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

WRIT PETITION NO.1991 OF 2022

Diksha Babanrao Shirsat,
Age : 26 years, Occu. Service,
R/o Majalgaon, Tq. Majalgaon,
District Beed

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
General Administration Department,
Mantralaya, Mumbai – 32
2. The Commissioner & Director Municipal
Administration, 3rd Floor,
Government Transport Services
Building, Sir Pochakhnawala Road,
Near R.T.O., HQ Warali, Mumbai
3. The District Collector &
President of District Selection Committee,
Beed, Collector Office Building,
Beed
4. District Selection Committee, Beed
Through its Secretary,
The Resident Deputy Collector,
Beed, Tq. & Dist. Beed
5. Priyanka Appasaheb Dongre,
Age 29 years, Occu. Education,
R/o Karjat, Post Hastpokhari,
Tq. Ambad, Dist. Jalna

..RESPONDENTS

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Mr. S.S. Thombre, Advocate for petitioner;
Mrs. M.A. Deshpande, A.G.P. for respondent nos.1 to 4;
Mr. S.B. Jadhav, Advocate for respondent no.5

**CORAM : R.D. DHANUKA
AND
S. G. MEHARE, JJ.**

DATE : 10th March, 2022

ORAL JUDGMENT (Per R.D. Dhanuka, J.)

1. Rule.
2. Mrs. Deshpande, learned A.G.P. waives service on behalf of respondent nos.1 to 4 and Mr. Jadhav, learned Counsel on behalf of respondent no.5.
3. Rule is made returnable forthwith.
4. By this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the order dated 19.1.2022 passed by the Maharashtra Administrative Tribunal, Aurangabad in Original Application No.130 of 2017 thereby allowing the O.A. filed by respondent no.5 herein and setting aside the appointment order granted in favour of the petitioner herein.

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5. In response to the advertisement dated 9.9.2016 for filling up six posts, the petitioner and respondent no.5 applied for post at item no.4, i.e. Maharashtra Municipal Council, Water Supply, Drainage and Sanitary Engineering Services (Class-C). The petitioner as well as respondent no.5 applied for the said post under Women (General) category. Respondent no.5 was shown on waiting list at Sr. no.1. The application of the petitioner was found successful.

6. The candidates were directed to produce the documents on 5.1.2017 including non creamy layer certificate.

7. In so far as the petitioner is concerned, it is common ground that on 5.1.2017 the petitioner did not have the said non creamy layer certificate. The candidates were instructed to produce all such documents vide letter dated 2.1.2017.

8. Respondent no.5 filed an Application before the Tribunal contending that there was no power of relaxation granted to the Selection Committee for production of non creamy layer certificate

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after 5.1.2017.

9. The Administrative Tribunal accepted the submissions of respondent no.5 and was pleased to set aside the order of appointment of the petitioner and directed the management to issue appointment letter in favour of respondent no.5. Being aggrieved by the said order, the petitioner has filed this Petition under Article 226 of the Constitution of India.

10. Learned Counsel for the petitioner invited our attention to the terms and conditions of the advertisement and would submit that the Selection Committee had power to relax the condition to submit non creamy layer certificate. It is submitted that the submission of the said document was only a procedural requirement and would not affect the merit of the candidate. The petitioner was otherwise meritorious and was selected on merits.

11. Learned Counsel for the petitioner invited our attention to the document at page 123 of the writ petition, i.e. the income certificate of the father of the petitioner alleged to have been issued on 5.1.2017

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and submits that this certificate was produced with the Selection Committee along with the non creamy layer certificate dated 6.1.2017, on 6.1.2017. There is no proof submitted in support of this submission that both these documents were submitted on 6.1.2017. The fact remains that on 5.1.2017 which was the date for submission of verification of documents, the petitioner did not have non creamy layer certificate.

12. Learned Counsel invited our attention to the non creamy layer certificate produced by his client and would submit that the said certificate was produced on the next day in view of the relaxation granted by the Selection Committee, i.e. after one day of the date prescribed in the advertisement.

13. Learned Counsel placed reliance on the judgment of the Supreme Court in the case of **Dolly Chhanda Vs. Chairman, JEE and Ors., AIR 2004 SC 5043** in support of the submission that depending upon the facts of each case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every

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infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature. It is submitted by the learned Counsel that the petitioner was already issued letter of appointment on 28.2.2017 before the grant of interim relief by the Maharashtra Administrative Tribunal on 1.3.2017. He submits that the petitioner is already in the employment since last more than four years and is already made permanent and is granted promotion.

14. Learned A.G.P. for respondent nos.1 to 4, on the other hand, does not dispute that the documents were required to be produced by the petitioner as well as by respondent no.5 on 5.1.2017. She submits that when on the representation of the petitioner that the application for non creamy layer certificate was already made by the petitioner, the Selection Committee granted relaxation of one day to the petitioner to produce the said certificate.

15. Mr. Jadhav, learned Counsel for the respondent no.5, on the other hand, invited our attention to the terms and conditions of the advertisement and would submit that it was made mandatory in the said terms and conditions that all the documents including a non

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creamy layer certificate was required to be produced on 5.1.2017. He submits that there is no power of relaxation granted to the Selection Committee to permit any candidate to supply documents subsequently, beyond the cut off date.

16. Learned Counsel invited our attention to the averments made by the petitioner before the Tribunal to the effect that prior to 5.1.2017 the petitioner had already made an application for non creamy layer certificate. He invited our attention to the non creamy layer certificate produced by the petitioner, annexed at page 125 of the writ petition and would submit that the said certificate itself would indicate that the application for such certificate was made by the petitioner only on 6.1.2017 and not prior to 5.1.2017 as canvassed before the Tribunal by the petitioner. He submits that it is curious to note that the learned Tahsildar appears to have made all inquiries on the same day and has granted the said certificate.

17. It is submitted by the learned Counsel that the letter of Collector dated 2.1.2017 also makes it clear that all the documents have to be produced by 5.1.2017 and there was no question of any

relaxation.

18. Learned Counsel further submits that the Tribunal has rightly interfered with the letter of appointment issued to the petitioner and thus, no interference is warranted with the said order.

19. A perusal of the record indicates that the petitioner was selected for the said post under Women (General) category. All the successful candidates were required to submit various documents including non creamy layer certificate on 5.1.2017. A perusal of the affidavit-in-reply filed by the petitioner before the Tribunal and more particularly paragraph 5 clearly indicates that it was the case of the petitioner herself that, before the Selection Committee for documents verification on 5.1.2017, the petitioner appeared and made a statement that she had already made an application for getting creamy layer certificate and the same was in process. The Selection Committee purportedly exercised powers allegedly vested in it and granted seven days time to submit the creamy layer certificate. However, on the next day only the creamy layer certificate was submitted before the Selection Committee which was followed by

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issuance of appointment order dated 28.2.2017, followed by appointment order issued by the Municipal Council, Majalgaon in favour of the petitioner on 6.3.2017.

20. A perusal of the advertisement issued by respondent nos.1 to 4 and letter of Collector dated 2.1.2017 makes it clear that all the documents including non creamy layer certificate ought to have been produced by the successful candidates on 5.1.2017. It is an admitted position that on the date of verification of the documents, the petitioner did not possess the said non creamy layer certificate.

21. In our view, there was no condition prescribed in the advertisement or in the letter of the Collector dated 2.1.2017 prescribing the power of relaxation in favour of the Selection Committee to relax any of the conditions prescribed in the advertisement. The relaxation granted by the Selection Committee in favour of the petitioner was on the basis of the representation made by the petitioner that an application for non creamy layer certificate was already filed by her and was being processed. In our view, in absence of any such condition in the advertisement, the Selection Committee did not have any power of such relaxation in favour of the

petitioner.

22. A perusal of the record clearly indicates that the petitioner had applied for the said non creamy layer certificate on 6.1.2017, i.e. after the last date of production of documents. It is surprising that the Tahsildar is alleged to have conducted the inquiry on the same day and has issued non creamy layer certificate on the same day.

23. Respondent no.5 expeditiously filed an application before the Tribunal challenging the said appointment of the petitioner. The Tribunal granted ad interim relief in favour of respondent no.5 on 1.3.2017. However, respondent nos.1 to 4 made a statement that the petitioner was already appointed one day prior to the date of granting interim relief.

24. Insofar as the judgment of the Honourable Supreme Court in the case of Dolly Chhanda (supra) relied upon by the learned Counsel for the petitioner is concerned, in our view the said judgment would not advance the case of the petitioner. It is held that depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid

principle as it pertains in the domain of procedure. In our view, the production of non creamy layer certificate which was a condition for selecting the candidate is not a matter of procedure. Be that as it may, the Selection Committee having no power to grant such relaxation could not have granted extension and then also on an incorrect representation made by the petitioner before the Selection Committee that an application for said certificate was already filed and was in process. The so called relaxation granted by respondent nos.1 to 4 was based on such representation and that too without any authority.

26. We have also perused the reasons recorded by the Tribunal below. We do not find any infirmity in the order passed by the Tribunal. The Writ Petition is devoid of merit and is accordingly dismissed. Rule is discharged. No order as to costs.

27. Respondent nos.1 to 4 are directed to issue letter of appointment in favour of respondent no.5 on 7.4.2022.

(S. G. MEHARE, J.)

(R.D. DHANUKA, J.)

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