

APHC010510012023

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI

[3483]



WRIT PETITION NO: 26386 of 2023

Bepari Shaik Arshiya Anjum

...Petitioner

Vs.

The High Court Of Andhra Pradesh and Others

...Respondent(s)

Advocate for Petitioner:

Mr. K B Ramanna Dora

Advocate(s) for Respondent(s):

Mr. N. V. Sumanth

**CORAM : THE CHIEF JUSTICE DHIRAJ SINGH THAKUR
SRI JUSTICE RAVI CHEEMALAPATI**

DATE : _____

Per DHIRAJ SINGH THAKUR, CJ:

A notification, dated 10.11.2022, came to be issued by the Registrar (Recruitment) of the High Court of Andhra Pradesh inviting applications from eligible candidates for filling up of 31 posts of Civil Judges of Junior Division in Andhra Pradesh State Judicial Service.

2. Out of the posts so advertised, 25 vacancies were to be filled up by direct recruitment apart from the reservation provided for other categories, one post was reserved for candidates belonging to BC-E category.

3. The petitioner applied for the said post under the BC-E category (creamy layer). Her case however was considered under the open merit category in view of the provisions of the advertisement notification, a reference where to shall be made in the later paragraphs.

4. The petitioner, it appears, had applied for the non-creamy layer certificate on 15.11.2022 i.e., after the issuance of the notification dated 10.11.2022. The certificate was furnished to the petitioner on 19.08.2023. It may be pertinent to mention here that the entire process of selection had been completed by 08.08.2023.

5. After the petitioner had obtained the certificate issued by the concerned Tahsildar in the prescribed format, she approached the respondents with a representation, dated 11.09.2023, requiring her consideration under the non-creamy layer of BC-E. The representation was rejected by the administrative committee on the ground that the petitioner had not satisfied the stipulated conditions as per the advertisement notification.

6. Learned counsel for the petitioner would submit that the respondents could not have ignored the petitioner for consideration under the reserved category and that the certificate when produced by her, though after the completion of process of selection, ought to have been considered, inasmuch as even when there was delay in producing proof of her belonging to non-creamy layer under the BC-E category, the right of the petitioner to be considered under the said category could never have been defeated.

7. Reliance in this regard is placed upon the judgment of the Apex Court rendered in the case of ***Charles K. Skaria Vs. C. Mathew***¹, wherein it was held:

"20. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence."

8. Reliance was also placed upon ***Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and another***², to emphasize the point that the candidature of candidates belonging to Other Backward Classes could not be rejected simply on account of late submission of caste certificates.

9. The stand of the official respondents is that the petitioner had failed to furnish the requisite certificate reflecting her to be belonging to non-creamy layer, which certificate had to be appended along with the application form. It was also urged that the petitioner had to produce the certificate of non-creamy layer issued in the year 2021 or 2022 whereas the certificate that was produced, much after the selection process was completed, was a certificate issued in the year 2023.

¹ 1980 (2) SCC 752

² 2016 (4) SCC 754

10. According to the notification, the last date for receipt of application was fixed as 8th of December, 2022.

11. At this stage, it may be necessary to reproduce the relevant conditions of the advertisement notice.

According to the advertisement notification, dated 10.11.2022, Clause IV provided for reservation which reads as under:

"The applicants who intend to avail/claim reservation under Backward Classes (A, B, C, D & E) shall submit a copy of the latest certificate issued either in the year 2021 or 2022 to the effect that they belong to non-creamy layer in terms of G.O.Ms.No.3, Backward Classes Welfare (C2) Department, dated 04.04.2006 and G.O.Ms.No.26, Backward Classes Welfare (C) Department, dated 09.12.2013 and as per the income ceiling which is in force on the date of notification. In case of non-submission of the latest certificate, his/her candidature will be considered against Open Category only."

The method and manner of furnishing documents was envisaged under Clause-V which reads as under:

"The applicant, who intends to avail reservation under Backward Classes (A, B, C, D or E), shall upload latest community and also certificate of non-creamy layer as per law. In case of failure to upload the latest certificate, his/her candidature will be considered against Open Competition."

12. A reading of the aforementioned conditions would show that the non-creamy layer certificate had to be issued either in the year 2021 or 2022 certifying that the petitioner belongs to non-creamy layer in terms of G.O.Ms.No.3, dated 04.04.2006 and G.O.Ms.No.26, dated 09.12.2013.

13. As per the G.O.Ms.No.3, dated 04.04.2006, based upon the recommendations made in that regard, the criteria of creamy layer based upon the income insofar as the State of Andhra Pradesh is concerned was fixed at Rs.4,00,000/- per annum. This income criteria was subsequently increased to Rs.6,00,000/- per annum for determining the creamy layer among the BC categories for the State of Andhra Pradesh by virtue of G.O.Ms.No.26, dated 09.12.2013.

14. The entire case set up by the petitioner is that notwithstanding the fact that the petitioner had applied under the creamy layer in the application form, since she had obtained the non-creamy layer certificate later on, much after the conclusion of the entire selection process, she nevertheless ought to have been considered under the said category.

In our opinion, the argument advanced is untenable for the simple reason that the petitioner had clearly applied not under the non-creamy layer category, but under the creamy layer category. She could, therefore, not have been considered under the non-creamy layer at all.

15. Apart from this, the petitioner was not entitled to be considered under the non-creamy layer of the BC-E category inasmuch as she had produced the certificate much after the conclusion of the selection process. It is reiterated that admittedly, the petitioner had applied for the non-creamy layer certificate on 15.11.2022, after the issuance of the notification dated

10.11.2022, and the same was obtained on 19.08.2023, whereas the entire process of selection had already been completed by 08.08.2023.

16. According to the advertisement notification, it was made clear to the petitioner and similarly situated others that any applicant who intended to avail the reservation had to upload the non-creamy layer certificate and in case of failure to upload the same, that the candidate would be considered under the open merit category. The petitioner therefore was required to upload the requisite certificate before the last date for application prescribed in the advertisement notification i.e., 8.12.2022 and, therefore, clearly her case could not have been considered in any category except the open category as had clearly been made clear in the said notification.

17. Moreover, the petitioner cannot get any benefit by placing reliance upon the certificate in question issued in her favour by the Tehsildar concerned, which does not satisfy the requirement of the advertisement notification that the same had to be issued by the concerned authority either in the year 2021 or 2022. The certificate in question which has been relied upon by the petitioner has been issued in the year 2023 and therefore does not at all satisfy the requirement of the advertisement notification.

18. Reliance placed upon by the Counsel for the Petitioner on the Apex Court Judgment in ***Ram Kumar Gijroya*** would be of no avail to the Petitioner

as a division bench judgment of the Apex Court in ***Divya v. Union of India***³, has held that the judgment in ***Ram Kumar Gijroya***'s case was in direct conflict with the judgment of a three judge bench in ***Ashok Kumar Sharma v. Chander Shekhar***⁴.

19. In fact, the Apex Court in ***Divya***'s case was considering the issue as to whether the UPSC was justified in prescribing the cut-off date for possession and for uploading of the income and asset certificate to stake a valid claim under the EWS category. The relevant rules prescribed that a candidate ought to be in possession of the requisite income and asset certificate based on the income for the year 2020-21 and that the candidate should also be in possession of the certificate as on 22.02.2022. The case of the petitioner before the Apex Court was that she was unable to obtain the certificate for financial year 2020-21 before 22.02.2022 and further that for the financial year 2021-22, she was able to obtain the certificate by 13.12.2022, whereas she was not able to obtain the said certificate for 2020-21 till 16.03.2023. In that case, the last date for submission of the application forms was 22.02.2022.

According to the rules, the petitioner should have been in possession of all the requisite certificates in the prescribed format in support of their claim by the closing date of the application for civil services preliminary examination 2022. The Apex Court, in the aforementioned facts, held that since the

³ (2024) 1 SCC 448

⁴ (1997) 4 SCC 18

petitioners did not possess the valid documentation determining their eligibility before the prescribed cutoff date, they could not complain if their claim for categorization as EWS was rejected.

The Apex Court held:

"94.1 A. The candidates claiming benefit of EWS category for purposes of CSE 2022 acquire eligibility only if they meet the criterion prescribed by the central government in the OM dated 19th of January 2019 and 31st of January 2019 and are in possession of the required income and asset certificate based on the income for the year 2020-21. Further, as required under Rule 28 of the CSE rules 2022, read with the OM of 19th of January 2019 and 31st of January 2019, the candidate should have been in possession of the income and asset certificate as on 22nd of February 2022. Any candidate not in possession of the I and AC in the prescribed format as mentioned hereinabove cannot claim the benefit of EWS category."

20. It can be seen that although the petitioner before the Apex Court in **Divya's** case was one claiming under the EWS category, yet the conditions of eligibility prescribed for OBC candidates also required the non-creamy layer certificate.

21. In the instant case, similarly the petitioner was required to upload the non-creamy layer certificate issued either in the year 2021 or 2022 issued in terms of G.O. No. 26, dated 9.12.2013, read with G.O. No. 3, dated 4.4.2006. We are dealing with the crucial issue of determining the eligibility of the petitioner. Failure to do the needful within the time prescribed as per the notification would render her to be considered only under the open category and not under the non-creamy layer category of BC-E.

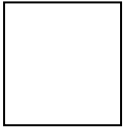
22. Be that as it may, in our opinion the case of the petitioner was rightly rejected by the respondents for consideration under the non-creamy layer category of BC-E. We find no merit in the present petition, which is accordingly dismissed. No costs.

Pending miscellaneous applications, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ

RAVI CHEEMALAPATI, J

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**HON'BLE MR.JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE RAVI CHEEMALAPATI**

W.P. No.26386 of 2023

DATE : _____

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