

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 253 OF 2018

Dr. Anjali Prataprao Ghare .. **Petitioner**
Versus
The State of Maharashtra and others.. **Respondents**

Shri V. D. Salunke, Advocate for the Petitioner.
Shri N. T. Bhagat, A.G.P. for Respondent Nos. 1
to 4.
Shri M. R. Kulkarni, Advocate for Respondent
No. 5.

CORAM: S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.

DATE: 7th August, 2018

PER COURT :

1. The petitioner assails the order passed by the Deputy Commissioner, Women and Child Welfare Commissionerate, so also, seeks declaration that the clause nos. 9 and 10 of the Government Resolution dated 25.05.2001 denying 30% reservation for the person belonging to Creamy Layer is unconstitutional and violative of Article 14, 15(3) and 16 of the Constitution of India.

2. Mr. Salunke, learned counsel for the

petitioner submits that the advertisement was issued for filling in the post of 'Assistant Professor' pursuant to the same the petitioner applied from Open - Female category i.e. 30% reservation. The advertisement discloses that the candidate should have experience of four years as a lecturer in pay scale of Rs. 15600-39100 and Grade Pay of Rs. 6600. The petitioner submitted online application along with non Creamy Layer certificate. The petitioner was selected from Open - Female category. The non Creamy Layer certificate of the petitioner was sent to the Deputy Commissioner for verification. The Deputy Commissioner raised the grievance that the Non Creamy Layer certificate must be submitted showing the income statement of the husband of the petitioner. According to the learned counsel, the Government Resolution dated 25.05.2001 provides that Non Creamy Layer certificate is mandatory for claiming reservation under the Open - Female category. Clause no. 10 states that in case of

married woman, husband's income would be calculated instead of parents' income for the purpose of Non Creamy Layer certificate. The said Government Resolution is evidently different than Government Resolution dated 25.03.2013, regarding OBC reservation. In the said Government Resolution it is stated that the parents' income would only be considered for considering the Non Creamy Layer status of the candidate. The learned counsel submits that the salaries of the Assistant Professors in private or Government Medical Colleges is much beyond the income limit of Non Creamy Layer category. In view of that, it would be impossible that any female candidate would take benefit of reservation. The learned counsel submits that the clause in the advertisement, more particularly Clause 4.2, is also erroneous.

3. Mr. Kulkarni, the learned counsel submits that the petitioner participated in the selection process pursuant to the advertisement and now she

cannot turn around and contend otherwise. The learned counsel relies on the judgment of the Apex Court dated 05.03.2008 in a case of **Dhananjay Malik and others Vs. State of Uttaranchal and others** in **Civil Appeal No. 1771 of 2008**.

4. We have also heard the learned Assistant Government Pleader.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. It is not disputed that the petitioner had participated in the selection process pursuant to the advertisement on her own volition without any demur. The petitioner at no point of time till the selection process was concluded ever raised any grievance to the terms and conditions in the advertisement.

7. The petitioner after having participated in the selection process pursuant to the advertisement and on the terms and conditions

enumerated in the advertisement, cannot subsequently make a grievance with regard to the said terms and conditions in the said selection process.

8. We could have considered the challenge raised by the petitioner to the advertisement and the Government Resolution had the petitioner assailed the advertisement before participating in the selection process.

9. Considering the above, as the petitioner had participated in the selection process without any demur, the grievance raised by the petitioner in the present petition cannot be considered.

10. Writ Petition, as such, is disposed of. No costs.

[SUNIL K. KOTWAL, J.] [S. V. GANGAPURWALA, J.]

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