

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

Reserved on: 18.02.2013
Pronounced on: 10.04.2013

+ **W.P.(C) 405/2013**

ANIL KUMAR Petitioner
Through : Ms. Shweta Priyadarshini,
Advocate.

versus

UNION OF INDIA Respondent
Through : Sh. Joginder Sukhija, CGSC.

+ **W.P.(C) 5416/2012 & C.M. NO. 11037/2012 (for ex-parte relief)**

RAKESH KUMAR Petitioner
Through : Sh. N.L. Bareja, Advocate.

versus

UNION OF INDIA & ORS Respondents
Through : Sh. Himanshu Bajaj, CGSC.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

MR. JUSTICE S. RAVINDRA BHAT

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1. The grievance in these two petitions is common. The writ petitioners are Anil Kumar [in W.P.(C)405/2013] and Rakesh Kumar

[in W.P.(C) 5416/2012]. Rakesh Kumar had applied for recruitment to the post of Assistant Sub Inspector (Executive) [ASI (Exec)] with the Central Industrial Security Force (CISF) in response to an advertisement. They complain that the respondents have unjustifiably treated them as “Unreserved category” candidates and denied them appointment. They had applied as candidates belonging to the “Other Backward Classes” (OBCs). They seek appropriate directions that they should be treated as OBC candidates and their applications and candidature should be processed for appointment accordingly. The facts in Rakesh Kumar’s case [W.P.(C) 5416/2012] are that the advertisement was issued on 29.05.2010 for the post of ASI (Exec) in the CISF. The last date for applying was 28.06.2010. It is not in dispute that the petitioner – Rakesh Kumar applied within the time; he relied upon an OBC certificate dated 05.07.2005. The written examination was conducted by the respondents, i.e. Staff Selection Commission (SSC) on 28.08.2010. The petitioner secured 235 marks. His Physical Test was conducted on 06.11.2010 and medical examination on 08.11.2010. He was called for interview on 01.02.2011. Besides the certificate dated 05.07.2005, he appears to have applied for another OBC certificate in view of a condition which stipulated that only a certificate issued within three years of the date of the advertisement would be valid. Such certificate was applied for and was issued on 25.01.2011, i.e. before the date of interview. The respondents rejected his application to be an OBC candidate and considered him as “Unreserved Category” candidate. His marks were not better than the last marks of an unreserved category candidate.

The facts in W.P.(C) 405/2003 are that Anil Kumar applied pursuant to the advertisement dated 05.02.2011 for the post of Constable (General Duty), called for by the Staff Selection Commission (SSC) in the BSF, CISF, SSB and CRPF. The closing date for the application was 04.03.2011. It is not in dispute again that the application was made within the time. The petitioner had relied upon a certificate dated 24.09.2007. The written examination for this post took place on 05.06.2011 and the medical examination took place on 13.09.2011. The petitioner was able to secure a later certificate on 02.12.2011 and has relied upon it in these proceedings.

2. It is contended by the petitioners that the candidatures in their cases to be treated as belonging to OBC class appears to have been rejected on account of Clause 4(C) of the notice of advertisement. In both the cases, the said condition stipulated that certificate relied upon “should have been obtained within three years before the closing date.” The petitioners contend through their learned counsel that the stipulation has the effect of depriving their legitimate right to be considered as OBC candidates. They strongly rely upon the decision in *Hari Singh v. Staff Selection Commission & Anr.* 170 (2010) DLT 262 (DB) and two previous rulings of the Division Bench in *DSSSB and Anr. v. Ms. Anu Devi & Anr.* [W.P.(C) 13870/2009] and *Govt. of NCT of Delhi v. Poonam Chauhan* 152 (2008) DLT 224.

3. It was argued that the status of the candidate as belonging to a reserved category – either Scheduled Caste (SC)/Scheduled Tribe (ST) or OBC is akin to his date of birth and in the sense that it is unalterable. In a sense, the production of a certificate is mere evidence

of such status which always existed. However, in the case of an educational qualification, the production of a document evidences that the candidate acquired or is yet to acquire the qualification which is not akin to a status. In other words, the certificate only reflects what exists as a reality. The production of a defective certificate or one which does not conform to a preordained format is at best an irregularity which can be set right or cured by the candidate and cannot be a ground for disqualification. Learned counsel stressed that not being possessed of the educational qualification amounts to disqualification whereas being possessed of a defective caste certificate or a defective date of birth or a record which does not conform to the format in respect of the Date of Birth would be mere irregularities, which are curable. In any event, the authorities can verify the correct state of affairs and the production of the correct or acceptable documentation on a later date. This would not mean that the candidate acquires the status as belonging to the OBC/SC/ST later.

4. Learned counsel for the respondents submitted that the stipulation in para 4(C) was meant to alert the candidates about the need to produce the certificates issued within three years of the last date of the receipt of applications. This is an essential requirement because in the case of OBC candidates, the appointing authority has to be satisfied that the applicant does not belong to the “Creamy Layer”. The requirement, therefore, cannot be treated as an empty formality.

5. Learned counsel even relied upon other decisions of the Division Benches of this Court in *Vishesh Kumar v. Staff Selection*

Commission [W.P.(C) 5580/2012, decided on 14.09.2012]; *Parminder Bhadana v. Staff Selection Commission* [W.P.(C) 2211/2012, decided on 17.04.2012] and upon *DSSSSB and Anr. v. Ram Kumar Gijroya and Ors.* [LPA 562/2011, decided on 24.01.2012]. It was submitted that in these cases, the Court had underlined the sanctity of “cut-off date” for the purpose of reckoning the three-year period before which the OBC certificate should be valid and stated that granting appointment to such candidates who produce the OBC certificates later might be unfair on those who choose not to appear and rely upon older certificate, by following and adhering to the norms.

6. The relevant stipulation in the present case is phrased identically. For the purpose of discussion, it would be sufficient to rely upon Clause 4(C) which was relied on by the respondents in Anil Kumar’s case [W.P.(C) 405/2013]. It reads as follows:

*“Candidates who wish to be considered against vacancies reserved/or seek age relaxation **must submit requisite certificate** from the competent authority, in the prescribed format when such certificates are sought by the concerned Regional/Sub Regional Offices **at the time of Written Examination or Medical Examination or any other time as may be decided by the Commission.** Otherwise, their claim for SC/ST/OBC/Ex-Servicemen status will not be entertained and their candidature/applications will be considered under **General (UR)** category. The formats of the certificates are annexed. Certificates obtained in any other format will not be accepted. Candidates claiming OBC status may note that certificate on creamy layer status should have been obtained **within three years** before the closing date i.e. on 04.03.2011.”*

7. The decision of the Division Bench in *Ms. Anu Devi (supra)* pertinently mentioned as follows:

“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.”

8. In *Govt. of NCT of Delhi and Anr. v. 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 the 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.

9. In *Hari Singh (supra)*, the Division Bench had to deal with identical fact situation where the candidature had initially produced a defective certificate but later after the cut-off date indicated in a stipulation worded identically with Clause 4(B), as in the present case, produced the correct certificate. The Court noticed certain previous judgments, including the judgment of the Supreme Court in *Mrs. Valsamma Paul v. Cochin University and Ors.* AIR 1996 SC 1011, where the Court had emphasized that the concerned citizen, to

improve his excellence, equal status and dignity with the advancement of human rights is afforded the opportunity of a reservation, and held that the submission of a certificate within reasonable time even if it is not at the time of making of application for the job, would be in order and cannot be rejected. The Bench in *Hari Singh (supra)* also noted a ruling in *Deepak v. Competent Authority for the Purpose of Admission to Engineering Course in Government Engineering College, Pune* AIR 1997 (Bom) 1, where it was held that the requirement of caste verification cannot be made a precondition for accepting the application of those candidates belonging to reserved categories. In *Hari Singh (supra)*, the Court finally held as follows:

“47. The prescription in the public notice in question that the closing date for receipt of application would be treated as the date of reckoning of OBC status of the candidate and also for ascertaining that the candidate does not fall in the creamy layer, in our view, is a prescription evolved for the benefit of the candidates belonging to OBC category and not for the purpose of ousting them from the benefit of reservation. What the NOTE under Clause 4(B) (set out in para 5 above) provides is that, if a candidate is certified as being an OBC category candidate not falling within the creamy layer prior to the close of the date of submission of applications (i.e. 14.09.2007 in this case) then the candidate would be treated as an OBC candidate not falling in the creamy layer for the purpose of the examination in question, and the issue that the candidate may have come into the creamy layer subsequently, i.e. after the date of closing, would not be relevant or gone into to deny the benefit of reservation to such a candidate.

48. *The prescription in the NOTE appended to Clause 4(B) does not get whittled down merely by acceptance of an OBC certificate issued on a later date. A candidate who is certified as belonging to an OBC and as not belonging to the creamy layer on a later date than the one fixed by the public advertisement cannot be assumed to be as falling under the creamy layer on any date prior to the date of issuance of the certificate. There would be no basis for such an assumption. The possibility of such an eventuality is highly remote. In fact, the greater probability is that a candidate who may have been certified as an OBC candidate falling outside the creamy layer, may actually get covered by the creamy layer on a later date.*

49. *In any event, we are not suggesting that the respondents are precluded from examining the issue of eligibility of any candidate to claim the benefit of reservation. But, they cannot reject the candidature of such a candidate as a reserved category candidate and are bound to consider the candidature of the candidate concerned “provisionally” and, subject to the final determination, to even appoint the person concerned if found otherwise eligible and meritorious. Similar submissions have already been rejected by this Court in Anu Devi (supra) and in Poonam Chauhan (supra).”*

10. So far as the judgments relied upon by the respondents are concerned, it is to be noticed that in *Ram Kumar Gijroya (supra)*, the decision in *Hari Singh (supra)* was not noticed at all nor was the judgment of the Supreme Court in *Mrs. Valsamma Paul (supra)*, highlighting the necessity for adopting a liberal approach in such matters, even noticed. The Court was persuaded to hold as it did on the reasoning 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.” Such reasoning, in this Court’s opinion, would apply squarely in the case of candidates who are not qualified but subsequently acquire qualifications. It cannot have blanket application to those who possess the status but are caught in the cleft in the policy changes of the government in regard to the validity of their certificates. As noticed in *Hari Singh (supra)* and *Ms. Anu Devi (supra)*, the certificate is only evidence of what always existed, i.e. the status of the candidates as belonging to the OBC category who are not from the creamy layer. It is not as if he acquires such status subsequent to the closing date or subsequent to the commencement of the recruitment process, as in the case of a candidate who fulfils the academic qualification later. This liberal approach was noticed and applied in *Hari Singh (supra)* where the Court even commented on the Central Government’s policy of accepting the application even where applications of candidates are processed regardless of the defect or validity of the certificate. It would be pertinent to notice in this context that on 01.06.2011, the SSC itself has issued an Office Order/Clarification, which states that:

“4. Accordingly, it has now been decided by the Commission that the OBC certificate issued by the competent authority as prescribed by DOPT, in the prescribed proforma, issued up to the last Tier of examination will be accepted by the Commission with

effect from 06.05.2011, the date of receipt of the clarification from DOPT. The crucial date in this regard will be determined as follows:

(i) If the last tier is the written examination, the date of examination/last paper.

(ii) If the last tier is the interview, the date of completion of interview.

(iii) If the last tier is skill test/computer proficiency test/data entry test, the date of completion of such test.”

11. In the light of the above order, it is held that the production of certificates dated 25.01.2011 before the last stage of the selection process, i.e. interview on 01.02.2011 conforms to the Office Order No. 1/4/2010-P&P. In any event, subject to this verification by the respondents, the petitioners' applications are entitled to be further processed. Similarly, the production of the acceptable format of the OBC certificate in Anil Kumar's case also merits consideration of his candidature and further processing, subject to verification.

12. In the light of the above discussion, directions are issued to the respondents to process the candidature of the two writ petitioners in W.P.(C) 405/2013 and W.P.(C) 5416/2012 and take into consideration the subsequent OBC certificates produced by them and intimate each of them directly about the outcome, within four weeks. In case they are selected and have to be appointed and there is consequently impediment in their being accommodated in one or the other batch for training, consequent directions are issued to the respondents to accommodate these petitioners at the relevant slot in the succeeding

batch or batches of recruits for the purpose of training. The writ petitions and pending application are allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

SUDERSHAN KUMAR MISRA
(JUDGE)

APRIL 10, 2013
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