



{1}

wp 8077.21 R.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8077 OF 2021

Shital Gurunath Kore,
Age 25 years, Occ. Student,
R/o. At Post Her, Tq. Udgir,
Dist. Latur.

...Petitioner

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Education and Sport Department,
Mantralaya, Mumbai -32.
2. The President,
Maharashtra State Secondary
and Higher Secondary Examination
Board, Pune.
3. The Secretary,
Maharashtra State Secondary and
Higher Secondary Examination
Board, Pune.

.. Respondents.

Mr. R.D. Biradar, Advocate for petitioner,
Mr. Yugant R. Marlapalle, Advocate for respondent Nos.2 and 3
Mr. N.S. Tekale, AGP for respondent No.1.

CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.

DATE : 18th JANUARY, 2024.

Judgment (per S. G. Chapalgaonkar, J.) :-

1. Heard. Rule. Rule made returnable forthwith. Heard finally by consent of learned advocate for the parties.
2. The petitioner approaches this court under Article 226 of the Constitution of India thereby challenging the validity of clause Nos. 6,7 and 8 of the Govt. Resolution dated 31.5.2021, consequently, raises challenge to the final selection list, dated 12.7.2021 issued by the respondent No.1 and further seeks direction to issue appointment order in favour of the petitioner for the post of `Junior Clerk' advertised on 10.9.2019 by the respondent No.3 i.e. Maharashtra State Secondary and Higher Secondary Education Department.
3. Mr. Biradar, learned counsel for the petitioner submits that the respondent No.3 had published an advertisement for recruitment of 266 posts of Jr. Clerk. Total 27 posts were earmarked for EWS (Economically Weaker Section category) and 7 posts were further earmarked for EWS (Female). The petitioner in response to the advertisement submitted online application and also appeared for the examination. She secured 137 marks. The cut off marks for EWS was 126. Accordingly, petitioner's name figured at Sr. No. 579 in the merit list. Meanwhile, the Government Resolution dated 31.5.2021 came to be issued by which candidates belonging to SEBC (Socially and Economically Backward Class category) were permitted to be included and considered against seats earmarked for EWS category during recruitment process undertaken by the State of Maharashtra and body corporates under its control.
4. Mr. Biradar, learned counsel for the petitioner would submit that because of the inclusion of SEBC candidates in EWS quota, the

petitioner lost her right of appointment. The Government Resolution by which such inclusion was permitted was arbitrary and illegal. Consequently, this Court in ***Writ Petition No. 2663 of 2021 (at Principal Seat) vide order dated 29.7.2022*** declared that the impugned clauses in Government Resolution were invalid. The recruitment process initiated for the purpose of appointment of EWS category in furtherance of the advertisements which were subject matter of respective writ petitions and Govt. Resolutions will not affect the selection process initiated pursuant to the publishing such advertisement. It is further declared that the action on the part of the respondents in applying the Government Resolution retrospectively to the selection process is illegal and bad in law and consequential directions issued by the MSEDCL in that case are held to be illegal and bad in law. He would, therefore, submit that the decision of the respondent Nos. 2 and 3 thereby including the SEBC category candidates in EWS category is illegal and the petitioner would be entitled for appointment on the post of her original merit by excluding the candidates from SEBC category considered under the EWS quota. He placed reliance on the order of this court dated 29.7.2022 in a group of writ petitions i.e. ***WP No. 2663 of 2021 (Vikas Balwant Alase and others Vs. Union of India through Secretary and others) with connected writ petitions.***

5. Mr. Marlapalle, learned advocate for respondent Nos. 2 and 3 would submit that the petition itself is based on misconception. He would submit that the petitioner is relying upon the cut off marks declared for verification of documents. The petitioner was, therefore, called upon for verification of documents on the basis of her merit position. However, the actual merit list for EWS (Female) would show that the cut off for EWS (Female) was 141 marks. The petitioner was

much below the final cut off for EWS (Female). He would point out that even after excluding the SEBC candidates from EWS (Female) category, the petitioner could not secure merit position for appointment on the post of Junior Clerk.

6. We have considered the submissions advanced on behalf of respective parties. We have perused the record pressed into service alongwith the writ petition and the reply.

7. Apparently, the petitioner had responded to the advertisement issued by the respondent No.3 thereby inviting applications from the eligible candidates for recruitment on the post of Junior Clerk. 27 posts were reserved for EWS category, out of that, 8 posts were earmarked for EWS (Female). The petitioner offered her candidature from EWS (Female) category. The petitioner appeared for the written examination and secured 137 marks. Initially, respondent No.3 had prepared list of candidates to be called for verification of documents and prescribed the cut off marks details for each category. The cut off for EWS (Female) is shown to be 126 marks. Accordingly the petitioner was called for verification of documents.

8. It appears that petitioner considers the call for verification of documents as her selection. The final merit list would shows that cut off for EWS (Female) is 141 marks in the select list. Admittedly, the petitioner could not achieve the merit position as per the said cut off.

9. The first challenge of the petitioner is to validity of certain clauses of the Government Resolution dated 31.5.2021 which was subject matter of challenge in W.P. No. 2663 Of 2021 in the case of Vikas Balwant Alase (supra) with other writ petitions. This Court, vide judgment dated

29.7.2022 upheld the contentions of the petitioners that the Govt. Resoution cannot be given retrospective effect to include SEBC candidates in EWS quota in respect of recruitment process which was already initiated prior to the publication of Govt. Resolution. Apparently, the first contention of the petitioner that the Govt. Resolution shall not apply retrosectively in subject recruitment process has to be accepted in view of the specific judgment of this court in the case of Vikas Alase (supra).

10. At this stage, we called upon Mr. Marlapalle, learned counsel appearing for respondent No.2 to demonstrate whether the position of the petitioner would be altered if SEBC candidates who were included in EWS (Women) category are removed from the merit list. It is brought to our notice that even after the candidates from SEBC category are removed from the list, the petitioner who has secured 137 marks stands at Sr. No. 9. As only 7 posts are available for EWS (Female), the petitioner does not qualify in the order of merit as the cut off marks for Verification of documents for EWS (Female) category are 138. The learned counsel for the petitioner does not dispute the aforesaid contention.

11. In that view of the matter, we do not find merit in the petition. The writ petition therefore stands dismissed. Rule is discharged. No costs.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-