

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: April 28, 2023

+ W.P.(C) 5493/2023, CM APPL. 21424/2023 and
CM APPL. 21425/2023

POOJA ROHILLA

..... Petitioner

Through: Mr. T.N. Tripathi and Mr. Pragyesh
Pratap Singh, Advs.

versus

DSSSB AND ANR

..... Respondents

Through: Mrs. Avnish Ahlawat, SC for DSSB
Ms. Tania Ahlawat, Mr. Nitesh
Kumar Singh, Ms. Palak Rohmetra,
Ms. Laavanya Kaushik and Ms. Aliza
Alam, Advs. for GNCTD

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this petition is to an order dated March 29, 2023 passed by the Central Administrative Tribunal ('Tribunal', for short) in OA 2053/2017, whereby the Tribunal has dismissed the petition filed by the petitioner herein.

2. The grievance of the petitioner before the Tribunal was that her candidature to the post of TGT (Domestic Science) under the category 'OBC' was cancelled on the ground that OBC certificate produced by her was issued on the basis of OBC certificate issued in favour of her

father in the State of Haryana (being a resident of the said State), i.e., the OBC certificate issued to her is from outside Delhi.

3. The facts noted from the petition are, the petitioner (prior to her marriage) belong to OBC category as her caste is “Chippy (Darzi)”, which is a notified OBC in both the State of Haryana and Delhi. It is her case that her husband also belongs to OBC category.

4. Various posts including the post of TGT (Domestic Science) were advertised in the year 2010. The petitioner applied for the said post under the OBC category. At the time of submission of her application form, she submitted the OBC certificate issued by the competent authority of the State of Haryana. She appeared in the written examination and secured 75.25 marks i.e. last cut-off marks under the OBC category. She in the year 2015 applied for the OBC certificate in the State of NCT of Delhi on the basis of OBC certificate issued by State of Haryana. The competent authority in Delhi had on March 24, 2015 issued OBC certificate on the basis of OBC certificate issued in favour of her father in Haryana. The OBC certificate was issued by the authority prior to the verification of the documents for the post of TGT (Domestic Science), i.e., on June 24, 2016. The respondents issued a rejection notice dated May 11, 2017 stating that the OBC Certificate issued in favour of the petitioner is from outside Delhi.

5. The case of the petitioner before the Tribunal was, it is a settled law that subsequent OBC certificate issued in Delhi is a mere affirmation of the fact already in existence that the petitioner belong to OBC category. In any case, the case of the respondents was that as per

the policy of the Govt. of NCT of Delhi only two types of certificates are considered as valid for grant of benefit of reservation as OBC in appointments under the Govt. of NCT of Delhi (i) OBC certificate (Delhi) issued by the Revenue Department of Govt. of NCT of Delhi on the basis of any old certificate issued to any member of individual's family from Govt. of NCT of Delhi, (ii) OBC certificate issued by competent authority outside Delhi to a person belonging to a community duly notified as OBC by Govt. of NCT of Delhi. This certificate should have mandatorily been issued on the basis of OBC certificate issued by Govt. of NCT of Delhi to any family member before September 8, 1993. The Tribunal has in paragraphs 6 to 12 stated as under:

"6. In the present case, it is not disputed that at the time of submission of the application by the applicant, she had submitted "Backward Class Certificate", which was issued by Tehsildar, Rohtak, Haryana dated 26.06.2003 declaring that she was resident of Village Rohtak, Tehsil Rohtak, District Rohtak, Haryana State.

7. It is not in dispute that the applicant had consciously filed the application form. The applicants after going through the detailed advertisement for Section 'B' Scheme of Examination; for Section 'C' General instructions & procedure for submission of application form and for Section 'D' Prescribed Application form.

8. There is no dispute regarding stipulation (s) in the Advertisement, which have not been refuted nor challenged e till date by the applicant is so far issue of her claim to OBC is concerned. Nor there is challenge to respondent's notice dated 24.06.2016 in present OA.

9. The citations relied by the learned counsel for the applicant does help and support to facts narrated and set up her.

10. In the present case, it is admitted and undisputed by the applicant that she married on 31.01.2008 and started residing at Delhi with her husband Shri Mukesh Kumar, who is stated to be an OBC himself. It was incumbent upon the applicant to have obtained an OBC certificate on the basis of Other Backward category of her husband, immediately, after marriage. However, the applicant chose to rely upon caste certificate of her father who was resident of Rohtak, Haryana. The subsequent Cast~ Certificate dated 24.3.2015 issued by Competent Authority, Delhi based upon the Certificate issued in favor of her father by Haryana Authorities and not her husband with whom she was now residing after marriage. Even till date of written examination 28.11.2014 she was not possessing required OBC Certificate from Competent Authority, Delhi. No explanation is coming forward as to why she did not seek to submit the OBC Certificate prior to her submission of application form on basis of her husband being OBC himself. There is nothing on record to show that the O applicant has been discriminated qua the similarly situated, who have been given the offer of appointment.

11. Having gone through the above factual matrix which are quite identical to decision rendered by the Hon''ble Apex Court in Ravindra Singh (supra), wherein it was observed and held as under:-

“3. Applications were invited for the post of Sub-Officer in Delhi Fire Service – Group `C` post. The age

prescribed for the post of Sub-Officer was not exceeding 27 years (relaxable in upper age limit for SC/ST - 5 years). The candidates belonging to OBC were entitled to three years age relaxation. The respondent herein applied for the said post, however, he was not given the age relaxation of three years. Therefore, the respondent approached the Tribunal. It was the case of the respondent/original applicant that though he was found to be more meritorious than the last candidate selected from the OBC category, he has not been appointed. The learned Tribunal dismissed the application. However, by the impugned judgment and order the High Court has allowed the writ petition by observing that in the advertisement, there was no mention of age relaxation with respect to OBC candidates. The High Court observed that the respondent, who belong to OBC ought to have been given the benefit of three years age relaxation. A review application was filed pointing out that as the respondent belong to outside OBC candidate and, therefore, as per the advertisement, he was not entitled to three years age relaxation. The High Court has rejected the review application observing that such a plea was not taken up earlier.

4. Having gone through the impugned Judgment and orders passed by the High Court and even having gone through the advertisement issued in the year 2009 which fell for consideration before the High Court, it was specifically mentioned that a candidate belonging to OBC is entitled to three years age relaxation. In the note, it is also specifically provided that “OBC candidates seeking benefit of reservation should submit OBC Certificate issued by the Competent

Authority of Government of NCT of Delhi. All other OBC candidates with certificate issued from outside Delhi will be considered for the unreserved category only, if eligible otherwise". Therefore, OBC candidates belonging to outside the Government of NCT of Delhi were considered in the unreserved category.

5. In that view of the matter, the respondent being OBC outside the Government of NCT of Delhi and as the condition mentioned in the advertisement was not under challenge, the respondent was not entitled to the benefit of three years age relaxation and his case was to be considered in the unreserved category. Thereafter, when he was found to be over-age, it cannot be said he was wrongly denied the appointment. When it was pointed out by way of review application, the High Court has refused to consider the review application. The High Court ought to have considered the aforesaid aspect which goes to the root of the matter.

6. In view of the above and for the reasons stated hereinabove, both the appeals succeed. The impugned judgment and order passed by the High Court in the Writ Petition as well as in the Review Application are hereby quashed and set aside.

12. Conclusion:

In view of the above analysis and discussion, the present OA is liable to be rejected being devoid of merit. Hence, it is dismissed, with no order as to costs."

6. Today also, learned counsel appearing for the petitioner makes similar submissions as were advanced before the Tribunal. He has

drawn our attention to the certificate issued by the competent authority in Delhi to contend that the valid certificate having been issued by the competent authority in Delhi, the same should be considered for the purpose of appointment under the OBC category.

7. On the other hand, Mrs. Avnish Ahlawat, learned standing counsel appearing for the respondents submits that the issue in hand is covered by the judgment of the Supreme Court in the case of ***Government of NCT of Delhi & Ors. v. Ravindra Singh, SLP (C) Nos. 12474-12475/2019*** wherein according to her, the Supreme Court has clearly held, a certificate issued from outside Delhi should be considered for the unreserved category only. According to her, instructions in that regard have been issued by the Govt. of NCT of Delhi, on April 8, 1994, which reads as under to contend that the petitioner's own case is that she has been residing in Delhi only since 2008:

*“Subject: Issuing of Other Backward Class
Certificates to migrants from other States / UTs*

Sir,

In continuation of the DOPT's letter of 36012/22/93-Estt.(SCT) dated 15th November, 1993, I am directed to say that it has been represented to this Department that persons belonging to OBCs who have migrated from one State to another for the purpose of employment, education, etc. experience great difficulty in obtaining caste certificates from the State from which they have migrated. In order to remove this difficulty, it has been decided that the prescribed authority of a State/U.T. Administration in terms of the DOPT letter

No.36012/22/93-Estt.(SCT) dated 15th November, 1993 may issue the OBC Certificate to a person who has migrated from another State on the production of a genuine certificate issued to his father by the prescribed authority of the State of his father's origin except where the prescribed authority feels that a detailed enquiry is necessary through the State of origin before the issue of the Certificate.

2. The Certificate will be issued irrespective of whether the OBC candidate in question is included in the list of OBC pertaining to the State/U.T. to which the person has migrated. The facility does not alter the OBC status of the person in relation to the one or the other State/U.T. The OBC person on migration from the State/U.T. of his origin to another State/U.T. where his caste is not in the OBC list is entitled to the concessions/benefits admissible to the OBCs from the State of his origin and Union Government but not from the State where he has migrated.

3. It is requested that all competent authorities may be advised to issue the OBC Certificate after satisfying themselves of the correctness of the Certificate. The Lists of the Competent Authorities empowered as per DOPT's circular of 15th November, 1993 may be followed strictly. No other authorities may be allowed to issue the OBC Certificates."

(emphasis supplied)

8. It is also her submission that the petitioner was a resident of the State of Haryana till 2008 and as such in terms of the OM, the certificates which were submitted by the petitioner cannot be treated as a certificate issued from Delhi, but one which has been issued from

outside Delhi and hence the candidature of the petitioner has been rightly rejected.

9. We are in agreement with the submissions made by Mrs. Ahlawat. The Supreme Court in paragraphs 4 and 5 of **Ravindra Singh** (*supra*) has held as under:

“4. Having gone through the impugned Judgment and orders passed by the High Court and even having gone through the advertisement issued in the year 2009 which fell for consideration before the High Court, it was specifically mentioned that a candidate belonging to OBC is entitled to three years age relaxation. In the note, it is also specifically provided that “OBC candidates seeking benefit of reservation should submit OBC Certificate issued by the Competent Authority of Government of NCT of Delhi. All other OBC candidates with certificate issued from outside Delhi will be considered for the unreserved category only, if eligible otherwise”. Therefore, OBC candidates belonging to outside the Government of NCT of Delhi were considered in the unreserved category.

5. In that view of the matter, the respondent being OBC outside the Government of NCT of Delhi and as the condition mentioned in the advertisement was not under challenge, the respondent was not entitled to the benefit of three years age relaxation and his case was to be considered in the unreserved category. Thereafter, when he was found to be over-age, it cannot be said he was wrongly denied the appointment. When it was pointed out by way of review application, the High Court has refused to consider the review application. The High

Court ought to have considered the aforesaid aspect which goes to the root of the matter.”

10. As such the issue in hand is covered by the aforesaid judgment. We do not see any merit in the petition. Same is dismissed.

CM APPL. 21424/2023 and CM APPL. 21425/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

APRIL 28, 2023/jg

