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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12488 OF 2024
(The State of Maharashtra and another Vs. Shaikh Danish s/o Abdul
Rafat)

Ms.Neha B.Kamble, AGP for the petitioners.
Mr.Syed Masood Chand, Advocate for the respondent.

(CORAM : MANGESH S. PATIL AND
PRAFULLA S. KHUBALKAR, JJ.)

DATE : NOVEMBER 19, 2024

PER COURT :- (Per Prafulla S. Khubalkar, J.)

1. Heard the learned AGP for the petitioners and the learned Advocate for the respondent.
2. The State of Maharashtra is challenging the judgment and order dated 26.08.2024 of the Maharashtra Administrative Tribunal, allowing the Original Application No.854/2023. By the impugned judgment and order, the Maharashtra Administrative Tribunal has held that the respondent is entitled to be appointed against Open (General) seat on the basis of his merit on the post of “Planning Assistant” (Group B) (Non gazetted) in the Town Planning Department.

3. The facts leading to the filing of the instant petition are briefly stated as below :-

[a] In pursuance to an advertisement issued by the Director of Town Planning, Maharashtra State, Pune dated 28.03.2023, applications were invited for the post of “Planning Assistant” (Group B) (Non Gazetted).

[b] Total 177 posts were advertised. The social as well as horizontal reservations were also provided and the break up of reservations was also stated in the advertisement. Out of 177 posts, 14 posts were reserved for candidates belonging to OBC (General) and 36 posts were reserved for open (General) category.

[c] The respondent had applied for the post of ‘Planning Assistant’ from OBC category, claiming reservation meant for OBC.

[d] In the selection process, the respondent scored 150.202 in the written test and became eligible to be selected from open category in view of merit. Accordingly, the name of respondent was included in the list of eligible candidates to be recommended against Open (General) seats.

[e] However, the respondent was declared ineligible on the ground that he failed to submit the requisite non-creamy layer certificate as per the requirement of the advertisement.

[f] The respondent challenged the decision of the petitioners declaring him ineligible by filing the Original Application No.854/2023.

[g] The petitioners herein, who were the respondents in the original application, opposed the Original Application on the ground that the respondent had failed to submit a non-creamy layer certificate as was required and as per the terms of the advertisement.

[h] The Maharashtra Administrative Tribunal decided the original application by judgment and order dated 26.08.2024, by which the original application was allowed.

4. The petitioners challenge the judgment of the Maharashtra Administrative Tribunal on the ground that it has committed illegality in holding the respondent eligible despite the fact that he had failed to submit the requisite non-creamy layer certificate. The petitioners have raised a ground that the respondent has submitted non-creamy layer certificate issued on 01.07.2023, which is valid upto 31.03.2026, although while submitting the online application, the respondent had uploaded the certificate issued on 25.04.2019, which was valid upto 31.03.2022. It is thus contended that the respondent had submitted 2 different certificates on 2 separate occasions and both the certificates

were not valid upto 31.03.2023, which was the requirement as per the general instruction no.10. It was thus submitted that the non-creamy layer certificate as specifically required by the advertisement, was not submitted and therefore the respondent could not have been declared to be eligible. The respondent had failed to scrupulously fulfill the criteria and was rightly declared as ineligible. It was also contended that the respondent had submitted online application from OBC category and he had paid the fees from that category and hence his candidature could have been considered from the same category i.e. OBC category.

5. The respondent opposes the petition on the ground that although he had applied from OBC category, but in view of his merit, he was entitled to be considered from open category. The respondent contends that the impugned judgment needs no interference since the same is passed on the basis of settled legal position.

6. We have heard the Advocate Ms.Neha Kamble, the learned AGP and the learned Advocate Syed Masood Chand for the respondent. We have perused the entire record including the advertisement dated

28.03.2023 and also the non-creamy layer certificates of respondent dated 25.04.2019 and 01.07.2023. We have perused the copy of original application with the documents and also the reply filed by the respondent before the Maharashtra Administrative Tribunal.

7. On scrutiny of the entire record of the case, it is evident that although the respondent had submitted his application from OBC category, in order of merit, he stands at a higher position. The list of Open (General) candidates consisted of 33 posts and name of the respondent was found at Sr.No.24. It can thus be seen that even though the respondent had applied from OBC category, but on the basis of marks secured by him in the written test, he got the place in the list of the candidates who could be recommended against Open (General) seats. Thus, it is clear that the petitioner became entitled for being considered from Open (General) category on the basis of merit.

8. There can be no quarrel with the proposition that a reserved category candidate is always entitled to claim a seat from open category on the basis of his merit and he cannot be compelled to continue his candidature from the reserved category. It has to be noted

that the open category is meant for candidates to be selected on merit irrespective of caste, creed, sex or any other criteria. Thus the respondent having secured higher marks in the written examination was entitled to be considered from open category.

9. The learned AGP strenuously argued about ineligibility of the respondent on the ground that he had failed to submit the requisite non-creamy layer certificate and there was a missing period about the validity of the non-creamy layer certificate for the period from 01.04.2023 to 31.03.2026, after considering the 2 non-creamy layer certificates, which were filed by the respondent. It was argued that since there is non compliance with the requirement of the advertisement, the respondent should have been declared as ineligible. Although this argument appears to be based on the basis of 2 non-creamy layer certificates, it is crucial to note that in view of the marks obtained by the respondent, he had become eligible to be considered from the open category and therefore absence of a valid non-creamy layer certificate for the entire period, as required by the online application, became irrelevant. It has to be seen that when the respondent had become eligible on the basis of his merits, he ought to

have been considered from open category and the requirement to submit non-creamy layer certificate had lost significance. It also needs to be noted that the respondent had not taken any benefit of reservation during the process of selection in the nature of age relaxation or any other significant advantage to meet eligibility criteria.

10. After considering the arguments advanced by the respective Advocates and on perusal of the impugned judgment, we are of the view that the Maharashtra Administrative Tribunal has given a thoughtful consideration to the factual and legal aspects of the matter. The impugned judgment and order is well reasoned and needs no interference on any count. The petitioners have failed to point out any perversity, arbitrariness or illegality in the impugned judgment.

11. In that view of the matter, indulgence in the judgment of the Maharashtra Administrative Tribunal is not at all required. The petition deserves to be dismissed. Hence the same is dismissed with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

(MANGESH S. PATIL, J.)