

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5996 OF 2012

Varsha Hariharrao Chondekar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Ankush N. Nagargoje, Advocate for the Petitioner.
Shri K. G. Patil, Addl.G.P. for Respondent Nos. 1 to 3.
Shri V. S. Panpatte, Advocate for the Respondent No. 4.
Shri V. D. Gunale, Advocate h/f Shri Subhash S. Chillarge,
Advocate for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND
V. L ACHLIYA, JJ.**

DATE : 03RD MARCH, 2015.

PER COURT :

. Mr. Nagargoje, the learned counsel for the petitioner submits that, the appointment order issued in favour of the respondent No. 5 dated 03.01.2012 is per-say illegal. The respondent No. 5 does not belong to Non Creamy-layer section, still she obtained a false Non Creamy-layer certificate. The income of the respondent No. 5 and husband of the respondent No. 5 is not more than upper limit of Rs. 4.5 Lacs. The petitioner and the respondent No. 5 both belong to Other Backward Class category. The income has to be less than Rs. 4.5 Lacs per year. The learned counsel submits that, the total income of the

respondent No. 5, her husband is about Rs. 60,000/- per month. The husband of the respondent No. 5 is also having the income from agricultural source. The annual income of the respondent No. 5's family is Rs. 7.00 Lacs and more.

2. As per the advertisement, the documents are required to be annexed along with application. The respondent No. 5 annexed the non creamy-layer certificate from the paternal side, which is not permissible. The non creamy-layer certificate from the husband side was filed much subsequent to the interview and thereafter appointment order is issued in favour of the respondent No. 5 which is illegal. According to the learned counsel by suppressing facts non creamy-layer certificate has been obtained by the respondent No. 5. The learned counsel submits that, fraud has been played by the respondent No. 5 while obtaining non creamy-layer certificate. The complaint made by the petitioner is also not considered by the authorities and appointment order has been issued.

3. Mr. Panpatte, the learned counsel for the respondent No. 4/Zilla Parishad submits that, initially the respondent No. 5 had submitted the non creamy-layer certificate from paternal side and subsequently non creamy-layer certificate from the husband side was submitted. It was considered and thereafter appointment order was issued. The learned counsel submits

that, the petitioner does not stand on better footing. Even non creamy-layer certificate submitted by the petitioner is from paternal side. The respondent No. 5 has secured more marks than the petitioner, as such, the appointment order was issued.

4. Mr. Gunale, the learned counsel for the respondent No. 5 submits that, the petitioner is working as talathi and her husband is also in employment and there is landed property in the name of husband of the petitioner. The petitioner also does not belong to the caste from which the petitioner has applied. The respondent No. 5 is more meritorious and the respondent No. 5 has submitted non creamy-layer certificate in respect of income which was prevailing on the date and fresh non creamy-layer certificate was obtained.

5. We have considered the submissions canvassed by learned counsel for respective parties.

6. It is not disputed that, in the selection process for the post of Extension Officer, the petitioner and the respondent No. 5 applied from O.B.C. category. The petitioner has secured 151 marks and the respondent No. 5 has secured 155 marks. Naturally, the respondent No. 5 is more meritorious.

7. It cannot lie in the mouth of the petitioner to contend that,

the respondent No. 5 had not submitted the relevant non creamy-layer certificate from the husband side as the petitioner herself had submitted the non creamy-layer certificate along with application from the paternal side. Even if the respondent No. 5 is not appointed, the petitioner would not get appointment order.

8. The non creamy-layer certificate has been issued by the authority under the Statute by following procedure of law. The said disputed question about income cannot be gone into at this stage, as it is for the authority to conduct the enquiry and arrive at the satisfaction.

9. Considering the above, no case for interference is made out. The writ petition as such, is disposed of. No costs.

[V. L ACHLIYA, J.]

[S. V. GANGAPURWALA, J.]