



IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITIONS NO.372 OF 2024,
784 OF 2024, 1012 OF 2025(FILING)
AND 1695 OF 2025(FILING)**

WRIT PETITION NO.372 OF 2024

Ms. Rachana Deepak Pednekar,
Age 28 years, Resident of H. No.
137J, Holy Cross Colony,
Chicalim-Mormugao Taluka
South Goa, Goa 403711

... Petitioner

Versus

1. State of Goa
through the Chief Secretary
Government of Goa
Porvorim Goa.
2. Public Works Department
Through its Principal Chief
Engineer, Office of the
Principal Chief Engineer,
Altinho Panaji Goa.
3. Rajan Shrikant Talkar,
r/o of 109, Talwada, Querim,
Presently working as Technical Assistant (CEIT),
ASW, Works Division II, PWD,
Panaji Goa.
4. Saish Narayan Naik,
r/o 880/A/3, 13, Town
Presently working as Technical Assistant (CEIT),
ASW, Works Division III, PWD,
St. Inez, Panaji Goa.
5. Deepika Subhash Naik
r/o 603/1, Khamamol, Curchorem
Presently working as Technical Assistant (CEIT),
ASW, Works Division XVIII, PWD,
Ponda Goa.

6. Sweety Premanand Naik,
H. No. 474, Dhamod, Xeldem,
Presently working as Technical Assistant (CEIT),
ASW, Works Division V, PWD,
Panjim Goa ... Respondents.

AND
WRIT PETITION NO.784 OF 2024

Aditi Jayesh Naik,
w/o. Jayesh Naik,
Aged 31 years,
r/o. H.no. 465, Sindolim,
near Sateri Temple,
Sancoale, Cortalim, Mormugao,
South-Goa.

Versus

1. State of Goa,
Through Chief Secretary,
Having office at Secretariat,
Porvorim-Goa.
2. Office of the Principal Chief Engineer,
Public Works Department,
Althinho-Panaji, Goa.
3. The Dy. Director (Administration),
Public Works Dept,
Althinho, Panaji-Goa.
4. The Director (Administration),
Public Works Department,
Althinho, Panaji Goa
5. Sameer Santosh Korgawkar,
Major of age,
Presently working at
STP SD-II, Works Division XXI, PWD,
Vasco-Goa
6. Sankil Sakharam Dhargalkar,
Major of age ,
Presently working at
ASW, Works Division, XXI, PWD,
Fatorda, Margao, Goa

7. Kiran Bablo Kharat,
Major of age,
Presently working at
SD-III (Rev/NRW), Works Division IX,
PWD, Vasco, Goa.

... Respondents.

AND

WRIT PETITION NO.1012 OF 2025 (FILING)

Mr. Pandurang alias Vedant Surendra Naik
Age 26 years
Resident of H. No. T-205 A,
Near Shantadurga Temple, Sailant,
Sancoale, Marmugao Goa

... Petitioner

Versus

1. State of Goa
Through the Chief Secretary
Government of Goa
Porvorim Goa.
2. Public Works Department
Through its Principal Chief Engineer,
Office of the Principal Chief Engineer,
Altinho Panaji Goa.
3. Nehal Ashok Divkar
Junior Engineer (Civil),
Public Works Department
4. Sairaj Ramesh Sakhalkar
Junior Engineer (Civil),
Public Works Department
5. Priyanka Pritidas Naik
Junior Engineer (Civil),
Public Works Department
6. Sarvesh Vaman Naik
Junior Engineer (Civil),
Public Works Department
7. Tanesh Naresh Narvekar
Junior Engineer (Civil),
Public Works Department
8. Vishwesh Krishna Salva
Junior Engineer (Civil),
Public Works Department

9. Rohan Ramnath Satarkar
Junior Engineer (Civil),
Public Works Department
10. Nilesch Salvo Naik
Junior Engineer (Civil),
Public Works Department
11. Ramit Raganath Chodank
Junior Engineer (Civil),
Public Works Department
12. Suchit Sadanand Naik
Junior Engineer (Civil),
Public Works Department
13. Viraj Arjun Naik
Junior Engineer (Civil),
Public Works Department
14. Ramesh Suryakant Polji
Junior Engineer (Civil),
Public Works Department
15. Saish Shantaram Naik
Junior Engineer (Civil),
Public Works Department
16. Vishant Ramdas Kalshavkar
Junior Engineer (Civil),
Public Works Department
17. Anuraj Suhas Naik
Junior Engineer (Civil),
Public Works Department
18. Sujay Vasudev Naik
Junior Engineer (Civil),
Public Works Department
19. Shivam Alias Dharmu Babuso Naik
Junior Engineer (Civil),
Public Works Department
20. Ved Shrihari Mamledar
Junior Engineer (Civil),
Public Works Department
21. Gautam Devanad Shet
Junior Engineer (Civil),
Public Works Department

22. Abhishek Prabhakar Mangji
Junior Engineer (Civil),
Public Works Department
23. Shantanu Sudan Jalmi
Junior Engineer (Civil),
Public Works Department
24. Gangaram Dhaktu Shelke
Junior Engineer (Civil),
Public Works Department
25. Gayatri Anil Vengulekar
Junior Engineer (Civil),
Public Works Department
26. Tato alias Vijay Pandurang Naik
Junior Engineer (Civil),
Public Works Department
27. Ashis Shrawan Toraskar
Junior Engineer (Civil),
Public Works Department
28. Rohan Ramakant Salgaonkar
Junior Engineer (Civil),
Public Works Department
29. Sunny Dharma Pednekar
Junior Engineer (Civil),
Public Works Department
30. Sneheel Sudesh Chimulkar
Junior Engineer (Civil),
Public Works Department
31. Saeel laxman Naik Chopdekar
Junior Engineer (Civil),
Public Works Department
32. Sagar Sadanand Naik
Junior Engineer (Civil),
Public Works Department
33. Akshay Mohan Naik
Junior Engineer (Civil),
Public Works Department
34. Swapnil Mortu Naik
Junior Engineer (Civil),
Public Works Department

*Deleted as per order
dated 05.05.2025*

... Respondents

AND
WRIT PETITION NO.1695 OF 2025 (FILING)

Mr. Ashwin Naik
Age 50 years
Resident of H. No. 480,
Khandiwada, Curchorem-Cacora
South- Goa

Versus

1. State of Goa
Through the Chief Secretary
Government of Goa
Porvorim Goa.
2. Public Works Department
Through its Principal Chief Engineer
Office of the Principal Chief Engineer
Altinho Panaji Goa.
3. Vishwesh Krishna Salvi
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
4. Rohan Ramnath Satarkar
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
5. Nilesh Salvo Naik
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
6. Ramit Raganath Chodankar
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
7. Suchit Sadanand Naik
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
8. Viraj Arjun Naik
Junior Engineer (Civil),
Public Works Department
Panaji-Goa

9. Ramesh Suryakant Polji
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
10. Saish Shantaram Naik
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
11. Vishant Ramdas Kalshavkar
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
12. Anuraj Suhas Naik
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
13. Sujay Vasudev Naik
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
14. Shivam Alias Dharmu Babuso Naik
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
15. Ved Shrihari Mamledar
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
16. Gautam Devanad Shet
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
17. Abhishek Prabhakar Mangji
Junior Engineer (Civil),
Public Works Department
Panaji-Goa

18. Shantanu Sudan Jalmi
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
19. Gangaram Dhaktu Shelke
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
20. Gayatri Anil Vengulekar
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
21. Tato alias Vijay Pandurang Naik
Junior Engineer (Civil),
Public Works Department
Panaji-Goa.
22. Ashis Shrawan Toraskar
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
23. Rohan Ramakant Salgaonkar
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
24. Sunny Dharma Pednekar
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
25. Sneheel Sudesh Chimulkar
Junior Engineer (Civil),
Public Works Department
Panaji-Goa
26. Saeel Laxman Naik Chopdekar
Junior Engineer (Civil),
Public Works Department
Panaji-Goa

27.Sagar Sadanand Naik
Junior Engineer (Civil),
Public Works Department
Panaji-Goa

28.Akshay Mohan Naik
Junior Engineer (Civil),
Public Works Department
Panaji-Goa

29.Swapnil Mortu Naik
Junior Engineer (Civil),
Public Works Department
Panaji-Goa

... Respondents.

Mr S. D. Lotlikar, Senior Advocate with **Mr Terence Sequeira, Mr Sarvesh Sawant and Ms Sailee Keny, Advocates** for the Petitioner in Writ Petition No.372 of 2024.

Mr Devidas J. Pangam, Advocate General with **Mr Siddharth Samant, Additional Government Advocate** for Respondents No.1 and 2 in Writ Petition No.372 of 2024.

Mr Omkar Kulkarni, Advocate for Respondent No.4 in Writ Petition No.372 of 2024.

Mr Prasheen Lotlikar with **Mr Bhavesh Lotlikar, Advocate** for Petitioner in Writ Petition No.784 of 2024.

Mr Devidas J. Pangam, Advocate General with **Mr Neehal Vernekar, Additional Government Advocate** for Respondents No.1 to 4 in Writ Petition No.784 of 2024.

Mr Pavithran A.V., Advocate for Respondents No.6 and 7 in Writ Petition No.784 of 2024.

Mr Chaitanya Padgaonkar and Ms Vaishali Mahato, Advocate for Petitioner in Writ Petition No.1012 of 2025(Filing).

Mr Devidas J. Pangam, Advocate General with **Mr Deep D. Shirodkar, Additional Government Advocate** for Respondents No.1 and 2 in Writ Petition No.1012 of 2025(Filing) and in Writ Petition No.1695 of 2025(Filing).

Mr Deepak Gaonkar, Advocate for Respondent No.34 in Writ Petition No.1012 of 2025(Filing).

Ms Kalpa D. Govekar, Advocate for the Petitioner in Writ Petition No.1695 of 2025(Filing).

**CORAM : BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.**

Reserved on : 17th JULY 2025.

Pronounced on : 11th SEPTEMBER 2025.

JUDGMENT: (Per. BHARATI DANGRE, J.)

1. The four Writ Petitions before us involve a common question of law being, whether a Caste Certificate issued to a OBC (Other Backward Class) category candidate, in absence of a specific reference to its validity shall have a validity period and if the said period has expired when an application is preferred by a candidate, whether an appointment can be denied merely on that count.

Although the abovementioned four Petitions involve different factual circumstances, but all the Petitions are filed being aggrieved by rejection of the candidature of the Petitioners, pursuant to an advertisement issued by the Public Works Department on 27.08.2021 for the post of Junior Engineer/Technical Assistant, on the ground that the Caste Certificate issued to them has expired on the last date of the application and therefore they did not qualify themselves to be appointed on the seat reserved for OBC category.

2. For the sake of convenience, first we shall assimilate the facts placed before us in Writ Petition No.372 of 2024, a Petition filed by Smt Rachana D. Pednekar, the Petitioner belonging to Bhandari Naik

community in Other Backward Class (OBC) category, being aggrieved by her non-selection to the post Technical Assistant, only on the ground that the Caste Certificate produced by her dated 30.07.2018 was valid only for a period of three years and the same having expired prior to the date of advertisement and application and, therefore, she cannot secure an appointment to the post, despite the fact that she cleared the exam and secured requisite marks, making her eligible on merit.

We have heard the learned Senior Counsel, Mr Lotlikar, along with Mr Terence Sequeira for the above Petitioner and the learned Advocate General, Mr Devidas Pangam, along with Mr Siddharth Samant, the learned Additional Government Advocate for the Respondents.

The Petitioner, Rachana D. Pednekar, obtained a Certificate from the office of the Deputy Collector and Sub-Divisional Officer, Mormugao on 30.07.2018 declaring that she belong to Bhandari Naik community/Caste recognised as Other Backward Class, under the Government of India, Ministry of Welfare, and she ordinarily reside in Taluka Mormugao, District South Goa of the State of Goa.

In addition, the Certificate also certified as below:

“It is also certified that, she as on date of issue this certificate does not belongs to persons /section (Creamy layer) mentioned in column 3 of the Schedule to the Government of India, Department of Personnel and Training O.M. No.36012/22/No.2/EST/STAT/OE/2001-02/(sct) dated 8/9/93 circulated vide O.M.NO. 12-25-92/SWD/Part dated 4/10/95.”

3. On 27.08.2021, an advertisement was published for filling up various vacancies in the Public Works Department and this included 31 posts of Technical Assistant (Computer/Electronics/Information

Technology), of which 8 posts were reserved for OBC category. The Petitioner, possessing essential qualifications, applied for the post of Technical Assistant in OBC category, pursuant to the said advertisement and on 11.06.2023, she answered the examination conducted by the Department. On 08.11.2023, the marks secured by the candidates who appeared for the examination were displayed and the Petitioner secured 58 marks out of 100. The Department also uploaded the list of the shortlisted candidates for verification and the Petitioner found her name in the list of OBC category.

07.12.2023 was the date scheduled for verification of the documents and the Petitioner produced her Caste Certificate dated 30.07.2018 and since she had applied for a fresh Caste Certificate and as she was granted the said Certificate on 21.11.2023, she even produced this Certificate which declared her to be belonging to OBC along with a declaration that she do not belong to creamy layer.

On 12.01.2024 when the Department published the list of candidates who were selected for the post of Technical Assistant, the Petitioner was surprised to find that her name was not included and when she approached the Department, she was informed that the Caste Certificate produced by her dated 30.07.2018 was valid only for three years and the same had already expired on the date on which she preferred the application, pursuant to the advertisement.

It is the grievance of the Petitioner that on 31.01.2024 the Public Works Department issued appointment order to three candidates from OBC category who had secured less marks than her, being Respondent No. 4 to 6 and also issued appointment order to Respondent no.3 who had obtained the same number of marks as that of the Petitioner.

In the background facts, the Petition seek issuance of writ of mandamus for quashing and setting aside the merit list for the post of

Technical Assistant insofar as it include the Respondents no.3 to 6 in the OBC category and a direction is sought to re-draw the merit list by including the name of the Petitioner as per merit. The Petition also raise a challenge to the order dated 31.01.2024 issued by the Principal Chief Engineer, Public Works Department which is in form of appointment order issued in favour of Respondents no.3 to 6 or, in the alternative, relief is sought to grant appointment to the Petitioner on the post of Technical Assistant from the date on which the Respondents are appointed.

4. Contesting the relief claimed in the Petition in the background facts, the Director of Administration, Public Works Department has filed an affidavit stating that when the Petitioner applied for the post of Technical Assistant(C/E/IT) under OBC category, she gave an undertaking to the effect that she possess the requisite essential qualifications and other mandatory requirements meant for the post and if the information provided by her is found to be false or incorrect, her candidature for recruitment is liable to be rejected or even cancelled after selection. It is not disputed that the Petitioner appeared for the written examination/the re-examination conducted and was shortlisted by the Departmental Selection Committee based on the marks scored by her and therefore she was called for verification of her original documents and during verification process, it was noted that the Petitioner had not produced valid Caste Certificate at the time of applying for the post of Technical Assistant, as the last date for receipt of the applications was 27.09.2021. The specific stand adopted is to be found at paragraphs 12 and 13 of the affidavit which read thus:

“12. I say that the Petitioner did possess a Caste Certificate at the time of applying for the post of Technical Assistant, but the same was not valid. The Respondent states that the

Department advertised the post of Technical Assistant via notice dated 27.08.2021, which was published in dailies on 31.08.2021, with the last date for applying being 27.09.2021. The Petitioner submitted a Caste certificate issued on 30.07.2018, which was valid for 3 years as per the circular dated 19.07.2000 issued by the Directorate of Social Welfare. Therefore, it is evident that the Petitioner did not possess a valid caste certificate at the time of applying for the post and provided a false declaration that she met the mandatory requirements for the post. The Declaration signed by the Petitioner clearly states that if any particulars or information provided by the candidate are found to be false or incorrect, the candidature for recruitment is liable to be rejected or cancelled even after selection.

13. I say that that before finalizing the select list, the Department sought clarification from the Directorate of Social Welfare regarding the validity of the OBC Certificate. In response, the said Department, via letter dated 14.12.2023, furnished the circular dated 19.07.2000, wherein it is mentioned that the OBC certificate is valid for 3 years. The Respondent submits that the Petitioner's request to redraw the merit list by including her or to quash and set aside the appointment order dated 31.01.2024 is not acceptable, as her caste certificate was not valid. The Department cannot accommodate candidates disqualified by the selection committee due to the non-availability of required documents.”

5. Upon the affidavit being filed, the Petitioner, after seeking leave of the Court raised a challenge to the Circular issued by the Government of Goa, Directorate of Social Welfare, Panaji on 19.07.2000 being illegal and arbitrary by contending that the imposition of validity period of three years to a Caste Certificate violate the concept of reservation enshrined under Article 14 of the Constitution of India as the caste of a person always remain the same. Apart from this, it is also contended by the Petitioner that the said Circular is only interdepartmental instruction and not in public domain and in any case it is urged that the Petitioner had a Certificate

dated 21.11.2023 at the time of verification based on the last three years' income, which was below the threshold limit and therefore, she could not have been denied the benefit of appointment only on the ground of not having a valid non-creamy layer certificate.

6. The learned Senior Counsel, Mr Lotlikar, representing the Petitioner, would place reliance upon the decision of the Apex Court in the case of ***Ram Kumar Gijroya v/s. Delhi Subordinate Services Selection Board & Another***¹, when the very same issue about non-submission of the Certificate by a reserved (OBC) category candidate within the cut-off date arose for consideration and it was held that declaring otherwise selected candidate ineligible, only on this ground would amount to denial of equality of opportunity contemplated under Article 14, 15, 16 and 39A of the Constitution.

According to Mr Lotlikar, the three Judge Bench of the Apex Court relied upon the decision by the Delhi High Court in case of ***Pushpa v/s. Government, NCT of Delhi & Ors.***² which had held that a Certificate issued by competent Authority is only an affirmation of the fact which is already in existence and the purpose of such Certificate is to enable the Authorities to believe in the assertion of the candidate that he belongs to OBC category and act thereon by giving the benefit to such candidate for he belonging to such category. Mr Lotlikar has taken us through said Law Report, when the Apex Court approved the view of the learned Single Judge in ***Ram Kumar Gijroya*** (supra), by relying upon the judgment in ***Pushpa*** (supra), had directed the Respondent to re-consider the application of the Appellant and other aggrieved candidates against OBC category and found the ground for declining the applications filed by the Appellant

¹ (2016) 4 SCC 754

² 2009 SCC OnLine Del 281

being the OBC Certificates issued and submitted after the cut-off date and therefore, finding them not eligible for appointment to the post to be a proper view. The learned Senior Counsel would also place further reliance on the decision of Delhi High Court in the case of **Ravi Kumar v/s. All India Institute of Medical Sciences**³, holding that insistence on Certificate of OBC-NCL within given cut-off date is arbitrary and the cancellation of the candidature based on submission of the Certificate beyond cut-off date was disapproved. In addition, Mr Lotlikar has placed before us an order passed by the Supreme Court in case of **Karn Singh Yadav v/s. Government of NCT of Delhi & Ors**⁴ dated 28.09.2022 relying upon the decision in the case of **Ram Kumar Gijroya** (supra), where the Court had ruled in favour of the concerned candidate.

7. According to learned Senior Counsel, Mr Lotlikar, it is not in dispute that the Petitioner belongs to Bhandari Naik community which is Other Backward Class and, in fact, the Directorate of Social Welfare had issued her a Certificate certifying so and upon verification by the Vigilance Cell declaring her OBC Certificate dated 29.05.2014 to be valid. He has urged before us that the Petitioner is armed with a Certificate obtained by her in the year 2018 and by way of abundant caution, she also procured a new Certificate on 21.11.2023, maintaining her status as OBC and declaring that she do not belong to creamy layer. Submitting that the validity period being prescribed by the Circular dated 19.07.2000 issued by the Directorate of Social Welfare, Government of Goa is arbitrary, he would submit that all the while, i.e. on the date of application as well as on the date of determining her eligibility to occupy the post reserved for OBC on the basis of her merit and being belonging to OBC category, her

³ (2024) SCC OnLine Del 6737

⁴ (2024) 2 SCC 588

income was below the threshold limit and the artificial ground that her earlier Caste Certificate has expired because it had validity of three years, is not a claim worth consideration.

8. We have also heard Mr Prasheen Lotlikar, the learned Counsel representing Petitioner, Aditi Naik in Writ Petition No.784 of 2024, who applied for the post of Junior Engineer under OBC category on 27.09.2021 and secured 62 marks which gave her placement in the merit list. However, on verification of the documents, she was found to be not eligible to secure the appointment despite having secured more marks than the Respondents No.4, 5 and 6, who were appointed to the post of Junior Engineer from OBC category. As far as Aditi Naik is concerned, she obtained the Caste Certificate of belonging to OBC category along with the declaration that she do not belong to creamy layer on 26.10.2021.

9. Writ Petition No.1012 of 2025(Filing), is filed by one Pandurang alias Vedant Surendra Naik, who, pursuant to the very same advertisement dated 27.08.2021 applied for the post of Junior Engineer (Civil) in OBC category on 20.09.2021. Though he received the hall ticket for written examination to be held on 13.11.2021, the examination was scrapped and he received a hall ticket for the written examination to be conducted on 18.06.2023.

The result of the said examination was declared in the month of November 2023 and the Petitioner received a communication to present himself for physical verification of his document on 05.12.2023.

The Petitioner, despite securing more marks than the Respondents No.4, 5 and 6, was not appointed on the post and he

submitted a fresh Caste Certificate dated 15.02.2024 certifying that he belong to OBC category and declaring him to be so for the period between 25.05.2020 to 28.01.2021, but despite this, he is denied the appointment and this has constrained him to file the Writ Petition seeking a direction to the Respondents for appointing him on the post of his placement on the basis of his placement on the merit list for the post of Junior Engineer (Civil) from OBC category.

10. In the 4th Petition, i.e. the Writ Petition No.1695 of 2025(Filing), the Petitioner, Ashwin Naik, is also an aspirant for the post of Junior Engineer (Civil) in OBC category, applied in furtherance of the advertisement dated 27.08.2021 and though he received a hall ticket for written examination, the same was scrapped and he thereafter appeared for the written examination held on 18.06.2023. He secured 67 marks out of 100 and was ranked 22 in the order of merit list and upon verification of his documents, he received a communication on 05.12.2023 informing him that he had not submitted the old Caste Certificate and therefore he submitted the Caste Certificate dated 27.09.2013 and was awaiting for the response but came to know that appointment orders have been issued in favour of the four candidates who were placed below in the merit list thereby denying his claim.

In all the aforesaid four Petitions, the appointment is refused to the Petitioners on the ground that they did not possess a valid Caste Certificate on the date of the application or the last date of application as set out in the advertisement.

11. Article 16 of the Constitution ensure equality of opportunity in matters of public employment and Clause (4) of Article 16 empower the State in making reservation of appointments or posts in

favour of any backward class of citizen, which, in the opinion of the State is not adequately represented in the services under the State. Availing the aforesaid power, the State while inviting applications for distinct posts by issuing advertisement have reserved certain percentage for the candidates belonging to Other Backward Classes category and, admittedly, all the Petitioners have been declared to be belonging to OBC category and thus entitled for competing to the posts reserved for the said category.

The advertisement is issued by the Public Works Department for the post of Technical Assistant/Junior Engineer, reserving the post for OBC category and the advertisement inviting applications required the interested and eligible candidates to fill in the prescribed application form with a specific condition that no application shall be accepted/considered after the last date of application. The advertisement also prescribed thus:

‘C. Only the eligible candidate fulfilling the criteria as per Recruitment Rules/advertisement shall apply online and the candidates need not furnish any document at the time of applying for the post. However, candidate shall not be considered, if he/she is found ineligible at the time of verification of the essential documents, even though has passed the examination.

D. The Instructions/guidelines regarding eligibility, etc available on the Departmental website and shall strictly be adhered by each and every candidate which will be made available from 07/09/2021 onwards.”

The instructions accompanying the advertisement specifically prescribe thus:

“2. DOCUMENTS/CERTIFICATE REQUIRED AT THE TIME OF VERIFICATION (along with original)-

i) Certificate of Educational Qualification with mark sheet of the qualifying examination as applicable for the post as per column No. 5 of Post wise Instructions given above.

..

..

vi) Valid Caste Certificate issued by the competent authority in respect of the reserved category.

..

viii) Valid Economically Weaker Section Certificate issued by the competent authority of the State of Goa.”

The advertisement prescribed the last date for filling up of the application form in the prescribed format along with the declaration and it also provide that no documents should be furnished at the time of applying for the post but if a candidate is found ineligible at the time of verification of the essential documents, his case cannot be considered. The application form to be forwarded by the candidate included his biodata including his name, gender, date of birth, qualifications, category from which he was applying and the declaration signed by the candidate that he/she possess the requisite qualifications and other mandatory requirements for the post.

All the Petitioners filled in the necessary form and even appeared for the written examination and secured a position on merit for the post either of Technical Assistant or Junior Engineer.

Despite finding place in the merit list, the appointment order is refused to them on the ground that the Caste Certificate produced by them was not valid. As far as Rachana Pednekar is concerned, the last date for application being 27.09.2021, the Caste Certificate issued in her favour on 30.07.2018 was found to be invalid, as, according to the Respondents, it was valid only for three years as per Circular dated 19.07.2000. She is, therefore, accused of furnishing a false declaration that she met the mandatory requirements for the post.

In case of Aditi Naik, who was also an aspirant for the post of Junior Engineer, is refused appointment on the very same ground that on the last date of receipt of the application, the Petitioner was

armed with a Certificate dated 26.10.2021 and when the Selection Committee asked the Petitioner to submit a valid Caste Certificate, she had produced an outdated Caste Certificate issued on 24.09.2014 which had expired in 2017 and hence, it was invalid. In case of Pandurang alias Vedant Surendra Naik, the Caste Certificate dated 15.02.2024 certified that he belong to OBC category for the period between 25.05.2020 to 28.01.2021 and the advertisement prescribed 27.09.2021 as last date. In case of Ashwin Naik, who applied pursuant to the same advertisement and was desirous of being appointed on the post of Junior Engineer, submitted a Caste Certificate of 27.09.2013 as he was asked to submit the old Caste Certificate and accordingly, he had produced the Certificate which failed to prescribe any validity period.

12. In all the four Writ Petitions, the Petitioners are aggrieved by the decision of the Respondents in rejecting the Caste Certificate by alleging that on the last date of the application as prescribed in the advertisement, the applicants did not possess the valid Caste Certificate as a valid Caste Certificate is a declaration of the candidate belonging to OBC category along with a declaration of he not belonging to creamy layer (NCL) and this, according to the learned Advocate General, is valid only for a period of three years.

To appreciate this argument, we must refer to the genesis of the submission with reference to the instructions/notifications issued by the Department of Personnel and Administrative Reforms, as well as the Circulars/directions issued by the State of Goa.

The Office Memorandum dated 08.09.1993 issued by the (Department of Personnel & Training), Government of India, with regard to the subject of “Reservations for Other Backward Classes in Civil Posts and Services under the Government of India –

Regarding..” with reference to the decision of the Apex Court in the case of **Indira Sawhney and Others v/s. Union of India and Others**⁵ regarding reservation for Socially and Educationally Backward Classes in Civil Posts and Services under the Government of India, provided thus:

“2. ..

- (a) 27% (twenty seven percent) of the vacancies in civil posts and services under the Government of India, to be filled through direct recruitment, shall be reserved for the Other Backward Classes. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued separately.
- (b) Candidates belonging to OBCs recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 27%.
- (c) (i) The aforesaid reservation shall not apply to persons/sections mention in column 3 of the Schedule to this office memorandum.
(ii) The rule of exclusion will not apply to persons working as artisans or engaged in hereditary occupations, callings. A list of such occupations, callings will be issued separately nu the Ministry of Welfare.”

The Schedule appended to the said Notification included the description of category of exclusion and this was divided into six categories including the category the category of Income/Wealth Test.

14. In continuation of the said Office Memorandum dated 08.09.1993, the Department of Social Welfare, State of Goa, issued a Notification dated 04.10.1995 declaring that the reservation shall be applicable for reservation to vacancies in Civil Posts and Services in all Government Departments, Public Sector Undertakings,

⁵ 1992 Supp (3) 217

Autonomous Bodies, Universities in the State of Goa. The Schedule appended to the said Notification was in conformity with the Schedule appended to the Office Memorandum dated 08.09.1993 which described the category of post and also set out as to whom the rule of exclusion shall apply and as far as the income/wealth test is concerned, the son(s) and daughter(s) of persons having gross annual income of ₹ 1 lakh above or possessing wealth above the exemption limit as prescribed in Wealth Tax Act for a period of three consecutive years, was excluded. The explanation appended thereto clarify that the income criteria in terms of rupee will be modified taking into account the change in its value every three years and if the situation demands, the interregnum may be less.

15. The Government of India, through DOPT, New Delhi, on 15.11.1993 addressed a communication to all the Chief Secretaries of State Governments/Union Territories with regard to the subject “Reservation for Other Backward Classes – exclusion of Creamy Layer for the purpose of appointment in services and posts under the Government of India –Certificate to be produced by the candidate.” The communication referred to the instructions issued on 08.09.1993 providing reservations to Other Backward Classes in the services and posts under the Government of India and it prescribed the manner in which the reservation shall be implemented with reference to the list of castes and communities notified to be Other Backward Classes and specific authorities were designated for issuance of the said Certificate which included the District Magistrate/Additional District Magistrate/Collector/Deputy Commissioner/Additional Deputy Commissioner/Deputy Collector, etc. The said communication specifically provided the guidance in the following manner:

“2. In the light of the Supreme Court's judgement in the Indira Sawhney case, this Department has specified the persons/sections ("Creamy Layer") to whom the benefit of reservation shall not apply vide column 3 of the Schedule to the Department of Personnel and Training O.M.NO. 36012/22/93-Estt. (SCT), dated 8.9.93. It has been considered that the same authorities who are notified as competent to certify OBCs status should also be authorised to certify that a candidate does not belong to the "Creamy Layer." It is, therefore, requested that instructions may be issued to the District Authorities under your control to verify and issue the necessary certificate to the candidates regarding his OBCs status as well as exclusion from the "creamy layer." To enable the District Authorities to examine the claims of the candidates a model format has been devised as in Annexure B. This may be suitably revised if considered necessary. The format of the certificate that may be given by the concerned district authorities may be as in Annexure A.”

The aforesaid communication, therefore, authorise the Authorities notified as competent Authorities to certify the OBC status to be competent to certify that a candidate does not belong to “Creamy Layer” and the format of the Certificate was also prescribed. It is worth to note that this communication did not prescribe any validity period for the Creamy Layer status.

16. On 25.07.2003, the DOPT, Government of India issued an Office Memorandum on the subject, “Validity period of OBC certificate and verification of Community and ‘non-creamy layer’ status of OBC candidates.”

Considering the fact that the OBC Certificate consisted of two parts; the first part indicating that the concerned person belongs to a community listed as OBC and the second part indicative that the candidate does not fall in the creamy layer, it was noted that the status of the candidates as OBC may change as only when the

community of concerned candidate is removed from the OBC list but his/her creamy layer status may change any time. It was noted that it is not possible to determine a fixed validity period for the OBC Certificate.

The Office Memorandum further provided thus:

“2. Every candidate seeking reservation as OBC is required to submit a certificate regarding his/her 'OBC status and non-creamy layer status' issued by an authority mentioned in Department of Personnel and Training Office Memorandum No.36012/22/93-Estt.(SCT) dated 15.11.1993. The 'OBC status' and/or 'non-creamy layer status' of the candidate, as pointed out in para above, may change after issue of the certificate making him/her ineligible for reservation. In order to ensure that candidates not eligible to get reservation do not seek reservation, a declaration, in addition to certificate issued by the competent authority, may be obtained from the candidates seeking reservation as OBCs in the following format:

"I. _____ son/daughter of Shri
_____ resident of _____ village
/town/city_____ district _____ State
_____ hereby declare that I belong to the
_____ community which is recognized as a
backward class by the Government of India for purpose
of reservation in services as per orders contained in
Department of Personnel and Training Office
Memorandum No.36012/22/93-Estt.(SCT) dated
8.9.1993. It is also declared that I do not belong to
persons/sections (Creamy Layer) mentioned in Column
3 of the Schedule to the above referred Office
Memorandum dated 8.9.1993."

3. The appointing authority, before appointing a person seeking appointment on the basis of reservation to OBCs should verify the veracity of the community certificate submitted by the candidate and also the fact that he/she does not fall in creamy layer on the crucial date. The crucial date for this purpose may be treated as the closing date for receipt of applications for the post except in cases where crucial date is fixed otherwise.”

The very said OM dated 25.07.2003 also refer to the OM dated 10.05.1995 which provided that in case of appointments against vacancies reserved for OBCs, a clause in the offer of appointment will be inserted to the effect that appointment will be provisional and subject to the verification of the community certificate as the reservation is only available to OBC candidates who do not fall in creamy layer and it was deemed appropriate to direct insertion of a clause in the offer of appointment so as to take care of creamy layer status of the candidates and the clause read thus:

"The appointment is provisional and is subject to the community certificate being verified through the proper channels. If the verification reveals that the claim of the candidate to belong to Other Backward Classes or not to belong to creamy layer is false, his/her services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of Indian Penal Code for production of false certificates."

17. On 30.05.2014, once again, the DOPT revised the format for OBC Caste Certificate and communicated the same to the Chief Secretaries of all the State Governments/Union Territories.

The instructions were issued in the backdrop of the OM dated 08.09.1993 providing reservation as well as the format of the Caste Certificate vide OM dated 15.11.1993. Since the format also prescribed that the certifying authorities should certify that the candidate do not belong to the persons/sections (Creamy Layer) representations were received by the Department where the candidate belonging to OBC community reportedly faced difficulty in getting the benefit of reservation because in the Caste Certificate issued by the concerned district authorities, the resolution by which the said caste/community is included in the OBC list do not find a

mention. Therefore, while prescribing a revised format providing for mentioning of the details of the resolution by which the caste/community of the candidate is included in the OBC List, it was stated that the Authorities issuing the Certificate shall ensure that he/she does not belong to persons/sections (Creamy Layer) and the revised format was circulated.

It is necessary to re-produce the said form of certificate appended to the OM.

**“FORMAT OF CERTIFICATE TO BE PRODUCED BY
OTHER BACKWARD CLASSES APPLYING FOR
APPOINTMENT TO POSTS UNDER THE
GOVERNMENT OF INDIA”**

This is to certify that Shri/Smt./Kumari _____
son/daughter of _____ of village/town
_____ in District/Division
_____ in the State/Union Territory
_____ belongs to the _____
community which is recognised as a backward class under the
Government of India, Ministry of Social Justice and
Empowerment's Resolution No. _____ dated
_____. * Shri/Smt./Kumari _____ and/or
his/her family ordinarily reside(s) in the
_____ District/Division of the _____
State/Union Territory. This is also to certify that he/she does
not belong to the persons/sections (Creamy Layer) mentioned
in Column 3 of the Schedule to the Government of India,
Department of Personnel & Training O.M. No. 36012/22/93 -
Estt.(SCT) dated 8.9.1993 **.

District Magistrate
Deputy Commissioner etc.

Dated:

Seal”

The said format do not prescribe any validity period.

18. It is relevant to note that pursuant to the recommendation of the Second Backward Classes Commission (Mandal Commission) providing reservations for Socially and Educationally Backward

Classes in services and educational institutions under the Government of India, OM dated 13.08.1990 was issued to be followed by another OM dated 25.09.1991 providing 27% reservations which was the subject matter of the judgment of the Apex Court in case of **Indira Sawhney v/s. Union of India & Others** (supra), where the 9 Judge Bench of the Supreme Court declared the Office Memorandums to be valid and enforceable subject to the exclusion of socially advanced members of sections from the notified Other Backward Classes, while giving preference to More Backward Classes (MBC) on the basis of degree of social backwardness. Accordingly, the Government of India, Ministry of Welfare appointed an Expert Committee for identification of 'Creamy Layer' for exclusion of such socially advanced persons vide Resolution dated 22.02.1993. The said Committee submitted its report on 10.03.1993 and categorised the list for exclusion of the 'Creamy Layer', suggesting the children of all the persons holding:

(I) Constitutional posts;

(II) Service Category:

A. Group A/Class I Officers of the All India Central and State Services;

B. Group B/Class II Officers of the Central and State Services; C. Employees in Public Sector Undertakings;

(III) Armed Forces Including Para-Military Forces;

(IV) Professional Class and those engaged in trade and industry having income limit specified therein;

(V) Property owners:

(A) Holders of agricultural land;

(B) Plantations, and

(C) Vacant land and/or buildings in urban areas or

urban agglomerations;

(VI) Income/Wealth Test, etc.

This was followed by the issuance of the OM dated 08.09.1993, to which we have made an exhaustive reference, and the Schedule appended to this included the description of the category to whom the rule of exclusion applied. As per the said OM, while specifying the income/wealth test, the cadre based on exclusion and the annual income limit of parents was fixed having gross annual income of Rs. 1 lakh and above or possessing the wealth above the exemption limit prescribed in Wealth Tax Act for a period of three consecutive years.

19. The Ministry of Social Justice & Empowerment, vide Office Order dated 06.10.2003 entrusted the work relating to review of the income criteria to exclude the Creamy Layer from the OBCs to the National Commission for Backward Classes (NCBC) in the following terms of reference:

- “(i) To review the existing ceiling of income/wealth to determine the ‘Creamy Layer’ amongst OBCs notified by DOPT vide OM dated 08.09.1993;
- (ii) to evolve and suggest formulae through the periodic revision of income ceiling/criteria in terms of quantum of rupee be fixed so that income ceiling for determining the creamy layer amongst OBCs is revised from time to time as per the formulae”

Pursuant thereto, the NCBC vide its report dated 23.01.2004, recommended raising the income limit for determining creamy layer from existing limit of ₹ 1 lakh to ₹ 2,50,000/- and to have a periodic review for every three years.

This report was accepted by the Government and the DOPT issued OM dated 09.03.2004 revising the income criteria upto ₹ 2,50,000/-. Thereafter, from time to time, the Ministry of Social Justice & Empowerment entrusted the work of reviewing the existing ceiling of income/wealth test to determine the creamy layer amongst the OBCs and time and again the NCBC submitted its report, resulting in revised OMs being issued, determining the income limit.

One such OM is placed before us dated 13.09.2017 with regard to the subject of revision of income criteria has raised the income limit from ₹6 lakh to ₹8 lakh per annum, for determining the creamy layer amongst the Other Backward Classes under Category VI of the Schedule of the OM dated 08.09.1993, the limit being substituted by “₹ 8 lakh.”

20. It can be seen that while conferring the benefit of reservation upon a candidate belonging to OBC, and when 27% reservation is prescribed for the said category, it was made applicable with the application of the rule of exclusion in respect of the post/categories specified in the schedule appended to the OM and as far as the criteria No.VI in the said schedule – Income/Wealth Test, the gross annual income has been revised from time to time so as to apply the rule of exclusion.

Since the form of certificate to be produced by Other Backward Classes applying for appointment to post under the Government of India as prescribed by the OM dated 30.05.2014 clearly contain a declaration that a person belongs to a community which is recognised as Backward Class, under the Government of India, Ministry of Social Justice & Empowerment’s Resolution and it also certify that a person do not belong to the persons/sections (Creamy Layer) mentioned in column 3 of Schedule to the Government of

India, DOPT OM dated 08.09.1993 (as amended from time to time). It is, therefore, relevant to note that the benefit of reservation for the Other Backward Classes is also dependent upon the rule of exclusion and in order to avail the reservation, a candidate shall not belong to the persons/sections (Creamy Layer) of which one of the criteria is the income/wealth test.

It thus appear with certainty that the community to which the candidate belongs if is declared as OBC, unless and until it is removed from the list of OBC, the status of the person shall remain the same but the certification of he not belonging to creamy layer may not remain constant as a person's income or the cumulative income which would determine his entitlement will undergo change from time to time. It is pertinent to note that the certification is not only as regards the declaration of his Caste as OBC but it also contemplate a certification in respect of a person not belonging to the persons/sections (Creamy Layer), as he may be a holder of certain post, a person in service category or any public sector undertaking, etc. or even the professional class and those engaged in trade and business as well as property owners to whom the income/wealth test specified in category VI will apply.

21. Perceiving this difficulty faced by the candidates belonging to OBC category, the Government of Goa issued a circular on 29.06.2017, where the guidelines are issued to facilitate the renewal of OBC Certificates as the applicants are facing hardship, physically and financially, as the competent authority, at the time of renewal of the certificate, are insisting to undergo entire procedure afresh which is being followed at the time of obtaining OBC Certificate for the first time. The Directorate of Social Welfare and Ex-Office Additional Secretary, therefore, clarified thus:

“In the above circumstances, applicants are facing hardship, both Physically and Financially. As such in order to facilitate the renewal of OBC certificates following guidelines are issued:

- a) Dy. Collector and SDOs concerned should not insist to undergo entire procedure for obtaining the renewal of OBC certificates.
- b) Dy. Collector and SDOs should ask the applicant to produce the following documents for renewal of OBC certificates:
 - 1. Application in the prescribed form.
 - 2. A copy of Social Status Certificate (Caste Certificate), issued earlier by the concerned Dy. Collector, SDO or verification certificate issued by the Scrutiny Committee.
 - 3. Fresh Income Certificate, issued by the Competent Authority.

Renewal of OBC certificate means issue of certificate in the prescribed format.”

22. At this juncture, we must refer to a Circular issued by the Government of Goa on 19.07.2000 and it is this Circular which is relied upon by the Respondents in asserting that the Certificate produced by the Petitioner did not enjoy the validity, as the life of the Certificate issued to OBC community is only three years. The Circular dated 19.07.2000 is issued in continuation of the Circular laying down the procedure to be followed for issuance of Caste Certificate to SC/ST/OBC by respective Mamlatdar for various purposes.

The Circular is found to be prefaced by the need for simplifying the procedure for issuance of Caste Certificate to OBC community and it has prescribed thus:

“1. In order to identify the person from OBC Community, the Mamlatdars may accept the recommendations from the OBC organisation for respective community, a list of which is

appended herewith alongwith normal affidavit from the applicant executed before Notary.

2. At present, it is observed that some of the OBC certificates are issued with limited validity which causes inconvenience to the Caste Certificate holders. It has therefore been decided by the Government that the applicants whose income is Rs.80,000/- and below per annum may be issued OBC certificate valid for 3 years. The Caste Certificate so issued may include names of parent alongwith his/her children.”

23. It is for the first time the aforesaid Circular has fixed the period of validity for the Certificate and though the learned Advocate General has vehemently relied upon the said Circular, we do not find that the Government of India ever imposed any validity period for the OBC Certificates. It is to be noted that the OM dated 08.09.1993, which is appended with a schedule, by applying the rule of exclusion in the income/wealth test, has only prescribed that sons and daughters of persons having gross income of particular amount or of ₹ 1 lakh (revised from time to time) or above or possessing wealth above exemption limit as prescribed in Wealth Tax Act for a period of three consecutive years would be excluded. The explanation appended in column 7 read thus:

“(ii) The income criteria in terms of rupee will be modified taking into account the change in its value every three years. If the situation, however so demands, the interregnum may be less.”

It is, therefore, apparent that for the sake of convenience, the gross annual income for a period of three consecutive years is taken into consideration, for attracting the exclusion test but as the explanation clarify that the income criteria in terms of rupee will be modified taking into account the change in its value every three years but it can be for lesser period also. It is quite possible that an income

of person may vary or may cross the threshold limit immediately in the next year in which he has obtained the Caste Certificate and on its basis, he may fall in exclusion clause, and be excluded from availing the benefit of reservation or such income may also raise after two years and therefore it is not necessary in every case that the income shall remain constant for three years. Therefore, for applying the Income Wealth Test, the gross annual income is the applied criteria.

24. When we have perused the OMs/instructions issued by the Government of India through the DOPT, New Delhi, we find that there is no validity period prescribed to the Caste Certificate, as we find that it is a declaration of the income of the person at the relevant time, i.e. the cut-off date prescribed for the recruitment process which shall be the determinative factor. In order to consider the candidature of a person against a seat reserved for OBC category, he/she must not only belong to OBC category but must also not belong to the 'Creamy Layer' and shall not fall within the categories set out in the Schedule and by applying the income/wealth test, he/she must not have gross annual income above the limit prescribed on the date on which the application is preferred.

It is with this principle being kept in mind that we will be required to determine the eligibility of a candidate and the validity of the Certificate, declaring the candidate as not falling in 'Creamy Layer'.

25. It is a well-settled position in law that in the selection/recruitment process, if the cut-off date is prescribed, the eligibility of a person shall be determined accordingly. If the cut-off date is prescribed in the relevant rules, e.g., prescribing the

maximum age limit for determining the eligibility of a candidate or if such cut-off date is prescribed in the advertisement stating that on the date of an advertisement the candidate must not have crossed a particular age limit and when no such cut-off date is prescribed, the eligibility must be determined as on the last date of receipt of application. Reliance placed by the learned Advocate General upon the decision in the case of ***Bhupinderpal Singh and Others V/s. State of Punjab and Others***⁶, throw light on this issue, as, by referring to various authoritative judgments, the Apex Court observed thus:

“13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma Vs. Chander Shekhar & Anr. JT 1997 (4) SC 99; A.P. Public Service Commission Vs. B. Sarat Chandra & Ors. 1990 (4) SLR 235; The Distt. Collector and Chairman, Vizianagaram (Social Welfare Residential School Society) Vizianagaram and Anr. Vs. M. Tripura Sundari Devi 1990 (4) SLR 237; Mrs. Rekha Chaturvedi Vs. University of Rajasthan & Ors. JT 1993 (1) SC 220; Dr. M.V. Nair Vs. Union of India & Ors. 1993 (2) SCC 429; and U.P. Public Service Commission, U.P., Allahabad & Anr. Vs. Alpana JT 1994 (1) SC 94, the High Court has held (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice.”

⁶ (2000) 5 SCC 262

Referring to the various decisions where it was noted that the State Government notifying the vacancies ought to have clearly laid down and stated the cut-off date by reference to which the applicants were required to satisfy their eligibility and if so not done, the Apex Court found the procedure to be faulty, when applications 1000 in numbers were entertained, the applicants called for interview though not eligible by reference to the last date of receipt of the application and it was concluded that the State had followed a wrong practice of determining eligibility condition as on the date of interview and it was directed that such practice should be discontinued.

26. The learned Advocate General has placed reliance upon the decision in the case of **Sakshi Arha v/s. Rajasthan High Court and Others**⁷ and a careful reading of the said decision with specific reference to the decision in the case of **Ram Kumar Gijroya** (supra), the Court observed that as opposed to the unabating virtue of being SC or ST candidate, the status of a candidate claiming to be OBC-NCL or MBC-NCL or EWS is constantly subject to transposition owing to their social or economic status with the concerned jurisdiction. Referring to the 9 Judge Bench decision in case of **Indira Sawhney** (supra), the Court noted that the Backward Classes were categorised into “Creamy Layer” and “Non-Creamy Layer” as an attempt to differentiate the affluent strata therein, so as to allow the reservation for those who are truly warranting of the affirmative action by the State.

Referring to the Circular dated 09.09.2015 issued by the Department of Social Justice & Empowerment of the State of Rajasthan stating that a certificate for NCL category shall be only valid for a period of one year and upon the applicant submitting the

⁷ 2025 SCC OnLine SC 757

affidavit that she has not progressed out of the said category in the following year, was deemed to be a valid Certificate but the maximum period to allow for the practice to continue was set out to be three years. The advertisement issued for the post of Civil Judge and Judicial Magistrate on probation in Civil Judge Cadre provided that for reservation of Scheduled Caste/Scheduled Tribe/Other Backward Class and More Backward Class, Certificate issued by the Competent Authority as per rules in the prescribed format shall be furnished. The instructions to the candidate also provided, as in the cases before us, that the applicant shall ensure that he/she meets all the eligibility conditions as per the conditions mentioned in the advertisement.

The advertisement was silent on the aspect of date of issuance of a valid category certificate though it clearly provided that the Certificate must be issued by the Competent Authority as per Rules. The advertisement published on 22.07.2021, though silent on the last date of issuance of concerned Certificates for each reserved category, specified the last date of receipt of application to be 31.08.2021. A notice was thereafter issued on 04.08.2022, mentioning that the reserved category certificates ought not to have been issued beyond 31.08.2021.

The Appellants belonging to different reserved categories who cleared their preliminary examination did not have their certificates issued as per the dates specified in the subsequent notice and therefore their names were not included in the list of candidates called for interview. When the appellants approached the High Court of Rajasthan challenging the subsequent notice requiring the candidates under reserved category to submit certificate issued within one year of the application deadline, i.e. 31.08.2021 or a certificate issued between 31.08.2018 to 30.08.2020 along with an

affidavit contended that there was no deadline for submitting the certificate as specified in the advertisement and therefore belated imposition of this condition is arbitrary and unjust.

27. It is in this background the Apex Court observed thus:

“36. The Subsequent Notice, which was issued by the Rajasthan High Court on 04.08.2022, cannot be said to be arbitrary or without any basis. It specified that the certificate belonging to the concerned reserved category should have been issued prior or upto 31.08.2021 i.e. the last date of receipt of the application in pursuance to the Advertisement. This was because the Advertisement required a candidate to possess eligibility upto the cut-off date. As regards the specifications regarding a certificate issued between 31.08.2018 and 30.08.2020 along with the affidavit is concerned, this was based on the Government Circulars dated 09.09.2015 and 08.08.2019 (reproduced above) which clarified that the certificate issued will be valid for one year extendable by three years with affidavit. Thus, the Subsequent Notice issued was in consonance with law and as per the Advertisement, applicable Rules, instructions and circulars issued by the competent authority. The plea of the appellants is unsustainable and deserves to be rejected. No relaxation can be granted in the given facts and circumstances of the case nor can it be claimed as a matter of right in the absence of any such discretionary clause in the Advertisement/Rules/Instructions.”

Taking note of the Circular dated 09.09.2015 and dated 08.08.2019, it was held that though the timeline was prescribed by a subsequent notice and not in the advertisement, it was in terms of the Circular.

It is relevant to note that the subject Circular dated 09.09.2015 specifically provided for validity period of Caste Certificate to the following effect:

“1. The validity of caste certificates issued for SC / ST will be lifetime whereas the certificate for OBC will be issued only

once but the fact that the person is not in the creamy layer will be recognised on the basis of a valid affidavit up to three years.

2. The certificate of non-creamy layer will be valid for one year. Once the certificate of non-creamy layer is obtained, if the applicant is not in the creamy layer in the next year as well, then in such a situation an affidavit (Appendix-D) will be obtained from him, where the earlier issued non-creamy layer certificate shall be deemed valid, this can be done for a maximum period of three years.”

The subsequent Circular dated 08.08.2019 however prescribed thus:

“...Therefore, it is once again clarified in this regard that the caste certificate of Other Backward Classes shall be valid for one year, however, in a situation where the applicant has been issued a certificate for not falling in the creamy layer category and if such applicant does not fall within the creamy layer in the subsequent year as well, in that situation, previously issued certificate of falling within the non-creamy layer will be treated as valid after obtaining an attested affidavit from the applicant, which can be done maximum for a period of three years.”

28. The effect of the Circulars as regards the NCL Certificate issued by the Social Justice Department of the State of Rajasthan is clearly distinct from the Circular issued by the Government of Goa on 19.07.2000.

The Circular of 09.09.2015 and 08.08.2019 rightly provided that the Certificate of Non-Creamy Layer will be valid for one year and once a Certificate was obtained, the burden was on the applicant to submit an affidavit in the next year that he is not in the creamy layer and thereafter, the non-creamy layer Certificate would be treated as valid even for the next year, this being permissible for maximum period of three years.

By applying the underlining principle contained in the two Circulars, when the advertisement issued prescribe the last date of application as 31.08.2021 and a notice was published on 04.08.2022, stating that the reserved category Certificate ought not to have been issued beyond 31.08.2021, and when the appellant Sakshi Arha, had a Certificate issued on 27.07.2016 and on 17.06.2022, beyond the said date, it was held that she did not possess a valid Certificate nor did she file an affidavit as per the proforma at the relevant time, the relevant time being the last date of the application, i.e. 31.08.2021.

Same was the case of all the applicants whose details were set out in paragraph 37 of the judgment as the Certificate of OBC-NCL produced by the candidates had a validity of one year but if affidavit is furnished stating that the candidate continue to be in non-creamy layer for the next year as well, the Certificate possessed by the candidate was considered to be valid but, since the appellants failed to hold a valid certificate nor did they file the affidavit as per the proforma at the relevant time, i.e as on 31.08.2021, it is rightly held that they did not satisfy the validity criteria as belonging to NCL category on the last date of application as prescribed in the advertisement and no fault was found with the subsequent notice issued on 04.08.2022 stating that the reserved certificate ought not to have been issued beyond 31.08.2021 as, by relying upon the decision of the Apex Court in the case of **Ashok Kumar Sonkar v/s. Union of India & Others**⁸, it was held that where no specific date is provided for document submission, the cut-off date for submission of application shall be applicable.

29. The argument canvassed before us in the backdrop facts, arising before us for consideration in the four different Petitions, we

⁸ 2007 4 SCC 54

must note that the advertisement prescribed the last date of application and, therefore, it has to be seen whether on that date the candidate was OBC and if he/she did not fall in the 'Creamy Layer'.

The Circular issued by the Government of Goa prescribing the validity of the OBC Certificate to be three years is also subjected to challenge as it is urged before us that the prescription of validity of three years is arbitrary.

We fail to understand the justifiability in fixing the validity period of an OBC Certificate to be three years as we find that the income criteria of a person may change very next year and this would result into a person whose income is raised beyond the threshold limit in the subsequent year, to still enjoy the benefit of the OBC Certificate issued to him which had declared him to be not belonging to 'Creamy Layer'. The Circular dated 19.07.2000 is issued with an object of simplification of procedure for issuance of Caste Certificate and it is noted is that the OBC Certificates issued with limited validity causes inconvenience to the Caste Certificate holders and therefore the Government took a decision to issue a Certificate which is valid for three years.

As indicated by us, three years is a long period as the income of a person may vary in the next year and as we have seen in the case of **Sakshi Arha** (supra), the Social Welfare Department of the State of Rajasthan has prescribed the validity of the Non-Creamy Layer to be one year and the burden was cast upon the applicant to submit an affidavit that there is no increase in the income limit of the candidate and thereupon the Certificate issued for the previous year shall be deemed to be valid for this year and this being continued for three years.

30. It is necessary to consider the annual income of the candidate/his family in terms of the guidelines issued for determination of the income and that is the specific reason why in the OM of the DOPT, the declaration restrict itself to a certification that the holder of the certificate does not belong to the persons/sections (Creamy Layer) mentioned in column 3 of the Schedule to the Government of India, DOPT Om No.36012/22/93-Estt (SCT) dated 08.09.1993 and as amended from time to time.

In order to consider whether the candidate fall into the exclusion category, it is necessary to ascertain the income as on the date on which the candidature of a person is under consideration and this at times, in absence of other specifications, shall be the last date of the application. The declaration of income, it being annual income, must be restricted only for one year and therefore even in the certificate issued for Socially and Educationally Backward Class of persons, the non-creamy layer certificate has a validity of one year and not beyond that. It is unfathomable to provide that the non-creamy layer certificate shall remain valid for three years merely on the basis that the financial limit prescribed for determining the creamy layer is liable to be revised every three years. The financial status of a person necessarily has to be determined on the date on which his candidature is to be considered and that shall be on the date as prescribed by the advertisement.

31. We shall now deal with each individual case and pronounce upon the eligibility of the candidate based on the Certificate produced, who has received rejection on the ground of absence of a valid OBC Certificate.

In all four cases, the advertisement issued by the Public Works Department is dated 27.08.2021 and in absence of a specific

date assigned on which the certificates produced shall be valid, we shall consider the last date of application as prescribed in the advertisement, i.e. 27.09.2021. As far as Writ Petition No. 372 of 2024 is concerned, the Petitioner was in possession of an OBC Certificate issued on 30.07.2018 and thereafter she obtained certificate on 21.11.2023, both of which are of no consequence as she must have a declaration of 'Non-creamy Layer' as on 27.09.2021. In absence of such a declaration, her candidature has been rightly rejected. In Writ Petition No.784 of 2024, the Petitioner possessed certificate dated 24.09.2014 which is issued almost seven years before 27.09.2021. The Petitioner obtained a further certificate on 26.10.2021 and 08.10.2024 and these certificates are also of no consequence to determine her income limit as on 27.09.2021.

In the case of Pandurang alias Vedant Surendra Naik, he produced the OBC Certificate dated 24.05.2017 and 25.09.2021, which also do not reflect his income as on 27.09.2021. Further, Ashwin Naik produced a certificate dated 27.09.2013 belonging to Bhandari Naik (OBC) which has rightly been not considered. What was relevant for all the Petitioners was production of a certificate which would have taken into consideration the annual income for the preceding financial year, i.e. 2020-2021, the last date for furnishing the applications being 27.09.2021 and this being the cut-off date for consideration whether the Petitioner belong to the exclusion category/'non-creamy layer', making them entitled for the benefit of OBC category as merely belonging to OBC category was not enough but it was also imperative for the Petitioners to have a declaration that they belonged to the 'non-creamy layer' on the last date of the application.

The rejection of the candidature of all the Petitioners, therefore, cannot be faulted and according to us, the Petitioners are not entitled for any relief.

32. For the reasons indicated above, since we are of the considered view that the eligibility of a candidate for being appointed to a post is to be determined on the last date of application specified in the advertisement, this date being 27.08.2021, only the candidate who was armed with a Certificate certifying him to be not falling in Creamy Layer on that date meet the requirement of filling the post by an OBC candidate. Any Certificate issued prior to the financial year 2021 will not deserve consideration of the candidate as he must meet the requirement of not falling in the Creamy Layer on 27.09.2021 and even any Certificate issued subsequent thereto, shall not make him eligible. As a result, finding no merit and substance in the four Petitions, they are dismissed.

As far as the Circular dated 19.07.2000 issued by the Government of Goa, Directorate of Social Welfare, we direct the State Government to re-visit the same as we find that the said Circular has prescribed the validity of an OBC Certificate of three years which would defeat the purpose for which the Certificate is issued and particularly, since we are of the view that the income of a candidate may not remain static and definitely not throughout the period of three years. It is open for the State Government to follow the procedure as upheld by the Apex Court in **Sakshi Arha's** case, based on the Circular formulated by the State of Rajasthan through its Social Welfare Department in form of a Circular dated 09.09.2015 and Circular dated 08.08.2019. Since we are of the view that the Petitioners were not holding a valid Certificate as far as the threshold of the income limit is concerned as prescribed by the OM dated

08.08.1993 in particular by applying the income/wealth test which contemplate taking into consideration of the gross annual income for considering whether the income limit is crossed so as to push the candidate out of the Creamy Layer.

33. As a result, all four Writ Petitions fail and are dismissed. Rule discharged. No order as to costs.

NIVEDITA P. MEHTA, J

BHARATI DANGRE, J