

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4384 OF 2019

ANKUSH SAHEBRAO GORE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner :
Mr. V. H. Dighe h/f. Mr. Wagh Shirinivas S.
AGP for Respondent / State : Mr. A. R. Kale
Advocate for Respondent No. 2 : Mr. A. S. Deshmukh

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CORAM: S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.

DATE: 04th APRIL, 2019

PER COURT :

1. The petitioner challenges the order passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad allowing Original Application 789 of 2016 filed by respondent no. 2 herein.

2. The petitioner was appointed as Police Patil for the village Ranjangaon (Shenpunji), Taluka - Gangapur, District - Aurangabad. The appointment of the petitioner was challenged by respondent no. 2 before the Maharashtra

Administrative Tribunal. The ground for challenge is petitioner did not possess the non-creamy layer certificate on the date of scrutiny of documents and / or the oral interviews.

3. Mr. Dighe, learned counsel for the petitioner submits that the oral interviews were conducted on 23.04.2016. The petitioner had applied for issuance of the non-creamy layer certificate on 12.04.2016. The application was misplaced in the office of the authority. The petitioner applied afresh on 22.04.2016 and was issued with the non-creamy layer certificate on 26.04.2016. Immediately non-creamy layer certificate was produced. The learned counsel submits that production of non-creamy layer certificate is not a mandatory condition and the same is directory. As per the terms of the advertisement, the committee has power to relax some of the conditions. According to the learned counsel, the tribunal failed to consider these aspects of the matter. Whenever the non-creamy layer certificate

is issued the income for past three years has to be considered. Upon consideration of the income of the past three years, the non-creamy layer certificate is issued on 26.04.2016.

4. We have considered the submissions canvassed by the learned counsel for respective parties. We have also heard the learned counsel for the respondent and the learned Assistant Government Pleader.

5. The last date for filling the application as per the advertisement for the post of Police Patil it appears is 28.03.2016. It is submitted that the scrutiny of documents was to be conducted on the date of oral interviews. The oral interviews were scheduled on 23.04.2016. Clause no. 7 under the head Minimum Qualification of the advertisement it is clarified that the person applying from Backward Class should possess the non-creamy layer certificate for the year 2015 - 2016. Clause no. 17 of the Terms and Conditions and the selection

process requires that a person appointed from the reserved category such as V.J., N.T., O.B.C. should possess the valid non-creamy layer certificate as on 31.03.2016.

6. Even if the case of the petitioner is accepted that the petitioner had applied on 12.04.2016 and that application was misplaced, the fact remains that the petitioner had applied after the filling in the form. The application dated 12.04.2016 does not find place in the record and according to the petitioner a fresh application was made on 22.04.2016 and the scrutiny of documents is scheduled on 23.04.2016. The petitioner could receive the non-creamy layer certificate only on 26.04.2016 i.e. after the cut of date for production of the non-creamy layer certificate. More over, perusal of the non-creamy layer certificate shows that the same is for the year 2016 - 2017, whereas as per advertisement the non-creamy layer certificate ought to be for the year 2015 - 2016.

7. Considering the case of the petitioner either way, no valid non-creamy layer certificate as required under the terms of the advertisement was produced by the petitioner even on the date of the oral interview and / or the scrutiny of the documents.

8. In the light of above, the Tribunal has not committed any error in allowing the Original Application filed by respondent no. 2.

9. Writ Petition, as such, is dismissed. No costs.

[A. M. DHAVALA, J.] [S. V. GANGAPURWALA, J.]

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