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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2964 OF 2022

Suman Mondal

..... Petitioner

Vs.

The State of Maharashtra and Ors.

..... Respondents

Ms.Kavisha Shah a/w Mr.Hamza Lakhani and Ms.Mehali Mehta for the Petitioner

Mr.Abhijeet A. Joshi a/w Ms.Varsha Sawant for the Respondents

**CORAM: S.V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE,J.**

DATED : APRIL 19, 2023

P.C.

1 The Petitioner was selected for the post of Probationary Officer from OBC category. The Petitioner was supposed to pass the confirmation test. The Petitioner failed once. The Petitioner was given another opportunity to pass the confirmation test. The Petitioner could not secure minimum 50% marks in the second confirmation test. The Petitioner is terminated from service. The Petitioner assails the same.

2 The learned Counsel for the Petitioner strenuously contends that the Petitioner is appointed from OBC category. The Respondents have nowhere suggested that for the confirmation test, an OBC candidate should obtain minimum 50% marks. The Circular was never brought to the notice of the Petitioner at any material point of time. In view thereof, the Respondents cannot rely upon the internal circular to contend that the Petitioner ought to have obtained minimum 50% marks. The learned counsel to substantiate her contention relies upon the judgment of the Apex Court in the case of *P.V. Indiresan (2) vs. Union of India and Others*¹. The learned counsel further contends that the last candidate called for consideration pursuant to the advertisement from OBC category had secured 44.43% marks. As such, the same was required to be considered as a bench mark. The Petitioner in the confirmation test has secured 48.83% marks. In view thereof, it was an error on the part of the Respondents in terminating the services of the Petitioner only on the ground that the Petitioner failed to secure 50% marks in the confirmation test.

3 Mr.Joshi the learned Counsel for the Respondents

¹ (2011) 8 SCC 441

relies upon the Circular to contend that for confirmation in JMGS, qualifying marks in the written test should be 50% and only for candidates from SC, ST and PWD, the bench mark is relaxed to 45%.

4 We have considered the submissions. It is not disputed that the Petitioner could not secure 50% marks in the confirmation test conducted after completion of two years of service. The Petitioner was provided with two opportunities to clear the confirmation test. After the first confirmation test was undertaken and the Petitioner did not clear the same, she was given further opportunity to clear the confirmation test within six months. In the second confirmation test also she could not achieve 50% marks. The contention of the learned Counsel for the Petitioner that during the selection process pursuant to the advertisement, the OBC candidate securing 44.43% marks was also called for the test and / or the interview and as such, the same could be considered as cut off marks to be obtained in the confirmation test, does not stand to reason, as the argument cannot be countenanced. The candidates were called in the ratio 1:20. To maintain the said ratio, the candidates were called. That would not mean that for the

confirmation test, the same cut off marks have to be applied.

5 The Circular of the bank dated 09.06.2011 is unambiguous. It states that the first confirmation test will be conducted after 18 months of probation. For confirmation in JMGS 1, qualifying marks in the written test will be 50%. Relaxation is provided for the candidates from SC, ST and PWD. They have to secure 45% marks. The Petitioner belongs to OBC for which the qualifying marks are 50%. Clause (iv) of the Circular further provides that a candidate who fails in the first confirmation test, his probation would be extended by six months and candidate would be required to appear for the second test to be conducted within six months of the first test.

6 Clause (v) of the circular further states that in case the candidate fails in the second test, in respect of Probationary Officers, their services will be terminated. The Petitioner admittedly was Probationary Officer (PO). She failed in the second confirmation test also. As such her services were terminated.

7 Reliance placed by the learned Counsel for the

Petitioner on the judgment of the Apex Court in the case of *P.V. Indiresan (2)* (Supra) would not enure to the benefit of the Petitioner inasmuch as the Apex Court in the said case, was concerned with the admission of the candidates. The Apex Court observed that if the total number of seats in a course is 154 and the number of seats reserved for OBCs is 42, all the seats should be filled in by OBC students in the order of merit from the merit list of OBC candidates possessing the minimum eligibility marks prescribed for admission. When an eligible OBC candidate is available, converting an OBC reservation seat to general category is not permissible. Thus, the consideration before the Apex Court in the said case was completely different.

8 In the present case, the Petitioner could not secure 50% marks in the first confirmation test. It was brought to the notice of the Petitioner that though she was given an opportunity after six months to clear the second confirmation test. The Petitioner appeared for the second confirmation test and after taking the benefit of the second confirmation test, the Petitioner is now agitating about the bench mark having not brought to the notice of the

Petitioner. The Petitioner would not be entitled to plead the same as the Petitioner had already appeared for the confirmation test and failed to secure the bench mark. Though she was given one more opportunity and she failed in the said opportunity as well.

9 In light of the above, no relief can be granted to the Petitioner .

10 Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J.) (ACTING CHIEF JUSTICE)