

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

WRIT PETITION NO.11722 OF 2014

Arvind s/o Motiram Chavan,
Age 25 years, Occ. Service,
r/o. Gavalwadi Tanda,
Ranisavargaon, Taluka Gangakhed,
District Parbhani.

...PETITIONER

VERSUS

1. The State of Maharashtra,
through the Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai 32
2. The Collector,
Parbhani, District Parbhani.
3. Vilas s/o Mangusingh Rathod,
Age 26 years, Occ. Education,
r/o. Kharabi, Post Darti,
Tq.Umarkhed, District Yavatmal.

...RESPONDENTS

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Mr V.J.Dixit, Senior Counsel i/b

Mr. Ade Ravindra B. and Mr.Chavan D.B., Advocates
for the petitioner.

Mr. V.H.Dighe, AGP for respondent State.

Mr.S.N.Janakwade, Advocate for respondent no.3.

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WITH

WRIT PETITION NO.11723 of 2014

Rupesh s/o Ravindrasing Gauttam,
Age: 27 years, Occu: Government
Service as Talathi at Talathi Sajja,
Purna, Taluka Purna, District:
Parbhani, r/o. North Trimurti Nagar,
Jintur Road, Parbhani, Taluka and
District: Parbhani.

...PETITIONER
(Orig.Resp.No.3)

VERSUS

1. Vilas s/o. Mangusing Rathod,
Age 26 years, Occu: Education,
r/o. Village Kharabi, Post: Darti,
Taluka Umarched, District Yavatmal.
2. The State of Maharashtra,
through the Deputy Chief
Secretary, Department of
Revenue and Forests, M.S.,
Mantralaya, Mumbai 32
3. The State of Maharashtra,
through the District Collector,
Parbhani.
4. Arvind s/o Motiram Chavan,
Age 25 years, Occu: Education,
r/o. Gavalwadi Tanda,
Ranisavargaon, Taluka: Gangakhed,
District: Parbhani.

...RESPONDENTS
(No.1 - Orig.Applicant
and Nos. 2 to 4 - Orig.Resp.
No.1, 2 & 4, No.4 is Formal
Party).

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Mr.Rajendra Deshmukh, Advocate for the
petitioner.

Mr. V.H.Dighe, AGP for respondent State.

Mr.S.N.Janakwade, Advocate for respondent no.1.
Mr. V.J.Dixit, Senior Counsel i/b Mr. Ade
Ravindra B., Advocate for respondent no.4.

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CORAM: S.S.SHINDE
AND
P.R.BORA, JJ.

Date: March 24th, 2015

JUDGMENT (Per P.R.Bora, J.) :-

1. Heard. Rule. Rule made returnable and heard forthwith with the consent of learned Counsel for the parties. Since both these writ petitions are arising out of one judgment delivered by the Aurangabad Bench of Maharashtra Administrative Tribunal, and the issues involved in both the petitions are common, both the petitions are being decided by this common order.

2. Petitioners have challenged the order passed by the Aurangabad Bench of the Maharashtra Administrative Tribunal (hereinafter referred to as 'the Tribunal'), in Original Application No.389/2014 on 17th December, 2014. Respondent no.3, namely, Vilas s/o Mangusingh Rathod, in Writ Petition No.11722/2014, who is respondent no.1 in Writ Petition No.11723/2014, had filed the aforesaid Original Application before the Tribunal challenging the orders passed in favour

of the petitioners whereby the petitioners have been appointed on the post of Talathi. Said Vilas Rathod is hereinafter referred to as Original Applicant.

3. It was the contention of the Original applicant before the Tribunal that the petitioners were not holding non creamy layer certificates on the date of submission of the applications for the post of Talathi and, as such, their candidature was not liable to be considered for the said post. It was the further contention of the Original Applicant that the Selection Committee was not having any right or authority or any discretion to extend the time for filing on record the non creamy layer certificates by the petitioners. The learned Tribunal accepted the contentions of the Original Applicant and quashed the appointment orders dated 1.7.2014 issued by the District Collector, Parbhani, appointing the petitioners on the post of Talathi. The Tribunal further directed to issue appointment order in favour of the Original Applicant on the post of Talathi in the reserved category of Vimukta Jati.

4. Shri V.J.Dixit, learned Senior Counsel, appearing for the petitioner in Writ Petition No.11722/2014, and Shri Rajendra Deshmukh, learned Counsel appearing for the petitioner in

Writ Petition No.11723/2014, assailed the judgment and order of the Tribunal on various grounds. It was the principal contention raised by both the learned Counsel that the Tribunal misconstrued the terms and conditions in the advertisement published on 12.5.2014 inviting on-line applications for the post of Talathi and the application form filled in by the petitioners for the said post. Learned counsel submitted that what was expected from the petitioners while filling in the application form was to furnish an information, whether they fall in the category of non creamy layer, and the relevant certificate in that regard was to be produced by them subsequently at the time of scrutiny of the documents. Learned Counsel further pointed out that, first the written examination was to be held and the candidates succeeding in the said written examination were only required to follow the further process of submission of the documents for scrutiny. The learned Counsel further submitted that the petitioners succeeded in the written examination and at the time of scrutiny they sought time from the District Selection Committee to file on record their non creamy layer certificate. Learned Counsel submitted that accordingly the time of one day was provided to the petitioners for filing the said certificate, which they furnished on record on 1.7.2014 and on the same day, the appointment

orders came to be issued in their favour. Learned Counsel submitted that the Selection Committee was well within its jurisdiction to give time to the petitioners for furnishing on record the non creamy layer certificate. According to both the learned Counsel, the learned Tribunal failed in appreciating the facts involved in the case in proper spirit and perspective and, consequently, reached to an erroneous conclusion. Both the learned Counsel, therefore, prayed for setting aside the order passed by the Tribunal.

As against this, learned counsel appearing for the original applicant has supported the order passed by the learned Tribunal. Learned Counsel submitted that the Tribunal has rightly held that the petitioners were mandatorily required to hold the non creamy layer certificates on the date of filing their applications to the post of Talathi. Learned Counsel further submitted that the Selection Committee was not having any right or authority to relax the said mandatory condition and to extend the time for filing of non creamy layer certificate by the petitioners. Learned Counsel relied upon two judgments; one of the Division Bench of this Court in the case of **Gorakhnath Balu Shinde Vs. State of Maharashtra and another** (2009 (3) Bom.C.R. 593) and the other of the Hon'ble Apex Court in the case of **Ashok kumar**

Sharma Vs. Chander Shekhar reported at **1987 CJ(SC) 89** to substantiate his contentions.

Learned A.G.P. also supported the order passed by the Tribunal and prayed for dismissal of the petitions.

5. We have carefully considered the submissions made on behalf of the learned Counsel for the respective parties. We have perused the impugned judgment and the documents filed on record. On the date of submitting their applications for the post of Talathi, both the petitioners were admittedly not having in their possession the non creamy layer certificate issued by the competent authority. Both the petitioners submitted the non creamy layer certificates on 1.7.2014. The applications for the post of Talathi were admittedly submitted on-line. No document was to be uploaded with the said on-line application. The candidates were expected to produce the original documents in consonance with the information filled in by them in the application form at the time of scrutiny of the documents which was to be admittedly held at a later stage after the candidates get through the written examination to be held for the said post. The advertisement dated 12.5.2014, whereby the applications were invited for the post, is filed on record. As provided in the said advertisement, the candidates succeeding in the

written examination and selected for the post of Talathi, were to submit the documents for verification at the time of scrutiny. The written examination was held on 22.6.2014. On 25.6.2014, the list was published of the successful candidates in order of merit. On 30th June, 2014, the successful candidates were called with relevant documents for verification / scrutiny of the said documents. The minutes of the meeting of the District Selection Committee, Parbhani, held on 30.6.2014, demonstrate that total 59 candidates appeared before the said Committee with relevant documents. The minutes of the meeting further reveal that one day's time was provided to the present petitioners for furnishing the non creamy layer certificate and subject to that the list of selected candidates was published by the Selection Committee. As stated earlier, both the petitioners filed on record the non creamy layer certificates within the given period i.e. on 1.7.2014.

6. After having heard the learned Counsel for the parties and on perusal of the material on record, two questions arise for our determination; first is whether the District Selection Committee was having any right or authority to extend the time, more particularly to provide one day's time to the petitioners for filing on record the non creamy layer

certificates. As has been argued on behalf of the original applicant, the Committee was not having any such power whereas the learned Counsel for the petitioners have invited our attention to the advertisement published on 12.5.2014 and more particularly to clause (4) thereof under caption 'Other Instructions for Recruitment' which suggests that the District Selection Committee did have a right to accept and / or reject the applications forms, to effect the contingent changes in the recruitment process and further that it's decision on the issue was final. In the affidavit in reply filed by Respondent no.2 and Respondent No.3 in Original Application No.389/2014, they have asserted this right.

7. The minutes of the meeting of the District Selection Committee held on 30th of June, 2014, show that the District Selection Committee had provided one day's time to the petitioners to furnish on record the non creamy layer certificate and subject to filing of such certificate, they were declared to have been selected. It appears that the District Selection Committee has exercised its discretion in favour of the petitioners by providing them one day's time to file on record the non creamy layer certificate. Nothing is brought to our notice by the original applicant to show that the District Selection Committee was not vested with

any such right or authority to exercise such discretion. The learned Counsel for the Original Applicant has cited the judgment of the Division Bench of this Court in the case of **Gorakhnath Balu Shinde Vs. State of Maharashtra and another (2009 (3) Bom.C.R. 593)** to substantiate his contention that extension of time was not permissible. However, in the said matter the fact-situation was different. In the said matter, in the application form itself, it was stipulated that the non creamy layer certificate shall be produced in any case on or before the last date of filling up of the Preference Form, failing which the category claimed will not be granted. In the instant case, no such restriction is found either in the advertisement issued or in the form of application. We, thus, do not find much substance in the objection raised in this regard by the original applicant. It further appears to us that the discretion was reasonably exercised by the District Selection Committee in providing one day's time to the petitioners to furnish on record non creamy layer certificates, and in the circumstances, the Tribunal should not have interfered with the discretion so exercised, and the order so passed by the District Selection Committee.

8. The further objection raised by the original applicant is that on the date of filing

of the online application and even on the date of scrutiny, since the petitioners were not holding the non creamy layer certificate, their selection is liable to be quashed. This objection also is liable to be rejected. It is not the case of the original applicant that the petitioners do not fall within the category of non creamy layer or that the non creamy layer certificates furnished on record by these petitioners are false; the objection is that on the date of submitting the application online and also on the date of scrutiny, the petitioners were not having in their possession non creamy layer certificate. Our attention was invited by the learned Counsel for the petitioners to the application form which was to be submitted online. Clause 10 in the said application form reads thus:

"Whether applicant belongs
to non creamy layer ?"(YES/NO)

The petitioners have answered the said clause in affirmative, meaning thereby that on the date of filing the applications, the petitioners were falling in the category of non creamy layer. It is the objection raised by the original applicant that the petitioners filled in the false information in the application form since, on the date of filing of the application, they were not holding the non creamy layer certificate in their

favour. This contention has been accepted by the Tribunal.

9. The non creamy layer certificates filed by both the petitioners are admittedly of the date 1.7.2014. The question arises, whether an inference, therefore, can be drawn that neither on the date of filling an application nor on the date of scrutiny, the petitioners were falling in the category of non creamy layer and hence were not liable to be considered for appointment on the post of Talathi. The learned Tribunal has held that the petitioners were not holding the non creamy layer certificates on the date of application and on that count has cancelled their appointments. It is not possible for us to agree with the conclusion arrived at by the learned Tribunal.

10. In Writ Petition No.11723/2014, the petitioner has filed on record circular dated 17.8.2013, issued by the State of Maharashtra. In order to resolve the controversy arose in the present matter, the said circular is of vital importance. It lays down the guidelines for issuance of non creamy layer certificates. It connotes that for issuance of the non creamy layer certificate, the base should be preceding three years' income of the applicant. It further denotes that, the income of the

applicant in any of the last preceding three years, if is less than the prescribed limit of income, the non creamy layer certificate can be issued in his favour. It is further clarified that if the income of the applicant and his family is less than the prescribed limit of income in all the three preceding years, the non creamy layer certificate is to be issued which may be valid for next three years. This criteria will have to be necessarily applied to the non creamy layer certificates furnished by the present petitioners. The non creamy layer certificate issued in favour of the petitioner in Writ Petition No.11722/2014 on 1st of July, 2014, thus, impliedly means that the income of the said petitioner and his family was less than the prescribed income in the preceding three years. Moreover, that has also been reflected in the income certificate placed on record by the said petitioner which is at Page No.37 of the paper book. In so far as the case of the petitioner in Writ Petition No.11723/2014 is concerned, the non creamy layer certificate filed on record by him reveals that initially it was issued on 31.8.2010 and the same was to remain valid till 31st March, 2011. The period of the said certificate was extended subsequently till 31st March, 2012. Thereafter, it was again extended for the period upto 31st March, 2014 on 17th December, 2013, and lastly, the period of said certificate has been

further extended for the period upto 31st March, 2015. Thus, there remains no doubt that on the date of submission of the application as well as on the date of scrutiny, both the petitioners were falling in the category of non creamy layer. The District Selection Committee, therefore, was well within its jurisdiction to select the petitioners and appoint them to the post of Talathi. It appears that the aforesaid circular dated 17th August, 2013, was not brought to the notice of the learned Tribunal and that appears to be the reason that the Tribunal reached to the conclusion that on the date of application, the petitioners were not fulfilling the criteria of belonging to the category of non creamy layer.

11. We reiterate that on the date of filing of the application, the petitioners were only expected to state whether they fall in the category of non creamy layer and, accordingly, both the petitioners, while filling in the application forms, have furnished the information that they belong to or fall in the category of non creamy layer and subsequently by filing on record the non creamy layer certificates dated 1.7.2014 both the petitioners have substantiated that on the date of application both were falling in the category of non creamy layer. In the circumstances, the contention of the Original Applicant that the petitioners submitted false

information while submitting the applications has to be rejected.

12. For the reasons stated above,

(i) Both the Writ Petitions are allowed.

(ii) The impugned order dated 17.12.2014 passed by the Maharashtra Administrative Tribunal Bombay, Bench at Aurangabad, in Original Application No.389 of 2014, thereby quashing and cancelling the appointment orders dated 01.07.2014 issued by Respondent No.2 in respect of the petitioners, for the post of Talathi, is quashed and set aside.

(iii) Rule is made absolute. No order as to costs.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

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