

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 42 OF 2016

DISTRICT : SOLAPUR

Miss Amruta Ramesh Bhai)
Occ : Nil,)
R/at Kasturba Gandhi Nagar,)
Solapur.)...Applicant

Versus

1.	The State of Maharashtra)
	Through the Secretary,)
	Home Department, Mantralaya,)
	Mumbai 400 032.)
2.	The Commissioner of Police,)
	For Greater Bombay, D.N Road,)
	Mumbai 400 001.)
3.	The Chairman,)
	Police Recruitment Committee 2014)	
	Additional Commissioner of Police,)
	Armed Police, Naigaon, Mumbai.)...Respondents

Shri K.R Jagdale, learned advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 07.09.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri K.R Jagdale, learned advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents

2. This Original Application has been filed by the Applicant challenging the communication dated 26.11.2015 issued by the Respondent no. 2, informing her that her candidature from OBC category was not considered for the post of Police Constable as she had not submitted the requisite Non-Creamy Layer (NCL) Certificate as stipulated in the advertisement.

3. Learned Counsel for the Applicant argued that the Respondent no. 2 had issued an advertisement dated 30.4.2014 for filling a total of 2570 posts of Police

Constables. 55 posts from O.B.C category were reserved for women. The Applicant had applied from O.B.C Women category and was allowed to participate in the selection process. The Applicant scored a total of 161 marks in the selection process. The cut-off marks for O.B.C Women category were 147, while for Open-Women, they were 136. The Applicant was, accordingly, found eligible to be selected for the post of Police Constable from O.B.C Women category. Learned Counsel for the Applicant argued that the Applicant was ultimately not selected for the post of Police Constable on the ground that she did not hold the requisite NCL Certificate. Learned Counsel for the Applicant argued that this contention of the Respondents is not correct. The Applicant had a NCL Certificate dated 27.5.2014 /4.6.2014 issued by the Sub-Divisional Officer, Solapur, which she had tendered to the Respondents. However, the Respondent did not accept this Certificate and orally informed her that she would be considered from Open-Women category. However, the Applicant was neither considered from OBC-Women category nor from Open-Women category, though she was fully eligible to be considered from both these categories on the basis of marks obtained by the Applicant.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the advertisement dated 30.4.2014 has clause 6(3) which provided that the Non-

Creamy Layer Certificate was required for the year, either from, 1.4.2012 to 31.3.2013 or from 1.4.2013 to 31.3.2014 and it should have been issued on or before the last date of submission of application form dated 25.5.2014. As per clause 6(5), even for Open Women candidates, seeking selection for the posts horizontally reserved for Women, Non-Creamy Layer Certificate issued up to 25.5.2014 was required. The Applicant, by her own admission, submitted NCL Certificate dated 4.6.2014. There is another date in the said Certificate viz, 27.5.2014, but that date does not indicate the date on which NCL Certificate was issued. Learned P.O argued that the Respondents have correctly held that the Applicant did not hold the requisite NCL Certificate, and was, therefore, not considered from OBC Category. A Women from OBC category cannot be considered for Open-Women post. In any case, the Applicant could not have been considered from Open-Women category as she had not produced NCL Certificate required for Open-Women candidate.

5. It is seen that the claim of the Applicant is that she was eligible to get NCL Certificate for the period mentioned in the advertisement viz. the year from 1.4.2012 to 31.3.2013 or from 1.4.2013 to 31.3.2014. The Applicant's contention may be correct. However, the Applicant has not disclosed any reason as to why she did not obtain the necessary Certificate in time. It appears

that after filling the Application Form, she applied for grant of NCL Certificate. In a similar hypothetical case, if a person produces Caste Certificate after due date, can that delay be condoned? The answer is no. Such a person was definitely eligible to get a Caste Certificate indicating the caste to which he belongs. However, it is necessary to produce Certificate within time as required in the advertisement. The Applicant clearly failed to do so and she herself is to be blamed for that. In the case of **BEDANGA TALUKDAR Vs. SAIFUDAULLAH KHAN & ORS**, Hon'ble Supreme in **SLP (C) no. 20152-20153/2010** have held that:-

“29 A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our opinion the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be relaxed in the case of respondent no. 1. Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India.”

Hon'ble Supreme Court has held that the conditions in the advertisement cannot be relaxed unless there is a specific provision in that regard in the advertisement itself. In the present case, all the Certificates were

required to be issued on or before 25.5.2014 as per clause 6(3) of the advertisement. Other clauses like 6(5), 6(8) also mention the same date. There is no mention in the advertisement that Certificate issued after that date can be accepted in certain circumstances. The Applicant was rightly held not in possession of requisite NCL Certificate by the Respondents. As such, she was not considered from OBC-Women category. An Open-Women category post cannot be filled by an OBC-Women. However, even if the claim of the Applicant that she should have been considered from Open-Women category is accepted, she was required to submit NCL Certificate as per clause 6(5) of the advertisement issued on or before 25.5.2014. Obviously, the Applicant could not have been considered from Open-Women category for her failure to produce NCL Certificate. This would have been an additional ground for her disqualification.

6. It is seen that the Applicant has relied on the following judgments, viz:-

- (i) Judgment of this **Tribunal dated 19.3.2013 in O.A no 578/2012: [Miss Sana B. Mulani Vs. The Commissioner of Police, Greater Bombay & Ors]** . In that case, the Applicant had applied from Open-female category for the post of Police Constable. She had a NCL Certificate dated 18.11.2011 in her possession. The dispute was whether she had

already tendered NCL Certificate at the time of scrutiny of the documents. This Tribunal held that there was no reason for the Applicant not to produce the NCL Certificate, which was valid and in her possession. The facts in the present case are different. Here the NCL Certificate is issued after the last date of acceptance of Application Form and it was clearly mentioned in the advertisement that all Certificates, which were issued on or before that date would only be considered.

- (ii) **Dolly Chanda Vs. Chairman, JEE & Others : AIR 2004 SC 5043:** It was held by Hon'ble Supreme Court that the general rule was that while applying for any course of study, a person must possess the eligibility qualification on the last date fixed for such purpose. There can be no relaxation in this regard. However, depending upon the facts of a case, there can be some relaxation, in the matter of submission of proof. In that case, there was some mistake in the Certificate issued by the Zilla Sainik Board, which was later rectified. In the present case, there is no mistake in the NCL certificate produced by the Applicant. The Certificate is dated after the last date prescribed in the advertisement. The case is clearly distinguishable.

7. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

(R.B. Malik)
Member (J)

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 07.09.2016
Dictation taken by : A.K. Nair.

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