

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.17530 OF 2017

ORDER: (Oral) (*Per Hon'ble Sri Justice Suresh Kumar Kait*)

Vide the present petition, the petitioner has assailed the order dated 24.04.2017 passed in O.A. No.456 of 2017 by the Andhra Pradesh Administrative Tribunal, Hyderabad (for short, 'the Tribunal'), whereby the O.A. filed by the petitioner was dismissed.

2. The case of the petitioner is that respondent No.2 had issued a recruitment notification on 27.08.2016 for the post of Stipendiary Cadet Training Constables (Communications). In all, 494 vacancies were notified and to an extent of 33.1/3 per cent, posts were reserved in favour of women. Since, the petitioner possesses the requisite qualification, she had responded to the said notification, vide online registration No.3010114 along with the application. She had enclosed all the relevant certificates including educational certificates, caste certificate and non-creamy layer certificate.

3. Learned counsel appearing on behalf of the petitioner submits that as per the selection process, one had to appear for the Physical Measurement Test/Physical Efficiency Test (PMT/PET) along with all original certificates with a set of legible xerox copies, duly attested by Gazetted Officer. In the present case, Physical Measurement Test was conducted on 14.11.2016 and he submitted all the certificates as required. After clearing Physical Measurement Test, it was stamped on the call letter that all the certificates have been verified. After being successful in the Physical Efficiency Test, he was issued a hall ticket for appearing final written test, vide Hall Ticket No.553180249 and a written test

was conducted on 29.01.2017. Respondent No.2 had prepared/published a merit list and in the said merit list, name of the petitioner was shown in serial No.2457 as she got 103 marks in the written test. She had secured decent marks in the written test and that she was expecting offer of appointment in her favour, but to her utter shock and dismay, her name did not find in the selection list.

4. Learned counsel further submits that the cut-off marks for BC-B women candidates was 85 marks, whereas the petitioner had secured 103 marks. However, a note was appended to the provisional list of selected candidates to the effect that though she had secured more marks than the cut-off marks as provided for BC-B women candidates, her name was not included on the ground that she did not submit her Non-creamy Layer certificate.

5. As stated in the writ petition and submitted by the learned counsel for the petitioner, it is to be noted that if the petitioner really had submitted the Non-creamy Layer certificate at the time of PMT/PET venue, the authorities would have certainly uploaded the same. In the uploaded certificates, Non-creamy Layer certificate is not available. Only three certificates – State Board of Technical Education and Training, Secondary School Certificate and Community, Nativity and Date of Birth certificates – were uploaded.

6. It is not in dispute that the Superintendent of Police, Kurnool, vide his message dated 15.02.2017, informed that the petitioner has not submitted the Non-creamy Layer certificate. In the merit list, in the column “Non-Creamy Layer” against the petitioner’s name, it is mentioned as “N” (No). Accordingly, the merit list was uploaded in the official website of “recruitment.appolice.gov.in”, which was available for the candidates. In addition, for the benefit of the candidates, in press release Rc.No.246/R&T/Rect.2/2016, dated 16.02.2017, it was stated at paragraph Nos.3 to 6 as follows:

"3. As informed in the Notification, the merit list for the post of Police Constable (Communications) is prepared based on the marks obtained by the candidates in the Examination held on 29-01-2017. This merit list includes, marks obtained, Reg. No., Date of Birth, Gender, Community, Non-Creamy Layer, Ex-servicemen, NCC, Home Guard & Local to State. This information in these fields has been prepared, based on Certificates submitted by the candidates at the time of PMT/PET. It is the responsibility of the candidate to submit all the certificates if he/she wants to claim benefit of Reservation, including Non-Creamy Layer for BC candidates.

4. If there is any discrepancy in this information, as per certificates submitted by candidate during PMT/PET, the candidate is requested to approach District Police Office, where he/she attended PMT/PET, within 2 days.

5. If the Certificate was not submitted at the time of PMT/PET., and no permission was taken from Chief Superintendent to submit any Certificate later, no Certificate will be accepted at this stage. Board will not entertain any correspondence from candidates directly on such matters.

6. Selection list will be prepared based on the marks list and the reservation quota for various social communities and also reservation for Women, Children of Police Personnel (CPP), NCC & Home Guards, as mentioned in Andhra Pradesh Police (SCT) Rules, issued in G.O.Ms.No.315, Home (Pol.C) Department, dated 13-10-1999 and its amendments thereon."

7. In addition, after releasing the merit list for the post of PC (Communications), on 16.02.2017 on website, one more chance was given to the petitioner to submit all the certificates, if she wants to claim benefit of reservation, including Non-creamy Layer for BC candidates. Even after issuance of the above press release, the petitioner did not approach the authorities, where she had attended the PMT/PET i.e., at Kurnool and did not submit the Non-creamy Layer Certificate. She has submitted the community certificate only but not Non-creamy Layer certificate as per proforma. Further, while issuing the Provisional Selection List, it was informed that due to non-submission of Non-Creamy Layer

Certificate, she could not get the post of Police Constable (Communications). Consequently, the post has been filled up by eligible candidate.

8. It is not in dispute that the petitioner is a native of Prakasam District, belongs to BC-B category as per her community certificate and participated in the recruitment process for the post of Police Constable (Communications) and having been qualified the Physical Measurement Test and Physical Efficiency Test. Thereafter, she appeared for final written examination held on 29.01.2017 and secured 103 marks. Though she secured 103 marks, she could not find her name in the provisional list of selected candidates and was shown at serial No.1, among those belonging to Creamy Layer due to non-submission of Non-creamy Layer certificate.

9. During the arguments before the learned Tribunal, learned counsel for the petitioner relied upon a judgment in **Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board**¹. The learned Tribunal has not considered the said citation stated to be helpful for the petitioner in view of the facts and circumstances of the present case.

10. The dispute is not late submission of the certificate. It is non-submission of Non-creamy Layer certificate in the required format given in Annexure III of the Notification dated 27.08.2016. It is not in dispute that the Other Backward Classes (OBC) certificate dated 10.11.2016 certify that the petitioner does not belong to persons/sections (Creamy Layer) mentioned in the column No.3 of the Schedule to the Government of India, Department of Personnel and Training, O.M.No. 36012/22/93-Estt. (SCT), dated 08.09.1993, which is modified vide O.M.No.36033/3/2004, Estt. (Res), dated 09.03.2004 and O.M.No.36033/3/2004 Estt. (Res) dated 14.10.2008.

¹ (2016) SLT 255

11. For the benefit of reservation, time to time, the upper limit of the source of the family income is increased. As on date, as informed by the learned counsel for respondent No.2, the upper limit of the family annual income is Rs.6,00,000/-. Therefore, if respondent No.2 is asking the proforma in Annexure-III of the notification, the purpose of the same is that in the said proforma, which consists of four pages, source of income of each and every family member is mentioned. The said proforma has to be filled up by the candidate and after verification, the Tahasildar concerned has to issue certificate whether the candidate comes under Creamy Layer or does not come under the Creamy Layer. The said proforma is required for the purpose even if the Creamy Layer certificate is issued in the very year and all of a sudden, income of the family is increased, then that has to be mentioned in the proforma, because the income of the family is to be taken into consideration on the date of notification for the particular post. The petitioner not only submitted the Non-creamy Layer certificate as required, despite opportunity is given by respondent No.2-authorities, but also did not respond to their suggestion. Since the petitioner failed to submit Non-creamy Layer certificate, which is necessary as reminded again and again by respondent No.2-authorities, the petitioner's case was not considered in the category of BC-B. The learned Tribunal has considered all the aspects and considering the submissions of both the parties, rejected the O.A. filed by the petitioner.

12. In view of the facts recorded above and after going through the order passed by the learned Tribunal, we find no illegality or perversity in the order dated 24.04.2017 passed by the Tribunal. Finding no merit in this writ petition, the same is accordingly dismissed. There shall be no order as to costs.

13. As a sequel, miscellaneous petitions pending, if any, shall also stand dismissed.

SURESH KUMAR KAIT, J

Dr. SHAMEEM AKTHER, J

Date:08-06-2017

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