

* **IN THE HIGH COURT OF DELHI AT NEW DELH**
+ **WP(C) NO. 193 OF 2009**

Date of Decision: 1st October, 2010

MR. MUKESH KUMAR YADAV AND OTHERS..... Petitioners
Through: Mr. Rajender Yadav, Advocate

Versus

\$ **GOVT. OF NCT OF DELHI AND OTHERS** Respondents
^ Through: Ms. Zubeda Begum and Ms. Sana
Ansari, Advocates

CORAM:
* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the Judgment?(No)
2. To be referred to the Reporter or not?(No)
3. Whether the judgment should be reported in the digest?(No)

JUDGMENT

P.K.BHASIN, J:(ORAL)

The three petitioners had applied for appointment to the post of 'A' Grade Staff Nurse in response to the advertisement issued by the respondent no. 2, Delhi Subordinate Services Selection Board on 15-12-07. The petitioners had applied in the reserved category for OBCs. As per the afore-said advertisement the last date for submission of the applications was 21st January, 2008 and the applicants seeking appointments in reserved category were to furnish requisite caste

certificate issued by the competent authority of the Government of NCT of Delhi along with their applications. The petitioners undisputedly had not submitted along with their applications OBC certificates issued by the competent authority of the Government of NCT of Delhi. Petitioners no. 1 and 2 had, however, submitted OBC certificates obtained by them from the State of Rajasthan while petitioner no. 3 did not submit any caste certificate along with his application. The applications of all the three petitioners were, however, entertained by the respondent no. 2 and they were issued admit cards to enable them to sit for the written examination and thereafter they gave the written test on 7th May, 2008. The respondent no. 2 published a list on 29th May, 2008 showing the names of candidates who had cleared the test and the names of the petitioners were allegedly shown in that list. However, on 29th July, 2008 another list of successful candidates was published by the respondent no. 2 but in that list the names of the petitioners were missing. Some of the petitioners allegedly sought information from the respondent no. 2 by moving an application under the Right to Information Act in respect of the absence of their names in the list published on 29th July, 2008 and in response to that application they were informed that the candidates having OBC certificates issued by a State other than Delhi were not entitled to avail the benefit of reservation in Delhi. Some of the candidates whose names did not appear in the list dated 29th July, 2008, including petitioner no. 1, filed

a writ petition in this Court (being WP(C) No. 5731/08). Thereafter respondent no. 2 published another list on 15th December, 2008 and in that list the reason given for non-selection of the petitioners was that the caste certificate (which the petitioners had in the meanwhile obtained from the office of the concerned SDM of Delhi Government and submitted to respondent no. 2) had been issued after the cut-off date. Then the present petition came to be filed.

2. The petitioners claim that they had secured the requisite marks required to be obtained for OBC category candidates but still their names were not shown in the list of successful candidates published on 15th December, 2008 and their grievance is that the rejection of their candidature despite their having secured the requisite marks in the written test was not justified for the reason that they had given caste certificates which were issued by the competent authority after the cut-off date. It is also claimed in the writ petition that the respondents had given appointment to some persons who had, in fact, submitted their caste certificates after getting appointment in the year 2003.

3. In the counter affidavit filed on behalf of the respondents it has been stated that as per the OBC Reservation Policy of the Delhi Government only those candidates could apply in the OBC category who were holding OBC certificates issued by the Competent Authority of NCT of Delhi while in the present case the petitioner had enclosed OBC

certificate issued by Naib Tehsildar of Alwar(Rajasthan) and, therefore, his candidature was rejected. Petitioner submitted OBC certificate issued by the Competent Authority of NCT of Delhi on 27th October, 2008 and since that had been issued after the cut-off date of 21st January, 2008 the same was not accepted.

4. Learned counsel for the petitioners has placed strong reliance on a Single Judge Bench(Gambhir,J) decision of this Court dated 11th February, 2009 in WP(C) 911/08, “***Ms. Pushpa vs. Government of NCT of Delhi & Ors.***” wherein the rejection of the candidature of the petitioner therein for the reason that she had submitted the OBC certificate after the cut-off date was held to be illegal and the Government was directed to re-consider her candidature. Learned counsel for the petitioners has also relied upon one judgment of a Division Bench of this Court reported as **152 (2008) DLT 224**, “***Government of NCT of Delhi vs. Poonam Chauhan***” in which case also the concerned candidate had applied for the caste certificate after the cut-off date and had also furnished the same with the DSSSB after publication of the final result but was denied appointment. In her challenge before the Central Administrative Tribunal she succeeded and this Court had rejected the writ petition of the Government against that decision.

5. Learned counsel for the respondents on the other hand has placed reliance on a decision of this Court dated 20th January, 2010 in WP(C)

8362/2009 also given by Gambhir,J wherein after taking note of the decision in Pushpa's case(supra) this Court had dismissed the writ petition under similar circumstances for the reason that the petitioner of that case had not applied for caste certificate before the cut-off date and it was observed that selection process cannot be stalled at the instance of those who fail to take timely steps to obtain and furnish the caste certificates in terms of the advertisement.

6. Counsel for the petitioners has admitted that none of the petitioners had submitted OBC certificates issued by the Competent Authority of the Government of NCT of Delh prior to 21st January, 2008 and that all the three petitioners had applied for the certificates after 21st January, 2008 which was the cut-off date in the advertisement in response to which they had applied.

7. I am of the view that none of the two decisions of this Court relied upon by the counsel for the petitioners is of any help to them. In Pushpa's case(supra) the writ petition was allowed since the petitioner of that case had applied for the caste certificate before the cut-off date but the concerned department had delayed its issuance and so it was observed by this Court that there was no fault on the part of the petitioner. In the present case, however, none of the petitioners had even applied for caste certificates before the cut-off date of 21st January, 2008. The judgment of the Division Bench of this Court in Poonam Chauhan's case(supra) relied

upon by the counsel for the petitioners is also not applicable since the advertisement in question in that case does not appear to be having any clause to the effect that the applications should be accompanied by caste certificates issued by the Competent Authority of the Delhi Government as is the clause in the advertisement in question in the present case. As far as the allegation that the respondents have given appointments to some persons who had submitted caste certificates after being appointed is concerned nothing has been placed on record by the petitioners to substantiate the same and the respondents have categorically refuted that allegation. Therefore, considering the fact that the applications submitted by the petitioners were not accompanied by OBC certificates issued by the Competent Authority of the government of NCT of Delhi and they had not even applied for the same before the cut-off date for the submission of the application it cannot be said that the respondents' action in refusing them the appointment in OBC category was illegal, arbitrary or unjustified. This writ petition is, therefore, dismissed.

P.K. BHASIN,J

OCTOBER 01, 2010
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