

Priyanka Prakash Kulkarni
v.
Maharashtra Public Service Commission

Civil Appeal No. 1982 of 2024

29 January 2024

[Vikram Nath and Satish Chandra Sharma, JJ.]

Issue for Consideration

Appellant was not able to take benefit of female reservation on account of her inability to produce a valid Non-Creamy Layer (NCL) certificate on the last date of submission of the application form. Later, a corrigendum enabled candidates to submit an NCL certificate valid in the current financial year. However, the High Court held that since the petitioner had applied from Open General Category because she did not hold the NCL certificate, her prayer for change of category cannot be accepted.

Headnotes

Service Law – Female Reservation – Non-Creamy Layer certificate – Change of category – Appellant contended that she did not submit her application under the ‘Reserved Female Category’ on account of her inability to obtain an NCL Certificate which was valid as on the last date of submission of the application form i.e., 01.06.2022 – However, upon the issuance of the Corrigendum, the appellants’ eligibility qua the ‘Reserved Female Category’ came to be revived as the appellant was no longer mandated to furnish an NCL Certificate which was valid as on the last date of submission of the application form but instead was called upon to furnish an NCL Certificate pertaining to current financial year:

Held: Admittedly, the appellant i.e., a candidate who was scrupulously following the terms and conditions of the impugned advertisement was constrained to apply under the ‘Open General Category’ only on account of certain logistical limitations preventing her from obtaining a valid NCL Certificate – Consequently, in the absence of the requisite documents evidencing status as a

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person belonging to the NCL under the impugned advertisement read with the Circular i.e., a valid NCL Certificate as on the date of submission of the application form, the appellant did not mark 'yes' against the specific question pertaining to her status as a person belonging to the NCL – The aforesigned conduct of the appellant is bonafide – Accordingly, the appellant cannot be unfairly deprived of the benefit of female reservation merely on account of the appellant's honesty and restraint which did not allow her to mark 'yes' against a column inquiring about a prospective candidates' status as a person belonging to the NCL, in the absence of the underlying supporting document – Additionally, other similarly situated candidates have been granted the benefit under the Corrigendum; and their otherwise defective applications have now been considered by the Respondent – The High Court adopted a hypertechnical interpretation of the instructions without appreciating that such an interpretation would nullify the effect of the Corrigendum – Impugned order set aside. [Paras 16, 17, 18]

Case Law Cited

State of T.N. v. G. Hemalathaa (2020) 19 SCC 430 – referred to.

List of Keywords

Service Law; Female reservation; Non-creamy Layer certificate; Eligibility qua 'reserved female category'; hypertechnical interpretation of instructions; Benefit of corrigendum; Relaxed instructions.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No.1982 of 2024

From the Judgment and Order dated 23.08.2023 of the High Court of Judicature at Bombay in WP No.9040 of 2023

Appearances for Parties

Abhijeet Pawar, Praveen B. Kamble, Lalit Kaushik, Dinesh Bhardwaj, Sashank Gaurav, Amit Sharma, Advs. for the Appellant.

Rahul Chitnis, Gary Singh, Ms. Samiksha Gupta, Chander Shekhar Ashri, Advs. for the Respondent.

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Judgment / Order of the Supreme Court

Order

1. Leave granted.
2. The decision of the Division Bench of the High Court of Judicature at Bombay (the “**High Court**”) wherein the High dismissed Writ Petition No. 9040 of 2023; and consequently, granted imprimatur to the decision of the Maharashtra Administrative Tribunal, Mumbai (the “**MAT**”) dated 07.07.2023 in Original Application No. 396 of 2023 (the “**OA**”) is assailed before us (the “**Impugned Order**”).
3. An advertisement was issued by the Respondent on 11.05.2022 in relation to the State Services Preliminary Examination for the recruitment of person(s) to the gazetted post of ‘Group A’ and ‘Group B’ officers under the Government of Maharashtra (the “**Impugned Advertisement**”). Pertinently, Paragraph 5.5 of the Impugned Advertisement contemplated the benefit of *inter alia* female reservation subject to certain prerequisites which included (i) that the candidate must be a domicile of Maharashtra; and (ii) that the candidate must belong to the Non-Creamy Layer (“**NCL**”).
4. Furthermore, under Paragraph 5.10 read with Paragraph 5.14 of the Impugned Advertisement, a candidate seeking to avail *inter alia* female reservation must not only clearly state that he/she is domiciled in Maharashtra but should also submit an NCL Certificate issued by the competent authority which must be valid as on the last date of submission of the application form i.e., 01.06.2022.
5. In the aforesaid context, the Appellant i.e., a candidate employed as State Tax Officer in the Goods and Services Tax (“**GST**”) Department, Nodal 3, Pune, Maharashtra submitted her application for the aforesaid examination under the ‘Open General Category’ on account of her inability to produce a valid NCL Certificate as on the last date of submission of the application form. However admittedly, and undoubtedly the Appellant was otherwise eligible to apply under ‘Reserved Female Category’ qua the underlying examination being conducted pursuant to the Impugned Advertisement.
6. Thereafter, the Appellant cleared the preliminary examination and qualified for the main examination. Subsequently, on 11.10.2023, the Appellant cleared the main examination from the ‘Open General Category’.

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7. However, in the *interregnum*, on 17.02.2023, the Department of Other Backward Bahujan Welfare issued a corrigendum (the “**Corrigendum**”) amending Clause 2 (iii) of a circular bearing number CBC-2012/P.No.182/Vijabhaj-1, dated 25.03.2013 issued by Department of Social Justice and Special Assistance, Government of Maharashtra whereunder (i) the procedure of obtaining; and (ii) validity of *inter alia* NCL Certificates’ were regulated (the “**Circular**”). Pertinently, the Corrigendum enabled candidates to submit an NCL Certificate which would have been valid in the current financial year as against an NCL Certificate which had to have been valid as on the last date of submission of the application form i.e., 01.06.2022.
8. In light of the changed circumstances following the issuance of the Corrigendum as more particularly delineated above, the Appellant, who had otherwise been eligible to apply under the ‘Reserved Female Category’ but for mandatory requirement of a valid NCL Certificate as on 01.06.2022, subsequently obtained an NCL Certificate on 09.03.2023. Thereafter, the Appellant made a representation to the Respondent to consider her candidature as a ‘Reserved Female Category’ candidate.
9. Aggrieved by the non-consideration of her representation, the Appellant preferred the OA before the MAT. *Vide* an order dated 07.07.2023, the MAT dismissed the OA observing *inter alia* that the Appellant was not in possession of an NCL Certificate prior to the issuance of the Corrigendum (the “**Underlying Order**”). Aggrieved by the Underlying Order, the Appellant herein preferred a writ petition before the High Court. *Vide* the Impugned Order, the writ petition came to be dismissed. The operative paragraph of the Impugned Order is reproduced below:

“6. Therefore, after hearing both the side and considering the conspectus of the matter, it is amply clear that the Petitioner had applied from Open General Category, because she did not hold the NCL Certificate. Having appeared for the Preliminary examination as well as Main examination from the “Open General” Category, merely because a corrigendum is issued, the Petitioner cannot be allowed to change the category at this stage, more so, on background of the general instructions to the candidate contained in paragraph Nos. 1.2.5.6 and 1.2.5.7, which does

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not permit to make any changes once the form is filled in. If the Petitioner was desirous of making an Application for general women category, she ought to have obtained the NCL in advance showing diligence, which she has failed. At this stage, if the Petitioner is allowed to change her category, it will open a flood gate of litigation, as observed by the MAT. Hence, the said prayer of the Petitioner cannot be considered.”

10. Mr. Amit Sharma, Ld. Counsel appearing on behalf of the Appellant has fairly submitted before us that the Appellant did not submit her application under the ‘Reserved Female Category’ on account of her inability to obtain an NCL Certificate which was valid as on the last date of submission of the application form i.e., 01.06.2022. However, upon the issuance of the Corrigendum, the Appellants’ eligibility qua the ‘Reserved Female Category’ came to be revived as the Appellant was no longer mandated to furnish an NCL Certificate which was valid as on the last date of submission of the application form but instead was called upon to furnish an NCL Certificate pertaining to current financial year.
11. Furthermore, Mr. Sharma has submitted before us that 7 (seven) – 8 (eight) other persons who dishonestly applied under the ‘Reserved Female Category’ without a valid NCL Certificate, have been granted the benefit under the Corrigendum, and subsequently upon producing the NCL Certificate as per the terms of the Corrigendum, the Respondent has proceeded to consider their candidature under the ‘Reserved Female Category’.
12. On the other hand, Mr. Rahul Chitnis, Ld. Counsel appearing on behalf of the Respondent has vehemently opposed the aforesaid submission(s). The main thrust of the arguments of Mr. Chitnis is two-fold i.e., (i) the Appellant cannot be allowed to change the category of her candidature in light of Clause 1.2.5.6 and 1.2.5.7 of the General Instructions to Candidates published on the Respondent Commission’s website (the “**Instructions**”)¹; and (ii) the Appellant has failed to mark ‘yes’ against the specific question pertaining to a prospective candidates’ status as a person belonging to the NCL. Accordingly, it was submitted that the Appellant’s case is differently

1 Reliance in this regard was placed on *State of T.N. v. G. Hemalatha*, (2020) 19 SCC 430.

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placed from the other 7 (seven) – 8 (eight) persons whom whilst having applied without a valid NCL Certificate, marked ‘yes’ against the specific question pertaining to their status as a person belonging to the NCL, and accordingly were granted the benefit under the Corrigendum.

13. Upon a perusal of Paragraph 5.10 read with Paragraph 5.14 of the Impugned Advertisement, it is clear that any application under the ‘Reserved Female Category’ was to be supported by an NCL Certificate that was valid as on the last date of submission of the application form i.e., 01.06.2022. Subsequently, *vide* the issuance of the Corrigendum, the aforesaid position changed; and candidates were now eligible to furnish an NCL Certificate pertaining to the current financial year.
14. Additionally, Clause 1.2.5.6 and 1.2.5.7 of the Instructions although prohibits any modification and / or change in the application submitted pursuant to the Impugned Advertisement, could not have been interpreted in such a manner so as to nullify the effect of the Corrigendum.
15. In this regard, the reliance placed on **G. Hemalathaa, (Supra)** is misdirected as therein a rule issued by the Tamil Nadu Public Service Commission was admittedly contravened; and thereafter relaxed by the High Court on humanitarian grounds erroneously. Herein, it is the on account of the Corrigendum that certain relaxations have been awarded to all person(s) however, on account of an overly restrictive interpretation of (i) the Corrigendum; and (ii) the Instructions, the benefit(s) under the Corrigendum are being selectively restricted by the Respondent.
16. Admittedly, the Appellant i.e., a candidate who was scrupulously following the terms and conditions of the Impugned Advertisement was constrained to apply under the ‘Open General Category’ only on account of certain logistical limitations preventing her from obtaining a valid NCL Certificate. Consequently, in the absence of the requisite documents evidencing status as a person belonging to the NCL under the Impugned Advertisement read with the Circular i.e., a valid NCL Certificate as on the date of submission of the application form, the Appellant did not mark ‘yes’ against the specific question pertaining to her status as a person belonging to the NCL.

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17. The aforesigned conduct of the Appellant is *bona-fide*. Accordingly, in our view the Appellant cannot be unfairly deprived of the benefit of female reservation merely on account of the Appellant's honesty and restraint which did not allow her to mark 'yes' against a column inquiring about a prospective candidates' status as a person belonging to the NCL, in the absence of the underlying supporting document. Additionally, other similarly situated candidates have been granted the benefit under the Corrigendum; and their otherwise defective applications have now been considered by the Respondent.
18. In our considered opinion, the High Court adopted a hyper-technical interpretation of the Instructions without appreciating that such an interpretation would nullify the effect of the Corrigendum. Such an interpretation ought not to have been adopted especially in light of the fact that other persons have been granted the benefit of the Corrigendum; and that the Respondent has relaxed the Instructions qua such persons so as to enable valid NCL Certificates to be furnished.
19. In light of the aforesaid, we find that the Impugned Order and resultantly, the Underlying Order ought to be set aside. Accordingly, taking note of the peculiar facts of the case; and that the Appellant is a meritorious candidate who has cleared the main examination under the 'Open General Category' despite being deserving of the benefit of female reservation, we are inclined to balance the equities and do justice by exercising our power under Article 142 of the Constitution of India. Accordingly, we direct the Respondent to forthwith treat the Appellant as a candidate under the 'Reserved Female Category'.
20. The appeal is allowed in the aforesaid terms. Pending application(s), if any, shall stand disposed of.

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeal allowed.