IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO 638 OF 2014

DISTRICT : AURANGABAD

Dr Anushree D/o Raviprakash Bajaj)
Occ : Service as Assistant Professor,)
Government Medical College, Aurangabad)
R/o: C/o Shrigurukripa, Plot No. 133,)
N-3, CIDCO, Aurangabad.)...**Applicant**

Versus

1. The State of Maharashtra)
   Through P.O., M.A.T, Mumbai.)
2. Maharashtra Public Service)
   Commission, Bank of India Bldg,)
   3rd floor, M.G Road, Hutatma Chowk)
   Mumbai 400 001, through its)
   Secretary.)
3. The Principal Secretary,)
   Medical Education & Drugs Dept,)
   Mantralaya, Mumbai 400 032.)...**Respondents**

Shri M.D Lonkar, lerned advocate for the Applicant.

Ms Neelima Gohad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

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

DATE : 28.01.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri M.D Lonkar, lerned advocate for the Applicant and Ms Neelima Gohad, learned Presenting Officer for the Respondents

2. This Original Application has been filed by the Applicant seeking appointment to the post of Assistant Professor (ENT) from open female category, pursuant to the advertisement dated 12.2.2014 issued by the Respondent no. 2 for the said post.

3. Learned Counsel for the Applicant argued that the Respondent no. 2, viz Maharashtra Public Service Commission (M.P.S.C) had issued an advertisement on 12.2.2014 to fill up a total of 13 posts of Assistant Professors (ENT) in the cadre of Maharashtra Medical

Education and Research, Group 'B'. Out of 13 posts, 3 open posts were reserved for Women candidates. The Applicant had applied to the post from open (unreserved) category. Learned Counsel for the Applicant argued that out of 3 open-women category posts, only two women candidates were selected though four women candidates were available, the rest were not selected. Learned Counsel for the Applicant argued that the action of the Respondent no. 2 in not selecting open-women candidates against vacancies reserved for them is totally illegal.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that for the posts horizontally reserved for women, a candidate belonging to open category has to produce a Non-Creamy Layer Certificate (NCL). In the application form also, the Applicant has to mention that she is applying for a post reserved horizontally for woman and has requisite NCL Certificate. The Applicant, in the application form, clearly indicated that she did not belong to Non-Creamy Layer category. As such she was considered from open-general category, where she obtained less marks than the candidates selected from open general category, she was rightly not selected. Learned Presenting Officer contended that there is no merit in this Original Application and it may be dismissed.

5. We find that the Applicant in her affidavit in rejoinder dated 14.1.2015 claimed in para 3 that she is in possession of a non-creamy layer certificate. It is stated that the said certificate is annexed as Exhibit-A-1. However, there is no such certificate annexed to the affidavit in rejoinder. In any case, the Applicant had not denied that in her on-line application, she has given information as 'No' against the column Non-Creamy Layer Certificate. In para 2.6 of the affidavit in reply of the Respondent no. 2 dated 1.9.2014, it is stated that:-

> "2.6 I say that the Applicant applied for the post and was called for interview for the Open Category post only as her claim in the application form regarding Non-Creamy Layer was 'No'. In the absence of the Non-creamy Layer Certificate the Applicant could not have been considered for the open (female) category."

6. In her affidavit in rejoinder, the Applicant has not denied this contention of the Respondent no. 2. Mere possession of a Non-Creamy Layer Certificate will not help a candidate, if the same is not sought to be relied upon. It is clear that the Applicant in her on-line application had not claimed that she had a valid Non-Creamy Layer Certificate, which would have made her eligible to be considered from Open-Women category and she was not found eligible to be appointed on the basis of

her performance in the selection process. The Applicant has not been able to make out a case for grant of any relief in the present proceedings.

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

Sd/-

(R.B. Malik)
Member (J)

Sd-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 28.01.2016
Dictation taken by : A.K. Nair.

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