



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

933 WRIT PETITION NO. 8459 OF 2025

THE STATE OF MAHARASHTRA THR DIRECTOR AND CHAIRMAN STATE
LEVEL SELECTION COMMITTEE PUNE DIRECTORATE

VERSUS

VENKATESH VIJENDRA MUNDHE

...

Mr. S. R. Wakle, AGP for Petitioner/State

Mr. V. V. Mundhe, Advocate for Respondent

CORAM : NITIN B. SURYAWANSHI AND
VAISHALI PATIL-JADHAV, JJ.

DATE : 5th MARCH, 2026

PER COURT :-

1. This Petition filed by the State challenges the order dated 25.03.2025 passed by the Maharashtra Administrative Tribunal Mumbai, Bench at Aurangabad in Original Application No. 988 of 2023.

2. In the Original Application, the respondent/original applicant sought direction to the petitioner to consider his candidature from NT-D category as per the Non Creamy Layer certificate issued by the competent authority dated 12.07.2023 and in consonance with Government Corrigendum dated 17.02.2023. A further direction was also sought to issue appointment order in favour of the respondent/original applicant on the post of Planning Assistant (Group-B) from NT-D category.

3. On 28.03.2023, the Petitioner published Advertisement bearing No.01/2023 calling upon applications for filling up 177 posts of “Planning Assistant” (Group-B) (Non-Gazetted) from the candidates belonging NT-D category. As per Clause 10 of the said advertisement, the candidate was required to submit a Non-Creamy Layer Certificate issued by the Competent Authority, valid till 31.03.2023. In the online examination held on 29.05.2023, the Respondent secured 146.660 marks and stood at serial No.57 in the general merit list. He then submitted representation on 10.07.2023 to the Petitioner pointing out that, as per clause 2(iii) of the Government Resolution (in short “G.R.”) dated 25.03.2013, a corrigendum is issued to the G.R. dated 17.02.2023. In view of the said corrigendum, the Non-Creamy Layer Certificate of the current financial year could be considered at the time of verification of documents of the concerned candidate. As per the advertisement, two posts of Planning Assistant were reserved for NT-D (General) category. The Petitioner, however, selected two candidates from NT-D (Divyang) category. Shri. Amol Pandurang Aghav, who has secured 110.008 marks and Shri. Shivaji Babasaheb Aghav who has secured 94.081 marks were selected from NT-D (Divyang) category. However, Shri. Shivaji Babasaheb Aghav was found not eligible for recommendation after the document verification, as he could not submit the necessary certificate of educational

qualification.

. After rejection of the claim of Shri. Shivaji Babasaheb Aghav, the Respondent immediately submitted an application dated 28.09.2023 pointing out that, he has secured 146.66 marks and stood at serial No.57 in the merit list. As per the advertisement, two posts were reserved for NT-D category and there was no candidate above the Respondent in the merit list. He, therefore, requested to give him appointment. However, Respondent was not called for document verification. Even his representation dated 06.10.2023 was not considered, hence he approached the Maharashtra Administrative Tribunal (for short 'the Tribunal').

4. After hearing the parties, the Tribunal has allowed the Original Application and directed the Petitioner to issue an appointment order to the Respondent. The Petitioner is aggrieved by the said decision.

5. Heard learned AGP for the Petitioner/State and learned Advocate for the Respondent/original applicant.

6. Perused the record.

7. Admittedly, the Respondent belongs to the NT-D category and had submitted his application stating that he did not want to apply under Non-

Creamy Layer category. The Clause 2(iii) of the G.R. dated 25.03.2013 enables the candidates to submit a Non-Creamy Layer (for short “NCL”) Certificate which would have been valid in the current financial year, as against NCL certificate, which could have been valid as on the last date of submission of the online application. In this context, the Tribunal has rightly held that;

“24. In the instant case, last date for filling in online application is 30.04.2023 and current financial year would also commence from 01.04.2023. We agree with the submissions made on behalf of the applicant by the learned counsel that the applicant has fairly stated “NO” to the relevant column as he had no NCL certificate valid up to 31.03.2023.”

25. Thus, in the light of the changed circumstances following issuance of corrigendum dated 17.02.2023, the applicant, who is otherwise being eligible to apply under reserved NT-D category, but for mandatory requirement of the valid NCL certificate as on 31.03.2023, subsequently obtained NCL certificate on 13.07.2023. The applicant, who was careful in following the terms and conditions of the advertisement, was constrained to apply in Open General category only on account of limitation preventing him from obtaining valid NCL certificate. However, we find that the conduct of the applicant is bona fide, he cannot be deprived benefit of NT-D reserved category. The applicant is meritorious candidate, who has cleared the main examination and so far NT-D category is concerned, admittedly there is

no other candidate above the applicant from NT-D category. So far the submission on behalf of the applicant that the posts reserved for social reservation are mandatorily required to be filled up and the same cannot be kept vacant for horizontal reservation for Divyang category is concerned, we do find substance in it. If in the recruitment process eligible candidate from Divyang category is not found, then the said reservation will be carried forward for the next recruitment, however, that does not mean that the respondent has been prevented from filling up the said post.

26. *In this context further it is necessary to note here that even one Divyang candidate for want of educational qualification is already held ineligible and there is no hurdle as such to give appointment to the applicant from NT-D category. By interim order dated 20.11.2023 this Tribunal directed the respondent to keep one post of Planning Assistant (Group -B) (Non-gazetted) meant for NT-D General category vacant and this order remained in force till disposal of the present O.A. In view of this, there is no hurdle to appoint the applicant on the post of Planning Assistant (Group-B) (Non- gazetted) of NT-D category.”*

8. From this, it is clear that since the Respondent did not possess valid NCL certificate at the time of filling application, he has mentioned that he is not applying under NCL category. It appears from the record that till the Respondent filed his representation on 10.07.2023, no documentary verification was done.

9. From the afore stated facts, it is clear that the Respondent was otherwise eligible to apply under the reserved NT-D category, but for the mandatory requirement of the valid NCL certificate as on 31.03.2023, he subsequently obtained NCL certificate on 13.07.2023. The conduct of the Respondent is, therefore, bona fide and the Tribunal has rightly held that he cannot be deprived benefit of NT-D reserved category. The Respondent is meritorious candidate and there is no other candidate above the applicant from NT-D category.

10. So far as contention of the Petitioner that, the posts reserved for social reservation are mandatorily required to be filled up and they cannot be kept vacant for horizontal reservation for Divyang category. It is accepted for the sake of argument, since the recruitment process, no eligible Divyang category candidate is found, then the said reservation will have to be carried forward for next recruitment. The Petitioner cannot keep the said post vacant.

11. The facts of the Respondent's case has squarely covered by *Priyanka Prakash Kulkarni Vs. Maharashtra Public Service Commission in Special Leave Appeal (Civil) No. 25347 of 2023, dated 29.01.2024*. The Tribunal has rightly relied on the said decision while allowing the Petition.

12. The Tribunal has passed a well reasoned order and has rightly interpreted the G.R., the corrigendum and has rightly applied the ratio in ***Priyanka Prakash Kulkarni*** (supra) who are allowing the Petition. There is no error of law or jurisdictional error has been committed by the Tribunal while allowing the Petition. No case is made out by the Petitioner to interfere in the impugned order passed by the Tribunal in exercise of extraordinary writ jurisdiction. Hence, Writ Petition being devoid of merits stands dismissed.

(VAISHALI PATIL-JADHAV)
JUDGE

(NITIN B. SURYAWANSHI)
JUDGE

ssp