

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

+ **W.P.(C) No. 18221/2006**

Judgment delivered on: 12.02.2009

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Shri Pradeep Kumar Petitioner.

Through: Mr. Harish Kumar, Adv.

versus

The Chairman, DSSSB Respondent

Through: Mr. E. Premjit Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J. (Oral)

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1. By way of the present petition filed under Article 226 of the Constitution of India, the petitioner seeks issuance of appropriate directions to consider the case of the

petitioner for appointment on the post of fire operator in the category of OBC.

2. Counsel for the petitioner submits that pursuant to the advertisement published in various national dailies the petitioner applied for the post of fire operator under OBC category. The petitioner was allotted Roll. No. 3056547 and was called for written test. He further submits that the petitioner qualified the examination, physical test as well as driving test. He states that result of the petitioner was withheld by the respondent on the ground that his case was sent by the respondent department to the Divisional Commissioner for necessary verification of his OBC certificate. He states that necessary verification of his OBC certificate was received by the respondent from the office of the Divisional Commissioner, but still the result of the petitioner in the OBC category was not declared due to the extraneous reasons. Counsel submits that the petitioner belongs to the OBC category and his certificate has already

been verified by the respondent through the office of the Divisional Commissioner. Counsel for the petitioner has drawn attention of this court to the photo copy of the said OBC certificate which was issued in his favour by the office of the Dy. Commissioner (West) Delhi. Counsel for the petitioner has further drawn my attention to the letter dated 14.3.2005, whereby the respondent DSSSB has confirmed the fact of receipt of necessary verification from the office of the Divisional Commissioner certifying the petitioner to be belonging to the OBC. Counsel thus states that the petitioner deserves to be considered for his appointment on the post of fire operator in the OBC category.

3. On the other hand, counsel for the respondent states that result of the petitioner and all the other candidates could not be declared due to the pendency of the petition filed by some of the unsuccessful candidates due to their failure in the driving test. Counsel further states that the order of the Central Administrative Tribunal was

challenged by the DSSSB before the Hon'ble Division Bench and vide order dated 21.1.2009, the same has been remanded back to the tribunal for fresh consideration of the submissions made by the said petitioners.

4. Be that as it may, since the issue of driving test is not involved in the present petition and the only issue which requires consideration is as to whether the petitioner should be considered in the OBC category or not after necessary verification of his OBC certificate which has already been completed by the respondent. The respondent has nowhere in the counter affidavit disputed the fact that the petitioner does not belong to OBC category or in the verification there was some adverse report against the petitioner. This court has already taken a view in W.P.(C)No.8508/2007 entitled **Smt. Poonam Vs. Govt. NCT of Delhi**, decided on 2.2.2009, that if a person belongs to OBC category or reserved category and has taken the steps for obtaining necessary certificate from the concerned

department, within the permissible time and has filed such a certificate before the completion of the provisional selection process then such a candidate has to be considered in the same category for which he/she had applied for, at the time of filing of the application for the said post.

5. The relevant para of the said decision is as under:

"Keeping this in mind and considering that the petitioner applied for the OBC certificate to the concerned office of SDM on 7/5/2007 much before July 2007, when the advertisement was made by DSSSB and since the certificate was made available to the petitioner on 1/11/2007, the petitioner cannot be made to suffer for the lapse on the part of the SDM office. But at the same time it is made clear that the caste certificate should reach the Board prior to their making provisional selection as while making provisional selection, the Board verifies & satisfies itself with authenticity of documents and eligibility as per the recruitment rules.

Be that as it may, the issue is no more res integra as in the case of **Tej Pal Singh & Ors. Vs. Govt. of NCT of Delhi** reported in **120 (2005) DLT 117** this Court has already taken a view that the candidates who belong to 'SC' and 'ST' categories but could not file certificate in proof of the same could not have been rejected simply on account of the late submission of the certificates and submission of such certificates cannot be made a pre-condition for accepting the application forms. The relevant para of the said judgment is reproduced as under:

"17. The matter can be looked into from another angle also. As per the advertisement dated 11th June, 1999 issued by the Board, vacancies are reserved for various categories including 'SC' category. Thus in order to be considered for the post reserved for 'SC' category, the requirement is that a person should belong to 'SC' category. If a person is SC his is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to 'SC' category and act thereon by giving the benefit to such candidate for his belonging to 'SC' category. It is not that petitioners did not belong to 'SC' category prior to 30th June, 1998 or that acquired the status of being 'SC' only on the date of issuance of the certificate. In view of this position, necessitating upon a certificate dated prior to 30th June, 1998 would be clearly arbitrary and it has no rationale objective sought to be achieved.

18. While taking a particular view in such matters one has to keep in mind the objectives behind the post of SC and ST categories as per constitutional mandate prescribed in Articles [15\(4\)](#) and [16\(4\)](#) which are enabling provisions authorising the Government to make special provisions for the persons of SC and ST categories. Articles [14\(4\)](#) and [16\(4\)](#), therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a right enshrined for protection of society. The right in social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular Arts. [14](#), [15](#), [16](#), [21](#), [38](#), [39](#) and [46](#) are to make the quality of the life of the poor, disadvantaged and disabled citizens of the society meaningful.

19. One can usefully draw sustenance from the following words of wisdom spoken by the Apex Court in Valsamma Paul (Mrs.) Vs. Cochin University and others [MANU/SC/0275/1996](#) :-

"The Constitution through its Preamble, Fundamental Rights and Directive Principles created a Secular State based on the principle of equality and non-discrimination, striking a balance between the rights of the individuals and the duty and commitment of the State to establish an egalitarian social order. The emphasis, therefore, is on a citizen to improve excellence and equal status and dignity of person with the advancement of human rights and constitutional philosophy of social and economic democracy in a democratic polity to all the citizens on equal footing....."

Mr. Sushil Salwan counsel for the respondent urged that the relief in the said judgment is meant only for the 'SC' & 'ST' category and not for 'OBC' category and therefore, the respondents have rightly not considered the application of the petitioner against the 'OBC' category. I do not find any merit in the submission of the counsel for the respondent. The petitioner cannot be denied the right to be considered for appointment to the said post under the 'OBC' category once there is no dispute that she belongs to OBC Category. Admittedly, there was no lapse on the part of the petitioner who had applied to obtain the said certificate in the OBC Category much prior to the date of the advertisement and she cannot be made to suffer simply on account of the fact that the authorities have taken considerable time in making available the OBC certificate.

In view of the above discussion and considering the merit of **Tejpal Singh's judgment (supra)**, I extend the benefit of OBC category to the petitioner. The respondents are directed accordingly to consider the application of the petitioner against the OBC category within a period of one month and accordingly announce the result taking into view the relaxation whatever available to the OBC candidates."

6. In the present case the petitioner had applied to seek appointment for the post of fire operator in the OBC

category. Necessary certificate was submitted by him, which also got verified by the respondent through the concerned office of Divisional Commissioner.

7. Considering the aforesaid facts, it is directed that the respondent shall declare the result of the petitioner as per his merit in the OBC category for his appointment on the post of fire operator. It is also directed that the notional seniority of the petitioner shall be granted as per his merit along with other qualified candidates.

8. With these directions, the petition stands disposed of.

February 12, 2009

**KAILASH GAMBHIR
(Judge)**

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