

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

WRIT PETITION NO. 3785 OF 2018

Harihar s/o Prabhakarrao Gayake

Age : 50 Yrs., Occ.: Service,

R/o : Shiradhon, Taluka : Kallam,

District.: Osmanabad

Presently residing at 'Rajprabha'

Sant Dnyaneshwar Nagar,

Juna Khopegaon Road, Ring Road,

Latur, District : Latur.

.... PETITIONER

VERSUS

1. The State of Maharashtra
Through Secretary
Department Social Justice
and Special Assistance
Department, Mantralaya,
Mumbai – 32.

2. The Collector
Osmanabad, District :
Osmanabad.

3. The Sub Divisional Officer
Kallam, Tq. Kallam,
District : Osmanabad.

....RESPONDENTS

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Mr. A.A.Khande, Advocate for Petitioner.

Mr. S.K.Tambe, A.G.P. for State.

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CORAM : V.L.ACHLIYA, J.

DATE OF JUDGMENT : 04/05/2018

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent heard finally.

2. By this petition under Article 227 of Constitution of India, the petitioner has challenged the order dated 30/06/2017 passed by respondent No. 3 – Sub Divisional Officer, Kallam, District Osmanabad and confirmed in Appeal by Respondent No. 2 – The Collector, Osmanabad vide order dated 09/10/2017.

3. Heard learned counsel for the petitioner and learned A.G.P. for State. Perused the impugned orders.

4. In view of limited challenge raised in the petition, it is not necessary to discuss the facts in detail. The petitioner claims to be working as a full time teacher in Horticulture Department in late Vyankatrao Deshmukh Junior College, Babhlegaon, Taluka and District Latur. Since he required Non Creamy Layer Certificate for the educational purpose of his son viz. Sharad s/o Harihar Gayake, who is studying in 12th standard, submitted application before respondent No. 3 for issuance of Non Creamy Layer Certificate. Along with the application, he has produced evidence showing his previous three years annual income. In response to query, he has also produced certificate issued by the District Vocational Education and Training Officer at Latur to show that the post held by him falls in Class-III employee. It is the contention of the petitioner that as per the criteria laid down vide Govt. Resolution dated 25/03/2013 the person falling under Class-III category, his income by way of salary and agricultural income is required to be excluded while assessing his income for the purpose of issuance of Non Creamy Layer

Certificate. However, without considering the contention of the petitioner and Govt. Resolution dated 25/03/2013, respondent No. 3 rejected his application vide communication made by petitioner dated 30/06/2017. While communicating the order, the copy of the order has not been provided to the petitioner. Being aggrieved, the petitioner preferred Appeal before respondent No. 2 challenging the order passed by respondent No. 3. In the Appeal preferred, the petitioner has specifically raised the contention that he is working in Jr. College as full time teacher and the post which is held by him falls in Class-III category and his income from salary and the agricultural income to be excluded, while examining his case for issuance of Non Creamy Layer Certificate. By order dated 09/10/2017 passed by respondent No. 2, the Appeal preferred by the petitioner came to be dismissed. Being aggrieved, the petitioner has preferred this petition.

5. In nut-shell, it is the contention of the petitioner that the order passed by both the

authorities below are passed without application of mind and considering the contentions raised by the petitioner. It is contended that in the order passed by respondent No. 3, the contentions of the petitioner are at all not discussed. It is further pointed out that in the order passed by respondent No. 2 though it is observed that the petitioner is holding the post as the Head Master which falls under Class-II category but the petitioner has never claimed that he is holding the post as Head Master. On the contrary, the petitioner has taken a specific stand that he is working as full time teacher which falls in Class-III category which entitle him to take the benefit in terms of Govt. Resolution dated 25/03/2013 to exclude income by way of salary and agricultural income while computing yearly income. It is further contended that the grounds raised in the appeal were not taken into consideration while passing the order by respondent No. 2.

6. Learned A.G.P. has supported the order

passed by both the authorities below and submits that the orders are passed on due scrutiny of claim of petitioner and order calls for no interference in exercise of jurisdiction under Article 227 of Constitution of India.

7. On due consideration of the submissions advanced in the light of orders passed, I am of the view that the orders passed are cryptic and non speaking orders. While passing the order, no reasons have been recorded by respondent No. 3 to reject the contentions of the petitioner that he is entitled to exclude his income by way of salary and agricultural income, while assessing the income for the purpose of issuance of Non Creamy Layer Certificate. The ground raised in that behalf also not considered by the appellate authority/respondent No. 2 while passing the order dated 09/10/2017. It was expected on the part of appellate authority to have looked into the grounds raised by the petitioner in Appeal, while deciding his appeal. The order reflects that none of the ground raised in the Appeal has been taken into

consideration by respondent No. 2, while passing order.

8. It is not clear from the order passed by respondent No. 2 as to on what basis the respondent No.2 has reached to the conclusion that the petitioner is holding the post as the Head Master and same falls in Class-II category. In fact, it is a specific case of the petitioner that he is working as full time teacher in Jr.College at Latur and post held by him falls in Class-III category. The petitioner claims that the certificate to that effect has been issued to him by District Vocational Education and Training Officer, Latur.

9. Thus, on due consideration of submissions advanced in the light of the orders passed by respondent Nos. 2 and 3, I am of the view that the orders impugned are perverse, passed without proper application of mind. The respondent Nos. 2 and 3 have acted in most arbitrary manner in deciding the application as well as the Appeal filed by the petitioner. I am, therefore, inclined to set aside the

orders passed by respondent Nos. 2 and 3 and refer back the matter to respondent No. 3 for fresh decision by giving opportunity of hearing to the petitioner. Accordingly, the impugned orders passed by respondent Nos. 2 and 3 are set aside. The case is remanded back to respondent No. 3 for deciding the application afresh by giving opportunity of hearing to the petitioner. The petitioner is directed to appear before respondent No. 3 on 15/05/2018 at 11.00 a.m. Respondent No. 3 is directed to hear the petitioner and then pass speaking order within two weeks from the date of appearance of the petitioner.

10. It is clarified that this Court has not examined the case of petitioner on merit and entitlement of petitioner to receive Non Creamy Layer certificate. Respondent No. 3 is directed to examine the matter thoroughly and if necessary seek information as to post held by petitioner as well as the claim made that his income by way of salary and agricultural income required to be excluded, while assessing income for the purpose of issuance of Non

Creamy Layer certificate.

11. Rule made absolute in above terms.

[V.L.ACHLIYA, J.]

KNP/W.P. 3785.2018 - [J]