

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

% Judgment reserved on : 05.03.2013
Judgment pronounced on : 08.03.2013

+ **LPA No. 686/2012 & CM No. 17645/2012**

KAUSHALENDRA KUMAR Appellant

Through: Mr Subrat Deb, Adv.

Versus

DELHI SUBORDINATE SERVICES SELECTION BOARD

.... Respondent

Through: Ms Mirza Amir Baig for
Mr Anjum Javed, Adv.

CORAM:

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN**

V.K. JAIN, J.

1. The appellant before us belongs to Ahir Community, which is stated to have been recognized as a backward class, vide Government of NCT of Delhi Notification dated 20.01.1995. He also claims to be a visually handicapped person. In February, 2008, Directorate of Education, Government of NCT of Delhi, invited applications for appointment of teachers in Delhi. As regards OBC candidates, the

requirement stipulated in the said advertisement was that they should obtain OBC Certificate, issued by Government of NCT of Delhi. The appellant applied in response to the aforesaid advertisement and appeared in the written examinations held on 08.06.2008. The result of the first examination, which was an objective type examination, was declared in August, 2008, wherein the appellant was short-listed along with 12 other candidates and his name appeared in the category of OBC candidates. The result of the second and final examination, which was descriptive in nature, was published on 01.01.2009 and the appellant passed that examination as well. Following result of the second and final examination, the appellant submitted documents on 05.01.2009, which included OBC certificate, issued by Deputy Collector, Mogaon. However, no appointment letter was issued to the appellant. He, thereupon, filed WP(C) No. 9548/2009 before this Court on 01.06.2009, seeking a direction to the respondents to issue appointment letter to him. In the meanwhile, the appellant also obtained an OBC certificate from the office of Deputy Commissioner (East District), Delhi. The writ petition was contested, *inter alia*, on the ground that the appellant had not obtained OBC certificate from the Competent Authority in Delhi. The

writ petition filed by the appellant having been dismissed, he is before us by way of this appeal.

2. It is contended by the learned counsel for the appellant that since the appellant belongs to Ahir Community, which has been declared a backward class not only in the State from which the Certificate dated 01.06.2006 was issued to him, but also in NCT of Delhi, he should have been considered and appointed against one of the posts, reserved for OBC candidates. He also submitted that in any case the appellant having been obtained OBC certificate, issued by Government of NCT of Delhi on 05.06.2009, the respondents should now appoint him against such a post.

3. It is an admitted position that the advertisement, issued by Directorate of Education, inviting applications for appointment of teachers contained an express stipulation that the candidates, applying under OBC category, should submit OBC Certificate, issued by Government of NCT of Delhi. Admittedly, the aforesaid advertisement was not challenged by the appellant on any ground whatsoever, including that the said Directorate could not have insisted upon submission of OBC certificate issued from Delhi and he participated in the recruitment process, on the basis of the terms contained in the advertisement,

including the term requiring submission of OBC certificate, issued from Delhi. It is by now settled proposition of law that a candidate who participates in a selection process on the basis of the terms and conditions stipulated in the advertisement inviting applications or the Recruitment Rules applicable to the advertised post cannot later challenge the terms and conditions, stipulated in the advertisement or the Recruitment Rules, prevailing at the time applications were invited. This issue has been examined by Supreme Court in a number of cases and there has been no change in the view taken by the Apex Court in this regard.

4. In **Dr. G. Sarana v. University of Lucknow and Ors.** (1976) 3 SCC 585, Supreme Court declared that the candidate who participated in the selection process cannot challenge the validity of the said selection process after appearing in the said selection process and taking opportunity of being selected.

In **Union of India and Ors. v. S. Vinodh Kumar and Ors.** (2007) 8 SCC 100, Supreme Court, *inter alia*, held that it is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same.

In **K.H. Siraj v. High Court of Kerala and Ors.** (2006) 6 SCC 395, it was held that candidates who participated in the interview with knowledge that for selection they had to secure prescribed minimum marks, on being unsuccessful in interview, could not turn around and challenge that the said provision of minimum marks was improper, and such challenge is liable to be dismissed on the ground of estoppel.

In **Vijendra Kumar Verma v. Public Service Commission, Uttarakhand and Ors.** (2011) 1 SCC 150, the Commission invited applications for appointment of Uttaranchal Judicial Service. Rule 8 of Uttaranchal Judicial Service Rules, 2005 required that a candidate for recruitment to the said service must *inter alia* possess basic knowledge of computer education. The appellant before Supreme Court submitted his application for one of the above said posts. He appeared in the preliminary examination and was declared successful. Thereafter, he was called for vive voce examination and his basic knowledge in computer operation was tested, at the time of his interview by an expert sitting with the members of the Interview Committee. He opined that the appellant did not possess the basic knowledge of computer operations. Accordingly, the appellant was not selected. The appellant challenged his

non-selection *inter alia* on the ground that no syllabus having been prescribed for judging and ascertaining the basic knowledge of candidates in computer education either before the selection process was initiated or even at the time when advertisement was issued, such a syllabus could not have been introduced by the respondents in the midstream of such selection process. Rejecting the contention, Supreme Court noted that in the Notification declaring the result of written examination, it was notified to the candidates that their basic knowledge of computer would be tested at the time of interview for which knowledge of Microsoft Operating System and Microsoft Office operation would be essential. The aforesaid criteria was also reiterated in the call letter, issued to him and having known the said criteria, the appellant had appeared in the interview, faced the questions from the expert of computer application and had taken a chance and opportunity therein without any protest at any stage and therefore, now he cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction.

5. Applying the proposition of law enunciated by Supreme Court in the above-referred cases, the appellant having participated in the recruitment process on the condition that a candidate will have to produce

an OBC Certificate, issued from NCT of Delhi, he cannot now say that the respondent could not have insisted upon production of such a certificate and should have accepted the certificate, issued by Deputy Collector, Mogaon. It is true that the appellant obtained OBC certificate, issued by Government of NCT of Delhi on 05.06.2009, but that would make no difference since the said certificate was required to be submitted by the appellant along with the application form and admittedly, he did not even possess the certificate issued from Delhi at that time.

6. Though the failure of the appellant to submit an OBC certificate, issued from Delhi, is sufficient to dispose of this appeal, we would like to note here that a person, who obtains OBC Certificate from outside Delhi, is otherwise not eligible to be considered for appointment of a post in Delhi Government, on the strength of such a certificate. This issue came to be considered by Supreme Court in M.C.D. vs. Veena & Ors. (2001) 6 SCC 571. In that case, a candidate, belonging to backward class in a State other than Delhi, had applied for appointment to the post of primary and nursery teacher in Municipal Corporation of Delhi in NCT of Delhi. One question which arose for consideration was as to whether OBC candidates of the States, other than Delhi, could be treated as OBCs in

Delhi and could be extended benefits thereto in Delhi and the following view was taken by the Apex Court:-

“Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belongs thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the consideration on the basis of which they been specified may be totally different. So the degree of disadvantages of various elements which constitute the date for specification may also be entirely different. Thus, merely because a given caste is specified in one State as belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in other State and a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. These aspects have to be borne in mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs.”

In taking the aforesaid view, the Apex Court also took into consideration the model Forms of Certificate to be issued by the

candidates, seeking benefit of reservation in NCT of Delhi and the Court was of the view that careful reading of this notification would indicate that the OBCs would be recognised as such in the Government of National Capital Territory of Delhi as notified in the Notification dated 20.01.1995 and further for the purpose of verification of claims for belonging to castes/communities in Delhi as per the list notified by the National Capital Territory of Delhi the certificates will have to be issued only by the specified authorities and certificates issued by any other authority could not be accepted.

7. This issue also came to be considered by a Full Bench of this Court in WP(C) No. 8368/2010 and other connected matters, decided on 12.09.2011. The petitioners in the aforesaid petitions had applied for the post of Lower Division Clerk, advertised by District Judge, Delhi. The petitioner in WP(C) No. 8368/2010 had furnished a certificate issued by some Authority in Chandigarh. It was held by the Full Bench that the petitioner Veena Yadav was born and educated outside Delhi and, therefore, could not claim benefit of reservation as an OBC candidate. Relying upon **Veena and Ors.** (*supra*), the Court, *inter alia*, held as under-

“57. It is also clear that in the case of OBCs, the considerations which weigh with the executive government in issuing notifications are different than in the case of the Scheduled Castes and Tribes. The power to issue Notifications is not rigidly conditioned as in the case of Articles 341 and 342; Parliament also does not have exclusive jurisdiction. The degree of backwardness in the case of OBCs is of an entirely different kind than in the case of Scheduled Castes and Tribes. In view of the above discussion, this Court is of the opinion that the above three writ petitions W.P.(C) 816/2011, 1713/2011 and 8368/2010 have to fail.”

In view of the decision taken by Supreme Court in *Veena and Ors.* (*supra*) and by the Full Bench of this Court in WP(C) No. 8368/2010, the appellant cannot claim benefit of OBC certificate, issued from outside Delhi for the purpose of employment under Government of NCT of Delhi.

8. It was stipulated in the advertisement that the OBC candidates with certificates, issued from outside Delhi, will be considered for reserved post. Admittedly, the appellant was considered for an unreserved post, but was not successful in the reserved category.

9. For the reasons stated hereinabove, we find no merit in the appeal and same is hereby dismissed.

V.K.JAIN, J

CHIEF JUSTICE

MARCH 08, 2013
BG

