

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

**REVIEW APPLICATION NO.219 OF 2017
IN
WRIT PETITION NO. 11901 OF 2015**

Avdhoot S/o Gangaram Puri,
Age : 26 years,
Occ. : Government Service,
R/o. : Plot No.58,
Rajdhani Colony,
Satara Parisar, Aurangabad ..Applicant

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Industries, Energy and
Labour Department,
(Industries-4) Mantralaya,
Mumbai-32
2. The Maharashtra Public Service
Commission, Through Secretary,
Bank of India Building,
3rd Floor, Mahatma Gandhi Road,
Hutatma Chowk, Mumbai - 400001
3. Director,
Directorate of Government
Printing and Stationary,
Government Book Depot &
Publication House,
Netaji Subhash Chandra Bose Road,
Mumbai, Maharashtra 400004
4. Sachin S/o Haribhau Kedar,
Age : 35; Occu.: Service;
R/o.: Government Press,
Civil Lines, Nagpur ..Respondents

Miss.Pradnya S. Talekar, Advocate for applicant

Mr.S.M.Morampalle, A.G.P. for respondent Nos.1 to 3

**CORAM : S.V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

**RESERVED ON : AUGUST 29, 2017
PRONOUNCED ON : SEPTEMBER 19, 2017**

ORDER (PER : SANGITRAO S. PATIL, J.) :

Heard

2. The applicant has sought review of the judgment and order dated 06.06.2017 passed in Writ Petition No.11901 of 2015, whereby the said Writ Petition came to be dismissed.

3. The learned Counsel for the applicant submits that as per Prayer Clause 2(F) of the Writ Petition, a declaration was sought to the effect that Clause 2.2.3.4 of the General Instructions of 2010 issued by respondent no.2 – M.P.S.C. is *ultra-vires* to Article 14 of the Constitution of India to the extent it requires Non-Creamy Layer ("N.C.L.", for

short) certificate of the financial year preceding the date of advertisement. According to her, despite this specific prayer challenging the constitutional validity of the said Clause being made, no finding has been recorded by this Court in respect of that prayer. This amounts to apparent error on the face of record. Therefore, she submits that in order to do full and effective justice, this Court may recall the Judgment and order dated 06.06.2007 and holding that clause 2.2.3.4 of the Central Central Instructions is illegal and against the mandate of Articles 14 and 16 of the Constitution of India. She further prayed for consequential orders in favour of the applicant.

4. Admittedly, the applicant had sent his application on-line in response to the advertisement dated 23.02.2012 for the post of Assistant Manager in the Directorate of Printing, Stationary and Publication, Government of Maharashtra, against a post reserved for DT-A category. The reservation for

DT-A, NT-B, NT-C and NT-D was interchangeable and in case, a suitable candidate was not available from DT-A category, then it could be filled up from the candidates belonging to NT-B, NT-C or NT-D categories. The applicant is belonging to NT-B category. As per Clause 7 of the advertisement, the candidates were given to understand that they should read the General Instructions published on the official website of respondent no.2 and should follow them. As per Clause 2.2.3.4 of the General Instructions, the candidates belonging to reserved categories, excepting the Scheduled Caste and Scheduled Tribe categories, should produce N.C.L. certificate at the time of interview, which should have been issued in the financial year immediately preceding the financial year in which the advertisement was published. The applicant was called for interview on 20.06.2012. He produced N.C.L. certificate dated 13.05.2011. Since the advertisement was issued in the financial year 2011-12 and since

the applicant produced N.C.L. certificate of the same year and not that of the preceding year i.e. 2010-11 as required under Clause 2.2.3.4. of the General Instructions, he was not allowed to participate in the interview. In the circumstances, the applicant approached the Maharashtra Administrative Tribunal by filing O.A. No. 612 of 2015 seeking necessary reliefs so as to get an opportunity of being interviewed and appointed to the above-mentioned post. Since his claim was not accepted by the Maharashtra Administrative Tribunal, vide Judgment and order dated 21.09.2015 he filed Writ Petition No.11901 of 2015 challenging the said judgment and order. After hearing the learned Counsel for the applicant and that of respondent nos.1 to 3, this Court dismissed the said Writ Petition on 06.06.2017.

5. It was contended on behalf of respondent nos.1 to 3 that the applicant, though aware of Clause 2.2.3.4 of the General Instructions, participated in the selection process by sending application on-line

without any demur, he was not entitled to take a contrary stand and challenge the validity of the said Clause after finding that because of non-compliance on his clause, he was not allowed to appear for the interview.

6. In paragraph 8 of the judgment, we observed that as per Clause 2.2.3.4 of the General Instructions, the applicant was required to produce N.C.L. certificate of the year 2010-11. He produced the N.C.L. certificate of the year 2011-12, in which financial year the advertisement was issued. Since the N.C.L. certificate produced by the applicant was not as per the requirement of Clause 2.2.3.4. of the General Instructions, it was held that the applicant was rightly denied the opportunity to appear for the interview. It was contended on behalf of the applicant that the Government Resolution dated 25.03.2013 issued by the Department of Social Justice and Special Assistance, Government of Maharashtra,

wherein crucial date for considering non-creamy layer status of the candidate has been stated to be the last date of receipt of the application or any other date prescribed in the advertisement should have been followed and the N.C.L. certificate produced by the applicant of the year 2011-12, should have been accepted as valid. This contention was repealed on the ground that the Government Resolution dated 25.03.2013 cannot be made applicable to the advertisement 23.02.2012. Moreover, as seen from Clause 2(iii) of the said Resolution, an option was given to prescribe any other date in the advertisement for considering the non-creamy layer status of the candidate. In the present case, respondent no.2 prescribed the financial year, preceding the financial year in which the advertisement was published, as relevant for considering non-creamy layer status of the candidate. Therefore, even if this Clause is considered, it cannot be said that respondent no.2 was not

authorised to prescribe any particular period for considering the non-creamy layer status of the candidate.

7. It may be noted that a number of other candidates belonging to DT-A, NT-B, NT-C and NT-D categories, though otherwise eligible but not possessing the N.C.L. certificate of the year 2010-11, must not have applied for the post under the belief that it was necessary to produce the said certificate at the time of the interview and being not in possession thereof, they would be disqualified and would not be allowed to appear for the interview. It is further possible that had such other candidates applied and competed, perhaps, they would have obtained more marks than that of the applicant and would not have even allowed the applicant to reach the stage of appearing for the interview. The applicant was well aware that he was required to produce the N.C.L. certificate of the year 2010-11 in

view of the specific instructions given in Clause 2.2.3.4 of the General Instructions. Despite that, he tried to take a chance by sending his application on-line, posing that he was having the requisite N.C.L. certificate as contemplated under Clause 2.2.3.4.

8. It is well settled that the Courts cannot lay down a law which would encourage such practices by issuing mandamus/directive contrary to the terms of selection/appointment. The terms and conditions mentioned in the advertisement certainly were intended to guide/instruct the prospective applicants, as to what requirements they are expected to fulfill for successfully participating in the selection process and there is no reason to dilute such terms and conditions.

09. In our view, respondent no.2 was well within its powers to prescribe the terms and conditions for completing the selection process in a fair and

transparent manner. The said terms and conditions were made applicable to all the prospective applicants. There cannot be any exception in the matter of application of the said terms and conditions in respect of any individual candidate and more particularly at the midst of the selection process. If such an exception is allowed to be made, it would amount to discrimination as contemplated under Articles 14 and 16 of the Constitution of India.

10. It is obvious that the applicant has challenged the validity of Clause 2.2.3.4 of the General Instructions after he was unsuccessful in the selection process for want of N.C.L. certificate of the financial year 2010-11. If at all he had any valid and justifiable ground to challenge Clause 2.2.3.4 of the General Instructions, he should have immediately challenged the same without waiting until his candidature was rejected for non-compliance of the said Clause. The applicant has raised challenge

to Clause 2.2.3.4 belatedly. In the O.A. filed before the Tribunal, no such challenge was raised. The O.A. was decided against the applicant. The order of M.A.T. was challenged before this Court. This Court remitted the matter back to the Tribunal. After the matter was relegated to the Tribunal, still the applicant did not raise challenge to said Clause. The O.A. was dismissed. The said order is challenged in Writ Petition and by amendment, for the first time challenge to said Clause is raised. In fact, the same was beyond the scope of challenge to the order of the Tribunal. Such a belated claim certainly cannot be characterised as *bona fide*.

11. In addition to the above mentioned reasons, for the reasons given in the judgment dated 06.06.2017 in Writ Petition No.11901 of 2015, we hold that Clause 2.2.3.4 of the General Instructions does not infringe any fundamental right envisaged either under Article 14 or 16 of the Constitution of India.

The said Clause which has been made applicable by respondent no.2 to all aspiring candidates was quite legal and valid. We do not find any reason to review and recall the judgment and order dated 06.06.2017 passed by us.

12. The Review Application is devoid of any substance. It is liable to be dismissed and accordingly dismissed.

[SANGITRAO S. PATIL]
JUDGE

[S.V. GANGAPURWALA]
JUDGE

kbp