

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

+ **W.P.(C) No.10768/2009**

Pronounced on: 23.04.2010

ARVIND KUMAR ...Petitioner

Through: Mr. Manoj Ohri, Advocate.

Versus

GOVT. OF NCT OF DLEHI & ORS. Respondents

Through: Ms. Anju Bhattacharya, Advocate
for Respondent Nos. 1&2.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

- | | |
|--|-----|
| 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 has filed the present writ petition under Article 227 of the Constitution of India seeking direction to the respondent no.2 to grant appointment letter to the petitioner for the post of Junior Engineer (Civil) in OBC category in the post code 018/08 and quashing the result dated 30.03.2009 and 20.07.2009 declared by the respondent no.2 for the said post.

2. The brief facts are that the petitioner is a 'JAT' by caste included in the OBC category vide notification no. F.28(93)/91-92/SC/ST/P&S/4384. He completed his diploma in Civil Engineering from Pusa Polytechnic, Delhi and started working between July 2004 to December 2007 with A. Khanna & Associates, Delhi.

3. In July, 2008 an advertisement was issued by the respondent no.2 in employment news dated 19-25 July, 2008 for the post of Junior Engineer (Civil) in MCD/respondent no.3 in the pay-scale of 5000-8000 in which 86 vacancies out of 268 were reserved for OBC candidates.

4. The petitioner being an OBC candidate submitted his application along with relevant documents in the office of SDM for grant of OBC certificate. The acknowledgement in this regard has been filed by the petitioner along with writ petition. On 12.08.2008, the petitioner filed the application in the office of respondent no.2.

5. It was specifically mentioned in the application that he belong to OBC category and also attached the acknowledgement dated 08.08.2008 received from the office of SDM, South-West. In October, 2008, the respondent no.2 published an advertisement inviting application for the post of Junior Engineer (Civil) in the post code no. 039/08 for total of 79 vacancies with 21 posts reserved for the OBC candidates with NDMC. The petitioner also filled up this application form however, his first choice was MCD. On 12.11.2008, the petitioner received the OBC certificate from the office of SDM South-West District, Delhi. The petitioner was allotted roll no. 181044 as an OBC candidate.

6. A common entrance examination consisting of Part I and Part II was held by respondent no.2 for filling up the vacancies. The petitioner opted for the first preference as MCD. Part I result was declared on 07.01.2009. The petitioner obtained 63 marks out of

200. As per general instruction no.5 the qualification marks for OBC were 30 per cent i.e. 60 marks out of 200.

7. Result of main examination i.e. Part II declared for vacancies in MCD. The result of the petitioner was shown as pending. On 30.03.2009, when the result was declared, the petitioner was asked to approach respondent no.2 for removing deficiency within ten days. On 02.04.2009 the petitioner visited office of the respondent no.2 and he was asked to submit OBC certificate.

8. The petitioner immediately submitted the OBC certificate with the respondent no.2 with his letter dated 31.03.2009 and he was asked to wait for declaration of result within four weeks. On 13.05.2009 no result was declared by respondent no.2 for pending cases. The petitioner wrote a letter to respondent no.1 and enquired about the same. However, no reply was received by the petitioner. On 20.07.2009 the respondent no.2 declared the result of pending cases however, the name of the petitioner was not mentioned in the successful OBC candidates.

9. On filing of the application under RTI by the petitioner asking the respondent no.2 as to why he was not declared successful, no reply was received by the petitioner and thereafter the petitioner filed the present writ petition.

10. The contention of the respondent is that the petitioner submitted the OBC certificate issued to him after cut-off date and after considering his candidature and due to lower merit he was not selected.

11. It is contended by the learned counsel for the respondent that admittedly he has applied for certificate on 08.08.2008 and got the same on 22.11.2008 and the contention of the petitioner cannot be accepted when the advertisement has a very clear term which stipulated that the last date for submission of requisite certificate was 12.08.2008. It was also argued by the respondent that the petitioner had sufficient time to apply for and get the OBC certificate as in the advertisement inviting the application for the aforesaid post appeared in the leading newspaper during the month of May 2008.

12. So, even according to the respondent the filing of the application for obtaining the certificate was delayed on the part of the petitioner as he had only filed the application for obtaining the certificate just four days earlier to the last date of submitting the application. It is not denied by the respondent that that the vacancies were reserved in the OBC category. The requirement is that a person should belong to OBC category.

13. Learned counsel for the petitioner has referred the judgment delivered by this court in W.P. (C) 8508/2007 in the case of **Smt. Poonam Vs. Government, NCT of Delhi & Anr.** which has dealt with the similar point involved in the present case. The relevant part of the judgment is reproduced hereinbelow:

“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 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 29th October, 2007 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 29th October, 2007 would be clearly arbitrary and has no rationale objective to be achieved.

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.

The principle of equality permeates the Constitution of India. All the citizens are entitled to be treated by the state equally, irrespective of their caste, race, religion, sex, descent, place of birth and residence. No citizen may be discriminated against by the state only on any of these grounds. The exceptions to this principle are made in favour of women and children, the backward classes, the Scheduled Castes and the Scheduled Tribes, and the weaker sections.

Referring to the reasons for reservation, the Hon'ble Apex Court in **Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217**, observed as under:

“251. Referring to the concept of equality of opportunity in public employment, as embodied in Article 10 of the draft Constitution, which finally emerged as Article 16 of the Constitution, and the conflicting claims of various communities for representation in public administration, Dr Ambedkar emphatically declared that reservation should be confined to „a minority of seats“, lest the very concept of equality should be destroyed. In view of its great importance, the full text of his speech delivered in the Constituent Assembly on the point is appended to this judgment.

But I shall now read a few passages from it. Dr Ambedkar stated:

"... firstly, that there shall be equality of opportunity, secondly, that there shall be reservations in favour of certain communities which have not so far had a „proper look-in“ so to say into the administration Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation ... we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, ...". Constituent Assembly Debates, Vol. 7, pp.701-702 (1948-49). (emphasis supplied)

These words embody the *raison d'être* of reservation and its limitations. Reservation is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, in so far as one group is preferred to the exclusion of another, must necessarily be narrowly tailored to the achievement of the fundamental constitutional goal."

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....."

14. The learned counsel for the respondent has also referred para 14 and 17 of **Tejpal Singh** (supra) stating that the present case does not help the case of the petitioner in view of the finding arrived in these paras.

15. The contention raised by the respondent No.2 as referred in para 14 has been dealt with by this court in the writ petition already decided in the case of **Smt. Poonam** (supra) and the said

contention of the respondent was not accepted by the court. Thus the submission made by the respondent has no force as the petitioner admittedly cannot be denied his right to be considered for the appointment to the post under OBC category as there is no delay on the part of the respondent and there is no dispute actually that the petitioner belong to OBC category.

16. Further, admittedly the petitioner has applied for obtaining the certificate on 08.08.2008 which is four days prior to the last date of submission of application. It is not the fault of the petitioner if he gets the certificate after expiry of three months from a Government Department. Since it is already mentioned that if a person is OBC, he/she is so by birth and not by acquisition of any category because of any other relevant happening at later stage, the certificate is merely an affirmation of the said fact which has admittedly been filed by the petitioner in the present case.

17. For the reasons mentioned above I allow the petition as the benefit of OBC category goes in favour of the petitioner. Accordingly, the respondents are directed to consider the certificate of OBC by the petitioner and to declare the petitioner as successful in the OBC category for the post code no. 018/08 as per the advertisement no. 02/08 and issue an appointment letter for the post of Junior Engineer (Civil).

MANMOHAN SINGH, J.

APRIL 23, 2010
dp