

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

% *Judgment Reserved on: April 30, 2013*
Judgment Pronounced on: May 06, 2013

+ **W.P.(C) 7304 /2010**

MANJUSHA BANCHHORE Petitioner
Represented by: Mr.Sanjeev Narula and Ms.Varuna
Bhandari, Advocates.

versus

STAFF SELECTION COMMISSION & ANR. Respondents
Represented by: Mr.S.M.Arif, Advocate for R-1.
Mr.Mirza Amir Beg, Advocate for
Mr.Anjum Javed, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. An advertisement for the Combined Graduate Level (Preliminary) Examination, 2004 in the Employment News dated October 18–24, 2003 was issued for recruitment/appointment to various posts, including the post of Sub-Inspector in Delhi Police, inviting applications from eligible candidates. Pertaining to eligibility certificates, para 6(ii) of the advertisement indicated as under:-

“Candidates are not required to submit along with their application for Preliminary Examination any certificate in support of the claim regarding age, educational qualifications, scheduled castes/scheduled Tribes/other backward classes and disability etc. which will be verified at the time of the Main Examination only. The candidates applying for the examination should ensure that they fulfil all the eligibility conditions for admission to the examination.

Their admission at all stages of examination for which they are admitted by the Commission viz. Preliminary Examination, Main (Written) and Interview test will be broadly provisional subject to their satisfying their prescribed eligibility conditions. If on verification at any time before or after the Preliminary Examination, Main (Written) and Interview test, it is found that they do not fulfil any of the eligibility conditions, their candidature for the examination will be cancelled by the Commission.”

2. Relevant would it be to highlight that candidates appearing and wanting to take the benefit of reservation were not to furnish any certificate in support of their claim for reservation. It was indicated that being permitted to take the examination till the stage of interview would be treated as provisional requiring verification of the documents at any stage as per the decision of the Staff Selection Commission.

3. Petitioner applied for being appointed as a Sub Inspector and sought benefit of reservation under the OBC category. Though not required to submit any certificate certifying that she was a member of an Other Backward Class she enclosed along with her application a certificate dated December 12, 2003 certifying that she belonged to ‘Kurmi’ caste notified as an OBC.

4. Having successfully cleared the Preliminary Examination held on February 08, 2004 the petitioner was informed by the Staff Selection Commission under cover of a communication dated April 06, 2004 that she was eligible to take the final examination and for which she had to fill up another application and submit the same by May 21, 2004. Before that date, on April 24, 2004 a Notice pertaining to the examination was published, as per paragraph 17 thereof, the candidates who had cleared the Preliminary Examination were informed that while filling up the application form to take the final examination they were to attach the requisite certificates if they

were claiming to avail the benefit of reservation. The condition reads as under:-

“Only the Application form will be sent by concerned Regional Office of the Commission to the candidates, sample forms for various certificates i.e. SC/ST/OBC/Ex. S/PH etc. as Annexure I to VI have been published herewith. The candidate should attach the requisite certificate in this prescribed format.”

5. It is apparent that those who claimed the benefit of reservation were clearly informed that depending upon the category of reservation under which benefit was claimed the requisite certificate had to be submitted as per the prescribed format disclosed in the advertisement.

6. The petitioner submitted an application by filling up the required form on May 21, 2004 and took the final examination. Clearing the same she was called to take the Physical Efficiency Test which she cleared on December 24, 2004. In between, on August 02, 2004 she obtained a certificate as per proforma prescribed certifying her to be a member of the ‘Kurmi’ caste, for the reason the certificate dated December 12, 2003 submitted by her along with her application was not as per the proforma prescribed.

7. As pleaded by the petitioner, challenging the examination, interim stay was obtained by a few candidates in petitions filed which got disposed of resulting in the selection process proceeding ahead, with the result of the main examination as also Physical Efficiency Test declared on February 08, 2008. It was followed by the petitioner being sent a communication dated February 12, 2008 calling upon her to appear for an interview on March 04, 2008. The letter intimated that the caste certificates if relied upon, in the prescribed proforma, should be brought for verification at the time of interview.

8. Before the interview, the petitioner gave an undertaking as under:-

“UNDERTAKING

*Sub: Combined Graduate level, 2004 Examination –
Interviews for the post of Sub-Inspector in Delhi Police.*

With reference to my candidature for the above mentioned examination, I Manjusha Banchhore, Roll No.2293293, hereby undertake that although I applied and qualified written part of subject examination in OBC category, I could not furnish the OBC certificate in the prescribed proforma for Central Govt. Offices issues by the Competent Authority on or before 21.05.2005, which was the last date for submission of application forms for the Mains Examination as per annexure VII of the Notice of the said Examination which was mandatory. It is, therefore requested that my candidature may be considered in Unreserved category instead of OBC.

I will not claim for OBC status later and I shall abide by the decision of the Commission with regard to status of my candidature.

*Signature: sd/-
Name: Manjusha Banchhore
Roll No.2293293
Date: 04.03.2003”*

9. As per the petitioner she was faced with a Hobson’s choice because she was informed that the caste certificate furnished by her with the application form submitted by her when she applied for the post i.e. the certificate dated December 12, 2003 was not in the prescribed proforma and thus she could not be treated as an OBC candidate. As per the petitioner she was told that if she did not submit the undertaking she would not be interviewed. The choice she faced was ‘take it or leave it’. She gave the undertaking notwithstanding that she has submitted the photocopy of the certificate and at the interview had produced the original.

10. After the result was declared, name of the petitioner was not to be found in the merit list of successful candidates. The reason was she having obtained 449 marks and the last empanelled candidate in the unreserved category had obtained more marks. But, in the OBC category the last empanelled candidate had obtained 402 marks.

11. Petitioner's request to be treated as an OBC candidate was turned down. She approached the Central Administrative Tribunal by filing O.A. 2414/2009, and unfortunately for her, the counsel engaged did not have a Hawks Eye. The learned counsel had a very simple case to plead. The same was that the advertisement dated October 18-24, 2003 inviting applications did not require the candidates to submit or file any certificate with respect to the eligibility. It was clearly indicated to the candidates that the applications of all would be treated as provisional, subject to the candidates satisfying the prescribed eligibility conditions. After the result of the preliminary examination was declared, on April 24, 2004 a Public Notice was issued requiring those who had successfully cleared the Preliminary Examination to submit applications in the prescribed form and furnish the requisite certificates as per the format prescribed. The petitioner submitted the application in the prescribed form but did not file a certificate as per proforma along with the application. She obtained a certificate on August 02, 2004 and filed the same. Due to the examination process being challenged, matter did not proceed ahead till when petitions challenging the selection process were disposed of and result declared on February 08, 2008. The petitioner was called for an interview on March 04, 2008 with a direction that she would bring along the original OBC certificate. If only the counsel had pleaded that it was not a case of acquiring eligibility after the prescribed cut off date but was a case of producing a certificate as per proforma prescribed which petitioner did on August 02, 2004, the Tribunal

would have simply been called upon to decide whether in the absence of cut off dates prescribed to furnish documents, coupled with the fact that the department consciously left open filing and scrutiny of certificates at a subsequent stage, could the Staff Selection Board have obtained the undertaking in question from the petitioner.

12. The plain answer would be that the Staff Selection Commission could not have compelled the petitioner to furnish the undertaking

13. Be that as it may, in the absence of a well drafted petition before it, the Tribunal considered the question whether the petitioner was bound by the undertaking given by her. The Tribunal has held that the petitioner would be bound by the undertaking and that her plea of having been forced to sign the same was not made good.

14. The Tribunal over looked the fact that something must have happened which led the petitioner to furnish the undertaking. The language of the undertaking shows a legal input, and we take judicial notice of the fact that in various cases we have come across identically worded undertakings. It is obvious that the respondents have a standard form undertaking. That apart, the only circumstance under which the petitioner could have furnished the undertaking would be that the department was not willing to accept the certificate dated December 12, 2003 nor the certificate dated August 02, 2004, and this would have meant that if petitioner insisted upon being treated as an OBC candidate she would not have been interviewed at all. She was faced with a Hobson's choice.

15. As the adage goes : *Men can lie but circumstances do not lie*. The circumstances are such that they speak for themselves. The only conclusion has to be that the petitioner was compelled to submit the undertaking.

16. Learned counsel for the respondents relied upon the decisions of this Court :

(i) LPA No.562/2011 Delhi Subordinate Service Selection Board & Anr. vs. Ram Kumar Gijroya & ors. decided on January 24, 2012.

(ii) WP(C) 1656/2011 Krishan Kumar vs. UOI & ors. decided on October 12, 2012.

(iii) WP(C) 558/2012 Vishesh Kumar vs. SSC decided on September 14, 2012.

17. The last decision dealt with the subject of an OBC certificate issued prior to three years preceding the cut off date and held that the stipulation in the advertisement that the OBC certificate had to be within the three preceding years of the last cut off date was legal and valid because as against SC and ST candidates, creamy layer OBC candidates are not entitled to benefit of reservation. In other words the decision explain that a person may be below the income/wealth level in a particular year and hence entitled to benefit of reservation as an OBC, but may be above the prescribed income/wealth level thereafter. The decision has no application in the facts of the instant case. As regards the other two the law declared is that certificates issued after prescribed cut off dates have to be ignored. The said two decisions have no application in the instant case because the advertisement inviting applications did not prescribed any cut off date by which the certificates had to be furnished.

18. Besides, the law declared in Ram Kumar Gijroya's case (supra) and Krishna Kumar's case (supra) overlooks a fundamental point. The two decisions seem to be influenced by the line of reasoning found in various decisions that eligibility has to be obtained prior to the cut off date. In these decisions the certificates such as degrees etc. were issued after the prescribed cut off dates by which applications had to be filed. The two decisions over looked that a person becomes a member of a caste by birth

and the certificates are not akin to certificates certifying that a person has acquired a degree. Caste Certificates are more in the nature of a memorandum recording a fact pertaining to birth. This was the view correctly taken in the decision dated February 17, 2010 disposing of WP(C) 13870/2009 Delhi Subordinate Services Selection Board & Anr.vs. Anu Devi & Anr. The Division emphasized that reservations for SC, ST and OBC are beneficial legislations and that submission of an OBC certificate to claim reservation could not be equated with acquisition of Educational Qualifications.

19. Accordingly, we dispose of the writ petition setting aside the impugned decision dated August 16, 2010 and dispose of OA No.2414/2009 filed by the petitioner issuing a mandamus to the first respondent to take into account the marks obtained by the petitioner treating her as an OBC candidate and thereafter process her candidature accordingly. The second respondent shall also process the candidature of the petitioner and subject to antecedent character verification if appointment is made, the petitioner would be entitled to all consequential benefits i.e. her seniority as per merit position, notional increments etc. for future service except back wages which we deny on the principle of '*No work No Pay*'.

20. Compliance be made within 12 weeks from today.

21. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V. KAMESWAR RAO)
JUDGE

MAY 06, 2013
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