

* **HIGH COURT OF DELHI : NEW DELHI**

+ **W.P.(C) No.846/2008 & CM No. 4802/2008**

% Reserved on: 22.04.2010
Pronounced on: 23.04.2010

BABITA DAS ...Petitioner

Through: Mr. S.K. Bhaduri and Mr. S.P. Pandey,
Adv.

Versus

THE SECRETARY MINISTRY OF PUBLIC GRIEVANCES &
ADMINISTRATIVE REFORMS GOVT. OF INDIA & ANR.

....Respondent
Through: Mr. Ashok Singh, Adv.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. The petitioner in the present writ petition filed under Article 226 of the Constitution of India praying for quashing of letter bearing Ref. No. 10/1/2006-Exam-III dated 17.02.2008 issued by respondent no.2 cancelling the candidature of the petitioner.

2. Brief facts of the case are that the petitioner appeared as OBC candidate in the SSC Combined Matric Level (Preliminary)
W.P.(C) 846/2008 & CM 4802/2008

Examination conducted by respondent no.2 on the basis of advertisement published in Employment News in early 2006.

3. The application for the said examination was filed by the petitioner along with OBC certificate dated 23.11.2004 issued by the District Magistrate, Kishangarh, Bihar. The result of the preliminary examination was declared and the petitioner was declared successful in the said examination. The petitioner submitted the application form for main examination of Matric Level Examination 2006.

4. On 12.05.2007 and 13.05.2007, the main examination of Matric Level (Main) Examination was held by respondent no.2. In December 2007 the respondent no.2 provided the petitioner with a proforma for obtaining revised preference from qualified candidates of Combined Matric Level (Main) Examination, 2006 who desired to be considered for the post of Stenographer in CBDT along with other categories which the petitioner filled.

5. On 29.12.2007 the respondent no.2 directed the petitioner to furnish the OBC certificate in the prescribed proforma as per annexure II of the notice of examination issued by the competent authority latest by 10.01.2008.

6. The petitioner submitted her OBC certificate on 10.01.2008 and also got the receipt issued by the office of the respondent no.2.

7. The petitioner issued the letter dated 16.01.2008 specifically to the respondent no.2 in order to get the position of admission tickets for the practical examination to be held on 02.02.2008. The petitioner received a letter no. 10/1/2006-Exam III dated 17.02.2008 (wrongly dated) cancelling her candidature to appear in the examination on the ground that she has not submitted the OBC certificate as per prescribed proforma. Thereafter, the present writ petition has been filed by the petitioner.

8. It is not in dispute that the petitioner filed the true copy of the OBC certificate dated 23.11.2004 along with application but the same was not sent in the prescribed proforma as issued by the competent authority. Secondly, it was also not denied by the respondent no.2 that the petitioner had also deposited the fresh OBC certificate well in time in compliance of the letter dated 29.12.2007 issued by the respondent no.2.

9. The OBC certificate issued on 08.01.2008 has already been placed by the petitioner as Annexure P-6. It appears from the above said annexure P-5 and P-6 filed by the petitioner that the necessary compliance has been made by the petitioner well in advance and definitely before the last date provided by the respondent no.2.

10. The contention of the learned counsel for the respondent is that since the OBC certificate was not furnished in time and the same

was also not in the prescribed form therefore, her candidature of examination was cancelled.

11. In support of his submissions learned counsel for the petitioner has referred the judgment delivered by this court in W.P. (C) 9112/2008 in the case of **Smt. Pushpa Vs. Government, NCT of Delhi & Ors.** which has dealt with the similar point involved in the present case. The relevant part of the judgment is reproduced hereinbelow:

6. If a person is 'OBC', she 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 W.P.(C) No.9112/2008 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 she belongs to 'OBC' category and act thereon by giving the benefit to such candidate for her belonging to 'OBC' category. It is not that petitioner did not belong to 'OBC' category prior to 21st January, 2008 or that acquired the status of being 'OBC' only on the date of issuance of the certificate. In view of this position, insisting upon a certificate dated prior to 21st January, 2008 would be clearly arbitrary and has no rationale objective to be achieved.

7. Caste is the only accepted criteria to identify under-represented groups. The underlying theory is that the under-representation of the identifiable groups is a legacy of the Indian caste system. After India gained independence, the Constitution of India listed some erstwhile groups as Scheduled Castes (SC) and Scheduled Tribes (ST). The framers of the Constitution believed that, due to the caste system, SCs and the STs were historically oppressed and denied respect and equal opportunity in Indian society and were thus under-represented in nation-building activities. Later,

reservations were introduced for other sections as well.

12. Learned counsel for the petitioner has referred to another judgment of this court being W.P.(C) No. 18221/2006 titled as **Sh. Pradeep Kumar Vs. The Chairman, DSSB** relevant para whereof reads as under:

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.

13. Learned counsel for the petitioner has lastly referred to a judgment of Division Bench of this court being W.P.(C) No. 548/2008 titled as Govt. of NCT of Delhi and Anr. Vs. Poonam Chauhan, relevant para whereof reads under:

“The controversy between the parties can be examined from another angle also. As per the advertisement dated 30.04.2004, vacancies were reserved for candidates from SC/OBC category. In order to be considered for the post of Domestic Science Teacher reserved for OBC category, the requirement is that a person should have belonged to that category. In the present case, it is not disputed that respondent belongs to OBC category. The stand of respondent is that she received a letter dated 24.01.2005 from Deputy Secretary, DSSB to furnish OBC certificate duly attested from Gazetted Officer/Notary Public and documents in support of educational qualifications by 31.01.2005. Respondent visited the office of Deputy Secretary with letter dated 31.01.2005 and requested 15 days time as her original OBC certificate dated 13.03.2001 was not traceable at that time. Thereafter she applied for the OBC certificate to the Government of NCT of Delhi and on 05.02.2005 SDM, Seelampur, Delhi had furnished OBC certificate to her which was sent by her to DSSB on 07.02.2005. She further stated that she had annexed the OBC certificate dated 13.03.2001 with application form which was issued to her before marriage by Tehsildar Baraut, District Bagpat, UP. Respondents 1 and 2 in their reply before Tribunal have referred to the OBC certificate issued by Tehsildar Baraut, District

Bagpat, UP. The Tribunal has also taken note of the same in the impugned order. The Tribunal has concluded that the OBC certificate dated 13.03.2001 issued by Tehsildar Baraut, District Bagpat, UP was submitted by respondent with the application form. The petitioner has not been able to show any reason to differ from the said finding of fact. Respondent has also annexed a copy of aforesaid certificate along with O.A. filed before Tribunal. The genuineness of the same is not challenged before Tribunal or before this Court. The aforesaid caste certificate is issued much prior to last date of application. It is not the case of the Government that the respondent falls in the creamy layer.”

14. In view of the reasons stated above and the judgments referred by the learned counsel for the petitioner, I allow the petition and direct that the letter no. 10.01.2006-Exam-III dated 17.02.2008 is quashed and it is also directed to the respondents to consider the candidature of the petitioner accordingly in view of quashing of the letter dated 17.12.2008. Writ petition is disposed of with no order to costs.

MANMOHAN SINGH, J.

APRIL 23, 2010

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