

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2205 OF 2014

The Commissioner of Police, Mumbai
& anr.

... Petitioner

V/s.

Miss Sonali Sakharam Chaugule

... Respondent

Mr. A.D. Kango, AGP for the State.

Mrs. Vaishali Jagdale for respondent.

**CORAM : NARESH H. PATIL AND
A.S. GADKARI, JJ.**

26th February, 2015.

P.C.

The petitioner challenges the order passed by the Tribunal in Original Application No. 869/2012 dated 20th March, 2013. The respondent participated in the recruitment process undertaken by the petitioner for appointment of constables. The advertisement no. 1/2011 was issued by the Police Commissionerate on 1st October, 201 for the year 2011. The advertisement mentions that there were about 3467 posts. The reservation prescribed for these posts was

mentioned in Clause (i) of the advertisement. One of the clauses mentions that 1418 posts were allotted to open category. The application forms were to be filled in on-line. In the advertisement near about 19 centers were prescribed for submitting on-line applications.

2. Admittedly, respondents applied against the subject advertisement by approaching the center at Dy. Commissionerate of Police, Zone VII, Mumbai. It is the petitioner's case that during the scrutiny, she submitted a consent letter which mention that as she was not possessing the Non-Creamy Layer Certificate, her application shall be considered from open category (as applicable to male applicants). In the final merit list the respondent's name was shown in the list prepared for open category candidates. She secured 153 marks.

3. It is the petitioner's case that 30% posts were allotted to open category candidates which means that respondent was to compete amongst the female and male candidates belonging to open

category. There was no separate category of open female/women category prescribed. The open category candidates' selection closed on 175 marks, so the respondent was not selected as she had secured 153 marks.

4. The respondent approached the Tribunal. After considering the case, the Tribunal allowed the original application filed by respondent.

5. The learned AGP appearing for the petitioner submitted that the respondent had submitted on-line form with the help of the officers as a candidate belonging to unreserved category. The respondent did not possess non-creamy layer certificate on the day of submission of the on-line form. The respondent had submitted a written undertaking that her application shall be considered from the open category (as applicable to male candidates). The learned AGP has placed reliance on following judgments:

i) Rakesh Kumar Sharma Vs. Government of NCT for Delhi & ors. (Civil Appeal No. 6116 of 2013).

ii) Bihar Public Service Commissioner & ors. Vs. Kamini & ors. 2007(5) SCC 519.

iii) Smt. Megha Shetty vs. State of Rajasthan & ors. Civil Special Appeal (Writ) No. 170/2013.

6. We have perused the judgments cited supra by the learned AGP.

7. The learned Counsel appearing for respondent submits that the application forms were filled in at the police station and the respondent was made to sign a blank undertaking. It is submitted that the respondent had tendered her caste certificate of the NT (A) category during the scrutiny. The respondent had applied for non-creamy layer certificate afresh prior to 26th February, 2009 covering the period from 26/2/2009 to 31/3/2010 and another non-creamy layer certificate dated 17th November, 2011 for a period of 17/11/11 to 31/3/2012. It is submitted that the petitioners did not consider the respondent's application under reserved category neither in the open category on account of her failure to submit non-creamy layer certificate. The petitioner could not obtain the non-creamy layer

certificate prior to cut-off date, therefore, such a certificate could not be produced. Though according to instructions the learned Counsel submits that respondent had applied for non-creamy layer certificate but she could not obtain the said certificate. The learned Counsel further submits that in identical situation some candidates had approached the Tribunal and under the orders of the Tribunal the petitioners had allowed such candidates to join the services whereas the case of the petitioners is that inspite of the order passed by the Tribunal, the respondent had not been given posting so far.

8. We had heard the petition quite extensively. A copy of order passed in Contempt Application No. 28/2014 by the Tribunal on 20th June, 2014 was produced for our perusal. In the Contempt proceedings, a statement was made by the State that respondent was sent for medical test. As a criminal case was lodged against the respondent for offence punishable under Section 379 of IPC wherein respondent was acquitted, a High Power Committee is considering the matter. The Contempt Application was accordingly

disposed of by the Tribunal.

9. We have also perused the Government Resolution dated 27th August, 2014 placed before us by the Counsel appearing for the respondent.

10. The Tribunal while considering the Contempt Application observed that there was no dispute that respondent was allowed to take part in physical test and written examination. The respondent obtained 153 marks. The cut off marks under Female NT(A) category was 143. The respondent was in possession of the non-creamy layer certificate dated 17th November, 2011 (as corrected under the motion of speaking to the minutes) by the Tribunal on 20th March, 2013. The Tribunal considered the case of the respondent as NT(A) category. From the record it transpires that even if the respondent's case is considered as open category (woman) candidate, she still secures higher marks than the candidates in the open women category. The petitioners are not inclined to appoint respondent on the ground that the petitioner ought to compete in

General (male and female) category and not amongst women (General). We are informed that more than fifty posts are still lying vacant.

11. From the record placed before us and considering the reasoning adopted by the Tribunal, we are not inclined to interfere into the matter.

12. We direct the High Power Committee to take appropriate decision within three weeks from today. With these directions, the writ petition stands dismissed.

(A.S. GADKARI, J.)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.