IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.585 OF 2023

1 Sanjivani Abasaheb Karne
Age – 30, Occ. Nil
R/o At Karnewadi, Post. Andrud,
Tq. Phaltan Dist. Satara – 415 525
Mob.- 9561826449

2 Shubhangi Madhukar Misal
Age – 30, Occ. Nil
R/o A/p Unchegaon, Kranti Chouk,
Tal. Karvir, Dist. Kolhapur – 416 005
Mob.- 9834381413

3 Narale Dattatray Nana
Age – 40 years, Occ. Nil
R/o Paryanti, Tq. Man,
Dist. Satara – 415 509
Mob. 77090 63132

4 Akshay Sudam Lohar
Age – 26 years, Occ. Student
R/o At Dusale, Post. Vajroshi
Tq. Phaltan, Dist. Satara – 415 014
Mob. 95270 39927

5 Pooja Vijay Narvekar
Age – 27 years, Occ. Student
R/o At Post Hebbal – Jaldyal,
Tq. Gadhinglaj, Dist. Satara – 416 503

6 Chhaya Subhash Badiger.
Age 50 years, Occ. House wife
R/o 4, Pawar Colony, Shahu Puri,
Stata, Tq. & Dist. Satara 415 002
Mob. 73787 03737 ....Petitioners

V/S

1 The State of Maharashtra
Through its Secretary
Revenue and Forest Department
Mantralaya, Mumbai – 32.

2 The Collector and
District Selection Committee,
District Collector Office,
Tq. & Dist. Satara.

3 Tejshri Ganpatrao Warke,
Age -25 years, Occ. Nil.
Residing at Plot No.M/17A,
Shahu Market Yard, Kolhapur.

4 Ashwini Anil Kshirsagar
Age 27 years, Occ. Nil.
Residing at Civil Colony,
Sambhaji Nagar, Satara,
District Satara.

5 Aniket Balkrushna Taware,
Age 33 years, Occ. Nil.
Residing at Buruj Galli,
Mayani, Tq. Khatav,
Dist. Satara.

6 Balaji Baburao Kage
Age – 46 years, Occ. Nil.
Residing at Nagoba Galli,
Yenegur, Tq. Umarga,
Dist. Osmanabad.

7 Balasaheb Eknath Karche
Age 49 years, Occ. Nil.
Residing at Pimpri, Tq. Malshiras
District Solapur. ....Respondents

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Mr. Suvidh Kulkarni a/w Mr. Vishal S. Kadam for the Petitioners.
Ms. Nisha Mehra, AGP for the Respondent Nos.1 and 2-State.
Mr. Laxman Deshmukh for Respondent Nos.5 to 7.

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CORAM: S.V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.
JUDGMENT RESERVED ON : 18 JANUARY 2023.
JUDGMENT PRONOUNCED ON: 30 JANUARY 2023.

JUDGMENT (per SANDEEP V. MARNE, J.):

1 Rule. Rule made returnable forthwith with consent of the parties and is taken up for final hearing.

2 By this Petition, Petitioners assail judgment and order dated 9 January 2023 passed by the Maharashtra Administrative Tribunal, Mumbai (hereinafter referred to as "Tribunal" for short) in Original Application No.701 of 2022. The Original Application was instituted by the Petitioners challenging their non-selection on the post of Talathi vide communication dated 27 May 2021.

3 The selection was convened by the District Selection Board and Collector, Satara, for filling of 114 posts of Talathi. The Petitioners applied in pursuance of the selection under various following categories:

Sr.No.	Name of Petitioners	Applied in Category
1	Petitioner No.1 Sanjivani Abasaheb Karne	OBC
2	Petitioner No.2 Shubhangi Madhukar Misal	OBC

3	Petitioner No.3 Narale Dattatray Nana	Ex-serviceman OBC
4	Petitioner No.4 Akshay Sudam Lohar	NT-B (General)
5	Petitioner No.5 Pooja Vijay Narvekar	Female (General)
6	Petitioner No.6 Chhaya Subhash Badiger	Female OBC (Anshkalin)

4 Under the stipulations of the advertisement, it was incumbent for the candidates applying for reservation in above categories to produce non-creamy layer certificate for the year 2018-19 valid up to 31 March 2019. All Petitioners stated ‘applicable’ in the column seeking information about ‘non-creamy layer certificate’. The advertisement stipulated possession of valid non-creamy layer certificate as on date filling of online application form. It is common ground that none of the Petitioners were in possession of the requisite non-creamy layer certificates and applied the same after filling of the online application forms and the same were issued well after filling of the online application forms.

5 The Petitioners however were permitted to participate in the selection process. They apparently cleared the written test and their names were allegedly included in the original selection list. By letter dated 28 December 2020, they were directed to remain present for verification of their documents scheduled to be conducted from 6 January 2021 to 9 January

2021. It is contended that communications dated 19 January 2021 was sent to each of the Petitioners alleging non-submission of non-creamy layer certificate valid up on 31 March 2019. They were granted an opportunity to submit the same by 27 January 2021. However, on account of failure of the Petitioners to submit non-creamy layer certificate valid upto 31 March 2019, the candidatures were cancelled vide order dated 27 May 2021.

6 Aggrieved by the communication dated 27 May 2021, Petitioners instituted Original Application No.701 of 2022 before the Tribunal which came to be dismissed by judgment and order dated 9 January 2023. Aggrieved by the decision of the Tribunal, the Petitioners have filed present Petition.

7 Appearing for the Petitioner Mr. Kulkarni, the learned Counsel would submit that there is no dispute to the position that the Petitioners do belong to non-creamy layer category. He would submit that as long as the Petitioners' status as non-creamy layer category is not under dispute, Respondents cannot be permitted to take a hyper-technical defence and reject candidature of the Petitioners only on account of non-possession of the requisite certificates at the time of filling up of online application forms. It is submitted that in the past as well as in several other districts, candidates were permitted to submit non-creamy layer certificates subsequently and

such candidates have been appointed in service. Reliance is placed on recruitment advertisement published by Maharashtra Public Service Commission (in short 'MPSC') in respect of some other posts for which candidates are permitted to submit non-creamy layer certificates of the subsequent period.

8 Mr. Kulkarni would rely upon the following judgments in support of his contentions:

i) The judgment of the Apex Court ***Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board and another*** reported in ***(2016) 4 SCC 754***;

ii) The judgment of the Kerala High Court in **Union of India vs.Abdul Rasheed** (in WA No.655 of 2016, decided on 21 July 2016);

iii) The judgment of this Court, Bench at Aurangabad in ***Jyoti Nandkumar.Shende vs. The Chief Executive Officer & Ors.*** *(in Writ Petition No.8360 of 2016, decided on 5 March 2018);*

iv) The judgment of the Rajasthan High Court, Bench at Jaipur in ***Sourabh Didwania vs. Rajasthan Co-operative Recruitment Board*** *(in S.B. Writ Petition No.7678 of 2020, decided on 6 May 2022)*.

9 The Petition is vehemently opposed by Ms. Nisha Mehra, learned AGP appearing for the Respondent Nos.1 and 2-State as well as Mr. Laxman Deshmukh, learned counsel appearing for Respondent Nos.5

to 7. They would rely upon conditions stipulated in the advertisement which mandated possession of non-creamy layer certificate valid upto 31 March 2019. They would place reliance on the judgment of this Court, Bench at Aurangabad in **Supriya Vinayak Gawande vs. The State of Maharashtra** in *Writ Petition No.5294 of 2019, decided on 2 August 2022*. They would submit that the Special Leave Petition challenging the judgment in ***Supriya Vinayak Gawande*** (supra) had been rejected by the Supreme Court on 6 September 2022.

10 After having heard the learned Counsels for the parties, there is no dispute to the position that the relevant clauses of the advertisement required candidates to possess non-creamy layer certificate in respect of the year 2018-19, valid upto 31 March 2019. Such certificate was required to be produced at the time of document verification. All the Petitioners applied against the categories which mandatorily required submission of non-creamy layer certificates. They participated in the selection process by making a declaration that the condition of submission of non-creamy layer certificate is applicable to them. Having mentioned ‘applicable’ against the column for non-creamy layer certificate, it became incumbent upon them to possess such a certificate as on the date of the submission of online application form.

11 By letter dated 28 December 2020 the Petitioners were directed to remain present for document verification when they were expected to produce original non-creamy layer certificates. The Petitioners have placed on record copies of following non-creamy layer certificates at Exhibit 'F' to the Petition.

Sr.No.	Name of Petitioners	Date of issuance of certificate	Validity of period of certificate
1	Petitioner No.1 Sanjivani Abasaheb Karne .	25.06.2019	31.03.2022
2	Petitioner No.2 Shubhangi Madhukar Misal	09.09.2019	31.03.2022
3	Petitioner No.3 Narale Dattatray Nana	25.08.2019	31.03.2020
4	Petitioner No.4 Akshay Sudam Lohar	21.08.2019	31.03.2020
5	Petitioner No.5 Pooja Vijay Narvekar	23.08.2019	---
6	Petitioner No.6 Chhaya Subhash Badiger	06.01.2021	---

12 Though dates of making application for issuance of non-creamy layer certificates by all Petitioners are not available on record, it appears that Petitioner No.1 applied for the same on 21 June 2019 i.e. after submitting her online application form. Thus none of the Petitioners had with them non-creamy layer certificates issued as on the date of filling of online application

forms which were valid upto 31 March 2019. On account of Petitioners failing to submit the requisite non-creamy layer certificates, they were given one more opportunity by letter dated 19 January 2021 to submit the certificates by 27 January 2021. The Petitioners failed to act on the requisition. This has led to cancellation of their candidatures.

13 It would be necessary to reproduce relevant condition Nos.1 and 6 of the advertisement relating to production of non-creamy layer certificate for female and other categories as under:

> "१) महिला आरक्षण — शासन निर्णय, महिला व बालविकास विभाग क्र.८२/२००१/मसेआ—२००/प्र.क्र.४१५/का.२, दि.२५/५/२००१ आणि तद्नंतर शासनाने वेळावेळी निर्गमित केलेल्या आदेशानुसार महिला आरक्षणांतर्गत अर्ज करण—या महिला उमेदवारांनी सन २०१८—२०१९ या कालावधीकरीता वैध असलेले (दि.३१/०३/२०१९ पर्यंत वैध असलेल) उन्नत आणि प्रगत व्यक्ती व गट (क्रिमिलेयर) यामध्ये मोडत नसल्याबाबतचे सक्षम प्राधिकारी यांनी निर्गमित केलेले मुळ प्रमाणपत्र कागदपत्रे पडताळणीचे वेळी सादर करणे आवश्यक राहील.
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> "६) महाराष्ट् राज्य लोकसेवा अनुसूचित जाती, अनुसूचित जमाती, विमुक्त जाती, भटक्या जमाती, विशेष मागास प्रवर्ग, इतर मागासवर्ग यांचेसाठी आरक्षण अधिनियम, २००१ (सन २००४ चा महाराष्ट्र अधिनियम क्र.८) हा अधिनियम महराष्ट्र शासनाने दि.२९ जानेवारी २००४ पासून अंमलात आणला आहे. त्यानुसार उन्नत व प्रगत गटाचे (क्रिमिलेयर) तत्व वि.जा.अ., भ.ज.—ब, भ.ज.—क, भ.ज.—ड, वि.मा.प्र.,इ.मा.व, यांना लागू आहे. सदर प्रवर्गातील उमेदवारांकडे दि.३१ मार्च, ३०१९ पर्यंत वैध असलेले नॉन क्रिमिलेअरचे सक्षम अधिकारी यांचेकडील प्रमाणपत्र असणे आवश्यक आहे. नॉन क्रिमिलेअरचे तत्व अनुसूचित जाती/ अनुसूचित जमाती व्यतिरिक्त इतर सर्व मागास प्रवर्गांना लागू राहील. तसेच (राज्यातील शैक्षणिक संस्थमधील जागांच्या प्रवेशाचे आणि राज्याचे नियंत्रणाखलील लोकसेवांमधील नियुक्तींचे किंवा पदांचे) आरक्षण अधिनियम — २०१८ (सन २०१८ चा महाराष्ट्र अधिनियम क्रमांक ६२) नुसार उन्नत व प्रगत गटाचे (क्रिमिलेयर) तत्व एस.ई.बी.सी. यांना लागू आहे. व सामान्य प्रशासन विभाग

दि.१२.०२.२०१९ च्या शासन निर्णयामधील तरतुदीनुसार ई.डब्ल्यु.एस. (आर्थिक दृष्टया दुर्बल घटक) यांना आरक्षणचा लाभ घेण्यासाठी पात्रता प्रमाणपत्र देणे गरजेचे राहील."

14 Thus the advertisement made it abundantly clear that candidates were required to possess certificates which were valid upto 31 March 2019. As observed above, the Petitioners made a remark 'applicable' against the column 'non-creamy layer'. Candidates were required to possess non-creamy layer certificates but an opportunity was given to them to submit the same at the time of verification of documents. This did not imply that the candidates could make a false declaration in the online application form and subsequently procure the certificates. From the details of certificates submitted by each of the Petitioners, it is apparent that none of the certificates were valid as on 31 January 2019. None of them were issued on the date of filing of the online application forms nor the certificates were valid as on 31 January 2019. This is thus case of misrepresentation on the part of the Petitioners who falsely stated that they were in possession of the requisite non-creamy layer certificates.

15 The Tribunal has rightly followed the judgment of this Court in ***Supriya Vinayak Gawande*** (supra) in which the Division Bench of this Court has upheld cancellation of candidatures on account of making false declaration in online application form about possession of requisite valid

non-creamy layer certificate. The Special Leave Petition filed by the Petitioners therein has been dismissed by the Apex Court by its order dated 6 September 2022. In our opinion, therefore, the Tribunal has already followed the law expanded by this Court in ***Supriya Vinayak Gawande*** (supra) to which one of us (Sandeep V. Marne, J.) was member.

16 What remains now is to deal with various judgments relied upon by Mr. Kulkarni.:

i) In ***Ram Kumar Gijroya*** (supra) the issue was entirely different viz. non-submission of OBC Certificate along with the online application form. There was no issue with regard to validity of the certificate. Another distinguishing factor was that the Appellant therein had applied for OBC Certificate 10 days prior to the last date of submission of online application form. In the present case the Petitioners have admittedly applied for issuance of non-creamy layer certificates much after filing of their online application forms. The judgment in ***Ram Kumar Gijroya*** (supra) therefore, has no application to the facts of the present case.

ii) In ***Union of India vs. Abdul Rasheed*** (supra) the Kerala High Court was dealing with a case where OBC Certificate was issued to the candidates 180 days after the closing date of online application. The judgment will have thus no application to the present case. Even otherwise

the judgment of Kerala High Court can only have persuasive value whereas we are bound by the view taken by this Court in ***Supriya Vinayak Gawande*** (supra).

iii) In ***Arvind Motiram Chavan vs. The State of Maharashtra*** *(Writ Petition No.11722 of 2014, decided on 24 March 2015)* the Petitioners therein were in possession of the requisite non-creamy layer certificates but produced the sane slightly late. In the present case, none of the Petitioners possessed non-creamy layer certificates valid as on 31 March 2019 or such certificates were submitted before the Respondents. The judgment in ***Arvind Motiram Chavan*** (supra) is thus clearly distinguishable.

iv) In ***Sourabh Didwania*** (supra) a Single Judge of the Rajasthan High Court has dealt with the case of denial appointment on the ground of delayed submission (OBC/Non-creamy layer certificate) after cut off date. The exact terms and conditions of the advertisement in the case before the Rajasthan High Court are unknown. Therefore, we are unable to follow the judgment of the Single Judge of the Rajasthan High Court and are bound by the judgment of the Division Bench of this Court.

17 Resultantly, we are of the considered view that no error is committed by the Tribunal in dismissing the Original Application filed by the Petitioners.

The Petition is devoid of merits and the same is dismissed without any order as to costs. Rule discharged accordingly.

(SANDEEP V. MARNE, J.) **(ACTING CHIEF JUSTICE)**

SUDARSHAN RAJALINGAM KATKAM

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