

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

+ **Writ Petition (Civil) No. 2016/2008**

Date of Decision : 18.5.2009

RAVINDER KUMAR & ORS.

..... Petitioners
Through : Mr.Ajay Kumar,
Advocate.

Versus

DELHI SUBORDINATE SELECTION BOARD (DSSSB) & ORS.

..... Respondents
Through : Ms.Manju
Bhattacharya and Mr.Elgin
Matt John, Advocates.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

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

V.K. SHALI, J. (Oral)

1. The petitioner in the instant writ petition has prayed for production of records by the respondents with regard to the process of appointment to the post of Primary Teachers which was held in pursuance to the advertisement No.01/2002 published on 13.5.2002. It has been further prayed that the respondent no.1/Delhi Subordinate Selection Board (DSSSB) (hereinafter referred to as Board) be directed to recall the order of surrender of the vacancies for the post of Primary Teachers to be filled in by OBC candidates and direct the appointment of the

petitioners against one such vacancy each on account of their having obtained the qualifying marks in the OBC category.

2. Briefly stated the facts leading to the filing of the present writ petition are that the respondent no.1 issued an advertisement bearing No.01/2002 on 13.5.2002 in the various National dailies in Delhi inviting applications for the post of Primary Teachers in the schools being run by respondent no.2. The total vacancies shown in the said advertisement were 717 out of which 193 were to be filled up in the category of OBC. The case of the petitioners, who are three in number, is that they had applied for the appointment to the post of Primary Teachers in OBC category in respect of which result was declared on 24.12.2003. It is stated that only 120 OBC candidates holding the certificates issued by the Government of NCT of Delhi were declared to be successful. The case of the petitioners is that all three of them are holding the OBC certificates issued by the competent authority of the Government of NCT of Delhi but despite this they were not considered for the appointment to the post of Primary Teachers by the respondents under mistaken belief of their having not submitted the OBC certificates issued by the Government of NCT of Delhi. It is further alleged that vide order dated 05.2.2008 result of four more candidates issued out of which two were OBCs.

3. The learned counsel has contended that the petitioner learnt about the factum of their being ignored for the appointment only through the information obtained by the

petitioner in the year 2008 in pursuance to their queries furnished under the RTI Act, 2003 where upon he has without any loss of time chosen to file the present writ petition. It was urged by counsel for the petitioner that at the time when examination was held in respect of the post in question, there was no minimum marks fixed to be attained by any of the candidates so as to enable them to get appointment to the said post and therefore the appointment to the petitioner cannot be denied.

4. As regards the delay in approaching the Court for redressal of his grievance, the case of the petitioner is that delay was occasioned on account of the litigation between the respondents and some of the other candidates, who had filed their OBC certificate purported to have been issued by the authorities outside Delhi contending that they are also eligible. This writ petition was decided in favour of the respondents. It is urged that it is only on account of the pendency of the said writ petition and the factum of respondents themselves having declared the result of four candidates on 05.2.2008 and that the petitioner's cause of action to file the present writ petition accrued now which he availed of by challenging the action of the respondents in surrendering the post and non-appointment of the petitioners to the said post.

5. The respondent no.1 in its counter affidavit has contested the claim of the petitioner. The factum of advertisement, the number of posts, the number of candidates who have been

declared successful or the results having been declared on 05.2.2008 in respect of four candidates is not disputed.

6. The respondent no.1 has raised the question of delay and laches in approaching the Court. Secondly, the factum that the extra vacancies numbering around 69 under the OBC category were surrendered and the fact that there were candidates who are having more percentage of marks than the petitioners, therefore, the petitioners could not be appointed. Secondly, it was urged that the last candidate in the category of OBC, who was appointed, was having 73 marks out of 120 while as the petitioners had just 67, 70 and 56 marks respectively. It was also averred that in pursuance to the decision of the High Court of Delhi with respect to the litigation initiated by the persons who are having OBC certificates issued by the authorities outside Delhi, the Lt. Governor had taken a decision extending the benefit of the OBC category to those persons also whose names were appearing in the category of OBC in the Central list or the list approved by the backward commission but in any case the certificate had to be issued by the Competent Authority of Government of NCT of Delhi and as this clarification given by the Lt. Governor was prospective in operation, therefore, that is of no help to the petitioners.

7. On merits, it was urged that the petitioners could not be given appointment primarily on account of two reasons, firstly, that the seats which remained unfilled were surrendered and secondly, there were candidates who had obtained more marks

in aggregate than the petitioners and therefore, the petitioners could not claim the appointment as a matter of right.

8. I have heard the learned counsel for the parties and perused the record.

9. The learned counsel for the petitioner has very vehemently contended that the respondents ought not to have surrendered 69 remaining vacancies in the category of OBC and the petitioners ought to have been considered against the said vacancies as all three of them were having a valid certificates of OBC issued by the competent authority in Delhi and merely because the percentage of one of the petitioners who was stated to be lowest having a percentage of 56 could not be a ground for denying him the appointment to the post in question as no minimum criteria was fixed by the respondents while recommending the name for the appointment.

10. As against this, the contention of the learned counsel for the respondent was firstly that the writ petition is barred by inordinate delay and laches. Secondly, the remaining posts having been surrendered if at all in such direction for appointment of the petitioner is issued such directions would be futile direction as there is no posts against which he can be appointed. Last but not the least even on merits, it was contended by counsel for the respondent that the petitioners have obtained much less marks than the last person who was selected in OBC category. If it is assumed that the petitioner

ought to have been considered against the vacancy of OBC category even than his number was too down in merit list.

11. The first and foremost question which arises for consideration is as to whether the writ petition is barred by inordinate delay and laches. There is no dispute about the fact that the post of primary teachers were advertised on 13.5.2002. The total number of vacancies which were advertised are 717 out of which 193 were of OBC category. The result of these vacancies was declared by the respondents on 24.12.2003. The writ petition has been filed by the petitioner only after expiry of nearly seven years without giving any cogent explanation as to why he did not file the writ petition at an earlier stage when the results were declared. No doubt, the provisions of the Limitation Act are not applicable to the writ jurisdiction but the broad parameters of the Limitation Act would govern the proceedings so far as the filing of writ petition is concerned. It has been laid down by the Apex Court that no straight jacket formula with regard to the period within which the petitioner must come to the Court can be laid down but it must be done as expeditiously as possible and certainly within the period of limitation as is prescribed under the Limitation Act for similar relief although in a given case the period of limitation could be much less. Reliance in this regard is placed on ***State of M.P. Vs. Bhailal Bhai*** AIR 1964 SC 1006, wherein it has observed as under:-

“the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. It appears to us however that the maximum period fixed

by the Legislature as the time within which the relief by a suit in the Civil Court must be brought may ordinarily be taken to be a reasonable standard by which the delay in seeking remedy under Article 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a Civil action for the remedy but where the delay is more than the period it will almost always be proper for the Court to hold that it is unreasonable”

12. The aforesaid preposition of law is kept in view while examining the factual matrix of the case, the advertisement has been floated on 13.5.2002 and the results declared on 24.12.2003 in the same year. The writ petition has been filed on 11.3.2008 that is after expiry of more than six years. The ground on which the delay in filing the writ petition is sought to be justified by counsel for the petitioner is the factum of the litigation between the OBC candidates who had obtained the certificates from outside Delhi on the one hand and the respondents on the other. It is urged that since the matter was subjudice, therefore, the petitioners choose to wait for the outcome of the said decision and further it is stated that the cause of action to file the writ petition cannot be seen in isolation as the respondents themselves have declared result on 05.2.2008 in respect of two other OBC candidates. Therefore, the petitioner's case also ought to have considered along with the said case.

13. I do not find myself in agreement with this contention of the learned counsel for the petitioner. The result of the Selection process in question on the basis of which the names of 120

candidates were declared was done in December, 2003. It was in December, 2003 that after declaring result of 120 candidates, there were 73 vacancies which remained to be unfilled. The petitioners ought to have approached the Court at the earliest possible opportunity and certainly not beyond a year from the date of declaration of the result that is up to the end of December, 2004 for redressal of his grievance of not being appointed as a Primary Teacher by the respondents. On the contrary, the petitioners choose to sit at home and thereby this gives an impression that they have reconciled to their fate of not getting appointment to the post of Primary Teacher. Merely because there was litigation between the OBC candidates who were having certificates from the authorities outside the State of Delhi which litigation continued for almost 5 to 6 years, would not entitle the petitioners to get his delay in filing the writ petition condoned. It may be pertinent further here to mention that the petitioner was admittedly the candidate who has been issued a certificate by the competent authority of the Government of NCT of Delhi. Therefore, it does not stand to reason as to why did the petitioner wait for the outcome of the said writ as it was not going to affect the case of the petitioners in general. Therefore, in totality of circumstances, I feel that the case of the petitioner is hit by inordinate delay and laches and as such deserves to be dismissed on this ground itself.

14. But we may now proceed to examine the matter even on merits to see if the claim of the petitioners was justified or not.

In this regard, the original record shows that petitioner no.1's rank was 4379, petitioner no.2's rank was 2543 and petitioner No.3's rank was 17415. All these ranks are not disputed by the petitioners. The respondent no.1 in its counter affidavit has categorically stated that the last candidate who has been appointed under the OBC category was having 70 marks out of 120. While as all the petitioners in the present case were having much less marks than the last candidate so selected. Therefore, it could not be said that the action of the respondent no.1 in not treating him to be eligible to be selected cannot be found fault with. It has also been stated by them that in between 67 to 73, there are 100 candidates who had not been given appointment under the said category and accordingly, the name of the petitioners could not be considered. The contention of the learned counsel for the petitioners that there were no minimum qualifying marks in the test conducted in the year 2003 and the Circular dated 05.2.2008 and the stand taken by the respondent is that each of the OBC candidate must have qualifying marks of 35% each was prospective in operation and therefore, the petitioner ought to have been appointed as Primary Teachers in the category of OBC does not seem to be a valid submission. There is no dispute that in the year 2007 when the decision is taken that each of the OBC must get minimum 35% marks that will be only prospective in operation and cannot be applied but at the same time merely on account of the fact that no qualifying marks were prescribed in the test in which the petitioners had

applied does not mean that whatever percentage of marks or whatever total number of marks are obtained by the petitioners that would entitle them for appointment in the category of OBC. The respondents have very categorically and positively stated that no person having less marks than the petitioners has been appointed in the category of OBC and as a matter of fact the last person who has been appointed in the category of OBC has 73 marks while as out of the three petitioners, the petitioner no.1 has 67 marks and others also have less marks like 70 and 56. There is a wide gap in between the two set of marks obtained by the last candidates and the petitioners. Even in these two slabs of marks, it is stated that there are number of persons who are having 70 marks which is fortified from the record. This fact is also not denied by the counsel for the petitioner.

15. Therefore, all these facts clearly shows that even on merits, the petitioners could not claim appointment as a matter of right to the post of Primary Teachers in the category of OBC.

16. The last but not the least, the respondents have surrendered these remaining 69 vacancies in respect of which the candidates were not recommended. Since the posts itself have been surrendered, it is not possible to direct the respondents to recall the order of surrender of a post and declare the petitioners to be qualified for being appointed to the said post when according to the standard fixed by the respondent themselves, the petitioners have not been declared to be qualified. As a matter of fact, even if a direction is issued to the

respondents to appoint the petitioners, this would tantamount for issuance of a futile writ as there is no vacancy which remains to be unfilled on account of surrender of vacancies.

17. For the forgoing reasons, I do not find any merit in the writ petition of the petitioners. The authority which has been cited by counsel for the petitioner in support of his contention which is titled as ***Andhra Pradesh Vs. P.Chandra Mouleesware Reddy & Ors.*** 2006 (9) SCALE 252 is not applicable to the facts of the present case. The facts of the said case were that there were 19 vacancies in respect of the post of DSP's which were advertised and the State Services Commissioner conducted the test for recruitment of these 19 vacancies but the State Government had taken a decision to fill up only 10 vacancies. The said decision of the State Government to fill up only 10 vacancies was set aside by the Supreme Court on the ground that action of the respondents cannot deprive right of the petitioners to get appointed to the said post. In the instant case, there is no decision taken by respondent no.1 or for that matter the user department respondent no.2 that although the total number of vacancies are 193 but only 120 should be filled up. As a matter of fact out of 193 only 120 has were found to be duly qualified according to the standard fixed by the Selection Committee and the result of the said vacancies were declared by the respondents. Therefore, the judgment relied upon by the respondent is distinguishable from the facts of the present case.

18. For the forgoing reasons, the writ petition is barred by inordinate delay and laches apart from the fact that the same is without any merit and therefore the same is dismissed.

No order as to costs.

V.K. SHALI, J.

MAY 18, 2009
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