

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 537 OF 2024**

DISTRICT :

Smt Tejashree Kailas Pawar)
Occ-Nil, R/o: A1-3, 28/5,)
Indrayani CHS, Sector-19, Airoli,)
Navi Mumbai 400 708.)...**Applicant**

Versus

The Secretary,)
Maharashtra Public Service)
Commission, [M.S], Mumbai.)
Having office at Trishul Gold Field,)
Plot No. 34, Opp. Sarovar Vihar,)
Sector-11, C.B.D, Belapur,)
Navi Mumbai 400 614.)...**Respondents**

Shri B.A Bandiwadekar, learned advocate for the Applicant.

Shri Mandar Bangale with Ms Mandakini Bangale, learned counsel
for Respondent no. 1, M.P.S.C.

**CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)**

DATE : 30.07.2024

J U D G M E N T

1. The applicant prays that the Respondent be directed to extend the benefits of the Judgment and order of the Hon'ble

Supreme Court dated 29.1.2024 in Special Leave Petition (Civil) No. 25347/2023, Priyanka P. Kulkarni Vs. M.P.S.C, in favour of the applicant on the principles of similarly situated person and further direct the Respondent to include the name of the applicant in the Provisional Merit List dated 20.3.2024 through OBC Female category for the post of Deputy Education Officer, Maharashtra Education Service, Group-B (Administration Branch), and the applicant be granted all consequential service benefits.

2. The Respondent issued Advertisement No. 045/2022 for filling up 161 Multi Cadre posts. The applicant has filled up application form as a OBC candidate without claiming any benefits of NCL. She cleared the Preliminary and the Main Examination and was called for interview.

3. On 20.3.2024 the Respondents issued the provisional select list and the applicant found that her name was not included in the said provisional select list. Earlier the applicant had obtained the NCL Certificate of the same requisite year, i.e., on 31.3.2023, which was valid up to 31.3.2023.

4. Learned counsel for the applicant has given the example of one Priyanka Kulkarni, who has applied for the same Multi Cadre post examination in the year 2022. She has a similar case that she did not avail of the benefits of NCL Certificate. The said case filed by Priyanka Kulkarni was rejected by the Tribunal and so also by the Hon'ble Bombay High Court. However, she approached the Hon'ble Supreme Court by filing SLP (Civil) No. 25347/2024 and the said SLP was decided on 29.1.2024. The Hon'ble Supreme Court has granted the benefits to the applicant in view of the G.R dated 17.2.2023 issued by the OBC Welfare Department, by which

the period for submission of NCL Certificate was extended upto the date of the verification of the documents.

5. Learned counsel submitted that the cut-off marks for open female is 455.50 and for OBC female is 424.50 marks for interview. The applicant secured 464.73 marks without considering her marks in the interview and for open female cut-off marks is 455.50. Learned counsel for the applicant pointed out to Exh. R-1 which is the format to be submitted by the candidate at the time of verification of the document on 14.12.2023 before the interview. Learned counsel for the applicant relied on the decision of the Hon'ble Supreme Court in **Special Leave Petition (Civil) No. 25347/2023, Priyanka P. Kulkarni Vs. M.P.S.C** and submitted that the applicant stands on the same footing like the case of Priyanka Kulkarni.

6. Learned counsel submitted that on 18.1.2024 the general merit list was published and the applicant was shown under the category of open female. However, on 20.3.2024 the provisional merit list was published and that time two lists were published, which included merit list of eligible and non-eligible candidates. The name of the applicant did not appear in either of the lists and that is why the applicant has made enquiry with MPSC. The applicant made query to MPSC why her name was not shown in the list of eligible and non-eligible candidates. She was orally informed that as no NCL Certificate was submitted, her name was not included in the provisional merit list. The applicant thereafter filed written application on 8.4.2024 to MPSC and sought permission to produce the NCL Certificate.

7. Learned counsel for MPSC submits that though the applicant obtained NCL Certificate on 31.3.2023, she did not

approach the Tribunal or the M.P.S.C in time. Learned counsel has submitted that the applicant has filed on-line application in the open female category and she was not having NCL Certificate. The benefits of the decision of the Hon'ble Supreme Court in the case of Priyanka Kulkarni (supra) cannot be extended to the applicant on the ground that the applicant is a fence-sitter and she waited for the Judgment of the Hon'ble Supreme Court in the case of Priyanka Kulkarni (supra) and no fence-sitter is to be given any benefit of such Judgment. Learned counsel further submitted that in the case of Priyanka Kulkarni (supra), the applicant applied in open female category. However, she procured the NCL Certificate on 9.3.2023 and immediately on the same day she submitted the said Certificate to MPSC. The Hon'ble Supreme Court has appreciated the honest conduct of the applicant Priyanka Kulkarni that she did not claim any benefits as a female candidate and especially when other 7 to 8 female candidates have claimed the benefits of reservation though they were not holding the requisite NCL Certificate. Learned counsel has further submitted that she immediately approached the Tribunal and fought upto the Supreme Court. The case of the present applicant is not the same. Learned counsel for the applicant relied on the decision of the Hon'ble Supreme Court in the case of State of **Uttar Pradesh & Ors Vs. Arvind Kumar Srivastava & Ors, (2015) 1 SCC 347**, wherein the Hon'ble Supreme Court has held as under:-

“Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them.”

8. Learned counsel further pointed out that the Hon'ble Supreme Court has also relied on the Corrigendum dated

17.2.2023 issued by the Department of Other Backward Bahun Welfare by which the Circular dated 25.3.2013 issued by the Department of Social Justice and Special Assistance, Government of Maharashtra was modified on the point of cut-off date given for submission of NCL Certificate. Learned counsel has further submitted that the applicant has obtained the NCL Certificate on 31.3.2023. However, she did not submit the same to MPSC like Priyanka Kulkarni.

9. The major facts in the present case are not disputed by the contesting Parties. The present case mainly rests on the decision of the Hon'ble Supreme Court in the case of Priyanka Kulkarni (supra). The admitted facts can be stated in nutshell as the applicant did not claim benefit of OBC female reservation when she filled up the Application Form for the examination. Her case is to be treated in the Open Female Category. The applicant cleared the Main Examination and appeared for the Interview and has secured 526.75 marks. M.P.S.C published the General Merit List on 18.1.2004 and her appeared in the said list. However, her name was excluded in the provisional Select List published on 20.3.2024. Therefore, the applicant filed the present Original Application on 16.4.2024. The applicant though had applied in Open Female Category, she obtained the NCL Certificate of the requisite year on the last date, i.e., on 31.3.2023 which was valid up to 31.3.2023 only. Learned counsel submitted that the Preliminary Examination and Main Examination were over, however, the interviews were not conducted. Hence the process of selection and appointment was not completed. The applicant did not approach the M.P.S.C with a request to accept her NCL Certificate and so her candidature can be considered in OBC Female category. It is further admitted that the verification of the documents took place in December, 2023 on different dates. The

applicant also appeared in the interview and she secured good marks and her name was included in Open Female Category in the General Merit List which was published on 18.1.2024. Apart from these undisputed facts certain documents and facts are required to be addressed.

10. The applicant is holding a valid NCL Certificate issued on 31.3.2023. A question was raised by learned counsel Mr Bangale for MPSC as to why the applicant did not submit the said NCL Certificate immediately to MPSC because she went to opt for OBC Female reservation. It was further pointed out that the applicant also did not produce the said Certificate at the time of verification of documents which was conducted on 14.12.2023. Further, as per the Corrigendum dated 17.2.2023 the earlier period of NCL Certificate which was fixed as the last date of acceptance of the Application Form was extended and the NCL Certificate of that Financial Year is to be accepted. Considering the facts of the case of the applicant as she obtained the NCL Certificate on 31.3.2023, her case would not have been considered as per earlier Circular dated 25.3.2013, but for the Corrigendum the applicant is entitled to get the benefit of the reservation in OBC Female Category.

11. Shri Bandiwadekar, learned counsel for the applicant submitted that the applicant did not file the said NCL Certificate before MPSC immediately because she has already given choice in her On-line Application Form that she does not have NCL Certificate when she filled up the Application Form and therefore her case is to be considered in Open Female Category. Learned counsel further submitted that it might be premature to approach the Tribunal when the selection process was going on. He pointed out specifically that there was no delay on the part of the applicant in approaching the Tribunal. Therefore, the cause of action

according to the applicant arose in March, 2024 when the name of the applicant was excluded from the provisional Select List. This explanation is to be accepted and so also the applicant did not consume more time in approaching the Tribunal. Thus, the case of the applicant cannot be treated as she has acquiesced the wrongful action and slumbered upon it and then approached the Tribunal only when the decision in the case of Priyanka Kulkarni (supra) was delivered by the Hon'ble Supreme Court.

12. It is necessary to address one more document, i.e., Exh. R-1, Application Form which was filled on 14.2.2023 by the applicant. It is like a confirmation of the information given by the applicant. The Form is in the nature of confirmation given by the applicant. In the said Form there are specific columns about the submission of the documents, viz., Class, Status about NCL Certificate. In this column the applicant has mentioned 'No'. At the end of this form she maintained her stand that though she belonged to OBC category, she has claimed her candidature in Open Female Category. It was argued on behalf of MPSC why the applicant did not lodge her NCL Certificate later by 14. 2.2023, if she wanted to opt for OBC Female Category. However, it appears that the applicant has given the said information to maintain the correctness in the information given at the time of filling up the On-line Application Form. She did not submit/produce NCL Certificate and claimed OBC Female category as she was not having NCL Certificate at the relevant time. Thus, it cannot be held that the applicant suppressed the information that she was holding NCL Certificate. It is the confirmation of the information given at the time of filling the Application Form. The case of the applicant is required to be compared with the facts of the case of Priyanka Kulkarni. Therefore, we directed MPSC to produce the form which was filled up by Priyanka Kulkarni at the time of

verification of documents. It appears that she has filled up the said Form on the earlier date i.e., 7.12.2023, the date when she was called for verification of documents.

13. We compared the columns in the said Form. She has also stated that the said information is not applicable to her. Thus, Priyanka Kulkarni though was holding the NCL Certificate on 9.3.2024, she submitted the said Certificate to MPSC, but she did not write 'Yes'. She also maintained the same stand which was taken by her in her Application Form that she competed in Open Female Category. After comparison of two documents, it reveals that both of them have given in writing the consistent information at the time of verification of documents which they had earlier filled up in their respective Application Form.

14. The Hon'ble Supreme Court has appreciated the honesty of Priyanka Kulkarni that though she could have mentioned that she is claiming reservation in Open Female Category at the time of filling up the Application Form, however, she was not having NCL Certificate. Same analogy can be applicable to the present applicant that she also did not claim the reservation in OBC Female category at the time of filling up the Application Form as she was not holding the NCL Certificate for claiming the female reservation in OBC Female category. One more point is also important, that is MPSC in its first General Merit List on 18.1.2024 included her name in the Open Female Category. Hence, the applicant had no reason to challenge the said list or had any grievance against MPSC. However, when her name was not shown in the provisional Select List published on 20.3.2024, the applicant had cause of action to approach the Tribunal. Mr Bangale, learned counsel expressed that by mistake the name of the applicant was included in the General Merit List and thereafter MPSC has

corrected the said mistake excluding her name in the provisional Select List. In spite of this fact, it is to be noted that the applicant's name appeared in the Open Female Category because she has secured 526.75 marks and the last candidate in the Multi Cadre Post for Open Female category got 523.25 marks and the cut-off marks for OBC Female category is 519 marks. Thus, the applicant has secured more marks in both the categories Open Female Category and OBC Female Category and the applicant is therefore found meritorious. Therefore, her name was included in the General Merit List on 18.1.2024. The Application Form of Priyanka Kulkarni is taken on record and marked as Court Exhibit-I and Exh. R-1 is the information of the applicant dated 14.12.2023.

15. Thus, the case of the applicant is similar to the case of Priyanka Kulkarni (supra) and she is also found meritorious and her name was recommended in the General Merit List and she also did not suppress any facts of making false claim. We find that there is substance in her contentions and our indulgence is required.

16. In view of the above, we pass the following order:-

ORDER

- (a) The Original Application is allowed.
- (b) The Respondent, MPSC is directed to extend the benefits of the Judgment and order dated 29.1.2024 in Special Leave Petition (Civil) No. 25347/2023, Priyanka P. Kulkarni Vs. M.P.S.C, in favour of the applicant on the principles of similarly situated person and further direct the Respondent to include the name of the applicant in the Provisional Merit

List dated 20.3.2024 through OBC Female category for the post of Deputy Education Officer, Maharashtra Education Service, Group-B (Administration Branch)

- (c) The Respondent-MPSC is directed to consider the candidature of the applicant under OBC Female Category in the Multi Cadre Post.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 30.07.2024
Dictation taken by : A.K. Nair.