

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9040 OF 2023

Priyanka Prakash Kulkarni	]	
Aged – 30 years, Occ. Service,	]	
Resident of Block No.3, Chatur Apt.	]	
Near Govindshri Mangal Karyalaya,	]	
Geeta Nagar Jule Solapur South	]	
Indiranagar Solapur South	]	
Solapur Maharashtra 413 004	]	
Currently residing at	]	
209 Sai Vastu Park,	]	
Behind Aishwaryam Hamara Gat No.94	]	
Near SNBP City Pride School, Chikhali	]	
Pune, Maharashtra – 411 062.	]	... Petitioner

Versus

The Maharashtra Public Service Commission	]	
Through Secretary,	]	
Trishul Gold Field, Plot No.34,	]	
Sector – 11, Opp. Sarovar Vihar,	]	
Belapur CBD, Navi Mumbai	]	... Respondent

Mr.Dinesh B. Khaire a/w. Mr.Abhijeet Pawar and Ms.Purva Pradhan,
Advocate for the Petitioner.

Mr.N.K. Rajpurohit, AGP for Respondent – State.

**CORAM : NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.**

DATE : 23 August 2023.

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JUDGMENT : (PER : MANJUSHA DESHPANDE, J.):

The Petitioner herein is challenging the legality and validity of the impugned judgment and order dated 7 July 2023 passed by the Maharashtra Administrative Tribunal, Mumbai (“MAT Mumbai”, for short) in Original Application No.396 of 2023. The Petitioner herein had approached the MAT by filing Original Application No.396 of 2023, claiming that an advertisement No.045/2022 dated 11 May 2022 was issued by the Respondent for recruitment of the Gazetted post of Group A and B officers. She had filled in the form for the said examination from General Open Category i.e. “unreserved category”. It is her case that though she desired to apply from the “Open Women Category”. However, she did not apply from the said category considering Clause 5.10 and 5.14 of the said advertisement. It required her to produce recent Non-Creamy Layer Certificate (“NCL Certificate”, for short)/Economically Weaker Section (“EWS”, for short) Certificate, issued by the competent authority, which was valid on the last date i.e. cut off date of her submission of the Application i.e. 1 June 2022. Similarly, as per Clause 5.14 of the said advertisement required that for claiming any benefit for reservation, it was mandatory to hold a valid certificate before the last date of application. Since she did not possess the NCL Certificate of the financial year before the prescribed cut off date, she did not apply from the said category of Open Women Category. Instead she applied for the category Open General i.e. Unreserved Category.

On the basis of the said application, she appeared for the Preliminary examination and she cleared the same and qualified for the Main examination. Thereafter, she also appeared for the main examination, which was held on 21 January 2023, 22 January 2023 and 23 January 2023. While she was awaiting the results of the said examination, the Department of Other Backward Bahujan Welfare issued a Corrigendum dated 17 February 2023 amending Clause 2 (iii) of the Government Circular dated 25 March 2013. The Clause 2(iii) of the Government Circular dated 25 march 2013, states that the crucial date for consideration of claim for candidate of not belonging to the creamy layer category is valid certificate of NCL on the last date of submitting the application. The amendment enables a person applying from NCL Category to submit a certificate of current financial year. Therefore, considering the said amendment to the Government Resolution, the Petitioner made representation to the Respondent–Commission to consider her claim from “Open Women” Category on the basis of the said corrigendum. When the same was not considered, she had filed the Original Application (“O.A”, for short) before the MAT, Mumbai.

2 The said O.A. was opposed by filing a reply by the Maharashtra Public Service Commission (“Commission”, for short), wherein it was their categorical stand that while filling up her application form, the Applicant has mentioned her category to be unreserved and she does not belong to the NCL. The reliance was placed by the Commission in its affidavit on general instructions to

the candidates published in Commission's Website, more particularly, instruction No.1.2.5.6 and 1.2.5.7 which provided that

“१.२.५.६ कोणत्याही जाहिरातीस अनुसरून अर्ज सादर करण्यापूर्वी प्रोफाईलमध्ये आवश्यक त्या सुधारणा केल्यास सदर सुधारणा संबंधित अर्जामध्ये समाविष्ट होऊ शकणार नाहीत, तसेच आयोगास सादर केलेल्या अर्जामध्ये बदल करण्याबाबतची उमेदवाराची कोणतीही विनंती विचारात घेतली जाणार नाही.

१.२.५.७ स्पर्धा परीक्षेच्या पूर्व परीक्षेकरीता/सरळ सेवा भरतीकरीता सादर केलेल्या अर्जातील दावे उदा. अधिवास, दिव्यांग, माजीसैनिक, प्राविण्यप्राप्त खेळाडू, अनाथ, जातीचा प्रवर्ग, नॉन-क्रिमिलेयर, शासकीय कर्मचारी, बृहन्मुंबई महापाजिका/ बेस्ट कर्मचारी इत्यादी) मुख्य परीक्षा/सरळसेवा भरतीच्या मुलाखतीकरीता गाहय/अंतिम समजण्यात येतील. त्यामध्ये संबंधित मुख्य परीक्षे करिता/सरळसेवा भरतीकरीता कोणताही बदल करता येणार नाही.”

3 The said instructions prohibits an Applicant from making any changes in the application once the form is filled in. Similarly, reliance is also placed on paragraph 5.5 of the advertisement of the State Services Preliminary Examination 2022, wherein there was a clause that, while claiming reservation for women category, it was mandatory to mention about the candidate belongs to NCL category. Therefore, the said corrigendum of 17 February 2023, which merely changes the cut of date of the NCL can not be made applicable to the Applicant as she did not fill in the form from NCL category.

4 After considering the submission from either side, the MAT, Mumbai, *vide* its judgment dated 7 July 2023 has been pleased to dismiss the O.A. The said O.A. has been dismissed on the ground that the Applicant has not applied from General Women Category and was not holding the NCL Certificate prior to the

issuance of corrigendum dated 17 February 2023. After coming to know about the NCL, she has made an Application on 9 March 2023 and got the said certificate on the very date for the current year. The Tribunal has considered that not only in Preliminary examination, but she has already appeared for the Main examination and result is yet to be declared.

The Bench of the Administrative Tribunal has further observed that unlike the case cited of Mrs.Vijaya Milind Patil, the Petitioner had while filling up her form, consciously had stated to be belonging to “Open General” category. Whereas in case of Mrs.Vijaya Milind Patil, she had claimed to be belonging to “Open Women” category. In further clause she has inadvertently written as “No”. Therefore she had claimed to be belonged to Open Women category. However, in the present case, the Applicant had claimed that she belonged to Open General category. It was further contention of the Petitioner/Applicant before the Administrative Tribunal that nearly 7 to 8 candidates whose certificates were invalid were given an opportunity to produce NCL of current financial year after the corrigendum. So far as their case is concerned, the Tribunal has rightly observed that, those 7 to 8 candidates had filled in their form from that particular category. But their certificates of NCL were invalid, which subsequently was covered by the corrigendum. Therefore, in their form they had claimed belonging to that particular category and there was no necessity of changing their category. So far as the corrigendum is concerned, the corrigendum

merely makes change the last date mentioned in the advertisement for possession of NCL. Therefore, that does not change the nature of category claimed by the present Petitioner.

5 We have heard the learned counsel for the Petitioners as well as the learned AGP represented by the Respondents. The learned AGP has also filed an affidavit-in-reply on behalf of the Maharashtra Public Service Commission, and in the said affidavit-in-reply, the stand taken before the MAT is once again reiterated. In the said affidavit reliance is also placed on two decisions wherein similar issues had arisen before the MAT i.e. in Original Application No.410 of 2012 filed by Mr.Anil Prakash Sarkate, wherein he had prayed for making similar change in form. The said O.A. was dismissed and one another Writ Petition filed by person with Disability being Writ Petition No.8960 of 2021, by Manisha Ramkisan Khandekar has been rejected by this Court on 17 December 2021 holding that subsequent changes in category is impermissible.

6 Therefore, after hearing both the side and considering the conspectus of the matter, it is amply clear that the Petitioner had applied from Open General Category, because she did not hold the NCL Certificate. Having appeared for the Preliminary examination as well as Main examination from the “Open General” Category, merely because a corrigendum is issued, the Petitioner cannot be

allowed to change the category at this stage, more so, on background of the general instructions to the candidate contained in paragraph Nos.1.2.5.6 and 1.2.5.7, which does not permit to make any changes once the form is filled in. If the Petitioner was desirous of making an Application for general women category, she ought to have obtained the NCL in advance showing diligence, which she has failed. At this stage, if the Petitioner is allowed to change her category, it will open a flood gate of litigation, as observed by the MAT. Hence, the said prayer of the Petitioner cannot be considered.

7 Hence, we do not find any error in the impugned order dated 11th May 2022, passed by the Maharashtra Administrative Tribunal Mumbai in Original Application No.396 of 2023. Hence, Writ Petition is dismissed.

(MANJUSHA DESHPANDE J.)

(NITIN JAMDAR, J.)