

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

WRIT PETITION NO.6227/2018

Sapna Suryakant Kurude
Age 24 years, Occu-Nil
R/o C/o Surkant Narhari Kalaskar
Shahu Nagar, Waghi, Nanded,
District Nanded. .. PETITIONER

Versus

- 1] The State of Maharashtra,
Through its Secretary,
Transport Development Department,
Mantralaya, Mumbai
- 2] The Maharashtra State Road
Transport Corporation, Mumbai
Through its General Manager
Central Office, Dr. Anandrao Nair
Road Mumbai Central, Mumbai
- 3] The Divisional Controller,
Maharashtra State Road Transport
Corporation, Pune.
- 4] The Divisional Controller,
Maharashtra State Road Transport
Corporation, Ahmednagar
- 5] The Deputy Collector/
Sub-Divisional Officer, Nanded
District Nanded.

6] The Tahsildar,
Nanded, District. Nanded. .. RESPONDENTS

Mr.Patil Indrale Anand V. for petitioner
Mr.S.S.Gangakhedkar h/f B.S.Deshmukh for Respondent no.3
Mr.S.W.Mundhe, AGP for respondents no.1,5 and 6.

**CORAM : R.M.BORDE &
MANGESH S. PATIL,JJ.
DATE : 29/08/2018**

ORAL JUDGMENT [PER R.M.BORDE,J.] :-

Heard. Rule. With the consent of the parties petition is taken up for final disposal at the stage of admission.

2] The petitioner is praying for quashment of the communication dated 31/5/2018 issued by respondent no.3 thereby rejecting the candidature of the petitioner and declaring her as disqualified for competing for the post of Clerk-cum-Typist (Junior) from OBC women category. The respondent no.2 initiated the process for recruitment to various posts including post of Clerk-cum-Typist (Junior). The petitioner tendered an application for appointment from amongst OBC women category. The petitioner appeared for the written test and secured 77.5 out of total 100 marks. The petitioner has been

enlisted in the list of selected candidates in Pune Division from OBC category and is placed at Sr.No.26 in the selection list. During the documents verification the respondent employer objected to the Non-Creamy Layer certificate produced by the petitioner and as such by communication dated 31/5/2018, she has been communicated that since the certificate of Non-Creamy Layer produced by her is valid upto 31/3/2018 and does not refer to the year of recruitment i.e. 2016-17, she cannot be held eligible to compete for the post.

3] Petitioner has produced on record a Non-Creamy Layer certificate issued by the Deputy Collector/Sub Divisional Officer, Nanded. The certificate records that the petitioner does not belong to the persons/sections (Creamy Layer) mentioned in the Government of Maharashtra Gazette, Part IV-B dated 29/1/2004, Maharashtra State Public Service Commission (Reservation for SC/ST/DT(VJ)NT, SBC & OBC) Act, 2001 and instructions and guidelines laid down in the Government Resolution, Social Justice, Cultural Affairs, Sports and Special Assistance Department dated 1/11/2001, the instructions dated 16/6/1994, 5/6/1997, G.R. dated 29/5/2003 and the G.R. dated 31/7/2014. The certificate is stated to be valid upto 31/3/2020. The Sub Divisional Officer has issued certificate relying upon the certificate issued by the Tahsildar dated 31/7/2017. The income of the father of the petitioner from all sources is stated to be Rs.4,72,106/- during the year 2014-15, Rs.5,25,886/- during the year 2015-16 and Rs.5,67,718/- during the year 2016-17. The

Tahsildar has certified that the aforesaid certificate is valid till 31/3/2018. The petitioner has invited our attention to G.R.dated 17/8/2013 whereunder the income limit so far as Non-Creamy Layer is prescribed at Rs.6 lakhs. It is recorded in the G.R. that the Non-Creamy-Layer certificate is required to be issued on consideration of the income of an individual during preceding 3 years.

4] In the instant matter, the income of the father of the petitioner during preceding 3 years including the year of recruitment i.e. 2016-17 is below the prescribed limit of Rs.6 lakhs. The objection that has been raised by respondents is of hyper technical nature. The certificate issued by Deputy Collector/Sub Divisional Officer, Nanded appears to be in the prescribed form B-2 under Rule 5 (5)(4)(IV) of the relevant Rules. The certificate issued by the Tahsildar also clarifies that the income of the father of the petitioner during the year of recruitment i.e. 2016-17 was less than the prescribed limit. There does not appear to be any inconsistency or irregularity in issuance of the certificate and the same appears to have been issued in observance of the procedure laid down by the State Government under various instructions. The respondents have not questioned the factum of income earned by the father of the petitioner during the relevant period, however, has raised technical objection in respect of the proforma of the certificate and the year of issue. The objection raised by the respondents for denying the claim of the petitioner appears to be of hyper

technical nature. The petitioner is found successful during the process of selection and has acquired merit position and as such is entitled to claim employment on the basis of individual merit.

5] In view of the discussion as recorded above, the order impugned in this petition issued by the employer on 31/5/2018 deserves to be quashed and set aside and same is accordingly quashed and set aside. The respondents are directed to consider claim of the petitioner for appointment to the post of Clerk-cum-Typist (Junior) from amongst OBC category in accordance with the individual merit and issue necessary orders as expeditiously as possible preferably within 4 weeks from today. Rule is made absolute to the extent as specified above. No costs.

(MANGESH S. PATIL,J.) (R.M.BORDE,J.)

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