

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 614/2022

Hrushikesh S/o Anant Buradkar,
Aged about 31 years, Occupation-Nil,
R/o 83, Kalyaneshwar Nagar, Manewada-Besa
Road, Nagpur-440027.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra, through its Secretary,
General Administration Department, Hutatma
Rajguru Square, Madam Cama Road, Mantralaya,
Mumbai-32.
2. The State of Maharashtra, through its Secretary,
Social Justice & Special Assistance Department,
Hutatma Rajguru Square, Madam Cama Road,
Mantralaya, Mumbai-32.
3. Divisional Non-Creamy Layer Certificate
Scrutiny Committee, Nagpur through its
President/Chairman, Divisional Commissioner
Office, Civil Lines, Nagpur.

RESPONDENTS

Shri Sunil V. Manohar, Senior Advocate with Shri N.A. Jachak, counsel for the
petitioner.

Shri N.S. Rao, Assistant Government Pleader for the respondents.

CORAM : A. S. CHANDURKAR AND ANIL L. PANSARE, JJ.

DATE : DECEMBER 14, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard finally
considering the short issue involved.

2. The challenge raised in this writ petition is to the notice dated
01.02.2022 issued by the Additional Secretary, General Administration
Department, State of Maharashtra by which the petitioner has been called upon
to show cause as to why the recommendation as made for appointment of the

petitioner on a Group-B post with the State Government should not be cancelled on the ground that the petitioner does not possess a non-creamy layer certificate.

3. It is the case of the petitioner that he belongs to the Other Backward Classes category and possesses a validity certificate in that regard. The petitioner was also issued a non-creamy layer certificate initially on 28.08.2018 which has been subsequently renewed from time to time till 31.03.2024. Pursuant to an advertisement issued by the Maharashtra Public Service Commission, the petitioner participated in the selection process and his name was recommended for appointment on the post of Deputy Education Officer, Maharashtra Education Service Group-B. The documents furnished by the petitioner were thereafter subjected to verification. The petitioner's father is serving on the post of Principal of a non-Government Senior College affiliated to the Rashtra Sant Tukdoji Maharaj Nagpur University, Nagpur. A meeting of the respondent no.3-Divisional Non-Creamy Layer Certificate Scrutiny Committee was held on 30.11.2021 of which the petitioner had no notice. The petitioner later on learnt that his request for grant of such certificate had been rejected. The petitioner sought relevant documents under the Right to Information Act, 2005 and was supplied with the minutes of the meeting held on 30.11.2021. It was then that he learnt that he was found to be not eligible to receive the non-creamy layer certificate on the ground that the income of his father was more

than Rupees Eight Lakhs per annum. It is thereafter that on 01.02.2022 a show cause notice was issued by the respondent no.1 seeking explanation of the petitioner as to why the recommendation for his appointment should not be cancelled since he was not entitled to a non-creamy layer certificate. Being aggrieved, the show cause notice has been subjected to challenge in this writ petition.

4. We have heard the learned Senior Advocate for the petitioner and the learned Assistant Government Pleader for the respondents. It is the specific case of the petitioner that the Divisional Non-Creamy Layer Certificate Scrutiny Committee before rejecting the claim of the petitioner of belonging to non-creamy layer category had failed to grant an opportunity of hearing to the petitioner or his father and hence on that count its order on the basis of which the show cause notice has now been issued is liable to be set aside. A specific ground in this regard has been raised by the petitioner *vide* paragraph 12(vi) in the writ petition. In the reply filed on behalf of the respondent no.3 it has been stated in paragraph 11 that on 25.11.2021 the Office of the Tahsildar, Nagpur called for documents from the Joint Director of Higher Education, Nagpur for verifying the non-creamy layer certificate issued to the petitioner. Thereafter the Tahsildar forwarded the said documents to the Office of the Collector. It is stated that as the Tahsildar had granted an opportunity of hearing to the petitioner the stand taken by him that the said order was passed without such opportunity was misconceived.

It is necessary to note that the respondent no.3-Committee in its meeting held on 18.11.2021 examined the case of four claimants and thereafter resolved to reject the claim of the petitioner of belonging to the non-creamy layer category. This was by referring to the Government Circular dated 25.03.2013. In effect this decision has been arrived at by the said Committee without hearing the petitioner.

5. By relying upon the decision in **Writ Petition No. 6238 of 2020** [*Mrugakshi Prakashrao Kanthale Versus The State of Maharashtra & Others*] decided on 28.10.2020 this Court after considering the Circulars dated 22.01.2013 and 25.03.2013 has held that while considering grant of non-creamy layer certificate the salary income of the petitioner's father and mother is to be excluded. The Court has also referred to its earlier decision in **Writ Petition No. 513 of 2013** [*Aishwarya d/o Prakash Banmeru Versus State of Maharashtra & Others*] decided on 18.07.2013 in that regard. We further find that in **Writ Petition No. 595 of 2020** [*Ganesh Kanhaiyalal Dhandu Through father Kanhaiyalal Ramlal Dhandu Versus The State of Maharashtra & Others*] and other connected writ petition decided on 24.02.2020 this Court has considered the service rendered in an aided school and has then observed that such salary income is to be excluded while considering the grant of non-creamy layer certificate. It is thus seen that after considering the Circulars dated 22.01.2013 and 25.03.2013 the salary income of the parents is liable to be

excluded when such service is rendered in any aided institution. It is the specific case of the petitioner that his father is working on the post of Principal of a non-Government Senior College affiliated to Rashtra Sant Tukdoji Maharaj Nagpur University, Nagpur. In the counter affidavit filed by the petitioner dated 26.04.2022 it has been stated in paragraph 4 that the said College is an aided college. We therefore find that a similar order as passed in Writ Petition No.6238 of 2020 ought to be passed in the facts of the present case. Though the learned Assistant Government Pleader sought to urge that the Circulars dated 22.01.2013 and 25.03.2013 ought not to be considered in the manner as indicated in the judgments referred to hereinabove, we find that such contention cannot be permitted to be raised here since the respondents have accepted the orders passed in the aforesaid writ petitions and have not challenged the same.

6. Hence for aforesaid reasons, the notice dated 01.02.2022 issued by the respondent no.1 is set aside. The respondent nos.2 and 3 shall reconsider the petitioner's application for grant of non-creamy layer certificate within a period of two months of receipt of copy of this judgment. For said purpose, the decision of the respondent no.3-Committee as per the minutes dated 18.11.2021 pertaining to the petitioner shall not operate. It is clarified that the said application of the petitioner should not be rejected only on the ground that salary of the petitioner's father is more than Rupees Eight Lakhs.

7. With aforesaid directions, the writ petition is allowed and disposed of leaving the parties to bear their own costs. Rule accordingly.

(ANIL L. PANSARE, J.)

(A.S. CHANDURKAR, J.)

APTE