

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

Date of decision: 24th January, 2012

+ LPA 562/2011

**% DELHI SUBORDINATE SERVICES SELECTION BOARD
& ANR Appellants**

Through: Ms. Zubeda Begum & Ms. Sana
Ansari, Advocates.

Versus

RAM KUMAR GIJROYA & ORS. Respondents

Through: Mr. D.P. Sharma & Mr. Rajender
Yadav, Advocates for R-1, 2 & 5.

AND

+ W.P.(C) 8087/2011

% MS. RENU Petitioner

Through: Mr. Deepak Tyagi & Mr. K.K.
Gautam, Advocates.

Versus

**THE CHAIRMAN/SECRETARY, D.S.S.S.B
& ORS. Respondents**

Through: Mr. Sachin Chopra & Mr. Amit
Kumar Dadhich, Advocates for
R-2&3

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the order dated 24th November, 2010 of the learned Single Judge allowing W.P.(C) No.382/2009 preferred by the five respondents seeking mandamus commanding the appellants Delhi Subordinate Services Selection Board (DSSSB) and Govt. of NCT of Delhi to accept the Other Backward Classes (OBC) Certificates submitted by them for selection to the post of Staff Nurse in the Department of Health and Family Welfare, Govt. of NCT of Delhi after the cut off date provided therefor. It was the case of the respondents in the writ petition that the appellants had vide advertisement published on 30th August, 2007 invited applications for the post of Staff Nurse; that the last date specified in the said advertisement for submitting the applications was 21st January, 2008; the respondents applied before the cut off date for selection under the OBC category and the appellants issued Admit Card enabling the respondents to appear in the examination to be held therefor; that the respondents had so appeared in the examination and were shortlisted for selection; that however their names did not find mention in the list

published on 29th July, 2008 of selected candidates; that on enquiries they learnt that they were not selected for the reason of their having not submitted the OBC Certificates issued by the appropriate authority of belonging to the OBC Category along with their application forms. The respondents hence claimed the relief aforesaid commanding the appellants to accept the OBC Certificates from them. Notice of the said writ petition was issued. It appears that the respondents herein applied for early hearing of the writ petition on the ground that the matter in controversy was covered by the judgment dated 11th February, 2009 in W.P.(C) No.9112/2008 titled *Ms. Pushpa Vs. Govt. of NCT of Delhi*. The said application for early hearing was listed before the learned Single Judge on 24th November, 2010 when the same was allowed and the writ petition taken up for hearing immediately. The learned Single Judge finding the matter to be covered by *Ms. Pushpa* (supra) allowed the writ petition and directed the appellants to re-consider the selection of the respondents in the OBC Category. Aggrieved therefrom this appeal was preferred, notice whereof was issued. Only the respondents no.1, 2 & 5 namely Sh. Ram Kumar Gijroya, Sh. Kanhaiya Lal Yogi and Sh. Jaswant Kumar Yadav

have chosen to contest the appeal.

2. The respondents in the appeal have also opposed the prayer of the appellants in appeal for condonation of delay of 160 days in preferring the appeal. We had on 9th November, 2011 directed the appellants to produce the original records whereby the file of the appeal was processed. The said records were produced before us and have been perused and we are satisfied that the delay in preferring the appeal is unintentional and *bona fide* and sufficient cause for condonation thereof is made out. Accordingly, the said delay is condoned and the appeal is considered on merits.

3. W.P.(C) No.8087/2011 has been preferred impugning the order dated 29th April, 2011 of the Central Administrative Tribunal, Principal Bench, New Delhi dismissing O.A. No.2427/2010 under Section 19 of the Administrative Tribunals Act, 1985 preferred by the petitioner seeking a direction for her appointment for the post of Matron in the office of the DG, Prisons, in the OBC Category. Finding the controversy in the writ petition to be the same as in the appeal aforesaid, notice thereof was issued

for the same date when the appeal was listed.

4. It is the case of the appellants in the appeal that the applicants in pursuance to the advertisement supra and seeking appointment in the OBC Category were required to submit the certificate of belonging to the OBC Category along with the application form by the cut off date advertised for submission of the applications; that none of the respondents however so submitted the certificate; they were allowed to appear in the examination and on the basis of the result of the examination, provisionally selected in the OBC Category; however finding, on scrutiny of applications, the respondents to have not submitted the certificate of belonging to the OBC Category alongwith the application form, they were not so selected.

5. It is not in dispute that the advertisement was published on 30th August, 2007 and the last date for submission of applications was 21st January, 2008.

6. It is the categorical case of the appellants in the appeal that the respondents no.1 to 5 applied to the appropriate authority for issuance of

the OBC Certificates on 10th January, 2008, 19th June, 2008, 27th November, 2008, 21st August, 2008 and 1st February, 2008 respectively and OBC Certificates were issued to them on 6th February, 2008, 23rd June, 2008, 2nd December, 2008, 8th December, 2008 and 1st February, 2008 respectively. It is thus the case of the appellants that save for the respondent no.1 who applied for the OBC Certificate ten days prior to the cut off date, the respondents no.2 to 5 applied for the OBC Certificates long after the cut off date and the OBC Certificates in any case were issued to all the respondents after the cut off date and submitted to the appellants even thereafter. The appellants contend that the requirement of the advertisement inviting applications being of submission of OBC Certificate alongwith the application by the cut off date and none of the respondents having done so, they cannot be appointed even if had cleared the examination held for selection.

7. Ms. Pushpa, judgment (supra) in whose writ petition was relied upon by the learned Single Judge had also applied in pursuance to the same advertisement. It was however her case that she had applied to the

concerned office of SDM for issuance of OBC Certificate much prior to even the date of the advertisement and it was owing to the delay by the office of the SDM in issuing the Certificate that she could not submit the same along with her application and had submitted the same immediately upon the same being made available. The learned Single Judge allowed the petition preferred by Ms. Pushha holding that she could not be blamed or made to suffer for the delay on the part of the authorities in making the Certificate available to her.

8. It is the contention of Ms. Zubeda Begum, Adv. for the appellants in the appeal that the reliance by the learned Single Judge on *Ms. Pushpa* is misconceived inasmuch as the facts of the present case are materially different from that in the case of Ms. Pushpa. She contends that relief was granted to Ms. Pushpa for the reason of her having applied for the Certificate even prior to the date of the advertisement and her inability to submit the Certificate being owing to the delay by the authorities. It is contended that on the contrary, save for the respondent no.1 (who applied for the Certificate as aforesaid ten days before the cut off date), the other

respondents even applied for the Certificate long after the cut off date mentioned in the advertisement.

9. The Tribunal in the order dated 29th April, 2011 impugned in the writ petition has also found the petitioner in the writ petition to have applied for the OBC Certificate after the closing date for submission of the applications and has thus held the judgment in *Ms. Pushpa* to be not applicable.

10. The counsel for the respondents no.1, 2 & 5 in the appeal and the counsel for the petitioner in the writ petition have contended that they were entitled to be considered for appointment in the OBC Category by virtue of their status as belonging to the OBC Category; that their said status is by birth and is not dependent on the Certificate; that they having been allowed to participate in the selection process and having cleared the selection process could not be denied appointment for the reason of having not submitted the OBC Certificate by the cut off date; that they should have been given opportunity to produce the Certificate even after the cut off date. Besides, the judgment in *Ms. Pushpa*, reliance is placed on *Tej Pal*

Singh Vs. Govt. of NCT of Delhi 2000 (1) ILR (Del) 298 and judgment dated 17th February, 2010 of a Division Bench of this court in W.P.(C) No.13870/2009 titled ***D.S.S.S.B. Vs. Ms. Anu Devi*** and other connected writ petitions reported as 2010 (2) SLR 206.

11. On the contrary, Ms. Zubeda Begum, Adv. for the appellants has relied on:

(i) ***MCD Vs. Veena*** (2001) 6 SCC 571 laying down that persons holding OBC Certificates issued by other States cannot be treated as OBCs in Delhi and the applicants who had not submitted OBC Certificates issued by the authorities in Delhi were to be considered in Unreserved Category;

(ii) ***Shankar K. Mandal Vs. State of Bihar*** (2003) 9 SCC 519 laying down that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant Service Rules and if there is no cut off date appointed by the Rules, then such date shall be as appointed for the purpose in the advertisement calling for

the applications;

(iii) ***Ashok Kumar Sonkar Vs. Union of India*** (2007) 4 SCC 54

laying down that the proposition where the applications are called by prescribing a particular date as the last date for filing the applications, the eligibility of the candidates has to be judged with reference to that date and that date alone is a well established one;

(iv) Judgment dated 7th September, 2010 of a Division Bench of this Court in W.P.(C) No.1343/2010 titled ***Santosh Kumar Meena Vs. Govt. of NCT of Delhi*** laying down that the reason why a cut off date cannot be ignored in an individual case is that there may be other persons who may have applied, had they known that the date of acquiring qualification was flexible;

(v) Order dated 20th January, 2010 of this Court in W.P.(C) No.8362/2009 titled ***Dharmendra Saini Vs. Govt. of NCT of Delhi*** denying the relief to the petitioners who had remained careless and indifferent in taking timely steps not only in obtaining the OBC Certificates but in submission of the same.

12. The common legal question to be adjudicated in the appeal and the writ petition thus is whether notwithstanding the advertisement inviting applications requiring the certificate of belonging to the Reserved Category being filed along with application by the cut off date, the delay in submitting the certificate can be condoned and appointment directed.

13. We have recently in judgment dated 31st October, 2011 in W.P.(C) No.7767/2011 titled *Narayan Lal Meena Vs. Govt. of NCT of Delhi* had occasion to consider the sanctity of the cut off date qua eligibility qualification and have on a conspectus of the case law, need to reiterate which is not felt, held that eligibility has to be determined as on the cut off date prescribed and no relaxation can be granted; that the applicants cannot take any advantage of the mistake, if any on the part of the appointing/recruiting authorities in allowing the applicants to appear in the examination and interview; that appointment of an ineligible candidate is illegal and no question of estoppel arises. It was further held that granting any relief to the applicant approaching the Court in such cases would tantamount to giving a benefit to such applicants to the prejudice of others;

if the eligibility were allowed to be determined on the date of the interview and/or on the date of appointment, then the same would be to the detriment/prejudice of others who considering themselves to be ineligible as per the terms of advertisement did not apply. It was further held that the same would tantamount to giving premium to the illegality practiced in applying when the person was clearly in the know that he / she was ineligible to apply. It was yet further held that in such situation, it is well-nigh possible that had others similarly placed as the petitioner and who acted honestly and did not apply, also applied and competed, the petitioner may not even have been found successful.

14. The only question which thus remains to be adjudicated is whether what has already been held by us as aforesaid qua the eligibility qualification applies also to submission of documents as the OBC Certificate. The distinction is obvious. While the qualification does not exist on the cut off date, the status as OBC exists which as has been held in ***Tej Pal Singh*** (supra) is not dependent on the certificate which is but a proof of such status.

15. The Tribunal, in the order impugned in the writ petition, though noticed ***Tej Pal Singh*** held that in subsequent judgment dated 02.02.2009 in W.P.(C) No.8508/2007 titled ***Smt. Poonam Vs. GNCTD***, the law developed was that the delay in submission of certificate could be overlooked only if the certificate had been applied for well before the cut off date but was issued subsequently and for no fault of the applicant.

16. We may however notice that ***Tej Pal Singh***, (judgment of one of us i.e. the Acting Chief Justice and LPA No.304/2000 whereagainst was dismissed on 15.12.2000 and SLP dismissed on 16.04.2001) referred to the Chapter in Swamy's Compilation on Reservations and Concessions for Scheduled Castes (SC) and Scheduled Tribes (ST) under the heading "Verification of Claim for SC & ST" which *inter alia* stipulated verification of status belonging to the SC/ST after the provisional appointment. It was on the basis of the same that it was held that a person who claims to belong to SC/ST Category is not to be denied appointment merely because he has not been able to produce the certificate. It was held that the provision termed appointment in the Reserved Category on a

provisional basis and subject to submission of proof. This Court further found the advertisement inviting applications in that case to have also provided so and incorporated the Chapter aforesaid. It was yet further found that the advertisement did not prescribe the cut off date for the purpose of submitting SC/ST/OBC Certificates.

17. On the contrary, the advertisement in the appeal as well as the writ petition clearly provided that the certificates of belonging to OBC category had to be filed along with the application by the cut off date. We, therefore, are of the opinion that what was held in *Tej Pal Singh* qua the status as SC/ST and in the context of language of the advertisement in that case would not apply to the present cases concerning OBCs and in view of the unambiguous language of the advertisements inviting applications in the present cases. In spite of judgment of Coordinate Bench in *Anu Devi* supra, need is not felt to refer the matter to a larger Bench because the judgment in *Anu Devi* turned on, firstly the appointing authority in that case, notwithstanding the cut off date, having issued notices demanding the certificates thereby extending the cut off date and secondly on this Court

exercising the discretion under Article 226 in refusing to interfere with the decision of the Tribunal in that case. We are however consciously distinguishing **Tej Pal Singh** (supra). We may also notice that our Brother who has authored the judgment in **Anu Devi** had earlier, sitting singly in judgment dated 13.08.2009 in W.P.(C) No.10257/2009 titled **Abhishek Saini Vs. University of Delhi** held that the action of the University in not permitting the petitioner in that case to participate in the selection process on account of non-production of OBC certificate by the date stipulated in the Bulletin of Information and which was mandatory cannot be faulted with. Mention may also be made of **Hari Singh Vs. Staff Selection Commission** 170 (2010) DLT 262 where another Division Bench notwithstanding the OBC certificate having not been filed by the stipulated date and following **Tej Pal** held a case for making provisional admission to have been made out but again in the peculiar facts of that case and accepting the explanation for non-submission thereof.

18. Another Division Bench of this Court in judgment dated 25th January, 2010 in WP(C) No. 10558/2009 titled **Union Public Service**

Commission Vs. GNCTD and other connected Writ Petitions held that the procedure for making applications cannot be given a go by for accommodating a few people and if this is done there would be no obligation on anybody to follow any procedure resulting in an unmanageable situation. It was further held that the procedure prescribed in the advertisement casts a duty on the applicants to apply in accordance therewith and they cannot be allowed to contend that their application should be accepted even if incomplete. Accordingly, the rejection of the applicants who had not submitted the documents required to be submitted alongwith the application form was upheld.

19. Else, what has been observed by us qua qualification, equally applies to submission of OBC Certificate also. It is well-nigh possible that a number of other OBC candidates, though otherwise eligible but not in possession of the OBC Certificate by the cut off date, did not apply under the belief that being required to enclose the OBC Certificate along with the application and being not in possession thereof, their applications would be deficient and not entertainable. It is yet further possible that, had such others applied and competed, the respondents in appeal and/or the

petitioner in the writ petition may not have been eligible. The respondents in appeal and the petitioner in the writ petition were clearly in the know that their applications were incomplete and took a chance. This Court cannot lay down a law which would encourage such practices. The terms and conditions mentioned in the advertisement were intended, to guide/instruct the prospective applicants and there is no reason to dilute the same. Even otherwise, this Court would be loathe to issue mandamus/directive contrary to the terms of selection/appointment (see *Karnataka State Road Transport Corporation Vs. Ashrafulla Khan* (2002) 2 SCC 560, *FCI Vs. Ram Kesh Yadav* (2007) 9 SCC 531, *Maharishi Dayanand University Vs. Surjeet Kaur* JT 2010 (7) SC 179 and *State of West Bengal Vs. Subhas Kumar Chatterjee* (2010) 11 SCC 694).

20. As far as the case of the respondent no.1 in appeal who had applied for OBC Certificate ten days before the cut off date is concerned, we are unable to find the same at par with Ms. Pushpa. In *Ms. Pushpa*, the application for OBC Certificate had been filed much prior to the date of advertisement. The advertisement in the present case as per the

respondents was published on 30th August, 2007 and the respondent no.1 applied for OBC Certificate barely ten days prior to the cut off date. No case of the said respondent no.1 being not at fault also is thus made out.

21. We therefore are unable to agree with the order of the learned Single Judge challenged in appeal and set aside the same. The appeal is accordingly allowed. Axiomatically, we are in agreement with the order of the Tribunal challenged in the writ petition and dismiss the writ petition.

No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JANUARY 24, 2012

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