

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

WRIT PETITION NO. 10105 OF 2015

PARVATI SHAHADEO GUJAR **..PETITIONER.**

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS. **..RESPONDENTS.**

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Advocate for Petitioners : Mr.Dhase Rahul P.
AGP for Respondents/State: Mr.A.V. Deshmukh.
Advocate for Respondents : Mr.Dhakne Vijay A. for R/5, Mr.
Suryawanshi Prashant D. for R/2.

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

Dated: 22nd FEBRUARY, 2016.

PER COURT :-

1. Heard learned Counsel for the petitioner and learned Counsel for respondents. Learned Counsel for petitioner invited our attention to the On-line application filled in by the respondent No.5 and submits that the respondent No.5 did not apply from OBC (General) category; but, applied from Physically Handicapped (Low Vision 75%) category. It is submitted that, respondent No.5 did not filled in the

information about number of her non creamy layer certificate in the On-line application and therefore, filing of subsequent non creamy layer certificate is of no use. It is submitted that, even the said certificate was not filed at the time of scrutiny of the documents and it was later on submitted to the respondent – authority. At the cost of repetition, learned Counsel for the petitioner submits that since respondent No.5 applied from Physically Handicapped (Low Vision 75%) category and on the date of filling in On-line application, she was holding said certificate, her application ought to have been considered from said category and therefore, the petitioner, whose name stands at Sr.No.1 in the waiting list, should have been appointed from OBC category. He invited our attention to the fact that, in the selection list of the successful candidates itself, it was mentioned that, the selection of respondent No.5 is subject to scrutiny of the certificate that respondent No.5 belongs to Handicapped (Low Vision 75%) category. Therefore, according the Counsel for the petitioner, since the respondent No.5 was selected from the said category, consideration of her candidature from OBC category would not arise. Therefore, the petitioner being first in the waiting

list, is entitled for the appointment from OBC category on the post of *Anganwadi Supervisor*. He further submits that, the respondents referred the respondent No.5 for medical examination and upon re-examination, it was found that, the disability incurred by respondent No.5 is only 30%. Therefore, according to the learned Counsel for the petitioner, if the candidature of the respondent No.5 is not considered from the Physically Handicapped category, it could not have been considered from OBC category for not mentioning number of non creamy layer certificate in the On-line application and also not producing the same at the time of scrutiny of the documents. Therefore, relying upon the pleadings in the petition, annexures as also rejoinder to affidavit filed by petitioner, the learned Counsel for the petitioner submits that the petition deserves to be allowed.

2. The learned Counsel for the respective respondents, relying upon the averments in the affidavit-in-reply, submits that the respondent No.5 was considered from OBC category and appointment order has been issued from the said category and therefore, the learned Counsel for the respondent No.5 submits that, non creamy layer certificate

was produced by respondent No.5 on 18.5.2015 i.e. on the date of scrutiny of the documents and therefore, there is no substance in the contention of the Counsel for the petitioner that non creamy layer certificate was not submitted on the date of scrutiny of the documents.

3. We have heard learned Counsel for the parties. Upon perusal of the copy of the On-line application, which was filed by the respondent No.5, it appears that, in the Column of reservation, it is mentioned as OBC-GENERAL. It is true that, while mentioning number of non creamy layer certificate, it is written "000". However, in the column Validity of the same, it is written "31st March, 2017". It is true that, in the said application, respondent No.5 did mention that, she belongs to Handicapped (Low Vision 75%) category. It is also true that, in the selection list of successful candidates, which was published by the committee, it is mentioned that, selection of respondent No.5 is subject to verification of said certificate. So far as contention of the Counsel for the petitioner that, the respondent No.5 did not fill in the information about non creamy layer certificate, is concerned, upon careful perusal

of the information filled in the On-line application, though number is mentioned as "000", in the Validity column, 31st March, 2017 has been mentioned. Since the non creamy layer certificate was submitted by respondent No.5 on 18th May, 2015 at the time of scrutiny of document as contended by the respondents No.3 and 4 in their affidavit-in-reply, at this stage, learned Counsel for the petitioner submits that, as a matter of fact, in the certificate which was submitted at the time of scrutiny, it is mentioned that, said certificate is valid up to 31st March, 2018 and therefore, the same is not the certificate which is referred in the On-line application. Even if, we consider the said submission of the learned Counsel for the petitioner, the fact remains that the certificate on the date of scrutiny was submitted by the respondent No.5 and the same was accepted by the concerned committee and accordingly, appointment order was issued in favour of the respondent No.5. Admittedly, the respondent NO.5 secured 58 marks and the petitioner secured 57 marks. As already observed, the respondent No.5 did apply from OBC-GENERAL category. In that view of the matter and in view of the fact that, respondent No.5 has secured 58 marks, we are not inclined to entertain this

petition.

4. It appears that, the petitioner filed an application questioning the certificate issued in favour of the respondent No.5 that she belongs to Handicapped category i.e. Low Vision 75% and therefore, the respondent - authority referred the respondent No.5 to the Medical Board for re-examination. Since the respondent No.5 did possess the certificate showing 75% disability, in our opinion, in absence of any provisions available under the Persons with Disabilities (Equal Opportunities, protection of Rights and Full Participation) Act, 1995, it was not open for the respondents to re-examine the percentage of disability of the respondent No.5.

In view of above and the fact that the respondent No.5 has secured 58 marks and petitioner secured 57 marks, we are not inclined to entertain this petition. Hence, the petition stands rejected.

(P.R. BORA, J.)

(S.S. SHINDE, J.)