

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6696 OF 2018

Ms. Neelanajali Vijay Rasane
Age 23 Years, Occu-Student
R/o Vijay Bunglow, Plot No.16+17,
Behind R.T.O. Weigh-Scale, Peth Road,
Nashik.

... Petitioner

V E R S U S

1. The State of Maharashtra
 2. The Maharashtra State Electricity Board
through the Chief Executive Officer, Estrela
Batteries, Ground Floor, Labour Camp,
Dharavi Road, Matunga, Mumbai.
- ... Respondents

Mr. Sachin Gite for Petitioner.

Mr. M. M. Pabale, AGP for Respondent No.1 – State.

Mr. Pankaj Sutar a/w Mr. Rajeshwar I/by Jayakar & Partners for
Respondent No.2 – MSEB.

**CORAM : SHANTANU KEMKAR AND
NITIN W. SAMBRE, JJ.**

DATE : JULY 17, 2018

P.C.

. The Petitioner claims to be a female holding Degree in Engineering and further claims to be belonging to Other Backward Class category.

2. According to the Petitioner, she holds a Caste Validity Certificate (Part-A) dated 20th April 2018 issued by the competent authority certifying that she belongs to 'KASAR (87)' which is recognized as Other Backward Class vide Government Resolution No. CBC-1467-M dated 13th October 1967 and also a Non-Creamy Layer Certificate (Part-B) certifying that she does not belong to the person/sections of Creamy-Layer.

3. Based on the above qualification, Petitioner came across an Employment Advertisement No. 02(Feb)/2018 issued by the Respondent No.2 – MSEB. According to the Petitioner she having noticed seven posts of Assistant Engineer (Civil) in open category meant for the woman under 30% reservation, applied for selection and appointment from the said category. According to her, she appeared for examination on 17th March 2018 which she has successfully cleared and was called for interview on

21st April 2018. She submits that she has produced the Caste Certificate and Non-Creamy Layer Certificate along with her Application, however, her claim for consideration for selection and appointment to the post of Assistant Engineer (Civil) vide Roll No. 2110000107 - Registration No. 940009835 was found to be not eligible. According to her, the cause cited for declaring her not eligible was, she has not submitted the Certificate as belonging to Non-Creamy Layer category.

4. In the aforesaid background, the Petitioner has come up with following prayers :

“[a] This Hon'ble Court may be pleased to hold that the action on the part of the Respondent no.2 in holding the Petitioner not eligible for the post of Assistant Engineer (Civil) on the ground of non submitting Open Category Non-Creamy Layer Certificate as bad in law and the same may be set aside.

[b] This Hon'ble Court may be pleased to direct the Respondent No.2 to select the Petitioner for the post of Assistant Engineer (Civil) from the Open Category on the seat reserved for the woman.”

5. This Court having noticed that the Petitioner was possessing a Caste Validity Certificate and Non-Creamy Layer Certificate dated 20th April 2018 on the date of interview, was pleased to order issuance of notice to the Respondents on 5th June 2018 with further direction to the Respondents to keep one post of Assistant Engineer (Civil) reserved for woman from open category vacant.

6. It is in this background, the Petitioner is claiming that the rejection of the candidature of the Petitioner is illegal, as she has already produced Non-Creamy Layer Certificate (Part-B) along with Caste Certificate (Part-A) issued by the Deputy Collector/Sub Divisional Officer, Nashik on 20th April 2018.

7. According to the learned Counsel for Petitioner, the Certificate issued in favour of the Petitioner certifying her to be belonging to Non-Creamy Layer category along with Caste Certificate is not different than the one which is issued to candidates who were contesting their claim for employment in the State under the caption for '30% Woman Reservation'. According to him, by resorting to hyper-technical approach the claim of the Petitioner was illegally rejected, though on merit the

Petitioner was found to be eligible for selection and appointment. According to him, even if the Clause – (1) under the conditions for parallel reservation is read in the backdrop of the aforesaid submission, only inference that can be drawn is the Petitioner has produced the Non-Creamy Layer Certificate.

8. The Petitioner submits that the said certificate was very much produced on the date of interview and the fact remains that subsequent thereto along with the Petition she has also produced Creamy Layer Certificate dated 14th May 2018 issued to the candidate certifying that the income is within the limit prescribed for issuance of Non-Creamy Layer Certificate.

9. Per contra, the learned Counsel for the Respondent No.2 submits that if the advertisement incorporates the condition that Petitioner must produce Creamy Layer Certificate certifying that she belongs to Non-Creamy Layer category, it was incumbent on the part of the Petitioner to produce the same as prescribed in the Advertisement. According to him, though it is an admitted position on record that Petitioner has produced the Non-Creamy Layer Certificate along with

Caste Certificate, however, that cannot be termed as sufficient compliance in terms of Condition No.1 incorporated in the advertisement under the head 'Parallel Reservation'. He submits that when other candidates have already produced the certificate, their claim was evaluated on merits, whereas though the Petitioner was found to be meritorious, her candidature was declared not eligible for want of Non-Creamy Layer Certificate. According to him, the rejection is based on the valid ground i.e. non-compliance of the term of the selection. He submits that the Petition deserves for dismissal.

10. Considered rival submissions.

11. It is not in dispute that the Petitioner on the date of verification of documents has produced the Caste Certificate (Part-A) along with Non-Creamy Layer Certificate (Part-B) dated 20th April 2018. The Non-Creamy Layer Certificate issued by the Deputy Collector/Sub Divisional Officer, Nashik in favour of the Petitioner along with Caste Certificate is valid upto 31st March 2021. So far as the independent Creamy Layer Certificate dated 14th May 2018 produced at Exhibit 'F' speaks of that the claim of the Petitioner as belonging to Non-Creamy

Layer category is accepted and as such she can contest for the post reserved for woman from open category.

12. If both these certificates are verified i.e. one issued with Caste Certificate certifying that the Petitioner belonging to Other Backward Class and the Creamy Layer Certificate certifying that she is belonging to Non-Creamy Layer category and contest for the post reserved for woman from open category, the Respondent No.2 failed to satisfy as to why the first Certificate produced by the Petitioner along with Caste Certificate as belonging to Non-Creamy Layer category does not warrant any consideration and her candidature is justifiably rejected. The only submission of the Respondent No.2 is the Certificates are in two different formats. The later Certificate dated 14th May 2018 is issued only for a specific purpose i.e. the claim for the Petitioner for selection and appointment against the seat reserved for woman from open category.

13. If both the Non-Creamy Layer Certificates produced by the Petitioner are appreciated, the fact remains that both certifies that Petitioner belongs to Non-Creamy Layer category. The Petitioner has admittedly produced the Non-Creamy Layer Certificate along with the

Application Form which the Respondents have rejected for the reason that same was not in appropriate format.

14. Once the Petitioner having demonstrated that on the date of verification of documents she was holding Non-Creamy Layer Certificate and she has also produced another Non-Creamy Layer Certificate of later date, in our opinion, it justifies that the Petitioner is belonging to Non-Creamy Layer category. So far as both the Certificates are concerned, the only justification which the Respondents are coming-forth before this Court is that the first Non-Creamy Layer Certificate is not in appropriate format, but it is nowhere disputed that the first Non-Creamy Layer Certificate was produced for the verification at the time of interview.

15. That being so, this Court hardly notices any justifiable reason to reject the candidature of the Petitioner as not eligible for the post in question for the woman from open category. In fact, it has to be termed as hyper-technical view, i.e. contention of the Respondent No.2 that the Petitioner has failed to produce the Non-Creamy Layer Certificate in a particular format.

16. The reading of the relevant condition for selection and appointment for the post of Assistant Engineer (Civil) provides for production of Non-Creamy Layer Certificate. Whether such certificate is produced by the candidate as a part of caste certificate or an independent certificate will be in our opinion a sufficient compliance, particularly when there is no statutory disqualification or embargo on the right of the candidates. The Respondent No. 2, in our opinion, has failed to demonstrate the difference between two certificates but for the formats and that being so, we are left with no other option but to allow the Petition of the Petitioner in terms of prayer clause – (a).

17. It is disclosed by the Respondents that the Petitioner otherwise meritoriously was found to be eligible for the post and she is not granted appointment letter for the reason of non-production of Creamy Layer Certificate, in the aforesaid background. Once this Court having allowed the Petition in terms of prayer clause – (a), the further directions which in our opinion warrants to be issued in the circumstances are to consider the claim of the Petitioner for issuance of appointment order, if

she is on merit found to be fit as compared to the other candidates, provided she is otherwise not disqualified.

18. Let the Respondent No.2 to take decision in the matter within a period of four weeks from the date of production of the copy of this order.

19. In the above terms, Writ Petition stands allowed.

20. No order as to costs.

(NITIN W. SAMBRE, J.)

(SHANTANU KEMKAR, J.)