

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 4944/2020

Dr. Kiran Yadav W/o Mayank Yadav D/o Madan Lal Yadav, Aged About 26 Years, B/c Ahir (Yadav), Village Nasarpur, Tehsil Behror, District Alwar, Rajasthan.

----Petitioner

Versus

1. The State Of Rajasthan, Through Its Principal Secretary Department Of Personnel, Secretariat, Jaipur, Rajasthan.
2. District Collector, Alwar, Rajasthan.
3. Sub Divisional Magistrate, Behror, District Alwar, Rajasthan.
4. Tehsildar, Behror, District Alwar, Rajasthan.

----Respondents

For Petitioner(s) : None present

For Respondent(s) : Mr.Anil Mehta, AAG

HON'BLE MR. JUSTICE ASHOK KUMAR GAUR

Order

31/03/2020

This Court, on 26th March, 2020, directed to issue notice and copy of the petition to be supplied to Mr.Anil Mehta, AAG.

Heard Mr.Anil Mehta, AAG through video conference.

The issue, involved in the present writ petition, is with regard to grant of OBC certificate to the petitioner.

This Court finds that the issue involved in the present writ petition has already been decided by this Court in the case of ***Smt.Bimla Vs. State of Rajasthan & Ors. (SB Civil Writ Petition No.19160/2018)*** decided on 26th September, 2018. Therein, this Court has held as under :

"The issue involved in all these petitions is common and as such the petitions are decided by the present common order.

The issue is with regard to grant of OBC/SC/ST certificates to the petitioners. The petitioners in the writ petitions have pleaded that the State Government has not issued them certificates of their caste i.e. OBC/SC/ST. The petitioners have pleaded in the writ petitions that after marriage, they have settled in the State of Rajasthan and as such now they have become permanent residents of the State of Rajasthan. The petitioners have pleaded that the State Government in the matter of employment, is not considering their cases as the petitioners have migrated from other State and further the State Authorities are not entertaining their applications for issuance of certificates of OBC/SC/ST. The petitioners have pleaded that in their respective State, they belonged to a particular category i.e. OBC/SC/ST and after their migration in the State of Rajasthan on account of their marriage being solemnized in Rajasthan, the status of their caste is the same but still the respondents-State authorities have failed to grant them certificate of OBC/SC/ST and further deprived them from employment in such reserved category.

Learned counsel for the petitioners have submitted that if the candidates belong to a particular caste i.e. OBC/SC/ST in a particular State, after their marriage, if they have migrated in other State, the same status cannot be denied to them and in particular, when their caste after marriage with their husband, is falling in a particular category i.e. ST/SC/OBC, the benefit of reservation in public employment cannot be denied. Learned counsel for the petitioners have submitted that the respondents in some cases, even have not entertained the applications for issuance of certificates and in some cases even such certificates have not been issued.

Mr. J.M. Saxena, Addl. Advocate General who appears for the State has submitted that controversy with regard to grant of particular certificate belonging to a caste and consideration of the same for the purposes of employment, has been settled by the Apex Court in Civil Appeal No.1085/2013 [Bir Singh Vs. Delhi Jal Board & Ors.]. Learned counsel has further submitted that the Division Bench of this Court in DB Special Appeal (Writ) No.1116/2017 [State of Rajasthan & Ors. Vs. Smt. Manju Yadav & Ors.] dt.18.09.2018, has also decided the similar controversy.

Learned counsel has submitted that the Division Bench has made it clear that the issue of benefit of reservation is distinct from the entitlement of a person to apply for grant of OBC/SC/ST certificates.

Learned counsel for the respondents has submitted that the Division Bench has further passed the order on 20.09.2018 in D.B. Special Appeal (Writ) No.749/2017 [Smt. Poonam Yadav Vs. State of Rajasthan & Ors.] and other connected petitions.

It would be appropriate to quote the order passed by the Division Bench of this Court in D.B. Special Appeal (Writ) No.1116/2018 (supra) decided on 18.09.2018.

"1. Heard learned counsel for the appellants.

2. The issue of benefit of reservation is distinct from the entitlement of a person to apply for grant of an OBC/ ST/SC certificate.

3. In view of the Constitution Bench judgment delivered by the Supreme Court on 30/08/2018 in CA No.1085/2013 : Bir Singh Vs. Delhi Jal Board & Ors. and connected appeals, the issue of public employment has attained finality. A member of a Scheduled Caste or Schedule Tribe or OBC in a particular State cannot avail benefit of reservation in another State. Issue of benefit in Union Territories decided by the Constitution Bench

is irrelevant for public employment in the State of Rajasthan.

4. Females outside the State of Rajasthan on migrating to Rajasthan, post marriage may not be entitled to the benefit of reservation in public employment in the State of Rajasthan on account of being a member of a SC or ST or OBC in another State.

5. But these ladies would certainly be entitled to be issued a SC or ST or OBC certificate. For the reason, apart from reservation in public employment these certificates may be relevant for grant of some benefit. For example, it may be a housing scheme. A migrant lady may claim benefit on the strength of the certificate if the scheme envisages domicile or residence as the entitlement for a house or a flat with reservation provided.

6. Under the circumstances, we find no infirmity in the directions issued by the learned Single Judge as to what procedure needs to be followed for grant of an OBC certificate applied for by a female who has migrated, post marriage, to the State of Rajasthan. We make it clear once again. Issue of public employment and benefit of reservation has been decided by the Supreme Court and thus our present order would not be misconstrued as enabling anybody to the benefit of reservation. The present order concerns only to the issuance of a certificate applied for.

7. The appeal is dismissed."

This Court finds that the Division Bench while making distinction between the benefit of reservation for job/employment and for other benefits, which are granted to the candidates, has made it very clear that if the benefit apart from employment is available to the candidates of SC/ST/OBC, the same can be extended to them.

This Court further finds that the Division Bench has approved the directions which were given by the Single Bench while disposing of the writ petition No.3968/2017 [Smt. Manju Yadav Vs. State of Rajasthan & Ors.] and other connected petitions. It would be appropriate to quote the directions given by the Single Bench in the case of Manju Yadav Vs. State of Rajasthan & Ors. which was approved by the Division Bench. The order passed by the Single Bench in the case of Manju Yadav Vs. State of Rajasthan & Ors. (supra) is reproduced hereunder:-

"In any case, present writ petitions are disposed of with following directions, as agreed-

1. The circular dated 8.4.1994, issued by Central Government is made applicable in the present cases also, however, OBC certificate would be issued by the State authorities only after getting verification of father's income and caste from the State from where a candidate has migrated. The required verification would be sought by the SDO to whom application is submitted by the candidate. In case, verification is sought, the prescribed authority of the State of Haryana would send it not only indicating the category in which the candidate falls i.e. whether OBC or any other category in their State and the income of the candidate's father as to whether he is falling in creamy layer or not. The assessment of the creamy layer would be in reference to what is prevalent in the State of Haryana. It would be after proper verification and giving details. Accordingly, all the authorities in the State of Haryana, impleaded as party respondents in majority of writ petitions, would comply the direction aforesaid in consonance to the circular dated 8.4.1994.

2. On receipt of verification from the prescribed authority of the State of Haryana, competent authority in the State of Rajasthan would appropriately issue OBC certificate

indicating whether the candidate is falling in the creamy layer or not. The said certificate would be issued only if the petitioner was an OBC candidate in the State of Haryana and is falling in the same category in the State of Rajasthan and not otherwise. The direction aforesaid would resolve the grievance in regard to issuance of OBC certificate. The compliance of this order would be made by the parties in the State of Rajasthan as well as State of Haryana in consonance to the circular issued by the Government of India dated 8.4.1994.

3. The competent authority in the State of Rajasthan would take steps for issuance of caste certificate at the earliest.

4. The issuance of caste certificate/certificate for taking benefit of reservation would remain subject to final outcome of the judgment of the Apex Court. If it goes against then petitioner/s, would not be entitled to get benefits of reservation. A copy of this judgment be placed in each connected file."

Learned counsel for the petitioners have submitted that though the Division Bench on 18.09.2018, has dismissed the special appeal of the State without notice to the private respondents but the Division Bench itself in D.B. Special Appeal (Writ) No.749/2017 passed a different order.

This Court finds that the issue is with regard to grant of certificate and its purpose for employment and the same has been decided in D.B. Special Appeal (Writ) No.1116/2018 (supra). This Court is bound to follow the direction/order passed by the Division Bench in D.B. Special Appeal (Writ) No.1116/2018 (supra).

Learned counsel for the petitioners have further raised a plea that issue with regard to married lady who migrates to the State of Rajasthan from different States, is still sub-judice before the Apex Court in Civil Appeal

No.8425/2013 arising out of SLP© No.33724/2011 [Ranjana Kumari Vs. State of Uttranchal & Ors.].

This Court finds that the issue which the petitioners have raised in the present petitions, is covered by the judgment given by the Apex Court in the case of Bir Singh Vs. Delhi Jal Board & Ors. (supra) and further order passed by the Division Bench of this Court.

This Court deems it appropriate to rely on the order which has been passed by the Division Bench after considering the judgment of the Apex Court in the case of Bir Singh (supra) decided on 30.08.2018.

Accordingly, the present writ petitions are disposed of in terms of the order passed by the Single Bench in the case of Manju Yadav (supra) where directions have been given to the different authorities as in what manner they have to grant the certificate to the candidates for the purpose of their category to be shown either in SC/ST/OBC.

The claim of the petitioners in respect of employment is not entertained. The present batch of petitions are accordingly disposed of in terms of the order passed by the Division Bench in the case of State of Rajasthan & Ors. Vs. Smt. Manju Yadav & Ors.] (supra).

Copy of this order be placed in each file."

सत्यमेव जयते

Accordingly, this Court disposes of the present writ petition in terms of the judgment passed in the case of *Smt. Bimla* (supra).

(ASHOK KUMAR GAUR),J