

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.2527 OF 2017**Dr.Sujata D/o Bhavusaheb Pawar Vs. The State of Maharashtra
and others.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
--	---------------------------

Mr.R.S.Shinde, advocate for the petitioner.
Mrs.V.N.Patil, A.G.P. for the State.

**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**
Date : 02.03.2017.

PER COURT :

1. Heard.
2. Mr.Shinde, learned counsel submits that pursuant to the advertisement issued by the Respondent No.2, the petitioner had applied for the post of Assistant Professor Agricultural Botany. In the application, the petitioner in column No.9 had mentioned the category as open (female). As per the advertisement, one post is reserved for open (female) for subject Assistant Professor Agricultural Botany. On 4.2.2017, list of eligible candidates is published. The name of the petitioner did not appear in the said list on the count that the petitioner has not submitted the non-creamy layer certificate in the proper format and not having been issued by

competent authority.

3. According to the learned counsel for petitioner, the petitioner had submitted non-creamy layer certificate issued by the SDO (Revenue) dated 11.9.2014 and on 30.1.2017 had submitted another non-creamy layer certificate issued by Naib Tahsildar as required by the Respondent under the format. According to the learned counsel, the petitioner be considered as eligible.

4. Mr.Patnoorkar, learned counsel for the Respondent submits that the non-creamy layer certificate submitted by the petitioner along with the application was not issued by the competent authority and was issued as per the Circular dated 15.7.2014, which is stayed by the Government. As such it is not legal and valid. As per the terms of the advertisement, the petitioner is required to submit all the documents along with the application, else the candidature would not be considered. For seeking benefit of open (female) reservation, the non-creamy layer certificate has to be issued pursuant to the G.R. dated 25.5.2001. The Respondents and the petitioner would be bound by the terms of the advertisement. Deviation therefrom is not permissible. According to the learned counsel, no error has been committed in treating the candidature of the petitioner as ineligible on the count of non-submission of non-creamy layer certificate in proper format and by the competent authority.

5. We have considered the submissions. The application of the petitioner shows that the petitioner had applied from the category open (female). The petitioner on or about 11.9.2014 had obtained ESBS certificate of belonging to Maratha caste. The reservation provided vide G.R. dated 15.7.2014 has been subsequently stayed by the Government. When the said certificate of ESBS was issued, the G.R. dated 15.7.2014 was in operation. Along with the said certificate, the petitioner was also issued non-creamy layer certificate by SDO (Revenue) and the said non-creamy layer certificate is valid up to 31.3.2017.

6. The format for issuance of non-creamy layer certificate for a person claiming benefit of open (female) reservation is different than the one which the petitioner had produced. It appears that the petitioner has subsequently also filed an application for getting non-creamy layer certificate as per G.R. dated 25.5.2001. The said certificate was issued to the petitioner on 25.1.2017 and it is submitted on 30.1.2017 with the Respondent. It is not a case that along with the application, the petitioner has not submitted the non-creamy layer certificate, it is only that the said certificate was not in proper format. Subsequently, the certificate in proper format is also issued to the petitioner and is submitted before the list of eligible candidates is published.

7. Considering the aforesaid conspectus, we find it would be

too technical to reject the claim of the petitioner. We would have certainly not entertained the application if along with the application non-creamy layer certificate would not have been annexed at all. The only defect was that non-creamy layer certificate annexed with the application was not in proper format, however, subsequently the same is submitted by the petitioner as required under the proper format.

8. In light of the above, the Respondent shall not reject the candidature of the petitioner only on the ground that the petitioner had not submitted the non-creamy layer certificate along with the application in proper format. In case there is no other impediment then the Respondents may consider the petitioner in the list of eligible candidates for the category open (female).

9. The Writ Petition is accordingly allowed. No costs.

(K . L . WADANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.02.03.2017.
asp/office/wp2527.17

