Nidhi Apts,)
376 B/1, Shaniwar Peth,)
Pune.)...Applicants

Vs.

1. The Secretary,)
General Administration Department,)
Mantralaya, Mumbai.)
2. The Secretary,)
Maharashtra Public Service)
Commission, Trishul Gold Field,)
Plot No. 34, Sector-11,)
Opp. Sarovar Vihar, Belapur CBD,)
Navi Mumbai.)
3. Mr Bukeshwar P. Godage,)
R/at Sunanda Apartments,)
Tadsar Road, Kadegaon,)
Dist-Sangli.)...Respondents

Smt Punam Mahajan, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

Shri K.R Jagdale, learned counsel for the applicant in O.A 691/2024 and for Respondent No. 5 in O.A 1479/2023.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Shri Debashish Chakrabarty (Member) (A)

RESERVED ON : **19.09.2024**

PRONOUNCED ON : **19.12.2024**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. The Applicant in O.A 1479/2023 prays that Respondent No. 3-M.P.S.C. be directed to include name of Applicant in the Revised Provisional Select List for posts of Deputy Director Agriculture, Group-A.

2. The Applicant in O.A 691/2024 prays that Respondent No. 3 - MPSC be directed to add name of Applicant No. 1 & Applicant No. 2 to the list of recommended candidates dated 9.5.2024 for posts of Taluka Agriculture Officer, Group-B and Agriculture Officer (Junior), Group-B.

3. The Applicant in O.A 1479/2023 had applied on 21.10.2022 in pursuance to Advertisement dated 30.9.2022, for 'Maharashtra Gazetted Technical Combined Service Preliminary Examination, 2022', seeking appointment to post of 'Deputy Director of Agriculture, Group-A' under EWS Category.

4. The learned Counsel Smt Punam Mahajan for Applicant in O.A No. 1479/2023 submitted that Applicant had cleared the Preliminary Examination, Main Examination and Interview for post of 'Deputy Director Agriculture, Group-A' and secured 280.50 marks. The Applicant had applied for 'EWS Certificate' on

18.10.2022 and received 'EWS Certificate' on 19.10.2022, which was valid for the year 2022-2023. The 'EWS Certificate' dated 19.10.2022 was issued by Tahsildar, Madha, who is the 'Competent Authority'.

5. The learned Counsel for Applicant in O.A 1479/2023 further submitted that name of Applicant appeared at Sr. No. 13 in the 'General Merit List' under 'EWS Category' published by Respondent No. 3 - MPSC on 25.8.2023 and 1.11.2023. The Respondent No.3 - MPSC, had published the 'Provisional Select List' on 1.11.2023. Though Applicant has secured 280.50 marks, his name came to be included at Sr. No. 1 in list of 'Taluka Agriculture Officer, Group-B' instead of the 'Merit List' for Deputy Director of Agriculture, Group-A.

6. The learned Counsel for Applicant in O.A 1479/2023 thereupon submitted that Applicant should have been considered from 'Open EWS Category', but his name was shown in 'Open General Category'. Thus, if Applicant in O.A 691/2024 would have been given the benefit of 'Open EWS category', then name of Applicant would have got included at Sr. No. 12A or Sr. No. 13A for post of 'Deputy Director of Agriculture. Group-A'.

7. The learned Counsel for Applicant in O.A 1479/2023 referred to Clause 2.2.(1) of Advertisement dated 30.9.2022 for post of 'Deputy Director of Agriculture, Group-A' and drew our attention to 'Annexure A-4,' which is 'EWS Certificate' issued to him as per 'Central Government Format' which has not been accepted by Respondent No. 3 - MPSC as on the basis of the said 'EWS Certificate' issued on 19.10.2022, Applicant cannot be given the benefits of 'EWS Category'. Learned Counsel also submitted that Applicant in O.A No. 1479/2023 was orally informed by

Respondent No. 3 - MPSC that 'EWS Certificate' issued on 19.10.2022 was not as per 'Advertisement' dated 30.9.2022 in prescribed 'State Government Format' but it was in 'Central Government Format'.

8. The learned Counsel for Applicant in O.A No. 1479/2023 then referred to 'Exh.A7' which is the other 'EWS Certificate' issued on 13.9.2023 also by same 'Competent Authority', who is Tahsildar, Madha, but as per prescribed 'State Government Format' to emphasize that Respondent-Intervenor in O.A.No.1479/2023, has no locus to challenge the genuineness of 'EWS Certificate' issued on 13.9.2023 given to Applicant. Further, she referred to 'Short Affidavit in Reply' dated 24.1.2024 filed by Respondent No.4, Mr Vinod S. Ranaware, Tahsildar, Madha in which the contentions raised by Applicant in O.A No. 1479/2023 are dealt with. The Applicant in O.A No. 1479/2023 claimed that he had made application for grant of 'EWS Certificate' for 'Public Exam' conducted by State Government for year 2022, through Respondent No. 3 - MPSC. However, the same came to be issued in 'Central Government Format' to Applicant on 19.10.2022 and therefore it was not considered by Respondent No. 3 - MPSC while deciding his eligibility as candidate from 'EWS Category'. Further, she pointed out to contents of 'Para 4' of said 'Short Affidavit in Reply' dated 24.1.2024 of Tahsildar, Mhada, pertaining to verification of the records to emphasize that it does appear that Applicant had applied for 'EWS Certificate' and filed 'Affidavit for grant of 'EWS Certificate' in 'State Government Format' on 18.10.2022 but still 'EWS Certificate' was issued to Applicant in 'Central Government Format'.

9. The learned Counsel for Applicant in O.A No. 1479/2023 has further submitted that the 'Operator' in 'SETU Karyalaya' attached

to office of 'Tahsildar, Mhada', on 'Affidavit' has stated that the 'EWS Certificate' in 'Central Government Format' was issued inadvertently on 19.10.2022 to Applicant.

10. The learned Counsel further argued that Applicant had disclosed in the 'Application Form' submitted to Respondent No. 3 - MPSC that he was 'Government Servant' and holding on post of 'Circle Agriculture Officer' in 'Pay Band' of 'S-15'.

11. The learned Counsel then referred to contents of 'Para 8' and 'Para 10(a)' of the Affidavit in Reply dated 23.1.2024 of Sushma S. Chandramore, Under Secretary in office of Respondent No. 3 - MPSC.

12. The learned Counsel relied on the decision of this Tribunal **dated 29.10.2021 in O.A 824/2021, Anjali Dinkar Tayade Vs. State of Maharashtra & Ors** to emphasize that Applicant has submitted 'EWS Certificate' and that only on the ground it was in 'Central Government Format' the candidature of Applicant from 'Open EWS Category' was rejected by Respondent No. 3 - MPSC. The Tribunal cannot go beyond this prayer of Applicant to examine any other grounds being raised by Respondent-Intervenor in O.A No. 1479/2023.

13. The learned Counsel Shri K.R Jagdale for Respondent-Intervenor in O.A No. 1479/2023 submitted that the Respondent-Intervenor is at Sr No. 25 in the 'Provisional Select List' with 276 marks under 'EWS Category' for post of 'Deputy Director of Agriculture, Group-A' and name of present Applicant in O.A No. 1479/2023 is at Sr. No. 1 in the 'Provisional Select List' for post of 'Taluka Agriculture Officer, Group-B', in 'Open General Category'.

14. The learned Counsel for 'Respondent-Intervenor' in O.A No. 1479/2023 submitted that as the benefit of 'EWS Category' was not granted to Applicant in O.A No. 1479/2023, thus his name was not shown in 'Provisional Select List' for post of 'Deputy Director of Agriculture, Group-A'.

15. The learned Counsel for Respondent-Intervenor in O.A No. 1479/2023 referred to the 'Serial Nos of different 'EWS Certificates' at Annexure A-4, and also at Annexure A7; to further submit that the Applicant in O.A No. 1479/2023 was 'Government Servant' working on post of 'Circle Agriculture Officer' from 18.2.2020. The Applicant in O.A No. 1479/2023 had suppressed his 'Salary Income' of Rs. 693000/- while seeking 'EWS Certificate' for year 2022-2023. Further, Applicant in O.A No. 1479/2023 has shown gross Annual Income of only Rs. 550000/- which is income out of produce from 'Agricultural Lands', as for 'E.W.S Certificate', the total Annual Income should be below Rs. 800000/-. Learned Counsel for Respondent-Intervenor in O.A No. 1479/2023 drew attention to proof about 'Salary Income' of Applicant in O.A No. 1479/2023, i.e., 'Form No. 16', which shows 'Salary Income' of Applicant to be Rs. 693390/-.

16. The learned Counsel for Respondent-Intervenor in O.A No. 1479/2023 then pointed out that in 'EWS Certificate' issued on 19.10.2022 by 'Tahsildar, Mhada', which is in 'Central Government Format' 'Salary Income' of Applicant in O.A No. 1479/2023 was not at all taken into account by 'Tahsildar, Mhada as Competent Authority to issue 'EWS Certificate'. Further, last date of submission of 'E.W.S Certificate' was 23.10.2022 but 'EWS Certificate' in 'State Government Format' was issued much later on 13.09.2023.

17. The learned Counsel for Respondent-Intervenor in O.A No. 1479/2023 pointed out 'Additional Affidavit-in-Reply' filed on behalf of Respondent-Intervenor Mr Dhanraj A. Jagtap on 20.06.2024. He relied on 'Condition 5.10' of 'Advertisement' dated 30.09.2022. The format in which the 'E.W.S. Certificate' has to be necessarily produced as per G.R. dated 12.02.2019 and 31.05.2019 was specifically mentioned in 'Advertisement' dated 30.9.2022. However, Applicant in O.A No. 1479/2023 had failed to comply with the terms of 'Advertisement' dated 30.9.2022. So also as per 'Condition 5.11 of this Advertisement' dated 30.09.2022, the last date of 'E.W.S. Certificate' should be prior to last date for submission of 'Application Form', i.e. 23.10.2022. However, the 'E.W.S. Certificate' of Applicant in O.A No. 1479/2023 in 'State Government Format' was issued much later on 13.09.2023. As per 'General Instructions' in Para 3.3.4 it is specifically mentioned that 'State Government Format' for EWS Certificate was mandatory but 'EWS Certificate' issued on 19.10.2022 which was submitted by Applicant in O.A No. 1479/2023 was in 'Central Government Format' and hence rightly not considered by Respondent No. 3 - MPSC.

18. The learned Counsel for Respondent-Intervenor in O.A No. 1479/2023 further drew attention to 'Clause 12.2.3' to point out that 'General Instructions' were strictly applicable and had to be followed with exception by all candidates including Applicant in O.A No 1479/2023. The 'General Instructions' in 'Paragraph 1.2.5.7' directs as follows:-

"१.२.५.७ स्पर्धा परीक्षेच्या पूर्व परीक्षेकरीता / सरळ सेवा भरतीकरीता सादर केलेल्या अर्जातील दावे (उदा. अधिवास, दिव्यांग, माजी सैनिक, प्राविण्यप्राप्त खेळाडू, अनाथ, जातीचा प्रवर्ग, नॉन-क्रिमीलेयर, शासकीय कर्मचारी, बृहन्मुंबई महापालिका / बेस्ट कर्मचारी इत्यादी) मुख्य परीक्षा / सरळसेवा भरतीच्या मुलाखतीकरीता ग्राह्य / अंतिम समजण्यात येतील. त्यामध्ये संबंधित मुख्य परीक्षेकरीता / सरळसेवा भरतीकरीता कोणताही बदल करता येणार नाही."

19. The learned Counsel for Respondent-Intervenor in O.A No. 1479/2023 submitted that Respondent No. 3 - M.P.S.C. has not taken any plea about false 'EWS Certificate' submitted by Applicant in O.A No. 1473/2023 therefore it must be looked into by Tribunal while deciding O.A No 1479/2023. In the 'Affidavit-in-Reply' dated 26.03.2024 filed by Dhanraj A. Jagtap, who is Respondent-Intervenor, in Paragraph 5 has specifically highlighted about overt hiding of material information about Salary Income of Applicant and also questions the genuineness of the 'E.W.S. Certificate'. It is specifically averred in 'Paragraph 8' that Applicant in O.A No. 1478/2023 was serving on post of 'Circle Agricultural Officer' and thus drawing gross monthly Salary & Allowances of Rs. 61,335/-.

20. The learned Counsel had pointed out from Affidavit-in-Reply dated 20.06.2024 for Respondent-Intervenor, Dhanraj A. Jagtap about the details of 'Agriculture Land' of Applicant in O.A No. 1473/2023. He specifically emphasized that Applicant had obtained 'E.W.S. Certificate' on 19.10.2022 fraudulently by showing only part of the total Annual Income and concealing that he was salaried person being Government Servant. The family of Applicant owns 6.5 acres of Agriculture Land. As per G.R. dated 31.01.2019 to be eligible to get the 'E.W.S. Certificate' there is ceiling on ownership of 5 acres of 'Agriculture Land' and clear directions about what is to be included for criteria of 'Income and Assets'.

21. The learned Counsel for Respondent-Intervenor in O.A No. 691/2024 relied on the following judgments:

(i) ***Bedanga Talukdar Versus Saifudaullah Khan & Ors., I.A.No.5-8 in Civil Appeal Nos.8343-8344 Of 2011, dated 28.09.2011. on the point of relaxation of terms & conditions in Advertisement.***

(ii) On the point of fraud he relied on the judgment of ***The State Of Andhra Pradesh & Anr vs T. Suryachandra Rao reported in 2005 (6) SCC 149, on the point of fraud.***

22. The learned C.P.O relied on the Judgment of the **Hon'ble Bombay High Court, Aurangabad Bench dated 26.4.2024 in W.P 14475/2023 Dr Vilas K Dukare Vs. State of Maharashtra & Ors.**

23. The learned C.P.O further relied on Affidavit in Reply in O.A 1479/2023 filed on 23.1.2024 by Respondent No. 3 - MPSC. Learned C.P.O submitted that Applicant has produced the 'EWS Certificate' issued on 19.10.2022 in 'Central Government Format' and not as per the 'State Government Format' and therefore the candidature of Applicant from 'Open EWS Category' was not considered by Respondent No. 3 - MPSC.

24. The learned C.P.O relied on decision of **Hon'ble Supreme Court of India dated 9.10.2023** in case of **DIVYA Vs. Union of India & Ors, W.P (C) 724/2023**. The observations in Para 39 & Para 51 are reproduced as under:-

"39. As is clear from the Office Memoranda issued by the DoPT dated 19.01.2019 & 31.01.2019, the benefit of reservation under EWS category can be availed only upon possession of I&AC issued by a competent authority. The OM also makes it clear that crucial date for submission of I&AC by the candidate may be treated as the closing date of receipt of applications except where the crucial date is fixed otherwise. Insofar as the EWS candidates are concerned, Rule 27(3) of the CSE-Rules 2022 is very clear when it states that a candidate will be eligible to get the benefit of the Economically Weaker Section reservation only in case the candidate meets the criteria issued by the Central Government and is in possession of requisite I&AC based on the income for the F.Y. 2020-2021. Further, Rule 28 states that a candidate seeking reservation / relaxation benefits available for SC/ST/OBC/EWS/PwBd/Ex-Servicemen must ensure that they are entitled to such reservation/relaxation as per eligibility prescribed in the Rules/Notice. The Rule further

states that they should also be in possession of all the requisite certificates in the prescribed format in support of their claim as stipulated in the Rules/Notice for such benefits by the closing date of the application for Civil Services (Preliminary) Examination- 2022. It is not disputed that the closing date of the application was 22.02.2022.....

51. In this case, rules clearly exist in the form of CSE-2022. It has also been settled that determination of eligibility cannot be left uncertain till the final stages of selection, since that would lead to uncertainty. [See A.P. Public Service Commission v. B. Sarat Chandra (1990)2 SCC 669, para 7] Further, it is well settled that if rules prescribe the last date on which eligibility should be possessed, any relaxation would prejudice non-applicants who for want of possession of eligibility would not have applied. Relaxation would then be selective, leading to discrimination [See Yogesh Kumar (supra).”

25. The **Hon’ble Supreme Court of India** in its landmark **Judgment in case of *Bedanga Talukdar (supra)*** has examined at length the point about relaxation of terms and conditions which are mentioned in the ‘Advertisement’. The issue was pertaining to the submissions of ‘Certificate of Disability’ along with ‘Application Form’ or before appearing the ‘Preliminary Examination’. At that time, the Hon’ble Supreme Court of India in unambiguous language upheld that there can be no relaxation in terms and conditions contained in ‘Advertisement’. The pertinent observations in ‘Para 31’ are as under:-

“31. In the face of such conclusions, we have little hesitation in concluding that the conclusion recorded by the High Court is contrary to the facts and materials on the record. It is settled law that there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement. In the present case, no such rule has been brought to our notice. In such circumstances, the High Court could not have issued the impugned direction to consider the claim of respondent No.1 on the basis of identity card

submitted after the selection process was over, with the publication of the select list.”

26. The **Hon’ble Division Bench of Bombay High Court at Aurangabad Bench** in case of **Dukare (supra)**, had addressed the issue of ‘Salary Income’ of person claiming benefit of ‘EWS Certificate’ while dealing with similar issue of eligibility of those falling under ‘E.W.S Category’. We quote and rely on the following ratio:

*“17. We, having given a deep thought to the provisions of the GR dated 12.02.2019 and considering the language used in the clauses ~~2- α~~ (1&2) read with the **explanation** of the State Government conveyed vide the communication dated 06.11.2023, it is apparent that an EWS certificate is for a candidate to take advantage of the family being economically weak. The ceiling is of Rs. 8,00,000/- per year. When the Petitioner himself is drawing Rs. 12,00,000/- per annum, falling back upon the income of the family, excluding his income and contending that the family earns less than Rs.8,00,000/- and, therefore, he belongs to the EWS category, is a fallacious contention, which is not palatable.”*

27. The Tribunal in the case of **Anjali Tayade (supra)**, who had applied in ‘OBC EWS Category’ wherein the format the ‘OBC EWS Certificate’ to be submitted was not specified in the Advertisement and this Tribunal had taken view that the in ‘Advertisement’ there was no such mention about ‘Specific Format’ required for ‘EWS Certificate’. The Applicant, who was Tayade’s father has approached the concerned ‘Competent Authority’ before the ‘Advertisement’ and so ‘EWS Certificate’ was in different format than required by Advertisement. The facts of Anjali Tayade (supra) are distinguishable to apply the ratio laid down in it to case of present Applicant in O.A No. 1479/2023.

28. The ‘EWS Certificate’ in ‘Central Government Format’ was submitted by Applicant in O.A 1479/2023 but even if it is assumed that it were to be accepted by Respondent No. 3 - MPSC

even then there are much more valid and stronger grounds to reject candidature of Applicant for post of 'Deputy Director of Agriculture Group-A' under 'Open EWS Category'. At the outset, we express that we are unable to appreciate the submissions of learned Counsel of Applicant in O.A 1479/2023 on the point that Respondent No. 3 -MPSC has rejected his candidature only on the ground that 'EWS Certificate' was not in 'State Government Format' and that Tribunal cannot go beyond it and rely on other grounds for rejection of candidature of Applicant by Respondent No. 3 – MPSC. The Hon'ble Supreme Court of India has laid down the law in the case of **(1978) 1 SCC 405 (Mohinder Singh Gill Vs. Chief Election Commissioner, New Delhi)**. We are aware that once certain ground is quoted in writing by 'Competent Authority' then any other reason cannot be substituted for rejection. However, if any fact which had been intentionally suppressed and brought to our knowledge goes to the roots of the eligibility of candidate such as in present case relating to 'EWS Certificate', then this 'Judicial Forum' cannot turn 'Nelson's Eye' to such significant facts thereby allowing illegality to occur in important matters of 'Public Employment' undertaken by State Government through Respondent No. 3 - MPSC.

29. The Applicant had been issued 'EWS Certificate' in both 'Central Government Format' on 19.10.2022 and 'State Government Format' on 13.09.2023. However, after going through the two 'EWS Certificates' of Applicant issued by same 'Competent Authority' who is 'Tahsildar, Mhada', we found that Applicant had not disclosed his 'Salary Income' on both occasions to 'Competent Authority'. The description of the documents which were relied upon and verified by 'Competent Authority' for purpose of calculating the total 'Annual Income' of Applicant and 'Family' is mentioned in both 'EWS Certificates'.

(i) The list of documents which were produced by Applicant at the time of issue of EWS Certificate on 11.03.2022 in Central Government Format are:-

*“Annexure-1
Government of Maharashtra
Madha*

Documents

(This certificate has been issued on the basis of following proof/ evidences/ documents)

1. School leaving Certificate
2. Aadhar Id Of Father
3. VF 8A
4. Income Certificate
5. School Leaving Certificate of Aunty
6. Affidavit

Certificate No.42455280292

Date : 11/03/2022

(ii) The list of documents which were produced by Applicant at the time of issue of EWS Certificate on 19.10.2022 in Central Government Format are:-

*Annexure-1
Government of Maharashtra
Madha*

Documents

(This certificate has been issued on the basis of following proof/ evidences/ documents)

1. VF 8A
2. Aadhar Id of Father
3. Income Certificate
4. Extract from Voter List/ V F 7/ 12
5. School Leaving Certificate
6. School Leaving Certificate Of Grand Father
7. Affidavit

**INCOME & ASSEST CERTIFICATE TO BE PRODUCED BY
ECONOMICALLY WEAKER SECTIONS**

Certificate No.: 42455319050

Date : 19/10/2022”

(iii) The list of documents which were produced by Applicant at the time of issue of EWS Certificate on 13.09.2023 in State Government Format are:-

*Annexure-A
Government of Maharashtra*

Documents

- 1) *UID*
- 2) *Income Certificate*
- 3) *School Leaving Certificate*
- 4) *Self declaration*

Certificate No.: 310

Date : 13/109/2023”

30. The documents pertaining to ‘Salary Income’ of Applicant were not considered on both occasions by Competent Authority, who is ‘Tahsildar, Mhada’. Thus, ‘Salary Income’ of Applicant who has been serving on post of ‘Circle Agriculture Officer’ since 18.02.2020 was never considered by ‘Competent Authority’. The fact that Applicant in O.A No. 1479/2023 working as Government Servant since 18.02.2020 was not denied by him. The submissions of learned Counsel for Applicant in O.A No. 1479/2023 that ‘Salary Income’ from the post of ‘Circle Agriculture Officer’ in ‘Pay Band’ of ‘S-15’ and only Rs.13,360/- just is not acceptable. The Applicant in O.A No. 1479/2023 should have produced the ‘Salary Slip’ before the Tribunal thus disclosing his ‘Salary Income’. The ‘Family Income’ out of Agriculture Land is shown as Rs.5,50,000/- per annum and as Applicant was holding the post of ‘Circle Agriculture Officer’ his gross ‘Annual Income’ would have definitely been more than Rs. 5,50,000/- per annum. Therefore, it is definitely the case where the gross ‘Annual Income’ of Applicant and Family together is above Rs. 8 lakhs which is the requisite income limit for eligibility for seeking ‘EWS Certificate’. While meeting the contentions raised by learned P.O. and learned Counsel for Applicant in O.A No. 691/2024, the learned Counsel

for the Applicant in O.A 1479/2023 strongly contended that candidature of Applicant was *orally* rejected by Respondent No. 3 - MPSC from 'Open E.W.S. Category' on the ground that with 'Application Form' the 'E.W.S. Certificate' submitted was issued on 19.10.2022 was in wrong format i.e., in 'Central Government Format'. Therefore, no other objections can be held as valid especially on the ground of verification of gross Annual Income so as to deny the claim of the Applicant for appointment to post of Deputy Director of Agriculture, Group-A from 'Open EWS Category'.

31. The learned C.P.O. has relied on the **Judgment of Hon'ble Supreme Court in Writ Petition (C) No.724/2023, Divya Versus Union of India & Ors.** The observations in Paras 74, 75 & 80 are reproduced below:-

“74. Could we fault this exercise of the UPSC in rejecting their candidature under the EWS Category, is the question that arises for consideration? We are constrained to conclude that we cannot fault the method adopted by the UPSC. This is for the reason that the UPSC has strictly acted in accordance with the mandate of Rule 13 read with Rule 27 & 28. They had an obligation to scrutinize the forms as uploaded with DAF-I. Rules 13, 27 & 28 of the CSE-Rules 2022 are to be read with the Office Memoranda of 19.01.2019 & 31.01.2019 especially clause 5 of the Office Memorandum of 31.01.2019. The examining body has not considered the defects as insignificant. If this is so, then we have no option but to reject the writ petitions of all the petitioners.

75. In our view, the case of the petitioners in Writ Petition (C) Nos. 705 and 764 fails additionally, for being directly covered by the judgment in Gaurav Singh's case (supra).

80. It will be noticed that UPSC has considered these omissions as trivial and as not going to the root of the eligibility, unlike in the case of the petitioners herein. In *Ajay Kumar Mishra vs. Union of India* [2016] SCC OnLine Del 6563, *Indira Banerjee, J. (as Her Ladyship then was)* speaking for the Division Bench of the Delhi High Court felicitously put the issue about the examining body's right to decide as to which errors are material and which are inessential and trivial. We do nothing more except to extract paras 6, 7 & 9 from the said judgment :-

“6. There can be no doubt that a candidate applying for a government job, or for that matter, any job should fill in the application form carefully. No candidate can claim any vested right to rectification of arrears in an application. Union Public Service Commission and the State Public Service Commissions deal with lacs of applications, which are received pursuant to an advertisement. Such applications are required to be processed within a short time. A candidate, who is not short-listed and/or not allowed to participate in the selection process by reason of his own laches in making careless mistakes, cannot claim any right to be allowed to participate in the selection process.

7. It is for the body conducting the selection process to decide whether mistakes should be allowed to be rectified, if so, whether they should be rectified within any specific time and what are the mistakes which can be allowed to be rectified and other similar questions. However, in view of the mandate of Articles 14 to 16 of the Constitution of India, there should be no discrimination or arbitrariness in deciding these

questions. All candidates applying for the particular post/posts should be treated equally.

9. It is true that whenever any material discrepancy is noticed in the application form and/or when any suppression and/ or mis-representation is detected, the candidature might be cancelled even after the application has been processed and the candidate has been allowed to participate in the selection process. However, after a candidate has participated in the selection process and cleared all the stages successfully, his candidature can only be cancelled, after careful scrutiny of the gravity of the lapse, and not for trivial omissions or errors.”

32. The learned C.P.O. has reiterated that as on date of filing of ‘Application Form’, the Applicant was not holding valid ‘E.W.S. Certificate’ by relying upon Judgment dated 9.10.2023 in ***Divya (supra)***.

33. We would like to point out ‘Office Memorandum’ dated 31.01.2019 issued by ‘Ministry of Personnel, Public Grievance and Pension, Government of India’ about reservation for ‘EWS Category’ in Direct Recruitment in posts and services in the Government of India. We reproduce the relevant portion in Clause 4 pertaining to **‘criteria of income and assets’**.

“4. **CRITERIA OF INCOME & ASSETS:**

*4.1 Persons who are not covered under the scheme of reservation for SCS, STS and OBCs and whose family has gross annual income below Rs. 8.00 lakh (Rupees eight lakh only) are to be identified as EWSs for benefit of reservation. Income shall also include income from all sources i.e. **salary**,*

agriculture, business, profession, etc. for the financial year prior to the year of application.

Also persons whose family owns or possesses any of the following assets shall be excluded from being identified as EWS, irrespective of the family income:-

- i. 5 acres of agricultural land and above;*
- ii. Residential flat of 1000 sq. ft. and above;*
- iii. Residential plot of 100 sq. yards and above in notified municipalities;*
- iv. Residential plot of 200 sq. yards and above in areas other than the notified municipalities.*

4.2. The property held by a "Family" in different locations or different places/cities would be clubbed while applying the land or property holding test to determine EWS status.

4.3 The term "Family" for this purpose will include the person who seeks benefit of Reservation, his/her parents and siblings below the age of 18 years as also his/her spouse and children below the age of 18 years."

The above guidelines of 'Ministry of Personnel, Public Grievance and Pension, Government of India' thus make it necessary to include Annual Income from all sources including 'Salary Income' if earned by candidate who has applied under 'E.W.S. Category'. In the present case, if we peruse the 'E.W.S. Certificates' issued by the Tahsildar, Mhada as 'Competent Authority', on 11.03.2022 and 19.10.2022 then in these 'EWS Certificates' under the description of documents considered by 'Competent Authority' for verification only 'Income Certificate' is shown as considered and on that basis gross 'Annual Income' of Applicant in O.A No. 1479/2023 is shown to be Rs.5,50,000/-. It is also mentioned that his 'Family' does not own and possess the assets as mentioned in 'Clause 4.1' of 'Ministry of Personnel, Public Grievance and Pension, Government of India'. Thus, in both 'EWS Certificates' there is no whisper of 'Salary Income' which had been earned by Applicant as Government Servant while serving on post of 'Circle Agriculture Officer'. The Applicant in O.A

No 1479/2023 has not denied the fact that he is in Government Service of the State Government. Hence, it amounts to clever suppression of this fact by Applicant in O.A No 1479/2023. We rely and point out that the 'Application Form' was filled by Applicant up on 21.10.2022. The Applicant had disclosed that he was working as 'Circle Agriculture Officer' in the 'Pay Band' of 'S-15' and had also mentioned about receiving monthly 'Salary & Allowances' of Rs.61,335/- which is approximately more than Rs. 7 lakhs Per Annum. This fact is specifically contented in 'Affidavit-in-Reply' dated 26.03.2024 filed by Respondent Intervenor in O.A.No.1479/2023. We are surprised to come across such type of falsehood on the part of the Applicant in O.A No. 1479/2023.

34. We are thus of the considered view that if the 'Salary Income' of Applicant who is serving on post of Circle Agriculture Officer in 'Pay Band' of 'S-15' is taken into account then it will be more than Rs. 6 Lakhs Per Annum. Thus, in order to have gross Annual Income below Rs. 8 Lakhs; the 'Salary Income' of Applicant should have been just about Rs. 2,50,000/-. The 'Salary Income' of Applicant is definitely much above Rs. 6 lakhs and he has not produced his 'Salary Slip' before 'Competent Authority' who issued both 'E.W.S. Certificates'. On the ground of this intentional suppression of such material and crucial fact and for making misleading averments we dismiss this O.A No. 1479/2023.

35. We also direct that in compilation of 'Confidential Reports' of the Applicant in O.A No. 1479/2023 who is serving on post of 'Circle Agriculture Officer', which is in Group-B, the fact that he has obtained 'E.W.S. Certificates' surreptitiously should be noted and attached in 'Separate Sheet' placed with Confidential Reports. Further it be examined whether such misconduct on part of Applicant is violative of provisions of 'Rule 3' of Maharashtra Civil

Services (Discipline & Appeal) Rules, 1979. We give these directions to Principal Secretary, Agriculture Department where the Applicant is working on post of 'Circle Agriculture Officer'. In view of the above, following order is passed:-

ORDER

- (i) The O.A No. 1479/2023 is dismissed and Applicant is not entitled to get his name included in 'Revised Provisional Select List' for post of 'Deputy Director of Agriculture, Group-A'.
- (ii) Original Application No 691/2024 is allowed and accordingly Respondent No. 3 – MPSC is directed to include the name of Applicant No. 1 in O.A No. 691/2024 in list of recommended candidates for post of 'Taluka Agriculture Officer, Group-B', within a period of 'Two Weeks'.
- (iv) Original Application No 691/2024 is allowed and accordingly Respondent No. 3 – MPSC is directed to include the name of Applicant No. 2 in O.A 691/2024 in list of recommended candidates for post of 'Agriculture Officer (Junior) Group-B' within a period of 'Two Weeks'.
- (v) No order as to costs.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 19.12.2024
Dictation taken by : A.K. Nair.