

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

WRIT PETITION NO. 11030 OF 2021

Manisha Sanjay Chandre

... Petitioner

VERSUS

The State of Maharashtra and Others

... Respondents

...

Mr. Sujeet D. Joshi, Advocate for petitioner.

Mr. P.K. Lakhotiya, AGP for respondent – State.

Mr. Y.R. Marlapalle, Advocate for respondent No.2.

...

**CORAM : R.D. DHANUKA &
S.G. MEHARE, J.J.**

DATED : 08th MARCH, 2022

PC. :

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks a writ of certiorari for quashing and setting aside the impugned notification/publication dated 05.07.2021 thereby shifting the candidature of the petitioner from EWS to General category for want of EWS certificate in proper format and to set aside the said decision to that extent. The petitioner also prays for a writ of mandamus to consider the candidature of the petitioner from EWS category by treating the EWS certificate dated 16.01.2020 as valid and consider her case for appointment to the post of Junior Clerk from EWS (W) category on the basis of merit (143 marks) possessed by her.

2. The respondent no.2 published an advertisement for filling up 266 posts of Junior Clerk in its 10 different offices throughout the State providing horizontal and vertical reservation in the year 2019. The case of the petitioner is that she belongs to Maratha community falling in SEBC category and as such she has filled in the application under the said quota against the posts earmarked for that category. The petitioner was issued hall ticket for the examination to be held on 05.12.2019 accepting her candidature from SEBC category. The petitioner was thereafter called for document verification on 31.01.2020 with understanding that category wise select list was to be prepared on that basis. The respondent no.2 thereafter published the select list after document verification wherein she was shown at Serial No.418 with merit No.843. She was shown from SEBC female category having secured 143 marks.

3. It is the case of the petitioner that she exercised the option for EWS category. Her name was displayed at Serial No.74 in the list published by respondent no.2. The petitioner submitted the certificate of EWS dated 16.01.2020 and receipt dated 21.06.2021 in respect of the fresh certificate.

4. On 05.07.2021, respondent no.2 published a revised list of candidates applying from all categories. It was stated that the candidature of the petitioner was shifted from EWS to General, since the EWS certificate produced by her was not in proper format. The

respondent no.2 thereafter published merit wise select list of 266 posts wherein the name of the petitioner was shown at Serial No.45 from General (Women) category. In that list, 12 candidates were shown from EWS category. It is the case of the petitioner that name of Pooja Kurhade appeared at Serial No.8 wherein she secured 142 marks i.e. one mark less than the petitioner.

5. On 20.08.2021, the petitioner was informed by respondent no.2 that her name was kept on waiting list. The petitioner thereafter made representation on 01.09.2021 and questioned her consideration from General (W) category instead of EWS (W) category.

6. The learned counsel for the petitioner invited our attention to some of the documents annexed to the petition and would submit that the application filed by the petitioner was rejected merely on the ground that, the EWS certificate produced by the petitioner was not in the requisite format. He submits that the EWS certificate is issued by the authority and thus the petitioner has no say in such certificate being issued by the authority.

7. The next submission of the learned counsel is that application of the petitioner could not have been shifted from EWS to General category for want of production of EWS certificate in proper format. The learned counsel invited our attention to the select list produced on record and would submit that the candidates who have

secured less marks than the petitioner have been selected by the respondent no.2.

8. It is submitted by the learned counsel that even today certain posts are lying vacant. The learned counsel lastly submitted that the respondent no.2 has not produced any document on record to indicate that the candidate whose names were mentioned in the select list annexed to the affidavit in reply were in fact selected or the candidates who had secured less than 143 marks also came to be selected.

9. The learned counsel for respondent no.2 on the other hand invited our attention to the format prescribed in the advertisement and would submit that admittedly the petitioner has not produced EWS certificate in accordance with the format.

10. In so far as the submission of the learned counsel for the petitioner that certain candidates were selected though their marks were less than the marks obtained by the petitioner is concerned, it is submitted that the list relied upon by the petitioner, is not the final select list of the selected candidates. He invited our attention to the final select list and would submit that in the final select list, none of the candidates having secured less than 149 marks are selected.

11. The learned counsel, on instructions, states that all those candidates whose names were found in the final select list have been issued letter of appointment and are already appointed.

12. It is lastly submitted by the learned counsel that there are certain seats lying vacant. Some of the candidates who had applied for the same post have filed writ petitions in this Court. Few of them are granted appointment letter subject to the outcome of those petitions. At present, there are two posts lying vacant according to the learned counsel.

13. A perusal of the record indicates that the petitioner was required to submit application in the format prescribed under the advertisement for seeking appointment under EWS (W) category. It is not even the case of the petitioner that the petitioner has submitted EWS certificate in the format as contemplated in the advertisement issued by the respondent no.2. It is admitted by the petitioner that in respect of one of such format, the petitioner had only applied and had produced the copy of the receipt for consideration of respondent no.2. In these circumstances, in our view, the respondent no.2 was justified in rejecting the application of the petitioner under EWS (W) category and to transfer the said application under General category.

14. A perusal of the final list produced by respondent no.2 indicates that none of the candidates having secured less than 149 marks are selected by respondent no.2. We are inclined to accept the statement made by the learned counsel for respondent no.2 that only those candidates whose names are reflected in the final select list are appointed by respondent no.2. We are thus not inclined to issue any

further directions to respondent no.2 to produce the original record. However, it is made clear that if the petitioner produces any record contrary to the statement made by the learned counsel for respondent no.2, the petitioner would be at liberty to file appropriate proceedings under the provisions of the Contempt of Courts Act, 1971.

15. In so far as the vacant post available with respondent no.2 is concerned, according to the respondent no.2, few of said posts are already filled up in view of the interim orders passed by this Court which are subject to the outcome of those petitions. Those posts thus cannot be considered as vacant posts as on date.

16. In so far as the remaining two posts are concerned, the petitioner would be liberty to apply for any of those two vacant posts after complying with the requisite formalities and mandatory conditions. If such application is made by the petitioner, the same shall be considered by the respondent no.2, on its own merits.

17. Subject to the aforesaid directions, the writ petition is dismissed.

18. There shall be no order as to costs.

[S.G. MEHARE, J.]

[R.D. DHANUKA, J.]