

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

WRIT PETITION NO.9420 OF 2013

Dr. Shruti Ramesh Wankhede,
Age 34 years, Occu. Household,
R/o C/o Anand R. Chitte, Plot No.11,
Pethenagar, Bhavsingpura,
Aurangabad, District Aurangabad.

.. PETITIONER.

VERSUS

1. Vasantrao Naik Marathwada
Agricultural University,
Parbhani, through its
Registrar.

2. Ku. Darshana Shrihari Bhujbal,
age 28 years, Occu. Household,
S.M.S. (Horticulture),
Vasantrao Naik Marathwada
Krishi Vidyapeeth,
Krishi Vidyapeeth Kendra,
Near Railway Station,
Paithan Road, Aurangabad,
District Aurangabad.

..RESPONDENTS.

...

Mr.S.R. Barlinge, Advocate for the Petitioner.
Mr.Manish N. Navandar, Advocate for R.No.1.
Mr.Ajay S. Deshpande, Advocate for R.No.2.

...

**CORAM : S.S. SHINDE &
A.M. BADAR, JJ.**

Reserved on :21.09.2015.
Pronounced on : 08.10.2015.

JUDGMENT [Per S.S.Shinde, J.]:

1. Rule, returnable forthwith. By consent of learned Counsel for the parties, taken up for final hearing.

2. By way of this petition under Article 226 of the Constitution, the petitioner prayed two fold reliefs. Firstly, the petitioner has prayed for quashing and setting aside the appointment order issued in favour of the respondent No.2, appointing her to the post of Subject Matters Specialist (Horticulture); and secondly, it is prayed that the respondent No.1 be restrained from filling up the vacancy of the post of Subject Matters Specialist meant for open category as per the advertisement dated 31.3.2012 from 30% female reservation.

3. The background facts for filing the petition, in short, are as under:

The respondent No.1 University issued an advertisement dated 31st March, 2012. In response to the said advertisement, for the post of Subject Matters Specialist (Horticulture), the petitioner applied. The

petitioner has completed M.Sc. (Agriculture) from Dr. Punjabrao Deshmukh Krushi Vidyapeeth in 2003 in first division. She also acquired Ph.D. In 2007, she has several research papers to her credit and has participated in several conferences.

4. The petitioner also claims that she has required experience, in support of her claim for open woman category, she submitted non creamy layer certificate dated 7.4.2004 issued by the competent authority. It is further case of the petitioner that, respondent No.2 had also applied for the same post. However, she did not submit non creamy layer certificate and, therefore, in the first two statements showing details about applications of the candidates received in response to the advertisement, it was clearly mentioned that she had not submitted the non creamy layer certificate. According to the petitioner, respondent No.1 showed undue favour to the respondent No.2. In the second statement, for the first time, the University added the word "female" against name of the respondent No.2 though, in the first statement, it was not there. Such word is not mentioned in case of other female

candidates who have not submitted non creamy layer certificate. The reason for this is that only those female candidates are entitled to claim reservation in 30% quota for females who possess the non creamy layer certificate. As per the advertisement, the application form along-with all the documents, was required to reach the University on or before 30.04.2012. However, the respondent No.2 did not possess the non creamy layer certificate on the date of filling in the application by her. It is also alleged that, the reason for showing undue favour to the respondent No.2 appears to be that, the respondent No.2 happens to be the daughter of an employee of respondent No.1 University namely, Shrihari Bhujbal, who is close relative of the Honourable Vice Chancellor of respondent No.1 University. It is further case of the petitioner that the Registrar by letter dated 30th September, 2013 asked the respondent No.2 to submit non creamy layer certificate immediately in the prescribed format as per relevant Government Resolution.

5. It is the case of the petitioner that, the petitioner possesses five years experience as against it, respondent

No.2 does not possess any experience. The petitioner has eleven research articles to her credit. However, respondent No.2 has not published any research article. There are 23 popular articles at the credit of petitioner, she had one time T.V. Talk experience, she has MS-CIT certificate and her research is accepted by Germany to publish in the form of a book and petitioner is Ph.D. However, none of these qualifications are possessed by the respondent No.2. Therefore, the petitioner is better qualified candidate compared to respondent No.2. There are also some additional facts stated in the rejoinder to affidavit-in-reply filed by the petitioner. It is stated that giving 50% marks for the oral interviews is contrary to the law declared by the Supreme Court and, therefore, the selection of respondent No.2 for the post of Subject Matter of Specialists (Horticulture) deserves to be quashed and the appointment order issued in her favour deserves to be cancelled and the same deserves to be issued in favour of the petitioner.

6. In pursuance to the notice issued to the respondents, respondent No.2 has filed affidavit-in-reply and also additional affidavit-in-reply denying the allegations in the

petition. Respondent No.1 has also filed affidavit-in-reply and additional affidavit-in-reply.

7. The learned Counsel for the petitioner submitted that, on the date of filling in the application form in pursuance to the aforesaid advertisement, respondent No.2 did not possess the non creamy layer certificate. However, it was mentioned in the application form that the said non creamy layer certificate has been annexed by her with the application. It is submitted that even the desired qualification was not possessed by the respondent No.2 on the date of filling in the application. It is further submitted that, when the application as filled in, in the category of female, remark was written as "No" and also non creamy layer certificate was not enclosed with the application. The petitioner possesses better qualification than the respondent No.2 and also has experience to her credit and therefore, the petitioner ought to have been appointed. In support of the contention that the respondents should not have earmarked 50% marks for the *viva voce*, the learned Counsel for the petitioner pressed into service exposition of the Supreme Court in case of ***Ajay Hasia etc. vs. Khalid***

Mujib Sehravardi and others¹ and submitted that, at the most 15% marks can be earmarked for *viva voce* test.

8. On the other hand, learned Counsel for respondent No.1 invited our attention to the averments in the affidavit-in-reply and also the additional affidavit-in-reply and submitted that, in fact the respondent No.2 had already submitted non creamy layer certificate along with her application form and therefore, it was necessary to take entry in the Column No.5 as "Yes". However, the concerned clerk had committed a mistake in not mentioning word "yes". It is also submitted that the correction as suggested by the Grievance Committee were made in the list against the petitioner but, the correction regarding Open Female instead of open OBC is made and in Column No.5 N.CL for the 30% Female Reservation, it is mentioned as "No." It is submitted that, it is merely because of the mistake committed by the clerk, the remark "No" is shown against the category Female and non creamy layer in respect of respondent No.2. It is submitted that the respondent No.2 was found more better candidate in the oral examination as

¹ AIR 1981 SC 487;

compared to the petitioner and as such, respondent No.2 was selected by the Selection Committee. It is further submitted that the marks scored by the petitioner were only 20.11 in oral interview. As compared to the petitioner, the respondent No.2 scored 40.55 marks. In academic performance, petitioner scored 30.84 marks and respondent No.2 scored 12.50 marks. However, petitioner scored total 50.95 marks and respondent No.2 scored 53.05 marks. Therefore, respondent No.2 was selected.

9. The learned Counsel appearing for the respondent No.2 submitted that as a matter of fact, application form of respondent No.2 was complete in all respect and still in the first list appearing at page 25 onwards, in column No.3 while describing her category "Female" was remained to be incorporated. Similarly, in column No.5 although she submitted non creamy layer certificate along with her application form, it has been recorded as "No". It is further submitted that respondent No.2 possessed an equivalent qualification i.e. MS-CIT. The respondent No.2 also passed NET examination – one of the most desirable qualification. Therefore, it is submitted that, the respondent No.2 has

fully answered to the eligibility qualifications prescribed in the advertisement and as such, she came to be selected for appointment as Subject Matter Specialist (Horticulture). The learned Counsel also invited our attention to the copy of the application submitted along with the affidavit-in-reply with the list of attached documents and submitted that it would unmistakably reveal that the respondent No.2 did submit her caste certificate along with validity certificate and non creamy layer certificate for female reservation. Since the result of NET examination was declared immediately preceding the last date of submission of the application form, the respondent No.2 scribed the same manually by adding it at Sr.No.14 and necessary documents in relation thereto were produced during the course of interview.

10. It is further submitted that the last date of submission of non creamy layer certificate was 30th April, 2013. The earlier certificate which was valid up to 31st March, 2013 was got renewed and submitted at a later stage on 14th June, 2013. It is submitted that, respondent No.2 submitted grievance application to respondent No.1 with a

request to incorporate her status as "female" and to extend her reservation for female. Respondent No.2 also attached her renewed non creamy layer certificate to her application. Upon considering the grievance application, the respondent No.1 specifically recorded that, as per NCL certificate, respondent No.2 is considered as Open – Female.

11. The learned Counsel for the respondent No.2 also invited our attention to the additional affidavit-in-reply filed by respondent No.2 and submitted that on the date when the respondent No.2 got the application typed for the post of Subject Matter Specialist (Horticulture), the result of NET examination was not declared. However, it came to be declared on 30.4.2012 i.e. on the last date of submission of application form. Therefore, she incorporated manually NET qualification while submitting the application form. The learned Counsel for the respondent No.2 invited our attention to paragraph No.2 of the additional affidavit-in-reply and submitted that the respondent No.2 did submit non creamy layer certificate at Exh.R-2(B) which is composite in nature and titled as Caste Certificate. It is a matter of common knowledge that, non creamy layer

certificate is always issued for a financial year from 1st of April till 31st of March of every year. Considering the last date of submission of application form i.e. 30.04.2012, the respondent No.2 could not get a renewed certificate immediately, and therefore, she submitted the renewed certificate upto 31.3.2014 soon after she got the same on 14th June, 2013.

12. It is further submitted that renewed non creamy layer certificate was issued to respondent No.2 on 14th June, 2013, which was subsequently submitted to the respondent No.1. It is submitted that respondent No.2 was more meritorious compared to the petitioner and, therefore, she has been rightly selected. It is submitted that, contention of the petitioner that 50% marks should not have been earmarked for oral interview is devoid of any merits. In the case of **Ajay Hasia** (supra), the Supreme Court has dealt with different fact situation inasmuch as, there was written examination and therefore, it was observed that, there should not be more than 15% marks for the *viva voce* test. However, in the present case, there was no written examination and, therefore, 50% marks were assigned for

oral examination.

13. We have heard learned Counsel for the petitioner, learned Counsel for respondents 1 and 2. With their able assistance, perused the pleadings in the petition, grounds taken therein, annexures thereto, replies filed by respondents 1 and 2 respectively, and also additional affidavit-in-reply filed by respondents as also the rejoinder filed by the petitioner. As per the advertisement, last date for filling in the application for the post of Subject Matter Specialist (Horticulture) was 30th April, 2012. On the date of filling in the application, though it was mentioned in the list of documents that, the respondent No.2 has filed the non creamy layer certificate, as a matter of fact, as it is evident from the additional affidavit-in-reply filed by respondent No.2, the renewed certificate upto 31st March, 2014 was submitted on 14th June, 2013 in the prescribed form. Upon careful perusal of the clauses in the advertisement, it appears that there is no power of relaxation of any condition including submission of non creamy layer certificate after the date of filing the application is over. The petitioner has placed on record the

letter written by the Registrar of respondent No.1 University addressed to the respondent No.2 at Exh.E at page 118 of the compilation of the writ petition; in which, it is stated that, the name of respondent No.2 is being actively considered for the appointment for the post of Subject Matter Specialist (Horticulture) under Open category against 30% female reservation. Therefore, respondent No.2 was directed to submit non creamy layer certificate immediately in the prescribed form as per Government Resolution No.८२/२००१/मसेआ-२०००/प्र.क्र.-१४५/का-२, दिनांक २५.५.२००१-महिला व बालविकास विभाग, मंत्रालय, मुंबई. There is no denial in the affidavit-in-reply or the additional affidavit-in-reply filed by respondent No.1 about writing said letter by the Registrar to the respondent No.2. Therefore, the contents of the said letter would make it abundantly clear that on the date of filling in the application, respondent No.2 did not submit the non creamy layer certificate in the prescribed form as per the aforesaid Government Resolution. Apart from non submission of non creamy layer certificate in prescribed form on the date of filling in the application, it appears that 50% marks were assigned for oral interviews. Upon careful perusal of the additional affidavit-in-reply filed on behalf of

respondent No.1, it is abundantly clear that, in academic performance the petitioner secured 30.84 marks and respondent No.2 secured only 12.50 marks. However, it appears that in oral interviews, petitioner was given 20.11 marks and respondent No.2 was given 40.55 marks. Upon careful perusal of the advertisement, it appears that there was no separation of marks for academic performance and oral interviews. Therefore, at that stage, the petitioner had no opportunity to take an exception to 50% marks assigned for oral interviews. We find considerable force in the argument of the learned Counsel for the petitioner that, it is merely because of 50% marks earmarked for oral interview, though the petitioner's academic performance is extraordinary, the respondent No.2 was given more marks in the oral interview so as to defeat the claim of the petitioner. The Supreme Court, in case of **Ajay Hasia** (supra), has observed that the oral interview test is undoubtedly not a very satisfactory test for assessing and evaluating the capacity and calibre of candidates, but in the absence of any better test for measuring personal characteristics and traits, the oral interview test must, at the present stage, be regarded as not irrational or irrelevant

though it is subjective and based on first impression, its result is influenced by many uncertain factors and it is capable of abuse. However, in the matter of admission to college or even in the matter of public employment, the oral interview test as presently held should not be relied upon as an exclusive test, but it may be resorted to only as an additional or supplementary test and, moreover, great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high integrity, calibre and qualification.

It is further held in para 19 of the said judgment that, the allocation of as high a percentage as 33 1/3 of the total marks for the oral interview should be regarded as infecting the admission procedure with the vice of arbitrariness and selection of candidates made on the basis of such admission procedure cannot be sustained. Under the existing circumstances, allocation of more than 15% of the total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid.

14. If the facts of the present case are examined in the

light of observations made by the Supreme Court in the case of **Ajay Hasia** (supra) and looking to the academic performance of the petitioner and allegations made in the petition as against respondent No.2, we are of the view in the first place that, the application of the respondent No.2 filled in on 30th April, 2012 was not complete in the sense that respondent No.2 did not submit non creamy layer certificate in the prescribed form on that date. Secondly, it is difficult to accept the case of respondents that in the application submitted by respondent No.2, by mistake, word "No" was written as against the category 'Female and Non Creamy Layer '; thirdly, the act of the respondent No.1 to earmark 50% marks for the oral interview cannot be countenanced. Upon considering the material placed on record in its entirety, there is a room for doubt as alleged by the petitioner that, respondent No.2 was favoured giving go by to the good academic performance of the petitioner. We do not wish to enter into the comparative account of the academic excellence and experience gained by the petitioner vis-a-vis respondent No.2. However, taking into consideration the facts and circumstances appearing on record, the appointment of the respondent No.2 deserves to

be set aside.

However, we cannot accede to the prayer of the petitioner to appoint her on the said post, keeping in view the exposition of the Supreme Court in case of ***Hitendra Singh s/o Bhupendra Singh and others Vs. Panjabrao Deshmukh Krishi Vidyapeeth by Registrar and others***².

15. In the result, selection / appointment of the respondent No.2 to the post of Subject Matters Specialist (Horticulture) made by respondent No.1 is set aside. However, we direct the respondent No.1 to undertake fresh selection process for the post of Subject Matters Specialist (Horticulture), ensuring transparency and legality in it and complete the same, as expeditiously as possible but, within three months from today.

Writ petition is allowed, partly and stands disposed of. Rule made absolute in the above terms. No order as to costs.

[A.M. BADAR, J.]

[S.S. SHINDE, J.]

*kadam/**

² (2014) 8 SCC 369;