

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

+ **W.P. (C.) No. 13870/2009 & CM. No.15749/2009**

Date of Decision :- 17.02.2010

Delhi Subordinate Services Selection Board & anr. Petitioners
Through Ms. Ruchi Sindhwani, Ms. Bandana
Shukla, Advocates

Versus

Ms. Anu Devi & Another Respondents
Through Mr. Amit K. Paul, adv. for the MCD.
Mr. P.P. Khurana, Sr. Adv. with Mr.
Yashpal Rangi, Ms. Seema Pandey,
Advocates for the respondents

And

+ **W.P. (C.) No. 13875/2009 & CM.No. 15754/2009**

Delhi Subordinate Services Selection Board & Anr. Petitioners
Through Ms. Ruchi Sindhwani, Ms. Bandana
Shukla, Advocates

Versus

Ms. Savita & Another Respondents
Through Mr. Amit K. Paul, adv. for the MCD.
Mr. Ashok Aggarwal, Advocate for the
respondents

And

+ **W.P. (C.) No. 13883/2009 & CM.No. 15772/2009**

Delhi Subordinate Services Selection Board & Anr. Petitioners
Through Ms. Ruchi Sindhwani, Ms. Bandana
Shukla, Advocates

Versus

Mr. Shishupal Arya & Another Respondents
Through Mr. Amit K. Paul, adv. for the MCD.
Mr. Ajesh Luthra, Advocate for the
respondents

And

+ **W.P. (C.) No. 13913/2009 & CM.No.15827/2009**

Delhi Subordinate Services Selection Board & Petitioners
Another

Through Ms. Ruchi Sindhwani, Ms. Bandana
Shukla, Advocates

Versus

Fakeha Iram & Another Respondents

Through Mr. Amit K. Paul, adv. for the MCD.
Mr. Ajesh Luthra, Advocate for the
respondents

And

+ **W.P. (C.) No. 13915/2009 & CM.No.15830/2009**

Delhi Subordinate Services Selection Board & Anr. Petitioners

Through Ms. Ruchi Sindhwani, Ms. Bandana
Shukla, Advocates

Versus

Ms. Rekhawati & Another Respondents

Through Mr. Amit K. Paul, adv. for the MCD.

And

+ **W.P. (C.) No. 14112/2009 & CM 16254/2009**

Delhi Subordinate Services Selection Board & Others Petitioners

Through Ms. Ruchi Sindhwani, Ms. Bandana
Shukla, Advocates

Versus

Virender Solanki Respondent

Through Mr. Ajesh Luthra, Advocate for the
respondents.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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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 |

ANIL KUMAR, J.

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1. These writ petitions involve a common question, "whether the respondents in different writ petitions are not entitled for selection to the post of primary teacher under the OBC category as they had not submitted the OBC certificate along with the application form by 29 October, 2007, the last date for submitting the application form, but they had submitted the OBC certificate within the time given later on by the notices given by the petitioners."

2. The Central Administrative Tribunal had allowed the original applications of the different respondent no.1 and the petitioners were directed to declare the results of the applicants and to process their cases for appointments as teachers in their respective discipline to which they applied with all the benefits as admissible in law. The Central Administrative Tribunal, Principle Bench has held in different original applications filed before it that plea of cut-off date may hold good for educational qualification but would not apply in the case of caste certificates. It was held that eligibility under the OBC category is

acquired by a candidate on the date a particular caste is notified as OBC in a particular State and not on account of issuance of an OBC certificate. The Tribunal relied on a decision of High Court in WP (C) 8508 of 2007 dated 2.2.2009 which had relied on another decision of High Court in *Tej Pal Singh & ors. Vs Govt. of NCT of Delhi*, 120 (2005) DLT 117 holding as under:

“ 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 certificate and submission of such certificates cannot be made pre-condition for accepting the application forms. Mr. Sunil Sharma appearing for the respondent has urged that the relief in the said judgment is only for the SC and ST category and not to 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. As the petitioner who belongs to OBC category she 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. Considering the merit of *Tej Pal Singh* judgment, 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 applicable to the OBC candidates.”

3. Before considering the pleas and contentions of the learned counsel for the parties, the relevant facts of different petitions are enumerated hereinafter:

i. WP(C) 13870 of 2009, DSSSB Vs Ms. Anu Devi

a. The respondent had applied for the post of Teacher (primary) in Municipal Corporation of Delhi pursuant to an advertisement in the Employment News dated 6–12 October, 2007 issued by Delhi Subordinate Services Selection Board (DSSSB). The closing date for submission of application along with required documents was 29 October, 2007. The respondent applied for the said post under the OBC category. The respondent appeared in the written examination which was held on 15 June, 2008 and the result was declared on 25 September, 2008. The respondent secured 103/200 marks and she was not in the list of selected candidates. Though the respondent had not given the OBC certificate along with the application, however, she was allowed to appear in the selection examination.

b. According to the petitioner, the respondent had opted for OBC category but she had not enclosed the OBC certificate as per the conditions stipulated in the advertisement. Her result, therefore, could not be processed under the OBC category but the petitioner considered her under the UR category. The marks of the respondent were less than the marks of the last selected candidate in UR category therefore, her name was not included in the list of selected candidates. The petitioners stated that non inclusion of the OBC certificate along with the application was noticed by the petitioners after the result was declared and after respondent filed a RTI application regarding the declaration of her result. The respondent was, therefore, issued a notice dated 17

November, 2008 by the petitioners asking her to submit the OBC certificate. The petitioner also issued another notice dated 18 December, 2008 to the respondent to submit the OBC certificate by 27 December, 2008. Consequent thereto, on 22 December, 2008 the respondent submitted the OBC certificate dated 05 November, 2007 in the office of the petitioners which was issued after the cut – off date of 29 October, 2007.

c. The petitioners, therefore contended that the respondent was not eligible for being considered in the OBC category and she was considered in the UR category. The name of the respondent was not in the final list as her marks were less than the marks of the last selected candidate in UR category who had secured 120/200 marks. The respondent was thus denied selection under the OBC category. The respondent, therefore, approached the Central administrative Tribunal by filing O.A. No. 370 of 2009 wherein the respondent prayed for declaration of result by the DSSSB and selection to the post of Teacher (Primary). The respondent pleaded that she should have been selected in the category of OBC as she had applied for the certificate on 04 October, 2007 with Govt. of NCT of Delhi and before the last date of submission of her application form her caste was notified as OBC and therefore, she had acquired the qualification for selection under OBC category and merely because on the demands made by the petitioners she had submitted the requisite certificate within the time given by the petitioners but not before the last date for submission of application, she could not be denied selection under OBC category for the post of primary teacher.

d. The Tribunal noted that the claim of respondent had been squarely covered by a decision of the High Court of Delhi of a

Single Bench in W P (C) No.8508/2007 dated 02 February, 2009 which was decided relying on Tej Pal Singh & ors. Vs Govt. of NCT of Delhi, 120 (2005) DLT 117. The Tribunal had noted that there was no lapse on the part of the respondent who had applied to obtain the said certificate in the OBC category much prior to the last date of submission of application form and she could not be made to suffer simply on account of the fact that the authorities had taken considerable time in making available the OBC certificate. The respondent, whose caste had been included in the central list long back before advertisement was issued by the petitioner, had applied for an OBC certificate, which was ultimately issued to her on 05 November, 2007. The respondent had applied for OBC certificate on 4th October, 2007 and she received the certificate on 5th November, 2007, however, it was submitted by her on 22nd December, 2008 pursuant to the notice given by the petitioners to submit the OBC certificate by 28th December, 2008.

e. While allowing the petition of the respondent, being OA no. 370 of 2009 titled Anu Devi Vs Municipal Corporation of Delhi & anr. by order dated 17th July, 2009 the Tribunal directed the petitioner to declare the result of the respondent and to process her case for appointment as Teacher (Primary) with all benefits, as admissible in law. The order of the Tribunal dated 17th July, 2009 is challenged by the petitioners in WP (C) 13870 of 2009.

ii. WP (C) 13875 of 2009, DSSSB & anr. Vs Savita & anr.

a. The respondent no.1 had applied for the posts of Assistant Teacher in Govt. of NCT of Delhi (post code – 165/07) and Teacher (primary) in Municipal Corporation of Delhi (post code – 164/07) pursuant to an advertisement in the Employment News dated 6 – 12th October, 2007 issued by Delhi Subordinate

Services Selection Board (DSSSB). The closing date for submission of application along with all required documents was 29th October, 2007. The respondent applied for both the posts under the OBC category on 24th October, 2007. The respondent appeared in the written examinations which were held on 15th June, 2008 and the result was declared on 25th September, 2008. The respondent secured 92/200 marks and she was not in the list of selected candidates. The respondent had applied for the OBC Certificate on 27th October, 2008 before the closing date for submission of application forms.

b. The petitioners stated that the factum of respondent no.1 not having attached the OBC certificate at the time of submission of application, was noticed by them during the post examination scrutiny of the applications. Therefore a letter dated 17th November, 2008 was issued to the respondent asking her to submit the OBC certificate by 05th December, 2008. Before the last date stipulated in the notice, on 03rd December, 2008 the respondent no.1 submitted the OBC certificate dated 03rd November, 2008 in the office of the petitioners which was issued after the cutoff date 29th October, 2007.

c. The petitioners held that the respondent no.1 was not eligible for being considered in the OBC category and she was considered in the UR category. The name of the respondent was not in the final list as her marks were less than the marks of the last selected candidate in UR category who had secured 120/200 marks.

d. The order of the petitioners was challenged before Central Administrative Tribunal which allowed the application of respondent no. 1 in TA NO.1378 of 2009 titled Ms. Savita Vs

DSSSB & ors by common order dated 4th August, 2009 which is assailed by the petitioners in WP (C) 13875 of 2009 on the similar grounds as in other similar petitions.

iii. WP(C) 13883 of 2009, DSSSB & anr. Vs Shishupal Arya & anr.

a. The respondent no.1 had applied for the posts of Assistant Teacher in Govt. of NCT of Delhi (post code – 165/07) and Teacher (primary) in Municipal Corporation of Delhi (post code – 164/07) pursuant to an advertisement in the Employment News dated 6 – 12th October, 2007 issued by Delhi Subordinate Services Selection Board (DSSSB). The closing date for submission of application along with all required documents was 29th October, 2007. The respondent no.1 applied for both the posts under the OBC category on 27th October, 2007.

b. The petitioners stated that the respondent no.1 had not attached the OBC certificate at the time of submission of applications was noticed by the petitioners during the preliminary scrutiny of the applications. Therefore, a notice dated 11th February, 2008 was issued to the respondent no.1 asking him to submit the OBC certificate by 22th February, 2008. The respondent no.1 contended that he had submitted a photo copy of applying for the OBC certificate along with the application forms and pursuant to notice dated 11th February, 2008 he had submitted a photocopy of the OBC certificate on 22nd February, 2008

c. The respondent no.1 appeared in the written examinations which were held on 15 June, 2008 and the result was declared on 25th September, 2008. The respondent no.1 secured 111/200 marks and he was not in the list of selected candidates. The

respondent had applied for the OBC Certificate on 12th October, 2007.

d. The petitioners issued another notice dated 17th November, 2008 to the respondent no.1 to submit the OBC certificate by 03rd December, 2008. On 28th November, 2008 the respondent no.1 submitted the OBC certificate dated 31th October, 2007 in the office of the petitioner which was issued after the cut – off date 29th October, 2007. The respondent no.1 while submitting the OBC certificate reiterated that a copy of the application form applying for OBC certificate was annexed with the application form and a copy of OBC certificate was given on 22nd February, 2008 pursuant to notice dated 11th February, 2008.

e. Later on the respondent no.1 was however, held to be not eligible under the OBC category and he was considered in the UR category by the petitioners. The name of the respondent no.1 was not included in the final list as his marks were less than the marks of the last selected candidate in UR category who had secured 120/200 marks.

f. The order of the petitioners was challenged before Central Administrative Tribunal which allowed the application of respondent no. 1 in TA NO.1350 of 2009 titled Mr. Shishupal Arya Vs DSSSB & ors by a common order dated 4th August, 2009 which is assailed by the petitioners in WP (C) 13883 of 2009 on similar grounds as raised in other petitions.

iv. W.P. (C.) No. 13913/2009 DSSSB & anr. Vs Fakeha Iram & anr.

a. The respondent no.1 had applied for the posts of Assistant Teacher in Govt. of NCT of Delhi (post code – 165/07) and Teacher (primary) in Municipal Corporation of Delhi (post code –

164/07) pursuant to an advertisement in the Employment News dated 6 – 12th October, 2007 issued by Delhi Subordinate Services Selection Board (DSSSB). The closing date for submission of application along with all required documents was 29th October, 2007. The respondent no.1 applied for both the posts under the OBC category on 29th October, 2007.

b. The respondent no.1 appeared in the written examinations which were held on 15 June, 2008 and the result was declared on 25th September, 2008. The respondent no.1 secured 106/200 marks and she was not in the list of selected candidates. She had had applied for the OBC Certificate on 23rd October, 2007 before the last date for submission of application forms.

c. The petitioners stated that the respondent no.1 had not attached the OBC certificate at the time of submission of applications, was noticed by the petitioners during the post examination scrutiny. Therefore a letter dated 17th November, 2008 was issued to the respondent no.1 asking her to submit the OBC certificate as the said certificate had not been submitted by the respondent no.1. The petitioners issued another notice dated 18th December, 2008 to the respondent no.1 to submit the OBC certificate by 27th December, 2008, pursuant to which on 23rd December, 2008 the respondent no.1 submitted the OBC certificate dated 05th November, 2007. The petitioners, however, held that the respondent no.1 was not eligible for being considered in the OBC category and she was considered in the UR category by the petitioners. The name of the respondent no.1 was not in the final list as her marks were less than the marks of the last selected candidate in UR category who had secured 120/200 marks.

d. The order of the petitioners was challenged before Central Administrative Tribunal which allowed the application of respondent no. 1 in TA NO.1349 of 2009 titled Ms. Fakeha Iram Vs DSSSB & ors by a common order dated 4th August, 2009 which is assailed by the petitioners in WP (C) 13913 of 2009 on similar grounds as raised in other petitions.

v. WP(C) 13915/2009; DSSSB & anr. Vs Smt. Rekhawati & anr

a. The respondent no.1 had applied for the post of Teacher (primary) in Municipal Corporation of Delhi (post code – 165/07) pursuant to an advertisement in the Employment News dated 6 – 12th October, 2007 issued by Delhi Subordinate Services Selection Board (DSSSB). The closing date for submission of application along with all required documents was 29th October, 2007. The respondent no.1 applied for the said post under the OBC category before the closing date.

b. The petitioners stated that the respondent no.1 had not attached the OBC certificate at the time of submission of application was noticed by the petitioners during the preliminary scrutiny of the applications. Therefore a notice dated 11th February, 2008 was issued to the respondent no.1 asking her to submit the OBC certificate by 22th February, 2008. The respondent no.1 contended that she submitted the caste certificate on 20th February, 2008 pursuant to notice dated 11th February, 2008.

c. The respondent no.1 appeared in the written examinations which were held on 15 June, 2008 and the result was declared on 25th September, 2008. The respondent secured 118/200 marks and he was not in the list of selected candidates.

d. The petitioners, thereafter, issued a notice dated 17th November, 2008 to the respondent no.1 to submit the OBC certificate by 03rd December, 2008. The petitioners issued another notice dated 18th December, 2008 to the respondent no.1 to submit the OBC certificate by 27th December, 2008, pursuant to which an OBC certificate dated 14th November, 2007 was submitted by the respondent no.1 within the time stipulated in the notice. The petitioners, however, held that the respondent no.1 was not eligible for being considered in the OBC category and she was considered in the UR category by the petitioner. The name of the respondent no.1 was not in the final list as her marks were less than the marks of the last selected candidate in UR category who had secured 120/200 marks.

d. The order of the petitioners was challenged before Central Administrative Tribunal which allowed the application of respondent no. 1 in TA NO.956 of 2009 titled Ms. Rekhawati Vs DSSSB & ors by an order dated 11th September, 2009 which is assailed by the petitioners in WP (C) 13915 of 2009 on similar grounds as raised in other petitions.

vi. WP(C) 14112/2009, DSSSB & anr. Vs Virender Solanki & anr.

a. The respondent had applied for the post of Physical Education Teacher (P.E.T) in Directorate of Education and development Department pursuant to an advertisement in Punjab Kesri dated 04th June, 2006 vide its advertisement No. 02/2006 issued by Delhi Subordinate Services Selection Board (DSSSB). The closing date for submission of application along with all required documents was 26th June, 2006.

b. The respondent applied for the said post under the OBC category. The respondent appeared in the main written

examination which was held on 06th May, 2007 and the result was declared on 31th January, 2008. The respondent secured 162.50/400 marks and he was not in the list of selected candidates. The respondent had applied for the OBC Certificate on 20th June, 2007 prior to last date for applying for the said post.

c. The petitioners stated that the respondent had not attached the OBC certificate at the time of submission of application, was noticed by them during the post examination scrutiny of the applications. Therefore a letter dated 29th October, 2007 was issued to the respondent asking him to submit the OBC certificate and the said certificate was submitted by the respondent on 12th November, 2007 which was dated 05th July, 2007. Though the respondent had applied for the OBC certificate before the closing date for submission of application form, however, the OBC certificate was issued after the cut – off date 26 June, 2007. Therefore, the respondent was held not eligible under the OBC category and he was considered in the UR category by the petitioners. The name of the respondent was not in the final list as his marks were less than the marks of the last selected candidate in UR category who had secured 185.25/400 marks.

d. The order of the petitioners was challenged before Central Administrative Tribunal which allowed the application of respondent being OA NO.342 of 2009 titled Mr.Virender Solanki Vs DSSSB & ors by an order dated 4th August,2009 which is assailed by the petitioners in WP (C) 1412 of 2009 on similar grounds as raised in other petitions.

4. The petitioners have assailed the orders of the tribunal primarily on the grounds that the terms and conditions in the advertisements clearly stipulated that all the required documents were to be submitted along with the application forms. According to petitioners the advertisements were unambiguous that without the OBC certificates, the claim of the candidates under the OBC category shall not be entertained. It has also been emphasized by the learned counsel for the petitioners that the caste certificate had to accompany the application form and therefore the OBC certificate had to be submitted before the closing date.

5. The petitioners also asserted that considering the cases of the respondents shall be discriminatory, as a number of candidates who did not possess the OBC certificate on the closing date for applying may not have submitted their applications and thus it will cause injustice to such candidates. Distinguishing the case of Tej Pal Singh (*supra*) it was contended that the said cases pertained to schedule caste and scheduled Tribes and not to OBC category. Regarding OBC category it is submitted that not only the caste is relevant but the fact that the candidate does not belong to creamy layer. The fact that the candidate did not belong to creamy layer could be ascertained only at the time of issuing of the OBC certificate.

6. The learned counsel for the petitioners has relied on (2009) 2 SCC (L&S) 265, U.P State Public Service Commission v. Satya Narayan Sheohare and Ors; JT 1998 (9) SC 190 State of Haryana and Ors v. Anurag Srivastava and Ors; AIR 2000 SC 2011, Bhupinderpal Singh and Ors v. State of Punjab and ors; AIR 2003 SC 4411, State of U.P v. Vijay Kumar Mishra; (2007) 4 SCC 54 in support of her contention that acquiring certificates by the respondents being OBCs after the last date for applying, is acquiring qualification after the last date of filing the application and so they are not eligible for selection.

7. The writ petitions were contested by the respondents contending inter alia that the candidates had applied for OBC certificates prior to last date for submission of application forms. It is emphatically asserted by the respondents that the notices were given to them directing them to submit the OBC certificates failing which their selection shall be cancelled. The notices given by the petitioners were categorical to submit the OBC certificates by a particular date and the respondents had submitted the OBC certificates before the said date. In the circumstances, it is contended that their selection in the category of OBC could not be cancelled on the ground that the OBC certificates were not submitted along with the application forms by 29th October, 2007.

8. The learned counsel appearing for respondent no.1 in various writ petitions have relied on W.P(C) No.548/2008 titled Govt of NCT of Delhi and Anr v. Ms.Poonam Chauhan decided on 9th July, 2008; AIR 2009 SCC 2827; AIR 1975 SC 1994, J.R.Sen Gupta v. A.K.Bose; 1985 (4) SCC 71, 2001 98) SCC 24, Shyam Sunder v. Ram Kumar and Anr in support of their contentions and pleas. The learned counsel for the respondents have also contended that if two interpretations can be given to the expression, then a liberal and wider interpretation should be given and not a narrow and technical one, as the reservation for OBC candidate is a beneficial piece of legislation. The learned counsel has relied on (2008) 9 SCC 527, Union of India Vs Prabhakaran Vijaya Kumar.

9. The learned counsel for the parties were heard at length in support of their pleas and contentions. This is no more res integra that if requisite qualifications are obtained after the last date, it will not entitle a candidate for selection. In State of Haryana and Ors v. Anurag Srivastava and ors (supra), the last date for submitting the application was 7th January, 1982 on which date the candidate did not possess the master's degree in Modern Indian History. Though she had a master's degree in Modern Indian History in Group A, however, she obtained M.A in History in Group B on 16th July, 1981 and it was held that she had obtained the requisite qualification after the last date and relying on Ashok Kumar Sharma v. Chandershekhar, JT 1997 (4) SC 99 and

Rekha Chntuwedi v. University of Rajasthan, JT 1993 (1) SC 220 holding that qualifications have to be considered as they are possessed on the last date of filing of the application, it was held that the candidate was not entitled to be selected. In *Bhupinderpal Singh (supra)* the Supreme Court did not allow the practice to consider the date of eligibility as the date of interview. The Apex Court reiterated that the date of eligibility shall be the date of making the application or the last date fixed for receipt of applications. Similarly, in *State of U.P v. Vijay Kumar Mishra (Supra)* it was held that the applicant not possessing prescribed qualification on the date of application and acquiring qualification subsequently cannot be considered for appointment in absence of any power with the appointing authority to relax the qualification nor such a candidate can be compared with the candidate who possess the prescribed qualification on the date of application.

10. Where no cut off date is specified in the advertisement or in the rule, the Apex Court in *Ashok Kumar Sonkar (Supra)* held that the last date for filing the application must be considered as a cut off date. In this case, as the applicant did not hold the requisite qualification on the cut off date, it was held that he was not eligible for appointment to the said post. The Supreme Court further held that if an appointment is irregular it can be regularised but if it is illegal then it is non est in the eye of law and is a nullity. The Apex Court rather held that equity

jurisdiction of the Supreme Court cannot be invoked in a case of illegal appointment.

11. In U.P.Public Service Commission (Supra) relied on by the petitioners it was held that whenever (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994 was amended by including any caste/classes in the list of OBC in the Schedule I, then the date of amendment to the act would be the date of commencement of the act in regard to such caste/class inserted by amendment. In this case the applicants were general category candidates when recruitment notification dated 4th March, 2000 was issued, however, the act was amended on 7th July, 2000 before the commencement of written test on 4th August, 2000 and therefore the candidate belonging to OBC became entitled to claim benefit of reservation and they also secured necessary certificate and gave their representations without any delay on 29th August, 2000 and 13th September, 2000 and in these circumstances it was held that they were entitled for reservation.

12. The learned counsel for the respondents, however, have contended that the respondents belong to OBC which caste were notified as backward classes prior to the last date for applying. In the circumstances, it cannot be held that the eligibility on account of being a backward class was acquired by the respondents after the last date for applying for the selection. It is asserted that acquisition of certificate

in order to demonstrate that they belong to backward classes and the reservation in that respect cannot be equated with acquiring the educational eligibility and non submission of OBC certificates by the last date for application and submitting later on after it was demanded by the petitioners within the reasonable time will not be such a lacunae which should be a ground to deprive them of their right which has been conferred on the basis of a beneficial piece of legislation which is (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994. It is contended by the respondents that the petitioners had the power to extend the time to submit the caste certificate which was done by them by giving notice and demanding the certificates by extended time stipulated in the notices. In *Jnan Ranjan Sen Gupta and Ors (Supra)* while dealing with the ambit of erection of structure on land under Calcutta Thika Tenancy Act the Supreme Court had held that it was a piece of beneficial legislation conferring certain rights upon the tenancies and in dealing with such provisions of law something which is not already there cannot be read in it, as reading such a thing which is not in the provision will lead to imposing a restriction upon the rights of the class of tenants by judicial interpretation which is not permissible in absence of express words to that effect or necessary manifest intendment.

13. Dealing with the principle of statutory construction in *American Express International Banking Corporation (Supra)* the Supreme Court

has held that the words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. It was held that literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced and Judges ought to be more concerned with the 'color', the 'content' and the 'context' of such statutes. Similarly, in *Shyam Sunder and Ors (Supra)* it was held that if it is found that there is a doubt in regard to the meaning of a provision or words used in the provisions of an enactment, it is permissible for the court to apply the rule of benevolent construction to advance the object of the Act. Ordinarily, the rule of benevolent construction has been applied while construing welfare legislations or provisions relating to the relationship between weaker and stronger contracting parties. While interpreting "accidental falling off a passenger from a train carrying passengers" it was held by the Supreme Court in *Union of India Vs Prabhakaran Vijaya Kumar (supra)* that adopting a restrictive meaning will deprive a large number of railway passengers from getting compensation in railway accidents. In the circumstances it was held that the expression "accidental falling of the passengers from the train carrying passengers" would include accidents when a bone fide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. It was held that a purposive and not literal interpretation should be given to the expression.

14. In Govt. Of NCT of Delhi and anr. Vs Poonam Chauhan, 152 (2008) DLT 224 (DB) the candidature of the candidate for the post of Domestic Science teacher was cancelled on the ground that the OBC certificate was issued by the concerned SDM after the closure of date of submission of application form. The Division Bench of this court had noticed that the candidate belonging to OBC and not falling in creamy layer was not disputed. It was also not disputed that the application form was submitted by the candidate before the closing date of receipt of application form. The authorities in this case had also not disputed that after the last date for submission of the application forms, they had directed the candidate to furnish the attested copies of the relevant document in support of claim of reservation duly attested by any appropriate authority. Referring to relevant office memorandum it was noticed that it did not specify that the caste certificate issued subsequent to the date of closing of receipt of application could not be considered or looked into. Considering these facts and circumstances, the order of the Central Administrative Tribunal setting aside the order of the Government of NCT cancelling the candidature of the candidate was upheld.

15. This is not disputed and cannot be disputed by the petitioners that notices were sent to respondents by the petitioners to submit the OBC certificates by the last date as indicated in the notices. It is also

not disputed that before the last date indicated in the notices, the respondents in different petitions had submitted their OBC certificates. As also certifying that they were not part of creamy layer which was also their case in the applications filed before the petitioners for seeking appointment for the relevant post. In none of the cases the petitioners have found the respondents not eligible for selection under the OBC category. Thus it is admitted that the candidates belong to OBC category and they do not belong to creamy layer.

16. From the perusal of the facts and circumstances, it appears that the record of the petitioners also had deficiencies as the caste certificates were demanded from some of the candidates who had already submitted certificates pursuant earlier notices given to some of the candidates even before allowing them to appear in the examination and therefore, the petitioners had not treated the candidates who had not submitted the OBC certificate by the closing date for submitting the application forms that is 29th October, 2007 as not eligible. By the notices it was communicated that determination of the eligibility for the post under the OBC category is pending, on account of lack of certain information/documents and it was not communicated that their applications have been rejected for consideration under the OBC category. In the case of Shishupal Arya (*supra*) whom notice dated 17th November, 2008 was given directing the said candidate to submit the OBC certificate latest by 3rd December, 2008 to remove the deficiency.

The said candidate though had not only given a photocopy of the application applying for the OBC certificate along with his application for the post of primary teacher before 29th October, 2007 but pursuant to another earlier notice dated 11th February, 2008 whereby the said candidate was directed to furnish the requisite document, that is OBC certificate by 22nd October, 2008, he had submitted the requisite OBC certificate by 22nd February, 2008 and an endorsement regarding the receipt of certificate was also obtained on the notice dated 11th February, 2008. In reply to another notice dated 17th November, 2008 the said candidate again reiterated that he had already submitted the OBC certificate on 22nd February, 2008 and also submitted another certificate on 28th November, 2008.

17. Similarly notices were given to other candidates, respondent No.1 in other petitions who also submitted the OBC certificates within the time granted by the petitioners under the communications sent in November, 2008. This is also not the case of the petitioners that they could not extend the time for submitting the OBC certificate for selection under the OBC category. This is also not the plea on behalf of the learned counsel for the petitioners that the notices issued to the respondents in different petitions were sent un-authorizedly by persons who were not authorized to send the notices and demand from the candidates to rectify the deficiency and submit the OBC certificates, were not valid notices.

18. The petitioners had the power to extend the time and in the circumstances, the logical inference shall be that the time to submit the OBC certificates was extended and within the extended time, the certificates were submitted by the respondents/candidates. As also held in Poonam Chauhan (supra), the advertisement did not specify that the OBC certificates submitted after the last date for submission of application form shall not be considered and the applications shall be rejected. The petitioners have not construed such a restriction in their advertisements and therefore, extended the time and gave notices demanding rectifying the deficiencies and directed the candidates to submit the appropriate OBC certificates, which were applied by the candidates prior to last date for submission of application forms but which were given to the candidates by the authorities after the last date for submission of application forms, which were submitted by them within the extended time given by the petitioners.

19. In any case the submission of OBC certificate for reservation under the OBC category cannot be equated with acquisition of the educational qualification. A candidate becomes eligible under the OBC category, the day the caste he belongs to is notified by the appropriate authority as a backward class. Though the learned counsel for the petitioners has emphasized that whether a candidate belongs to a creamy layer or not is to be determined only on issuance of a certificate,

however, taking into consideration the entirety of the facts and circumstances, in our view the candidates not belonging to a creamy layer whose caste is notified as a backward class becomes entitled for reservation under the OBC category and submission of the requisite certificate is only a ministerial act which cannot be equated with acquisition of educational qualification to become eligible for a post. Consequently, the plea of the learned counsel for the petitioners that the respondents/candidates became eligible for selection in the OBC category on the dates the certificates were issued by the appropriate authorities, cannot be accepted. This plea in the present facts and circumstances should also be not accepted because in all the cases except in the case of Rekhawati (Supra) the candidates had applied for OBC certificate before the closing date for submission of forms which was 29th October, 2007. In the circumstances for the delay on the part of the authorities in preparing and giving the OBC certificate, it cannot be inferred or held that the candidates were not eligible for selection under the OBC category.

20. As already considered hereinbefore, the petitioners themselves did not treat the respondents in different petitions as ineligible for selection under the OBC category as none of the notices given to the candidates stipulated that they cannot be selected under the OBC category as they had failed to furnish the requisite certificate before the closing date for submission of the application forms. Rather the notices were given by

the petitioners extending the date for submission of the OBC certificate and all the candidates in different writ petitions submitted the OBC certificate before the last date notified in the notices. In the circumstances it will not be appropriate and in the interest of justice to infer that the order of the Tribunal holding that the respondents/candidates in different writ petitions are entitled for selection under the reserved category in accordance with their marks, are bad in law and are liable to be quashed.

21. The learned counsel for the petitioner has also emphasized that selecting the respondents/candidates in different petitions will be discriminatory viz-a-viz other candidates who might not have applied, on account of not having the OBC certificate by the closing date for submission of the application form that is 29th October, 2007. The plea of the petitioners is based on surmises. No particulars of any candidate has been given who did not have the OBC certificate by the closing date of 29th October, 2007 and therefore, he had not applied for selection to the said posts for which the respondents/candidates had applied.

22. It is also not necessary for the High Court in exercise of its writ jurisdiction to interfere in every case. For issuing a writ for 'any other purpose' under Article 226 of the Constitution of India, it has always been in the discretion of the High Court to interfere or not depending upon the facts and circumstances of each case. The Constitution

Bench in *The Moon Mills Ltd v. M.R.Mehar*, AIR 1967 SC 1450 had held that writ is legally a matter of sound discretion and would not be issued, if there be such negligence or omission on the part of the petitioner to assert his right is taken on conjunction with the circumstance which may cause prejudice to adverse party. It was further held that the writs so far as they are concerned with the enforcement of other rights are not issued as a “matter of course”. Similarly in *Shangrila Food Products Ltd v. Life Insurance Corporation of India and Anr*, (1996) 5 SCC 54 the Supreme Court had held that “the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. The jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity.

23. In the totality of facts and circumstances, therefore, this Court is not inclined to exercise its jurisdiction in exercise of its power under Article 226 of the Constitution of India for quashing the orders dated 4th August, 2009 in O.A No.342/2009, T.A No.1349/2009, 1350/2009, T.A No.1378/2009 and order dated 17th July, 2009 in O.A No.370/2009 and order dated 11th September, 2009 in O.A No.956/2009 directing petitioners to declare the result of the respondents/applicants and to process their appointment according to their applications with all

benefits as admissible in law. The writ petitions, therefore, are without any merits and are dismissed. All the pending applications are also disposed of and interim orders are vacated. However, considering the facts and circumstances parties are left to bear their own costs.

ANIL KUMAR, J.

FEBRUARY 17, 2010
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MOOL CHAND GARG, J.