

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

CIVIL WRIT PETITION NO. 11908 OF 2019

Hariba Ramrao Shinde

...Petitioner

Versus

The State of Maharashtra
Through Principal Secretary
Law and Judiciary Department & Anr.

...Respondents

...

Mr. Vinayak R. Kumbhar for Petitioner.

Mr. A.I. Pate, Additional Government Pleader a/w. Mr. K.S. Thorat, AGP for
Respondent No. 1 and 2.

...

**CORAM : S. S. SHINDE &
N. J. JAMADAR, JJ.**

DATE : 20th NOVEMBER 2019

PER COURT :

1. This petition is filed under Article 226 of the Constitution of India. The Petitioner, who aspires to be a Civil Judge Junior Division, seeks direction to the Respondent No. 2-, Maharashtra Public Service Commission, to declare him as qualified in the main examination and call him for interview alongwith other candidates who have been made eligible for interview as per the declaration dated 1.11.2019.

2. The Respondent No. 2 Commission issued an advertisement on

01.02.2019 inviting applications for the post of CJJD and JMFC, under the Maharashtra State Judicial Service. The Petitioner had filled in online application form on 18.02.2019. The Petitioner claimed to be belonging to category of SEBC. The Petitioner, however, did not mention that he does not belong to non-creamy layer. The Petitioner appeared for preliminary examination held on 07.04.2019. He was declared eligible for the main examination. The Petitioner appeared for the main examination. In the main examination the Petitioner secured 101 marks; 48 marks in Paper-I and 53 marks in Paper-II. In accordance with the provisions of Maharashtra Judicial Services Rules, a candidate belonging to the open category is required to secure at least 50% marks in each of the papers to become eligible for viva-voce. For the candidate belonging to the backward category the cut of is 45% in each paper. Thus, though the Petitioner secured aggregate 101 marks, the Petitioner was declared ineligible for the interview.

3. It is the claim of the Petitioner that, the Petitioner being the member of Socially and educationally backward class, was entitled to the benefit of reduced cut off for eligibility for appearing for viva-voce. When the Petitioner had filled in application form, the Petitioner had bonafide mentioned “NO” against the column- ‘Do you belong to Non-creamy layer?’, as at that time, the Petitioner was not in possession of non-creamy layer

certificate. The Petitioner has subsequently obtained the non-creamy layer certificate and, thus, the Petitioner cannot be deprived of the opportunity to appear for the interview on the basis of reduced cut off of 45%.

4. Learned counsel for the Petitioner urged that, the Petitioner had bonafide mentioned “NO” against the column of ‘Non-creamy layer category.’ It was further submitted that, this Court has upheld the constitutional validity of the State (for Socially and Educationally Backward Classes) SEBC Act, 2018 i.e. Maharashtra Act No. LXII of 2018 (for short ‘SEBC Act’) on 27th June 2019. The Petitioner being a member of SEBC Act and also belonging to non creamy layer, is required to be treated alike the other members of the backward category, who have been made eligible for the interview.

5. In opposition to this, learned counsel for Respondent No. 2- Commission submitted that, there are clear instructions in the advertisement as regards making the claim of being a member of the backward class and documents to be submitted in support thereof. Once the application is filled in online and certain information is furnished therein, the Respondent No. 2 has neither the opportunity nor the authority to correct the entries therein. It is further submitted that, the opportunity to correct the entries made in the application was available till the last date of filling in the application form. In

these circumstances, no fault can be found with the actions by Respondent No. 2.

6. We have considered the submissions of the learned counsel for the petitioner. The substance of the petition is that though the petitioner was belonging to 'Non-Creamy Layer' category, yet, when the form was filled in, the petitioner was not in possession of the Non-Creamy Layer certificate. Therefore, the petitioner made a true declaration that he then did not have the Non-Creamy Layer certificate. It is a matter of fact that the petitioner obtained the Non-Creamy Layer Certificate on 2nd July 2019. The eligibility of a candidate, in all its facets, is required to be ascertained, as on the date of the advertisement, and, in any event, the last date of filling in the form. From the own showing of the petitioner, the petitioner did not have Non-Creamy Layer certificate on the date the form was filled. The declaration by the petitioner that he was not having the Non-Creamy Layer certificate, may be bonafide. However, the claim of the petitioner for availing the benefit, which was otherwise available to the members of the backward classes who also belong to non-creamy layer, stood foreclosed on the date the application was filled in. It is trite law that the principle of not being a member of a "Creamy Layer" amongst the backward classes for availing the benefits meant for the backward classes is well recognized. Once the petitioner claimed that he belongs to a

creamy layer, the respondent No.2 could not have processed his application as a member of the backward class who was entitled to the benefit of reduced cut-off. The fact that the petitioner subsequently obtained non-creamy layer certificate is, therefore, of no avail. No arbitrariness, therefore, can be attributed to the respondent No.2.

7. In this view of the matter, in our view, at this juncture, grievance of the Petitioner cannot be entertained. Hence, the petition stands rejected.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)