

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.903 OF 2011**Ms. Kavita D/o Ramesh Pawar Vs. The Zilla Parishad Hingoli
through its Chief Executive Officer and others.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.Amol Chalak, advocate holding for Mr.S.B.Talekar, advocate for the petitioner.
 Mr.S.R.Bagal, advocate for Respondent Nos.1 and 2.
 Mr.Ajay S.Deshpande, advocate for Respondent Nos.3 to 5.

**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**

Date : 31.08.2016.

PER COURT :

1. Heard.
2. Mr.Chalak, learned counsel for the petitioner states that pursuant to the advertisement issued by the Respondents, the petitioner applied for the post of Live Stock Supervisor from OBC category. The petitioner had submitted all the relevant documents as detailed in the advertisement. The Respondent Nos.3 to 5 had also applied pursuant to the said advertisement but from the open category. The Respondent Nos.3 to 4 did not submit non-creamy layer certificate along with their applications. The names of

Respondent Nos.3 to 5 also did not appear in the cut off list displayed for the post of the Live Stock Supervisor, District Hingoli from OBC category. The name of petitioner appeared at serial No.2 of the cut off list in OBC female category. The learned counsel further submits that, still, the Respondent Nos.3 to 5 are selected from OBC female category. The said selection process has not been conducted properly. The Respondents did not have any authority to relax/waive the condition of submission of non-creamy layer certificate along with the application in case of Respondent Nos.3 to 5. The learned relies on the judgment of the Division Bench of this Court in the case of **“Anita Sidram Koli Vs. Union of India and others”** reported in **2010 (3) Bom.C.R.580**. The learned counsel submits that non-creamy layer certificate filed along with the affidavit of Respondent Nos.3 to 5 shows that these certificates have been obtained after the application is made and much subsequently.

3. Mr.Bagal, learned counsel for Respondent Nos.1 and 2 submits that Respondent Nos.3 to 5 had applied from OBC category. The application forms are placed on record. The non-creamy layer certificates were also annexed with the applications. The examination is conducted by MKCL. Considering the more marks being obtained by Respondent Nos.3 to 5, MKCL must have shown them in open category. After considering the marks

obtained, the Respondent Nos.3 to 5 are considered from the category from which they had applied and these Respondents Nos.3 to 5 have secured more marks than the petitioner.

4. Mr.Deshpande, learned counsel for Respondent Nos.3 to 5 adopts the arguments of Mr.Bagal.

5. Upon considering the arguments of the learned counsel and perusing the application forms filed along with affidavit-in-reply of Respondent Nos.1 and 2, it is manifest that these Respondent Nos.3 to 5 have applied from the OBC category and the documents that they do not belong to creamy layer are also on record. There was a long time gap between the applications being made and the Respondents being appointed, as such fresh non-creamy layer certificates were also required to be placed. Along with affidavit-in-reply the non-creamy layer certificates prior to the date of application are filed of the Respondent Nos.3 to 5. The copies of which are filed along with affidavits of Respondent Nos.1 and 2.

6. The proposition canvassed by Mr.Chalak, learned counsel, relying on the judgment of this Court in a case of **“Anita Sidram Koli Vs. Union of India and others”** referred to supra that the authorities could not have waived/relaxed the condition need not be debated. The same is a settled proposition of law. As is observed by the Apex Court, the rules of game can not be changed once the game is played. However, in the present matter we do not find any

rule or requirement or the condition laid down in the advertisement has been relaxed by Respondent Nos.1 and 2. We have also gone through the list showing the marks obtained by each candidate. The Respondent Nos.3 to 5 have obtained more marks than the petitioner and certainly these Respondent Nos.3 to 5 are more meritorious than the petitioner.

7. Considering the aforesaid, the petitioner has failed to make out a case. As such the Writ Petition is disposed of. No costs.

(K . L . WADANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.31.08.2016.
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