

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION
WRIT PETITION NO.3001 OF 2023**

Smita Pandurang Sable,	)
(since after marriage	)
Smita Sachin Gaikwad)	)
Age : 40 years, Occu. : Government Service	)
R/o. Flat No.204,	)
Lela Madhav Housing Society,	)
Near Orion Mall,	)
Taluka : Panvel, District : Raigad.	)... Petitioner

VERSUS

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|----|---|---|
| 1. | The State of Maharashtra, |) |
| | Through Principal Secretary |) |
| | Industries, Energy and Labour |) |
| | Department, |) |
| | Mantralaya, Mumbai-400 032. |) |
| 2. | The State of Maharashtra, |) |
| | Through Principal Secretary |) |
| | Women and Child Development |) |
| | Department, |) |
| | New Administrative Building |) |
| | 3 rd floor, Mantralaya, Mumbai-400 032 |) |
| 3. | The Commissioner, |) |
| | Women and Child Development |) |
| | Department, |) |
| | Council Hall, Pune-411 001 |) |
| 4. | The District Collector, |) |
| | Ahmednagar. |) |
| 5. | The Tahasildar, |) |
| | Ahmednagar. |) |

6. The Secretary,)
 Maharashtra Public Service Commission)
 (M.S.) Mumbai,)
 Cooperage Telephone Nigam Building)
 Maharshi Karve Road,)
 Cooperage Mumbai – 400 021.)
7. The State of Maharashtra)
 Through Principal Secretary,)
 Social Justice & Special Assistance)
 Department, Mantralaya, Mumbai-400 032.)
8. Smt. Ashvini Tushar Sakore,)
 R/o. Flat No.201, Durvankur Building,)
 Guruvihar Colony, Near Panjarpol,)
 Bhosari, Pune-411 039.)... Respondents

**WITH
 WRIT PETITION NO.3000 OF 2023**

Smita Pandurang Sable,)
 (since after marriage)
 Smita Sachin Gaikwad))
 Age : 40 years, Occu. : Government Service)
 R/o. Flat No.204,)
 Lela Madhav Housing Society,)
 Near Orion Mall,)
 Taluka : Panvel, District : Raigad.)... Petitioner

VERSUS

1. The State of Maharashtra,)
 Through Principal Secretary)
 Industries, Energy and Labour)
 Department,)
 Mantralaya, Mumbai-400 032.)
2. The State of Maharashtra,)
 Through Principal Secretary)
 Women and Child Development)

- Department,)
 New Administrative Building)
 3rd floor, Mantralaya, Mumbai-400 032)
3. Maharashtra Public Service Commission)
 Through its Secretary,)
 5th, 6th and 8th floor,)
 Cooperage Telephone Nigam Building)
 Maharshi Karve Road,)
 Cooperage Mumbai – 400 021.)
4. Smt. Ashvini Tushar Sakore,)
 R/o. Flat No.201, Durvankur Building,)
 Guruvihar Colony, Near Panjarpol,)
 Bhosari, Pune-411 039.)... Respondents

**WITH
 WRIT PETITION NO.2999 OF 2023**

Smita Pandurang Sable,)
 (since after marriage)
 Smita Sachin Gaikwad))
 Age : 40 years, Occu. : Government Service)
 R/o. Flat No.204,)
 Lela Madhav Housing Society,)
 Near Orion Mall,)
 Taluka : Panvel, District : Raigad.)... Petitioner

VERSUS

1. The State of Maharashtra,)
 Through Principal Secretary)
 Industries, Energy and Labour)
 Department,)
 Mantralaya, Mumbai-400 032.)
2. The State of Maharashtra,)
 Through Principal Secretary)
 Women and Child Development Department,))
 New Administrative Building)
 3rd floor, Mantralaya, Mumbai-400 032)

3. Maharashtra Public Service Commission)
Through its Secretary,)
5th, 6th and 8th floor,)
Cooperage Telephone Nigam Building)
Maharshi Karve Road,)
Cooperage Mumbai – 400 021.)
4. Woman and Child Department Department)
through it's Assistant Commissioner,)
Woman and Child Development)
Commissionerate, Near Old Circuit House)
Pune-411 001.)
5. Smt. Ashvini Tushar Sakore,)
R/o. Flat No.201, Durvankur Building,)
Guruvihar Colony, Near Panjarpol,)
Bhosari, Pune-411 039.)... Respondents

Appearances

Ms. Sairuchita R. Chowdhary, for Petitioner.

Mr. B. V. Samant, AGP for State – Respondent No. 1 to 7.

Mr. Balasaheb Deshmukh, for Respondent No. 8.

**CORAM : S. V. Gangapurwala, ACJ &
Sandeep V. Marne, J.**

Date : 28th April 2023.

JUDGMENT : (Per - Sandeep V. Marne, J.)

1. **Rule.** Rule made returnable forthwith. With the consent of the parties, petitions are taken up for final hearing.

2. By these petitions, petitioner challenges the common judgment and order dated 7th April 2022 passed by the Maharashtra Administrative Tribunal (**Tribunal**) thereby dismissing her Original Application Nos. 576 of 2020 and allowing Original Application Nos. 705 of 2020 and 119 of 2019 filed by Respondent No. 8. Petitioner had instituted Original Application No.576 of 2020 challenging the order dated 15th September 2020 by which her appointment to the post of Assistant Commissioner of Labour came to cancelled. The Respondent No. 8 (Ashvini Tushar Sakore) had filed Original Application No.119 of 2019 challenging the appointment order dated 17th December 2018 issued in favour of petitioner. Ashvini Tushar Sakore also filed Original Application No.405 of 2020 challenging decision of Maharashtra Public Service Commission (**MPSC**) treating the wait list as lapsed and seeking appointment on the post of Assistant Commissioner of Labour against post vacated by Petitioner. The Tribunal has dismissed Petitioner's Original Application while allowing the Original Applications filed by Respondent No. 8.

3. Petitioner-Smita came to be directly recruited to the post of Labour Officer (Class II) on 19th September 2011. An advertisement was published on 18th May 2017 by MPSC for filling up 11 posts of Assistant Commissioner of Labour. 30% of the advertised posts were reserved for open category female candidates. Petitioner-Smita and Respondent No.8-Ashiwini applied in pursuance of said advertisement. Petitioner was issued with Non Creamy Layer Certificate on 9th May 2018. After undergoing the process of selection, petitioner was declared successful in the selection process and her name was included in wait list. Appointment order dated 9th May 2018 was issued in her favour in respect of vacancy earmarked for open female category. Petitioner accordingly joined the post of Assistant Commissioner of Labour.

4. On 7th June 2018, Respondent No.8-Ashvini submitted complaint alleging suppression of factum of marriage as well as service on the post of Labour Officer by petitioner while obtaining Non Creamy Layer Certificate by showing income of her parents. Respondent No.8-Ashvini filed Original Application No.119 of 2019 challenging petitioner's appointment. The Non Creamy Layer Certificate of petitioner was forwarded for verification. Petitioner was issued a show cause notice on 23rd January 2020, which was replied by her. In the meantime a report was submitted by the office of Tehsildar, Ahmednagar about the Non Creamy Layer Certificate of petitioner stating that she disclosed income of her father while procuring Non Creamy Layer Certificate, by suppressing her own income on Group-B post. Petitioner thereafter addressed representation dated 12th March 2020 by inviting attention to the Government Resolutions dated 15th December 2017 and 11th January 2019. Thereafter order dated 15th September 2020 was passed cancelling the petitioner's appointment on the post of Assistant Commissioner of Labour.

5. Petitioner filed Original Application No.576 of 2020 challenging the order dated 15th September 2020. Respondent No.8-Ashvini stake claim for appointment on the post vacated by petitioner. It appears that MPSC denied appointment Respondent No. 8-Ashvini on the ground of lapsing of life of select/wait list. She therefore filed Original Application No.705 of 2020 challenging MPSC's decision and seeking appointment on the post vacated by petitioner.

6. The Tribunal, by common judgment and order dated 7th April 2022, has dismissed Petitioner's Original Application No.576 of 2020. The Original

Application No.119 of 2020 was already worked out on account cancellation of petitioner's appointment and the same was accordingly partly allowed. The Tribunal pleased to allow Original Application No.705 of 2020 filed by Respondent No. 8-Ashvini directing her appointment in place of Petitioner. Petitioner is aggrieved by the common judgment and order dated 7th April 2022 passed by the Tribunal and has accordingly filed the present petitions.

7. It must be observed here that MPSC also challenged the common judgment and order dated 7th April 2022 by filing Writ Petition Nos. 775 of 2023 and 776 of 2023. MPSC however was not aggrieved by dismissal of petitioner's Original Application No.576 of 2020. MPSC's challenge was restricted to the direction issued for appointment of Respondent No.8-Ashvini. This Court dismissed Writ Petitions filed by MPSC by judgment and order dated 19th January 2023. However, while dismissing MPSC's petitions, this court observed in paragraph 17 of the order as under:

"Resultantly, we do not find any error in the impugned common judgment and order. However, it is clarified that we have examined merits of the impugned judgment and order only to the extent of Original Applications No. 119 of 2019 and 705 of 2020. We are informed that Ms. Smita has instituted a separate Writ Petition challenging the very same judgment delivered in Original Application No. 576 of 2020. It is clarified that this order will not come in the way of decision of that petition filed by Ms. Smita on its own merits. With the above observations, Writ Petitions are dismissed without any order as to costs."

8. Appearing for petitioner, Ms. Chowdhari the learned counsel would submit that the Tribunal has not considered the provisions of the Government

Resolution dated 11th January 2019 in correct perspective. She would submit that petitioner's services have erroneously been terminated on the ground of her marriage when in fact condition of consideration of marital status of a woman has been deleted by Government Resolution dated 11th January 2019. She would therefore submit that marriage of a woman applying for horizontal reservation in open female category is an irrelevant factor.

9. Ms. Chowdhary would further submit that petitioner was already appointed on the post of Assistant Commissioner of Labour and was functioning on that post since 17th December 2018. That services of petitioner could not be terminated without holding inquiry. She would submit that no opportunity of hearing was granted to petitioner before cancellation of her appointment. She would submit that the Respondent Authority erroneously acted on baseless complaints made by Respondent No.8 for cancelling petitioner's appointment. That cancellation of her appointment has caused serious prejudice to petitioner. She would therefore pray for setting aside the common judgment and order passed by the Tribunal.

10. Mr. Samant, the learned AGP appearing for the Respondent State would oppose the petition. He would invite our attention to the order passed by this court on 19th January 2023 in petitions filed by MPSC and would submit that all the points raised by petitioner are squarely covered by the said judgment. He would pray for dismissal of the petition.

11. Mr. Deshmukh would appear on behalf of Respondent No.8-Ashvini and would support the common order passed by the Tribunal. He would submit that petitioner obtained Non Creamy Layer Certificate by suppressing of her

marital status. He would submit that the instructions which was prescribed at the time of advertisement were relevant. At the time of issuance of the advertisement in the year 2017, the marital status of the women candidates was a relevant factor. The provisions of Government Resolution subsequently issued in the year 2019 would not validate the illegal act of petitioner in obtaining Non Creamy Layer Certificate by indulging in willful act of suppression. He would pray for dismissal of petitions.

12. Rival contentions of parties now fall for our consideration.

13. Petitioner has already been in Government service and functioning on the post of Labour Officer, which is a Group B post. She desired to accelerate her progress in service career and applied for direct recruitment on the post of Assistant Commission of Labour in pursuance of the advertisement dated 18th May 2017. 11 posts were advertised out of which 02 posts were reserved for open female candidates. Petitioner applied in open female category. She was required to submit Non-Creamy Layer Certificate for taking benefit of reservation of open female category. She submitted Non-Creamy Layer Certificate dated 9th May 2018 issued by Tehsildar Ahmednagar. For the purpose of issuance of the Non-Creamy Layer Certificate, the income proof of previous three years submitted by petitioner was taken into consideration. Petitioner supplied income details of her father Shri. Pandurang Shankarrao Sabale, on the strength of which, the Non Creamy Layer Certificate was issued to her. Petitioner secured appointment on the post of Assistant Commissioner of Labour against post reserved for open female category on the strength of Non-Creamy Layer Certificate issued to her.

14. On account of complaints made by Respondent No.8, an inquiry was initiated into correctness of Non-Creamy Layer Certificate issued in favour of petitioner. Respondent No.8 alleged in her complaint that petitioner was already functioning on Group-B post and therefore her income was bound to be above the limit set for issuance of Non-Creamy Layer Certificate. Petitioner was issued a show cause notice on 23rd January 2020 alleging that she suppressed information about her marriage in the application form by declaring that she was unmarried. It was alleged that petitioner relied upon her father's income for obtaining Non Creamy Layer Certificate.

15. The Tehsildar, Ahmednagar submitted a report dated 25th February 2020 regarding correctness of Non-Creamy Layer Certificate issued to petitioner. While confirming that Certificate issued by office of Tehsildar, Ahmednagar, it was stated that petitioner did not submit any document of her marriage while procuring Non-Creamy Layer Certificate. It was further stated that she relied upon income of her father by submitting all documents of her father. It was further stated that petitioner did not show her own income while procuring the certificate.

16. After considering the entire, matter order dated 15th September 2020 was issued cancelling petitioner's appointment on the post of Assistant Commissioner of Labour.

17. The act of petitioner in suppressing information about her marriage as well as not declaring her own income drawn on Group-B post of Labour Officer while procuring Non-Creamy Layer Certificate amounts to misrepresentation and suppression. Despite she occupying a Group-B post in the services of State

Government since 2011, she relied upon income of her father for procuring Non Creamy Layer Certificate. With a view to suppress income of her husband, she did not declare information about her marriage in the application form as well as before Tehsildar. Such conduct on the part of petitioner is clearly deplorable.

18. The learned counsel for petitioner has strenuously relied upon the Government Resolution dated 11th January 2019 in support of her contention that marital status of petitioner was irrelevant for procuring Non-Creamy Layer Certificate. Firstly, the Government Resolution issued on 11th January 2019 would be irrelevant to the recruitment process initiated in the year 2017. Petitioner procured Non-Creamy Layer Certificate on 9th May 2018 when the Government Resolution dated 11th January 2019 was yet to issued. Therefore, petitioner cannot seek to rely upon Government Resolution issued subsequently in order to justify issuance of Non-Creamy Layer Certificate, which was procured by suppressing her marital status. Even if petitioner's marital status is momentarily ignored, no explanation is forthcoming about her conduct in not declaring her own income drawn on Group-B post of Labour Officer while procuring Non Creamy Layer Certificate. Therefore, petitioner's reliance on Government Resolution dated 11th January 2019 is completely misplaced.

19. The learned advocate for the petitioner has pointed out that no opportunity of hearing was given to petitioner while canceling her appointment. We find that this contention is raised only to be rejected. Apart from calling information about her Non-Creamy Layer Certificate from time to time, petitioner was issued specific show cause notice dated 23rd January 2020.

Another communication dated 13th February 2020 was issued to her. Petitioner has submitted her responses to various communications. Petitioner has been duly heard before issuing order dated 15th September 2020. The contention of denial of opportunity of hearing is thus misplaced and therefore rejected.

20. We find that petitioner, who is holding Group-B post of Labour Officer in the State Government has indulged in deplorable act of suppression of facts. Despite being married, she declared in her online application form that she is unmarried. The learned counsel for petitioner has strenuously tried to canvass before us that it was an unintentional mistake on the part of petitioner. We are unable to agree. The act of suppression of marital status in the online application form appears to be deliberate with a view to secure benefit of reservation by obtaining Non Creamy Layer Certificate based on father's income. In addition to suppression of marital status, petitioner suppressed the factum of drawl of salary and allowances by her as Labour Officer while procuring Non-Creamy Layer Certificate in the year 2018. Despite such serious misconduct being indulged in by petitioner, the Respondent State has taken a lenient view and has merely cancelled her appointment on the post of Assistant Commissioner of Labour, without affecting her service as Labour Officer.

21. So far as correctness of common judgment in Original Application No.705 of 2020 and 119 of 2020 filed by Respondent No.8-Ashvini are concerned, the issue is already decided by us in order dated 19th January 2023 passed in Writ Petition Nos. 475 of 2023 and 476 of 2023. We do not find any reason to take a different view in the petitions filed by the petitioner. Also, since cancellation of Petitioner's appointment is upheld, she has no cause left against Respondent No. 8-Ashvini to be appointed against post vacated by her.

20. Resultantly we find common judgment and order dated 7th April 2022 passed by the Tribunal to be unexceptionable. Writ Petitions filed by petitioner are devoid of merits and are dismissed with no orders as to costs.

SANDEEP V. MARNE, J.

S. V. GANGAPURWALA, ACJ