

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

**WRIT PETITION NO. 1182 OF 2011**

Razvi Shabana Mazhar Ali,  
Age : 35 years, Occu. Service,  
R/o Plot No. 76 Alamgir Colony,  
Aurangabad Dist. Aurangabad. .. Petitioner

**Versus**

The State of Maharashtra  
through its : Collector, Aurangabad .. Respondent

Shri U. R. Awate, Advocate h/f Pritesh S. Bhandari and S. B.  
Talekar, Advocate for the Petitioner.  
Shri M. B. Bharaswadkar, A.G.P. for the Respondent.

**CORAM : ANOOP V. MOHTA AND  
SUNIL K. KOTWAL, JJ.**

**DATE : 15TH JUNE, 2017.**

**ORAL JUDGMENT (Per Anoop V. Mohta, J.) :-**

. Called out from final hearing board. During the course of hearing, the learned counsel for petitioner submits that, petition is restricted to the extent of challenge to impugned order dated 13.01.2011 and petitioner does not press other prayers, so made in the petition.

2. Petitioner has challenged order dated 13.01.2011 passed by District Collector, Aurangabad, whereby non creamy-layer certificate issued to petitioner's father, which was basis for her appointment, was set aside.

3. This Court on 14<sup>th</sup> October, 2011, while admitting matter by reasoned order has granted stay in terms of prayer clause "C". Based upon said prayer clause, petitioner has been in service till this date. The effect of non creamy-layer certificate of father, so issued, therefore, remained in tact till this date.

4. Petitioner was appointed pursuance to the advertisement issued by Maharashtra Public Service Commission (M.P.S.C.) based upon the required non creamy-layer certificate dated 12.08.2006. There is no issue that in the year 2006 non creamy-layer certificate is required for availing 30% reservation by woman in open category. The required three years gross income for issuance of non creamy-layer certificate should not be more than Rs. 4,00,000/-. It appears that, petitioner's father for getting certificate mentioned gross income of Rs. 45,000/- (Rs. 15,000/- x 3). The concerned Tahsildar, Aurangabad, issued the non creamy - layer certificate. A complaint was lodged by the petitioner's estranged husband. The department initiated the proceedings. The petitioner accepted the mistake. However, requested to maintain/retain the certificate/order, as in any way three years income was not more than Rs. 4,00,000/-, even as per the enquiry so conducted.

5. The learned Assistant Government Pleader has pointed out various documents in support of the contention that, the petitioner's father had suppressed facts of gross income, than Rs.

45,000/- and obtained the certificate. Non submission of correct figure while applying for issuance of non creamy-layer certificate amounts to suppression of facts, and therefore, the impugned order, so passed needs no interference is the submissions.

6. We have noted after going through documents so read and referred that gross income of petitioner's father was never exceeded the limit so fixed. Therefore, there was no issue, with regard to issuance of non creamy-layer certificate. Non creamy-layer certificate, therefore, even otherwise, could have been issued in favour of petitioner's father.

7. In the facts and circumstances and after going through the income of father of petitioner, we have noted that, he was getting pension about Rs. 40,000/- per year. This mistake in no way take away the non creamy-layer certificate. Ultimately, the Tahsildar and/or higher officer required to consider at the time of issuance of non creamy-layer certificate, whether the person concerned has crossed the total gross income. In this case, we have noted that, there was such position. The non creamy-layer certificate, so issued needs no interference.

8. In case of allegations of fraud or misrepresentation, it is required to consider in the context in which such averments were made. It is with intent to cheat and gain and/or bonafide and/or it is by mistake and/or by negligence. In the contest and the

background, so referred above, we are convinced that, this is not the case that petitioner's father or petitioner could take gain or intended to cheat by putting less gross income by mistake. The gross income was less than limit. Therefore, petitioner's father, as even otherwise, could have got the certificate in question. Therefore, in the interest of justice, we see no reason to disturb and/or interfere in the non creamy-layer certificate, issued by Tahsildar, Aurangabad. Therefore, impugned order dated 13.01.2011 passed by respondent/Collector, Aurangabad is required to be quashed and set for the reason so recorded above as the certificate so issued was within the frame of law as income was within the prescribed limit. This is not the case of obtaining the certificate based on misrepresentation or fraud.

9. Therefore, following order.

### **O R D E R**

A. Writ petition is allowed.

B. Rule is made absolute in terms of prayer clause "B". No costs.

**Sd/-**  
**[SUNIL K. KOTWAL, J.]**

**Sd/-**  
**[ANOOP V. MOHTA, J.]**