

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD.****WRIT PETITION NO. 393 OF 2016**

Mrs. Patil Vijaya Milind,
age 31 years, occu. Housewife,
r/o At Balwadi, Post Khirdi,
Tq. Raver, Dist. Jalgaon.

... PETITIONER.

VERSUS

1 The State of Maharashtra,

2 The Collector,
Jalgaon, (Khandesh),
Dist. Jalgaon.

3 The Sub Divisional Officer,
The office of S.D.O.,
Faizpur, Dist. Jalgaon.

... RESPONDENTS.

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Advocate for Petitioner : Mr.Dhorde Pramod P.
AGP for Respondents/State: Mr.S.B. Yawalkar.

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

Dated: January 22, 2016.

ORAL JUDGMENT: (Per Shinde, J)

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

2. This petition takes exception to the order passed by the Sub Divisional Officer, Faizpur dated 29th December, 2015 (Annexure-I to the petition) and also seeks directions to respondent No.3 to include name of the petitioner in the list of selected candidates for interview / oral examination and give an opportunity of oral interview / examination to the petitioner.

3 It is the case of the petitioner that, on 2nd November, 2015 advertisement no.1/2015 for recruitment of Police Patils at villages of Raver and Yawal talukas of Faizpur Sub Division of District Jalgaon was published. The petitioner filed on-line application on 9.11.2015 for the post of Police Patil of village Balwadi from Open Female category. The petitioner also paid examination fees. It was informed to the petitioner that her registration is completed, and her E-mail I.D. will be her Login I.D. and Password was also given to her. The petitioner appeared for the examination on 13th December, 2015. The result of the said examination was declared on 25th December, 2015. According to the petitioner, she secured 47 out of 80 marks. However, her name was not shown in the list of successful candidates. It is the case of the petitioner that names of the other candidates from Open Women category, who secured less marks than the petitioner, were included in the list of successful candidates eligible for oral examination / interview. The

petitioner filed an application to respondent No.3 on 26.12.2015 requesting therein for inclusion of her name in the list of successful candidates selected for interview / oral test. However, by the impugned communication, the petitioner's application was rejected. Hence this petition.

4. Learned Counsel for the petitioner invited our attention to the copy of the on-line application filed by the petitioner addressed to respondent no.3, which is placed on record at Exh.B (page 25 of the compilation of the petition) and submits that while filling in the information in the application, in Clause No.8, it is mentioned that the petitioner applied from Open Category. The learned Counsel for the petitioner submits that the fact that the petitioner applied from the Open Female category can be seen from reading caption "subject" in the said on-line application wherein the petitioner has written, "Open Female". It is submitted that inadvertently, while filling in the information as against Clause No.13, by mistake the petitioner has written "No" instead of "Yes". The learned Counsel for the petitioner submits that it is only in the cases of candidates from the reserved category who are desirous to apply for woman reserved category, submission of non creamy layer certificate is necessary as per Clauses Nos.12 and 13 of the Conditions mentioned in the advertisement at Exh.A, page 14 of the compilation. Since the

petitioner applied from Open Women category, it was not necessary for the petitioner to comply with the Clauses 12 and 13 of the advertisement inasmuch as, it provides for submission of non creamy layer certificate only in cases of woman from reserved category. Therefore, relying upon the pleadings in the petition, annexures thereto, learned Counsel for the petitioner submits that the petition deserves to be allowed.

5. On the other hand, learned AGP appearing for the State, relying upon the averments in the affidavit-in-reply filed on behalf of the respondent No.3, submits that, in view of Clauses 12 and 13 of the said advertisement, it was incumbent upon the petitioner to submit non creamy layer certificate in case the petitioner was desirous to apply from Open Women category for the post of Police Patil since the said clause mandates compliance of the said requirement. It is further submitted that the petitioner herself while filling in information as against Clause 13 in the on-line form has mentioned "No" and in view of that, since the respondent / authority has no discretion, her candidature was considered from Open category but, not from Open Women category. and as a result, her name was not included in the list of successful candidates from Open Women category. He, therefore, submits that the petition may be rejected.

6. We have carefully considered the submissions advanced by the learned Counsel for the respective parties. From the material on record, it is abundantly clear that the post for which the petitioner has applied was reserved for Open Female. It is true that in the form to be filled in on-line, Clause 13 thereof prescribes for the information whether the candidate applying for the said post is eligible for horizontal reservation and the petitioner has filled in the information against said clause as "No". We are however, convinced that, that was an inadvertent mistake committed by the petitioner. In the circumstances, according to us merely for that reason the application of the petitioner could not have been rejected. We reiterate that when the post itself is reserved for Open Female, none else than Open Female could have applied for the said post. Having regard to the fact that in the test, the petitioner has secured 47 marks out of 80, she needs to be given an opportunity to prove her merit even in the interview and her candidature cannot be rejected merely on the ground that she has wrongly filled in the information against Column No.13.

7. For the reasons stated above, we quash and set aside the order dated 29th December, 2015 and direct the respondent N.3 to include name of the petitioner in the list of eligible candidate to be interviewed. We however, make it clear that the petitioner will

have to submit on record 'non creamy layer certificate' for the year, 2015-16 as provided in Clause No.14 of the on-line form in view of the Government Resolution dated 15.5.2001. Needless to state that if the petitioner fails to submit such certificate, she will be out of the fray. The petition is allowed on above terms and stands disposed of. Rule is made absolute accordingly with no order as to costs.

(P.R. BORA, J.)

(S.S. SHINDE, J.)