

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

+ **Writ Petition (Civil) No.706/2008**

% Date of Decision : February 11, 2008

Bhupender Singh Petitioner
Through : Mr. Kuldeep Sherawat,
Advocate

Versus

Delhi Subordinate Services Selection Board & Anr. Respondents
Through : Ms.Zubeda Begum, Advocate
for respondent No.1
Ms. Mansi Gupta, Advocate
for respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

SUDERSHAN KUMAR MISRA, J : (Oral)

1. The petitioner seeks a direction to the respondents to select the petitioner for the post of Teacher (Primary) with respondent No.2 in the reserved category of OBC with full seniority and service benefits.

2. Pursuant to an advertisement issued by the Delhi Subordinate Services Selection Board (D.S.S.S.B) on 15.5.2006, the petitioner applied for the post of Teacher (Primary) in Municipal Corporation of Delhi (MCD). It is the petitioner's case that although he applied for the said post as an OBC candidate along with all the requisite certificates,

including OBC Certificate issued by office of the Deputy Commissioner North West District, Delhi, the admit card was issued to the petitioner the basis of "General" category.

3. Thereafter the petitioner made a written representation to the Secretary, DSSSB for consideration of his candidature in the OBC category. In it, he informed the Secretary that he has already submitted the requisite OBC certificate and the same was acknowledged by the DSSSB vide acknowledgment slip No.001102. On 29.6.2006, the petitioner personally visited the office of the DSSB for correction in the category under which he has applied from "General" to "OBC". According to the petitioner he was assured orally by officials of DSSSB that the petitioner should appear in the examination & the said correction will be carried out and that he shall be considered as an OBC candidate.

4. The petitioner appeared in the written examination. He claims that although he has failed to qualify in the General Category, however, if treated as an OBC candidate, he makes the grade. He is aggrieved of the fact that despite persistent requests, respondent No.1, i.e., the DSSSB, has not changed his candidature from "General" to "OBC" category, and has persisted in processing his case as a General candidate, thus depriving him of selection to the post of Teacher (Primary) in the OBC category.

5. The question for consideration is whether the respondents should be directed to consider the petitioner for the post of Teacher (Primary). In this regard, the counsel for respondent No.1 has pointed out that the petitioner had moved two applications for the same post. One application bears No.000744 and is dated 20th May, 2006, stating that the petitioner is applying in the unreserved category. The second

application which is No.001102 and is dated 21st May, 2006, states that the petitioner is applying under the OBC category. She has also drawn my attention to the declaration in both forms to the effect that the applicant has submitted only one application for one post code. According to her, by filing two applications, the petitioner has also violated paragraph 7 of the general instructions and procedure for submission of the application, issued by respondent No.1, which states, inter alia, that, "A candidate should submit only one application for one post code."

6. The counsel for the petitioner states that all these infractions are innocuous mistakes and that the petitioner's candidature should not be cancelled on mere technical grounds. He further states that in fact it is the respondents themselves who are guilty of having issued acknowledgments to the petitioner against the OBC category and roll number against the general category and, for that reason also, the petitioner's candidature should not be cancelled. Petitioner's counsel has also placed reliance on **Krishnan Vs. Krishnaveni 1997 (4) SCC 241**. However, he has handed over a print out of the SCC Online law reports, giving the head note only. A reading of this head note shows no relevance whatsoever to the point in issue. He has also placed reliance on **Dolly Chhanda Vs. Chairman, JEE and others AIR 2004 SC 5043**. I do not think that even this case is of much assistance to the petitioner. In that case the petitioner, Dolly Chhanda, had applied for the admission in MBBS, against the seats reserved for children/ widows of personnel of armed forces, killed or disabled in action. She also filed a reserved category certificate issued by the designated authority. She was first rejected on the ground that the certificate which she had produced did not meet with

the requirements prescribed for such certificates. She then produced a fresh certificate in which the mistake in the earlier certificate had been rectified. Despite this, her candidature was rejected and somebody lower in rank was given admission. In these circumstances, the Court had held that, “depending on the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.” In this case, it is not a question of a valid certificate issued by the designated authority being rejected on the ground of some technical infirmity for which the petitioner could not be held responsible. The petitioner’s candidature has been rejected on the ground that while he did not qualify for the General category and there was no proper application for consideration under the OBC category. In addition, he has admittedly filed two separate applications in direct violation of the rules.

7. Learned counsel for the petitioner states that this is a procedural and curable defect. In my opinion this is not so. The petitioner was not rejected because of any mistake in the certificate issued by a third party. His rejection has come about because of his own deliberate actions. He has taken two separate forms, filled them up separately, and filed two separate complete applications. There is no question of any procedural defect here. The petitioner filled up these applications within a gap of one day from each other. Counsel's contention that his client belongs to a weak background and could not distinguish between, “post” and the, “post code” does not impress me. Besides the fact that no such ground has been averred in the

petition, the petitioner was aspiring to be a teacher. He cannot be heard to say that he is unable to even decipher the application form.

I find that there is a specific declaration made by the petitioner while filling up the application in question. Since the petitioner has filed each of the two forms on a different premise, the declarations appended to each are rendered false since they contradict each other. In one application, he has described himself to be an OBC candidate whereas in the other, he has specifically described himself as a general candidate. The declaration states as follows:-

“I hereby declare that all statements made in this application are true, complete and correct to the best of my knowledge and belief. I also declare that I have submitted only one application for one post code in response to this advertisement. I declare that I have read over and understood all the provisions mentioned in the advertisement carefully and I hereby undertake to abide by them. I further declare that I fulfill all the conditions of eligibility regarding age limit, educational qualification and experience etc. prescribed in the advertisement for the post applied for. I have also duly enclosed, attested copies of all the relevant documents/certificates. I understand that in the event of any information being found suppressed, false or incorrect or any ineligibility detected before or after the examination, my candidature/selection/appointment is liable to be cancelled. The information submitted herein shall be treated as final respect of my candidature for the post applied for through this application form. I also declare that I have informed my H.O.D/Department in writing that I am applying for this post. (for Govt. employees only).

It is noteworthy that in each declaration he has stated that all the statements made are true, complete and correct to the best of his knowledge and belief. He has also declared that he has submitted only one application for one post code and that in the event of any information being found suppressed, false or incorrect or any

ineligibility being detected before or after the examination, his candidature/selection is liable to be cancelled.

8. Furthermore, column 11 of the application form, which has to be marked if a candidate seeks the benefit of reservation/ age relaxation as applicable, has been left blank by the petitioner in both the application forms filled by him. This makes it clear that the petitioner never intended to apply as an OBC candidate. Although petitioner's counsel concedes that the relevant OBC certificates are to be annexed only by those candidates who have claimed such benefit in the first place; he seeks to explain the petitioner's failure to stake his claim for the benefit of reservations for OBC candidates as required under column 11 as yet another innocuous mistake on his part. I do not agree. If a claim, as specified in paragraph 11, to the effect that he seeks the benefit of reservation, is not made, the application is bound to be considered under the General category. A certificate describing a candidate to be from a reserved category is necessary only from those candidates who have claimed the benefit of that category. It follows, therefore, that if there is no such claim to begin with, simply attaching a certificate showing that he belongs to a reserved category is immaterial. Such an application can only be considered to be one for general category posts.

9. On merits, it is also submitted by the respondent that the petitioner did not secure the requisite marks under the general category and for that reason his candidature was rightly rejected. Counsel for the respondents also submits that in so far as his candidature under the OBC category is concerned, firstly, the petitioner has incurred disqualification for having submitted two forms as discussed above; secondly, in view of the fact that he has

not given any indication in column 11, neither of the forms can be construed as an application of OBC category.

10. The very fact that the petitioner has submitted two application forms on successive days, is itself sufficient for rejection of petitioner's candidature, being a clear infraction of para 7 of the general instructions and the procedure for submission of application, issued by DSSSB. This fact, specially when examined in the light of the other facts examined above, shows that there is no ground for interference in writ jurisdiction by this Court. It is a well known principle of equitable jurisdiction that, "he who seeks equity, must do equity," the petitioner cannot be allowed take advantage of his own actions, which are contrary to the stipulations laid down by the respondents for the posts in question.

11. In that view of the matter, I find no merit in this petition and the same is dismissed.

CM No. 1349/2008

Since the writ petition is disposed of, the stay is vacated. This application is also disposed of.

The date 19.3.2008 is cancelled.

February 11, 2008
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Sudershan Kumar Misra, J