



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7718 OF 2021

Dr. Devendra Narayan Bonde
Age: 40 years, Occu.: Service,
R/o. Nashirabad, Behind New English
School, Tq. And Dist. Jalgaon.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary
Higher and Technical Education
Department, Mantralaya,
Mumbai.
2. The Kaviyatri Bahinabai Chaudhari
North Maharashtra University,
Jalgaon, Through its Registrar,
3. Leva Educational Union,
Jalgaon Jilha Peth, Jilha Road,
Jalgaon, Through its President/Secretary,
4. Dr. Annasaheb G. D. Bendale
Mahila Mahavidyalaya, Jalgaon,
Jilha Road, Jilha Peth, Jalgaon,
Through its Principal.
5. Dr. Rupali Deelip Chaudhari,
Age: 42 years, Occu.: Service,
R/o. "Pramila", Vidya Nagar,
Near Gurukul, Faizpur, Jalgaon,
District Jalgaon.

.. RESPONDENTS

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Mr. Anil M. Gaikwad, Advocate for the petitioner.
Dr. Kalpalata Patil Bharaswadkar, AGP for respondent No.1.
Mr. A. B. Girase, Advocate for respondent No.2.
Mr. S. R. Barlinge, Advocate for respondent Nos.3 and 4.
Mr. Ajay G. Talhar, Advocate for respondent No.5.

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**CORAM : MANGESH S. PATIL AND
SHAILESH P BRAHME, JJ.**

**RESERVED ON : 20 JUNE 2024
PRONOUNCED ON : 02 JULY 2024**

JUDGMENT [Per Shailesh P. Brahme, J.] :-

Rule. Rule is made returnable forthwith. Heard both the sides finally at the admission stage with their consent.

2. Petitioner is challenging selection of respondent No.5 as Assistant Professor and seeking further directions to appoint him on the post of Assistant Professor by quashing the appointment of respondent No.5.

3. The petitioner and respondent No.5 belong to OBC category. They participated in the selection process for the post of Assistant Professor advertised by the Management on 17.09.2019. One of the conditions stipulated in the advertisement was, production of the original documents at the time of interview. They were interviewed on 05.02.2020 by a duly constituted selection committee. Petitioner secured 92 marks, whereas respondent No.5 secured 64 marks. The respondent No.5 was selected and appointed vide order dated 20.02.2020 as Assistant Professor.

4. Petitioner and other candidates submitted complaints in writing against the selection of the respondent No.5 on 20.02.2020 as

well as 27.02.2020. A specific objection was raised by them that at the time of interview on 05.02.2020, the respondent No.5 was not having valid Non-Creamy Layer certificate, which was a condition precedent and hence, she was not eligible for the appointment. Considering the grievances of the petitioner and others, a Committee was constituted by the respondent No.2 University. Petitioner, respondent Management and respondent No.5 were heard.

5. The Committee gave its report on 19.01.2021 in favour of respondent No.5 and recorded that respondent No.5 was holding educational qualification and was eligible. She was recommended for granting approval. Thereafter vide letter dated 28.05.2021, respondent No.2 granted approval to the respondent No.5, albeit subject to the outcome of the Writ Petition No.12051 of 2015 preferred in the High Court.

6. Learned Counsel Mr. Anil Gaikwad for the petitioner would formulate following submissions :-

- i) Respondent No.5 was not eligible as she was not having Non-Creamy Layer certificate on 05.02.2020, which was a cut off date, in view of condition stipulated in the advertisement. Her selection is overlooking to eligibility criteria.
- ii) Petitioner secured 92 marks and the respondent No.5 secured 64 marks, still she was selected which is discriminatory

and arbitrary.

iii) Respondent No.5 secured Non-Creamy Layer Certificate on 06.05.2021 and submitted it by tendering application on same day, which shows want of eligibility on 05.02.2020.

iv) The Non-Creamy Layer Certificate produced by respondent No.5 is backdated and cancelled subsequently.

v) Being wait-listed candidate, petitioner is entitled to be appointed at the place of respondent No.5.

vi) Reliance is placed on the judgments of (I) **Supriya Vinayak Gawande Vs. The State of Maharashtra and others, [Writ Petition No.5294 of 2019 with other matters decided on 02.08.2022]** (II) **Special Leave Petition No.14803 of 2022 decided by Hon'ble Supreme Court on 06.09.2022** and (III) **Sanjivani Abasaheb Karne and others Vs. The State of Maharashtra and others, [Writ Petition No.585 of 2023 decided on 30.01.2023]**.

7. Respondent Nos.3 and 4 support the petitioner. Learned Counsel Mr. S. R. Barlinge for them would adopt the submissions of the petitioner.

8. The respondent No.2 University has filed affidavit-in-reply to defend selection of respondent No.5. Learned Advocate Mr. A. B.

Girase appearing for respondent No.2 advances following submissions :-

- a) Present petition cannot be entertained because petitioner could have approached Grievance Committee under Section 79 of the Maharashtra Public Universities Act, 2016 (hereinafter referred to as 'the Act').
- b) After scrutinizing the proposal for approval, respondent – University called upon Management to remove the deficiencies. Then Non-Creamy Layer certificate was submitted.
- c) After receiving complaints from the petitioner and others, a Committee was constituted to inquire into the illegalities of the selection process. Due opportunity was extended to the stakeholders.
- d) After receiving report dated 19.01.2021 of the inquiry committee, approval was granted to the respondent No.5.
- e) It was the responsibility of the College/Management to verify the eligibility of the candidates appearing for the interview and not that of duly constituted committee.

9. Learned Counsel Mr. A. G. Talhar for the respondent No.5 would repel the submission of the petitioner and the Management on

the basis of affidavit-in-reply. He would make the following submissions :-

- a) Selection of the respondent No.5 was in accordance with law. Recommendation of the selection committee is confirmed by report dated 21.01.2021 of the inquiry committee.
- b) An expert committee after hearing the parties has recorded findings in favour of respondent No.5, which cannot be faulted with in the writ jurisdiction.
- c) Respondent No.5 was having Non-Creamy Layer Certificate previously also and production of the certificate on 06.05.2021 would not be a vital defect, but mere irregularity.
- d) Respondent No.5 was given time to produce the certificate in question and it was produced within time. Hence, there is no breach of any condition.
- e) Petitioner being unsuccessful candidate is estopped from challenging appointment of respondent No.5.
- f) Respondent No.5, who is an approved permanent employee rendering services, may not be unseated/displaced on the ground of equity.
- g) Reliance is placed on the decisions of **Ramesh Chandra Shah and others Vs. Anil Joshi and others, [(2013) 11 SCC 309]**,

Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and another, [(2016) 4 SCC 754], Shrikand s/o Chandrakant Saidane Vs. State of Maharashtra and others, [2012 (1) Mh.L.J. 787], Indian Institute of Science Education and Research and others Vs. Dr. Smitha V. S. [WA.No.2029 OF 2018 Arising out of the Judgment dated 19.09.2018 in W.P.(C) no.26224/2018 of High Court of Kerala and Tajvir Singh Sodhi and others Vs. State of Jammu and Kashmir and others, [2023 SCC OnLine SC 344].

10. Having heard litigating sides at length. We formulate following points for determination :

- (i) Whether statutory, alternate remedy of approaching grievance committee is available to the petitioner ?
- (ii) Whether the respondent No.5 was eligible on the date of interview and whether it was permissible to produce the certificate in question at later point of time ?
- (iii) Whether petitioner is entitled to the appointment as Assistant Professor ?

ANALYSIS

Point No.(i) :-

11. A preliminary objection has been raised by the learned Counsel for respondent No.2 University that there is a remedy under

Section 79 of the Act and the present petition is not maintainable. Petitioner is seeking direction to decide his complaints made on 20.02.2020 and 27.02.2020. This prayer cannot be granted, as already fact finding committee was appointed by the respondent – University and allegations have been inquired into. A report to that effect was prepared by the committee on 19.01.2021.

12. Petitioner is seeking quashment of appointment of respondent No.5 and also seeking mandamus for his appointment as an Assistant Professor. For considering these prayers, we have to examine the selection process which is comprising of advertisement, conditions stipulated along with it, recommendation of the duly constituted selection committee, the documents submitted by the candidates and report of inquiry committee appointed to consider complaints of illegalities in the selection process. The findings recorded by the inquiry committee appointed by the University are challenged by the petitioner alleging that appointment of the respondent No.5 was illegal.

13. It is apposite to examine constitution of the duly constituted selection committee, composition of the inquiry committee and composition of grievance committee under Section 79 of the Act. The selection committee of the University was constituted under statute 415 and its members were :-

- (I) Chairman, (Chairman of Governing body of College) –
Dr. Subhash Bhaskar Choudhari,
- (II) Principal - Dr. S. S. Rane,
- (III) Head of the Department – Dr. S. S. Rankhambe,
- (IV) Nominee of Vice Chancellor, subject expert – Principal,
Dr. V. R. Patil and Dr. Sunil Panpatil.
- (V) Nominee of Vice Chancellor, belonging to SC/ST/NT,
Dr. Ahire.
- (VI) Nominee of Vice Chancellor, Dr. Tiwari and Dr. Patil.
- (VII) Nominee of Joint Director – Dr. Satish Deshpande.

14. Inquiry committee appointed by the University was comprising of following members :-

- I) Chairman – Mr. P. P. Mahulikar, Pro Vice Chancellor.
- II) Member - Dr. M. T. Pawra, Member of Management Council.
- III) Member - Dr. S. R. Bhadlikar, Deputy Registrar and Law Officer.
- IV) Secretary - Mr. R. B. Ugale, Assistant Registrar, University.

15. Grievance Committee under Section 79(3) of the Act comprises of following members :-

- (a) retired Judge not below the rank of the District Judge, nominated by the Vice-Chancellor - Chairperson;
- (b) one Dean, nominated by the Vice-Chancellor;

(c) Chancellor's nominee on the Management Council;

(d) Registrar;

(e) one teacher belonging to Scheduled Castes or Scheduled Tribes or De-notified Tribes (Vimukta Jatis) or Nomadic Tribes or Other Backward Classes and one non-teaching employee nominated by the Senate from amongst its members;

(f) Law Officer of the University – Member-Secretary”

16. If the composition of above three committees is compared, what emerges is that in all these committees, some members are nominated by the Vice Chancellor. A selection committee, which recommended the appointment of respondent No.5, comprised of even official of the State Government i.e. Joint Director. Grievance Committee cannot be said to be an impartial forum to examine the selection process. Grievance Committee would be the judge of the cause in which its members are likely to have interest. Considering principles of natural justice, we do not find that approaching grievance committee is the appropriate remedy for the petitioner to ventilate his grievance.

17. Learned Advocate Mr. A. B. Girase has adverted our attention to the provisions of Section 79(1) of the Act to contend that grievance committee is empowered to deal with all types of grievances

including appointment of respondent No.5 in the present matter. It is further argued by referring to sub-section (7) of Section 79 of the Act that grievance committee can entertain complaint relating to the service of employee which are not within jurisdiction of the tribunal. We find that sub-section (1) of Section 79 of the Act carves out an exception that the grievances against the State Government including its officials cannot be entertained by the committee. One of the members of the selection committee happened to be public official being a Joint Director of Education. In that view of the matter, present case is covered by the exception.

18. Section 79(1) of the Act further postulates grievances of teachers and other employees of University or the affiliated colleges. Petitioner is neither the teacher of the University, nor its affiliated college. He cannot therefore maintain a complaint or the grievance before the grievance committee. Parties are *ad idem* that in the present matter, tribunal has no jurisdiction to entertain complaint of the petitioner as contemplated under Section 81 of the Act.

19. The minutes of the proceedings which are recorded in the inquiry report dated 19.01.2021 indicates role played by learned Vice Chancellor. He appears to have supervised the inquiry. When already a fact finding committee of University conducted inquiry, there is no reason to relegate the parties to another fact finding committee. We,

therefore, cannot countenance the submissions of learned Advocate Mr. A. B. Girase that the petitioner has alternate remedy of approaching grievance committee. We overrule the preliminary objection and proceed to decide the matter on merits.

Point No.(ii) :-

20. Advertisement dated 17.09.2020 issued by respondent Nos.3 and 4 stipulated minimum qualification for the appointment to the post of Assistant Professor as well as general conditions. Following is the relevant condition :-

- "1.
2. The original certificates must be produced at the time of interview."

21. Post of Assistant Professor for subject Hindi was reserved for OBC category. Petitioner and respondent No.5 are of OBC category. Petitioner applied in pursuance of the advertisement and produced caste certificate and Non-Creamy Layer certificate dated 06.02.2019 issued by competent authority. It was valid from 06.02.2019 to 31.03.2021. His caste validity certificate was also produced.

22. The respondent No.5 while applying for the post in question did not produce Non-Creamy Layer certificate. Duly constituted selection committee conducted interview of the petitioner

and respondent No.5 on 05.02.2020. Respondent No.5 did not produce Non-Creamy Layer certificate for the year 2019-2020 on 05.02.2020. As per general condition No.2 of the advertisement, the candidates appearing for the interview were expected to produce original documents on 05.02.2020.

23. It is not the case of any of the respondents that respondent No.5 was having Non-Creamy Layer certificate either at the time of submitting application for the post or at the time of interview held on 05.02.2020. There is voluminous record to indicate that Non-Creamy Layer certificate for the year 2019-2020 was produced by the respondent No.5 on 06.05.2020, much after interview and her appointment. It was her case before inquiry committee that she was not having said certificate at the time of interview.

24. Respondent No.5 was appointed on 20.02.2020. The proposal seeking approval to her appointment was forwarded by the respondent Management to the University. By letter dated 20.04.2020, respondent No.2 University pointed out deficiencies for not having produced Non-Creamy Layer certificate and caste validity certificate of respondent No.5. By letter dated 13.06.2020 Principal forwarded caste validity certificate and Non-Creamy Layer certificate to the University.

25. The Non-Creamy Layer certificate of respondent No.5 forwarded by the College to the University was bearing date

04.06.2020, that was subsequent to the interview held on 05.02.2020. It was valid for the period from 04.06.2020 to 31.03.2023. Such a certificate could not have enured to the benefit of the respondent No.5.

26. Respondent No.5 submitted application on 03.05.2021 to the University requesting to grant 10 to 15 days for producing the Non-Creamy Layer certificate for the year 2019-2020. Non-Creamy Layer certificate was issued to respondent No.5 on 06.05.2021. It was stated to be valid for the period from 01.04.2017 to 31.03.2020. Respondent No.5 submitted application on 06.05.2021 seeking production of Non-Creamy Layer certificate for the year 2019-2020. The certificate was accepted by the University. Thereafter on 28.05.2021, an approval was issued to the respondent No.5 stating that her appointment was subject to the outcome of the present writ petition.

27. Thus, unequivocally at the time of interview held on 05.02.2020, respondent No.5 was not having valid Non-Creamy Layer certificate. It was produced on 06.05.2021. There is violation of general condition No.2. Respondent No.5 had applied from reserved category and failed to produce documents of eligibility at the time of interview. She was not eligible for the post in question when she was interviewed on 05.02.2020. Considering the general condition No.2,

05.02.2020 was the cut off date for the candidates aspiring the post in question to produce original documents.

28. We have carefully gone through the advertisement dated 17.09.2019 and conditions stipulated in it. We do not find that there was any discretion left with the selection committee or Management or the University to extend time for production of original documents. There is no material on record to indicate that time was granted to respondent No.5 to produce original Non-Creamy Layer certificate. Therefore, the plea of respondent No.2 and respondent No.5 that due to extension of time, certificate was produced subsequently cannot be countenanced. Thus subsequent production of Non-Creamy Layer certificate is inconsequential.

29. After the appointment of respondent No.5, various complaints were made by the petitioner and others. An inquiry committee came to be appointed comprising of four persons under the Chairmanship of Pro Vice Chancellor. After considering the complaints and the response of the respondent Nos.3 to 5, it was recorded by the committee that Non-Creamy Layer certificate was produced by respondent No.5 within the time extended by the selection committee at the time of interview. In verbatim, it is as follows :-

"३. मुलाखतीच्या दिवशी निवड समितीने दिलेल्या मुदतीच्या आत नॉन क्रिमिलियर जमा केले आहे"

30. It is further recorded that respondent No.5 did not submit Non-Creamy Layer certificate at the time of applying for the post, however, it was submitted in the College subsequently and it was responsibility of the College to verify the documents. Inquiry committee in the report concluded that respondent No.5 was having eligibility for the post in question and recommended for granting approval.

31. Respondent No.2 in the affidavit-in-reply has taken a stand that interviews were conducted by the duly constituted selection committee under statute 415 and the respondent No.5 was recommended by it. It is being argued by learned Counsel Mr. A. B. Girase that University did not have administrative control except sending selection committee and it was the lookout of the Management to scrutinize the papers produced along with applications submitted by the aspirants for the post in question.

32. There is no condition, provision of law or any statute being pointed out empowering the members of the selection committee to extend time for producing documents. The finding recorded by the inquiry committee and the stand being taken by respondent No.5 that time to produce Non-Creamy Layer certificate was extended at the time of interview by the selection committee is thoroughly

misconceived and unsustainable. The defence of the respondent No.2 University is inconsistent with plea of the respondent No.5. The alleged extension of time to the respondent No.5 is grossly arbitrary and violative of conditions stipulated in the advertisement.

33. Learned Counsel for the petitioner referred to judgment in **Supriya Vinayak Gawande (Supra)**. In that matter also appointment of the petitioner was challenged on the ground that she had applied from NT-C category and was not possessing Non-Creamy Layer certificate at the time of uploading application. Her appointment was alleged to be in violation of mandatory conditions of the advertisement. It was held that subsequent production of the Non-Creamy Layer certificate was inconsequential and the petitioner was held to be ineligible. We prefer to follow the same view and reiterate paragraph Nos.18 and 19, which read thus :-

18. After perusal of specific condition in the advertisement for possession of Non Creamy Layer Certificate of the year 2015-16 issued after 01.04.2015, the petitioner ought to have procured such certificate before filling up the online application form and details of such certificate ought to have been stated in the form. Admittedly, the petitioner did not possess Non Creamy Layer Certificate issued after 01.04.2015 as on the date of filling up and uploading the online application form i.e. on 13.07.2015. Such certificate was issued to the petitioner only on 17.07.2015 i.e. after filling up of the online application form. Since the

petitioner was not in possession of Non Creamy Layer Certificate issued after 01.04.2015, perhaps, she chose to mention the number of Non Creamy Layer Certificate being "7586" which was in her possession at the time of filling up of online application form. However, the certificate was valid only upto 31.03.2015. Thus, as on the date of filling up of the form on 13.07.2015 there was no valid Non Creamy Layer Certificate in her possession. To overcome this defect, the petitioner appears to have stated that the validity of the Non Creamy Layer Certificate no.7586 was upto 31.03.2016. This statement was false to her knowledge. Thus, the statement in the online application form that the certificate no.7586 was valid upto 31.03.2016 appears to have been consciously made by her with a view to circumvent the reality that as on the date of filling up of the online application form i.e. 13.07.2015 she was not in possession of any valid Non Creamy Layer Certificate. The validity of certificate no.7586 had already expired on 31.03.2015. The petitioner thus knowingly gave false information in her online application form. This conduct of the petitioner does not commend us.

19. Apart from deplorable conduct of the petitioner in knowingly making false statement in her online application form, there was specific prohibition in the advertisement for considering any document or certificate, details of which were not mentioned in the online application form. Since Certificate No.7586 was mentioned by her in online application form, the authorities could not have taken into consideration an altogether different certificate, being certificate dated 17.07.2015 for considering her eligibility. The certificate dated 17.07.2015 was issued well after the petitioner submitted

her application on 13.07.2015. Therefore, the subsequent certificate dated 17.07.2015 ought to have been ignored by the concerned authorities. On the basis of Certificate No.7586, which was valid only till 31.03.2015, the petitioner was not eligible to apply for the post of Talathi in pursuance to the advertisement.

The judgment of the Division Bench in **Supriya Vinayak Gawande (Supra)** was confirmed by the Hon'ble Supreme Court vide order dated 06.09.2022.

34. Reliance is also placed in the matter of **Sanjivani Abasaheb Karne (Supra)**. In that matter also Non-Creamy Layer certificate was required to be produced at the time of submission of the application. Petitioners in that matter were not having the certificates while submitting online application. They were held to be ineligible. Their appointments were quashed by administrative tribunal and confirmed by Division Bench, relying on ratio laid down in the matter of **Supriya Vinayak Gawande (Supra)**. We concur with the view taken by the Division Bench.

35. Learned Counsel for respondent No.5 refers to judgment of the Hon'ble Supreme Court in the matter of **Ramesh Chandra Shah and others (Supra)** to buttress his submission that person who consciously takes part in selection process cannot, thereafter, turn around and question the method of selection. In the matter before

the Hon'ble Supreme Court appellants and the respondents had participated in the selection process. Appellants were successful and respondents failed. Being aggrieved, respondents approached High Court seeking quashment of advertisement and the process of selection. The test conducted by the concerned board was alleged to be *ultra vires*. Learned Single Judge of the High Court allowed writ petition and quashed the selection process. On appeal, the Division Bench reversed the order of learned Single Judge on the ground that having taken a chance for selection the respondents were not entitled to question the process of selection. Then matter reached Supreme Court. Appeal was allowed on following findings :-

"18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.

19. One of the earliest judgments on the subject is **Manak Lal v. Dr. Prem Chand [AIR 1957 SC 425]**. In that case, this Court considered the question whether the decision taken by the High Court on the allegation of professional misconduct leveled against the appellant was vitiated due to bias of the Chairman of the Tribunal constituted for holding inquiry into the allegation. The appellant alleged that the Chairman had appeared for the complainant in an earlier proceeding and, thus, he was disqualified to judge his conduct. This Court held that by not having taken any objection against the participation of the Chairman of the Tribunal in the inquiry held against him, the appellant will be deemed to have waived his objection. Some of the observations made in the judgment are extracted

below :

"8. ...If, in the present case, it appears that the appellant knew all the facts about the alleged disability of Shri Chhangani and was also aware that he could effectively request the learned Chief Justice to nominate some other member instead of Shri Chhangani and yet did not adopt that course, it may well be that he deliberately took a chance to obtain a report in his favour from the Tribunal and when he came to know that the report had gone against him he thought better of his rights and raised this point before the High Court for the first time.

9. From the record it is clear that the appellant never raised this point before the Tribunal and the manner in which this point was raised by him even before the High Court is somewhat significant. The first ground of objection filed by the appellant against the Tribunal's report was that Shri Chhangani had pecuniary and personal interest in the complainant Dr Prem Chand. The learned Judges of the High Court have found that the allegations about the pecuniary interest of Shri Chhangani in the present proceedings are wholly unfounded and this finding has not been challenged before us by Shri Daphtary. The learned Judges of the High Court have also found that the objection was raised by the appellant before them only to obtain an order for a fresh enquiry and thus gain time.Since we have no doubt that the appellant knew the material facts and must be deemed to have been conscious of his legal rights in that matter, his failure to take the present plea at the earlier stage of the proceedings creates an effective bar of waiver against him. It seems clear that the appellant wanted to take a chance to secure a favourable report from the Tribunal

which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.”

24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.”

36. The case in hand presents altogether different facts. Petitioner is not challenging advertisement or conditions. Rather he is alleging violation of condition No.2. It is not a matter of petitioner taking a chance by participating in selection process. He could not have objected appointment of respondent No.5 at any earlier point of time. The judgment does not enure to the benefit of respondent No.5.

37. Learned Counsel further referred to the judgment of **Ram Kumar Gijroya (Supra)**. In that matter, the appellant failed to submit caste certificate of OBC before a cut off date. As per the advertisement, cut off date was 21.01.2008. High Court allowed petition of the appellant, which was reversed by Division Bench of the High Court. Against that appeal was preferred to the Supreme Court. The date on which candidate had applied for the caste certificate

played decisive role and Supreme Court recorded finding in favour of the appellant reversing judgment of the Division Bench. Paragraph Nos.14 and 18 are as follows :-

14. The Division Bench of the High Court erred in not considering the decision rendered in the case of *Pushpa* (supra). In that case, the learned single Judge of the High Court had rightly held that the petitioners therein were entitled to submit the O.B.C. certificate before the provisional selection list was published to claim the benefit of the reservation of O.B.C. category. The learned single judge correctly examined the entire situation not in a pedantic manner but in the backdrop of the object of reservations made to the reserved categories, and keeping in view the law laid down by a Constitution Bench of this Court in the case of *Indra Sawhney v. Union of India* [4] as well as *Valsamma Paul v. Cochin University & Ors.* [5] The learned single Judge in the case of *Pushpa* (supra) also considered another judgment of Delhi High Court, in the case of *Tej Pal Singh* (supra), wherein the Delhi High Court had already taken the view that the candidature of those candidates who belonged to the S.C. and S.T. categories could not be rejected simply on account of the late submission of caste certificate.

18. In our considered view, the decision rendered in the case of *Pushpa* (supra) is in conformity with the position of law laid down by this Court, which have been referred to supra. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in the cases of *Indra Sawhney* and

Valsamma Paul (supra) wherein this Court after interpretation of Articles 14,15,16 and 39A of the Directive Principles of State Policy held that the object of providing reservation to the SC/ST and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39A of the Directive Principles of State Policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus, erred in reversing the judgment and order passed by the learned single Judge. Hence, the impugned judgment and order passed by the Division Bench in the Letters Patent Appeal No. 562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in the cases of *Indra Sawhney* and *Valsamma Paul* (supra). Therefore, the impugned judgment and order passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside. The judgment and order dated 24.11.2010 passed by the learned single Judge in W.P. (C) No. 382 of 2009 is hereby restored.

It was a matter pertaining to the production of social status certificate i.e. caste certificate of OBC. It was having altogether different complexion which cannot be equated with the facts of the present case.

38. In the present case, the social status of the parties is not in question. Both the contestants belong to OBC category. What is crucial is economic condition on the date of advertisement or date of interview. Economic condition of the party is variable from time to time and does not remain static. In that view of the matter, the ratio laid down by the Hon'ble Supreme Court is not applicable to the respondent No.5's case.

39. On similar line, next judgment cited by respondent No.5 in **Shrikant Chandrakant Saidane (Supra)** can be said to be distinguishable. In that matter also a candidate was unable to produce caste validity certificate though he had applied for under that category. Due to burden of work on the scrutiny committee, it was held that it would not have been possible for the selected candidates to produce the caste certificate before cut off date, being beyond their power. In the present matter, it is not a case of the respondent No.5 that Non-Creamy Layer certificate was applied for, but she was unable secure it before the cut off date.

40. Learned Counsel further relied on the judgment of Division Bench of Kerala High Court in the matter of **Indian Institute of Science Education and Research (Supra)**. In that case, respondent had participated in the selection process claiming benefit of OBC category. She had produced Non-Creamy Layer certificate but which was not of

the relevant year. She was classified into general category as Non-Creamy Layer certificate was not produced. She approached Single Judge of Kerala High Court and her petition was allowed. Against that decision, appeal was preferred before Division Bench and the same was dismissed. Considering the provisions of Selection Notifications and norms of the Union Government, it was held that it was not mandatory to produce Non-Creamy Layer certificate. It was further held that respondent was pregnant and was unable to produce the certificate in question before last date. The facts are distinguishable. Division Bench of Kerala High Court was considering specific notification and the government norms regulating the selection process. In the case in hand the selection process is regulated by the conditions stipulated in the advertisement. Therefore, respondent No.5 cannot derive any benefit from this decision.

41. Learned Counsel also relied on the Judgment in the matter of **Tajvir Singh Sodhi (Supra)**. It is held in paragraph Nos.66, 69 and 70 as follows :-

"66. Thus, the inexorable conclusion that can be drawn is that it is not within the domain of the Courts, exercising the power of judicial review, to enter into the merits of a selection process, a task which is the prerogative of and is within the expert domain of a selection Committee, subject of course to a caveat that if there are proven allegations of malfeasance or violations

of statutory rules, only in such cases of inherent arbitrariness, can the Courts intervene.

69. It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence.

70. This Court in *Sadananda Halo* has noted that the only exception to the rule of waiver is the existence of *mala fides* on the part of the Selection Board. In the present case, we are unable to find any *mala fide* or arbitrariness in the selection process and therefore the said exception cannot be invoked."

42. We have recorded in the present case that selection of the respondent No.5 is against general condition No.2. The selection was made overstepping the powers. We have also recorded that there is

arbitrariness and discrimination in selecting the respondent No.5. It is not case of approbate and reprobate. Hence, we are of the considered view that judgment of the Supreme Court cannot enure to the benefit of the respondent No.5.

43. We have no hesitation to hold that respondent No.5 was not eligible to be appointed as Assistant Professor from OBC category. There is a brazen violation of general condition No.2. Condition No.2 and its violation in the present matter cannot be said to be irregularity or a curable defect. It reflects on the eligibility of the candidates aspiring for the post. This is a fundamental flaw that goes to the root of the matter. Therefore, we are not in agreement with the submissions of learned Counsel Mr. A. G. Talhar that it was a curable defect and otherwise she was eligible.

44. Facts of the present matter and the submissions of respondent No.5 need to be looked from another angle also. The advertisement in question by its condition No.2 gave notice to public at large that aspirants should produce the documents at the time of interview. By permitting the respondent No.5 to produce the document after one year, the vital condition was relaxed. It is possible that few unidentified candidates could not have applied for want of original documents or for inability to produce original documents at the time of interview. Those persons lost opportunity to participate in

the selection process. Had it been publicly notified that time to produce original documents was extendable at the discretion of selection committee or any other authority, many such persons could have applied in pursuance to advertisement. Such aspirants are deprived of right of participation. As against that a leeway was shown to the respondent No.5 permitting her to produce the document in question subsequently. This action of the respondent University is discriminatory and arbitrary. We have no hesitation to quash the appointment of respondent No.5.

45. It is further being argued by learned Counsel Mr. A. G. Talhar that respondent No.5 has been accorded approval and she is the only earning member of her family. If the appointment of respondent No.5 is de hors the procedure laid down and there is element of discrimination, we are unable to help her, albeit we have sympathies with her. We are constrained to hold that appointment of respondent No.5 is a backdoor entry which is deprecated by the Supreme Court in the matter of **Secretary, State of Karnataka and others Vs. Umadevi and others [AIR 2006 SC 1806]**. We, therefore, answer this point No.(ii) against the respondent No.5.

Point No.(iii) :-

46. The petitioner was holding requisite qualification and he submitted Non-Creamy Layer certificate. The relevant papers of the

interview conducted by the selection committee are placed on record. It reveals that he secured 92 marks, whereas respondent No.5 secured 64 marks, still she was selected. The record of the selection committee shows that all the members of the selection committee placed petitioner in the wait list vide their independent opinion signed by them. There is unanimous opinion that the petitioner was the next eligible candidate and sole candidate in the waiting list.

47. Immediately, after the appointment of respondent No.5, petitioner made complaint and the inquiry committee was appointed to inquire into the allegations against respondent No.5. No time was wasted by the petitioner in challenging the appointment of respondent No.5. Respondent No.5 was given approval subject to outcome of this writ petition. If this is the situation, we are of the considered view that petitioner is entitled to be appointed as Assistant Professor in place of respondent No.5. There is nothing to indicate that petitioner is not either qualified or eligible for the post in question rather he is the only waitlisted candidate. We, therefore, answer this question in favour of the petitioner.

48. Considering the above analysis, we pass the following order :-

ORDER

- I) The Writ Petition is allowed.

II) Appointment of the respondent No.5 dated 20.02.2020 is quashed and set aside.

III) Respondent Nos.1 to 4 shall appoint the petitioner to the post of Assistant Professor (subject Hindi) in the respondent No.4 College and permit him to resume the duties within four weeks.

IV) Rule is made absolute in the above terms.

V) There shall be no order as to costs.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

scm