

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

WRIT PETITION NO. 12867 OF 2019

Sunita d/o Jagannath Shirsath,
Age; 30 years, Occ; Service,
R/o; Palaskhede (Mirache),
Tq. Jamner, District; Jalgaon

...PETITIONER

V E R S U S

1. The State of Maharashtra
Through its Secretary,
Revenue Department,
Mantralaya, Mumbai.
2. The District Collector,
Jalgaon District Jalgaon.
3. The Sub Divisional Officer,
Jalgaon Tq. & Dist. Jalgaon.
4. Archana Samadhan Patil
Age; 30 years, Occ; Household,
R/o; Palaskhede (Mirache)
Tq. Jamner District; Jalgaon.

...RESPONDENTS

.....
Advocate for the petitioner : Mr. Amol N. Kakade
AGP for the Respondent Nos.1 to 3-State : Mr. A.S.Shinde
Advocate for Respondent No. 4 (Caveator) : Mr. Vinod P. Patil
.....

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

**RESERVED DATE : 29.08.2022
PRONOUNCEMENT DATE : 07.09.2022**

JUDGMENT : [PER : SANDEEP V. MARNE, J.]

1. Rule.

2. Rule made returnable forthwith. With consent of the learned Advocates for the respective parties, heard finally at the state of admission.

3. The petitioner is challenging the judgment and order dated 16.09.2019 passed by the Maharashtra Administrative Tribunal in Original Application No. 986 of 2018, which was instituted by respondent No. 4, challenging the appointment of the petitioner on the post of 'Kotwal'. The Original Application has been allowed setting aside petitioner's appointment on the post of 'Kotwal' of village Palaskhede (Mirache). The Tribunal has further directed issuance of appointment in favour of respondent No. 4, if she was found eligible otherwise.

4. The controversy before the Tribunal was about non production of 'Non Creamy Layer Certificate' by the petitioner on the date of verification of documents. There is no dispute that Clause -11 of the advertisement made it mandatory to produce the 'Non Creamy Layer Certificate' on the date of document verification. The document

verification was conducted on 31.10.2018 and the petitioner admits that she did not produce the 'Non Creamy Layer Certificate' on that date. She applied for issuance of 'Non Creamy Layer Certificate' on 31.10.2018, which was issued in her favour on 01.11.2018 and she produced the same on 01.11.2018. The Tribunal has allowed the Original Application of respondent No. 4 holding that respondent No. 3 did not have any authority to grant any leeway to the petitioner in accepting the certificate after the prescribed date, when the terms of the advertisement were clear and unambiguous. The Tribunal has also arrived at the conclusion that the petitioner made false submission in her online application about possession of 'Non Creamy Layer Certificate' when she admittedly did not possess the same on the date of submission of the on line application.

5. Appearing for the petitioner Mr. Amol Kakade, the learned Counsel has submitted that the advertisement contained a specific stipulation conferring powers on the Selection Committee to make partial modification in the selection process. He further submitted that in accordance with the powers, the Selection Committee conducted a meeting on 31.10.2018 and permitted submission of 'Non Creamy Layer Certificate' up to the declaration of the final select list. He submits that acceptance of 'Non Creamy Layer Certificate' of the petitioner on 01.11.2018 by the Selection Committee was thus in order. He further submits that once it is proved that the petitioner indeed belongs to the Non Creamy Layer category, mere delay of one day in

submission of 'Non Creamy Layer Certificate' should not otherwise be fatal.

6. The State Government had opposed the Original Application of respondent No. 4 before the Tribunal by relying upon the minutes of the Selection Committee meeting held on 13.10.2018. The learned AGP Mr. Shinde invited our attention to the paragraph No. 5 of the affidavit-in-reply filed before the Tribunal, inter alia, contending that the minutes of the meeting dated 13.10.2018 were orally brought to the notice of the candidates when they appeared for interview. Mr. Shinde, also invited our attention to the chart produced at Exhibit R-2 to the affidavit-in-reply filed in the present petition to contend that total five candidates were permitted to submit 'Non Creamy Layer Certificate' after the cut off date.

7. Per Contra, Mr. Vinod patil, learned Advocate appearing for respondent No. 4 opposed the petition submitting that the petitioner made false statement in her on-line application about possession of 'Non Creamy Layer Certificate'. He further submitted that the minutes of the Selection Committee meeting held on 31.10.2018 were never published. He also submitted that such relaxation was granted only in Jalgaon District and not in other Districts. He would submit that the Selection Committee did not have authority to grant any special concession in favour of the petitioner. In support of his contention, Mr. Patil relied upon the judgment and order dated 02.08.2022 passed by

this Court in **Writ Petition No. 5294 of 2019 Supriya Vinayak Gawande Vs. State of Maharashtra and Others**. He also relied upon few more judgments, which have been taken into consideration while delivering the decision in Supriya (supra). Mr. Patil lastly submitted that the petitioner has been placed under suspension vide order dated 21.09.2021 on account of her continuous absence from duty and that therefore no practical purpose would be served by entertaining the petition. He therefore, prayed for dismissal of the petition.

8. The terms of the advertisement were clear and unambiguous. It was mandatory for the petitioner to possess the 'Non Creamy Layer Certificate' at the time of filling of the online application form. It was further mandatory for her to produce the certificate at the time of documents verification conducted on 31.10.2018. Admittedly she neither possessed the 'Non Creamy Layer Certificate' when she submitted on line application form nor did she produce anything during the documents verification conducted on 31.10.2018. She could not have foreseen a situation that the Selection Committee would extend the time for submission of the certificate. Non-creamy Layer certificate being an essential eligibility condition, the candidates were expected to possess the certificate while applying for the post. Because the process of submission of applications was online, a concession was given to produce the eligibility documents during verification process. This did not mean that the candidates who did not strictly fulfil the

eligibility criteria on the date of submission of applications, could subsequently acquire the same during the course of the selection process.

9. Apart from non-possession and non submission of the Certificate on cut off date, Petitioner had another hurdle to cross. She wrote "Yes" against the column of possession of 'Non Creamy Layer Certificate', thereby indicating that she actually possessed the certificate at the time of submission of application. This statement was admittedly false as the petitioner did not possess such certificate which was subsequently procured on 01.11.2018. The Tribunal has considered this declaration made by the petitioner. The Tribunal has held this conduct of the petitioner against her, while dismissing the Original Application. We do not find any error being committed by the Tribunal in doing so.

10. The petitioner has undoubtedly made a false declaration while submitting the online application form. In our judgment in **Supriya Vinayak Gawande** (supra), similar issue of making false statement in online application form and production of different 'Non Creamy Layer Certificate' than the one mentioned in the online application form was involved. In paragraph Nos. 17, 18 and 19 of the judgment, it is held as under:

"17. The advertisement thus required the candidates to fill up correct information in the online application form and not to annex or upload

any documents or certificates. The advertisement also required the candidates to possess Non Creamy Layer Certificate in respect of the year 2015-16 issued after 01.04.2015. The advertisement contained specific prohibition on consideration of any document, details of which were not to be found in the online application form. It is on account of these stipulations that the learned Tribunal arrived at a conclusion that the Non Creamy Layer Certificate relied upon / furnished by the petitioner violated three mandatory conditions.

18. After perusal of specific condition in the advertisement for possession of Non Creamy Layer Certificate of the year 2015-16 issued after 01.04.2015, the petitioner ought to have procured such certificate before filling up the online application form and details of such certificate ought to have been stated in the form. Admittedly, the petitioner did not possess Non Creamy Layer Certificate issued after 01.04.2015 as on the date of filling up and uploading the online application form i.e. on 13.07.2015. Such certificate was issued to the petitioner only on 17.07.2015 i.e. after filling up of the online application form. Since the petitioner was not in possession of Non Creamy Layer Certificate issued after 01.04.2015, perhaps, she chose to mention the number of Non Creamy Layer Certificate being "7586" which was in her possession at the time of filling up of online application form. However, the certificate was valid only upto 31.03.2015. Thus, as on the date of filling up of the form on 13.07.2015 there was no valid Non Creamy Layer Certificate in her possession. To overcome this defect, the petitioner appears to have stated that the validity of the Non Creamy Layer Certificate no.7586 was upto 31.03.2016. This statement was false to her knowledge. Thus, the statement in the online application form that the certificate no.7586 was valid upto 31.03.2016 appears to have been consciously made by her with a view to circumvent the reality that as on the date of filling up of the online application form i.e. 13.07.2015 she was not in possession of any valid Non Creamy Layer Certificate. The validity of certificate no.7586 had already expired on 31.03.2015. The petitioner thus knowingly gave false information in her online

application form. This conduct of the petitioner does not commend us.

19. Apart from deplorable conduct of the petitioner in knowingly making false statement in her online application form, there was specific prohibition in the advertisement for considering any document or certificate, details of which were not mentioned in the online application form. Since Certificate No.7586 was mentioned by her in online application form, the authorities could not have taken into consideration an altogether different certificate, being certificate dated 17.07.2015 for considering her eligibility. The certificate dated 17.07.2015 was issued well after the petitioner submitted her application on 13.07.2015. Therefore, the subsequent certificate dated 17.07.2015 ought to have been ignored by the concerned authorities. On the basis of Certificate No.7586, which was valid only till 31.03.2015, the petitioner was not eligible to apply for the post of Talathi in pursuance to the advertisement.”

11. Following the judgment in **Supriya Vinayak Gawande** (supra), we have no hesitation in holding that the petitioner cannot be granted any relief in exercise of our jurisdiction under Articles 226 or 227 of the Constitution of India.

12. Now we come to the issue of relaxation granted by the Selection Committee by way of Minutes of Meeting held on 31.10.2018. Without going into the issue whether the relevant clause of the advertisement empowered the Committee to extend the date for submission of Non-Creamy Layer Certificate, we find that the manner in which such relaxation was granted was faulty. Here we reproduce the relevant portion of the affidavit-in-reply filed by the State Government

before the Tribunal at page No. 54 which reads thus :

“That this change of fact and rules has also been **orally** brought to the notice of such candidates at the time of their interviews. Therefore, as per the authority available to the chairperson of selection committee, the policy decision taken by the Chairperson was in the interest of all candidates and by such police decision maximum number of candidates were accommodated for the interview and selection process.”

(emphasis and underlining supplied)

13. We do not appreciate the method of oral communication of the decision taken by the Selection Committee altering the terms and conditions of the advertisement. We feel that if at all the Selection Committee was to exercise powers of making alteration in the terms and conditions of the advertisement, the same ought to have been done by way of proper corrigendum with its due publication. The Respondent No. 4 has denied knowledge of any such oral communication. It is precisely to avoid such situations that the modification of terms and conditions of the advertisement ought to have been given proper publication. We therefore find that grant of such relaxation and acceptance of certificate of the Petitioner beyond the cut off date has vitiated the Petitioner's selection. Grant of similar concession to few candidates to submit the 'Non Creamy Layer Certificate' after 31.10.2018, would not legalise action of the Selection Committee, which is otherwise illegal.

14. Mr. Patil has produced a copy of suspension order of the petitioner, which shows that the petitioner has been under suspension

from 21.09.2021 on account of continuous absence from duties. Though this aspect may not be completely germane to the issue involved in the present case, it is to be noted that she continued in service after order of the Tribunal on account of interim order passed by this Court. Therefore her conduct of continuous absence from duties after securing interim order in her favour can be a factor to decline exercise of powers under writ jurisdiction by this Court. Nonetheless, we have considered the merits of the contentions raised before us and have arrived at a conclusion that the Petition lacks merits.

15. We, therefore, are of the considered view that the impugned judgment and order passed by the Tribunal cannot be faulted with. The petition, being devoid of any merit, deserves to be dismissed. It is dismissed without any orders as to costs.

16. Rule is discharged.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE