

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

+ **Date of Decision: 25.08.2014**

% **W.P.(C) 270/2014**

JYOTI Petitioner
Through: Ms. Jyoti Singh, Sr. Advocate with
Mr. Amandeep Joshi, Advocate
versus

GOVT.OF N C T OF DELHI & OTHERS Respondents
Through: Ms. Zubeda Begum, Standing
Counsel, GNCTD, with Ms. Sana
Ansari, Advocate

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to assail the order dated 25.09.2013 passed by the Central Administrative Tribunal (CAT/ Tribunal) in O.A. No.1875/2011, whereby the Tribunal dismissed the petitioners application – thereby declaring that the petitioner was not entitled to seek appointment to the post of Librarian in OBC category, which was advertised by the respondent/GNCTD.

2. The facts in brief are that in response to an employment notification issued by the Delhi Subordinate Services Selection Board (DSSSB) in the year 2009 for filling up the posts of Librarian (Post Code 17/2007) of the

Department of Education, GNCTD, the petitioner made her application. The case of the petitioner is that she belongs to the Jaat Community, which is recognised as a backward class by the GNCTD. She applied for issuance of the OBC Caste certificate on 23.04.2007. However, since the OBC Caste certificate was not issued till the date when she filled up the application form for the aforesaid post, while applying as an OBC candidate on 02.05.2007 and disclosing her status as such, she appended a copy of her application for issuance of OBC Caste certificate dated 23.04.2007.

3. The petitioner was issued the OBC Caste certificate on 08.06.2007. Her case is that upon issuance of the OBC Caste certificate, she had visited the office of the DSSSB in the month of June 2007 itself. However, the person sitting at the reception, after reading the covering letter, refused to accept the document by stating that DSSSB never accepts documents in this manner, and that the DSSSB shall, at the appropriate stage of selection, call upon the petitioner to complete the documents. The further case of the petitioner is that, in any event, in the month of October 2007, she had applied once again for the post of Librarian to the GNCTD against Post Code 163/2007 (Advertisement No.7/2007) and had annexed a copy of the OBC Caste certificate along with the application to the DSSSB. The DSSSB had clubbed the examination in respect of both the advertisements (i.e. Post Code 17/2007 and Post Code 163/2007) and conducted a common examination. Thus, the DSSSB had the OBC Caste certificate of the petitioner in October 2007 itself.

4. The petitioner appeared in the examination conducted by the DSSSB. She was all along shown and treated as an OBC category candidate. She

secured 94 marks in the examination when the final results were declared vide result notice no.66 on 18.01.2010. The petitioner did not find her name amongst the selected candidates – while candidates lower in merit in the OBC category, who had secured only 70 marks were shown as selected. Only 11 OBC candidates were declared as selected against 49 vacancies reserved for OBC.

5. The petitioner raised queries under the Right to Information Act (RTI Act), whereupon the DSSSB stated that since the petitioner did not possess the OBC Caste certificate issued by the GNCTD on the closing date of receipt of the application, i.e. 02.05.2007, she was not eligible for benefit of reservation in the OBC category. Thus, she had not been treated as an OBC category candidate.

6. Being aggrieved by the non consideration of her case as an OBC candidate, the petitioner preferred O.A. No.1930/2010. The said application was disposed of with a direction to the respondents to give an opportunity to the petitioner to prove her case as to whether, or not, she had taken reasonable steps for submission of the OBC Caste certificate soon after its issuance by the competent authority. The Tribunal directed that in case it was found that the petitioner had submitted her OBC Caste certificate soon after its issuance, the respondents should consider her case for appointment as an OBC candidate on the basis of the aforesaid advertisement. The respondent was directed to pass a reasoned and speaking order within three months from the date of the receipt of the order.

7. The petitioner, accordingly, represented on 27.09.2010. The DSSSB

rejected the petitioner's representation on 11.11.2010. The petitioner again represented on 29.11.2010, which too was rejected on 18.03.2011, leading to the filing of the aforesaid application i.e. O.A. No.1875/2011.

8. The Tribunal while dismissing the petitioner's application placed reliance on the judgment of this Court in ***Delhi Subordinate Services Selection Board & Anr. v. Ram Kumar Gijroya & Ors.***, LPA No.562/2011 : 2012 (128) DRJ 124 and ***Renu v. The Chairman/Secretary, Delhi Subordinate Services Selection Board & Ors.***, W.P. (C.) No.8087/2011 decided on 24.01.2012.

9. The submission of learned counsel for the petitioner is that the impugned order passed by the Tribunal cannot be sustained since the Tribunal has travelled beyond the scope of the inquiry that could have been undertaken by it. The submission is that in the earlier round i.e. in O.A. No. 1930/2010, the Tribunal had dealt with the issue with regard to the effect of non-submission of the OBC Caste Certificate along with the application form itself and had disposed of the original application with a direction to the respondent to grant an opportunity to the petitioner to prove her case as to whether, or not, she has taken the reasonable steps for submission of the OBC Caste Certificate soon after its issuance by the competent authority of the Government of NCT of Delhi. Learned counsel submits that it was not open to the Tribunal to revisit the entire gamut and undertake an academic exercise as done by it in the impugned order. Learned counsel submits that the Tribunal was bound by the order passed in O.A. No. 1930/2010 which was *inter-partes* and had attained finality. Learned counsel further submits that the Tribunal had failed to appreciate that the petitioner had already

applied for an OBC Caste Certificate before the closing date of the application and had also submitted with her application while applying as an OBC candidate the acknowledgement issued by the concerned authority of the application to obtain the OBC caste certificate. The respondent had treated the petitioner as an OBC candidate on the strength of the acknowledgement and the petitioner's declaration-meaning thereby that the petitioner would have the opportunity to submit the OBC Caste Certificate subsequently at the stage of verification of documents. Learned counsel submits that the defence of the respondent that scrutiny and verification of documents is undertaken at a later stage and the declaration made by the applicant initially with regard to his or her status is accepted per se, cannot mean that an applicant who has not even filed a copy of the relevant caste certificate, would have been treated as belonging to the declared caste, unless, the intention was to permit submission of the caste certificate at a later date. The respondent had consciously treated the petitioner as an OBC candidate and, on that basis, declared her result. Having done so, it was not open to the respondent to subsequently deny her selection by treating her as a General Category candidate. Learned counsel further submits that, in any event, the respondent – much before the conduct of the examination, already had the OBC Caste certificate since the same had been submitted along with the application made against post code 163/2007 Advertisement No. 7/2007. The respondent had clubbed the examination in respect of Post Code 17/07- with which the petitioner is concerned, and Post Code 163/2007. Therefore, no prejudice was caused to the respondent or to any candidate on account of the belated submission of the OBC Caste certificate. The further submission is that a large number of OBC category seats remained unfilled since only

11 out of the 49 vacancies reserved for that category were filled and there was no justification to deny selection to the petitioner as none would have been prejudiced. Learned counsel for the petitioner submits that, in any event, she had made detailed averments with regard to her taking steps to submit an OBC Caste certificate soon after it had been obtained and the said averments have not been seriously denied or disputed by the respondent. It is submitted that the Tribunal had no reason to disbelieve the petitioner's case that she had taken steps for submission of the OBC Caste certificate soon after it had been obtained but the respondent – DSSSB did not accept the same by observing that it did not accept such documents at an intermediate stage, and that the said documents shall be called for subsequently.

10. The petitioner placed reliance on several decisions including the decision in *Anil Kumar & Ors. v. Union of India*, 2013 (vi) AD (Del) 191; *Manjusha Banchhori v. Staff Selection Commission & Anr.* in W.P.(C.) No.7304/2010, and *Hari Singh v. Staff Selection Commission & Anr.*, 2010 (170) DLT 262.

11. On the other hand, learned counsel for the respondent has sought to defend the impugned order passed by the Tribunal.

12. Having heard learned counsel for the parties and carefully perused the impugned order of the Tribunal as well as the cases considered by it, which include the decisions cited before this Court, as also the facts of the present case, we are of the view that the impugned order cannot be sustained.

13. The relevant observations made by the Tribunal while disposing of the earlier Original Application of the petitioner (O.A. No.1930/2010) read

as follows:

“6. The main issue before us is the tenability of the applicant's claim for being considered in the OBC category despite non-submission of the required certificate along with the application form as stipulated in the terms of the advertisement. This matter has been considered in a number of cases by the Tribunal and the view taken has been that if a candidate had applied well before the cut-off date and the delay could not be attributed to him or her, effect of delayed submission should not deprive the candidate of his or her legitimate right for appointment, if otherwise found so eligible. In this context to name only a few, the following names are mentioned:-

*"1. OA 370/2009 (Anu Devi Vs. MCD & Ors.)
decided on 17.07.2009*

*2. OA 0342/2009 (Virender Solanki Vs. Govt. of
NCT of Delhi) decided along with several other
TAs on 04.08.2009.*

*3. OA 1059/2009 (Ajay Kumar Vs. Union of India
& Ors.) decided on 06.01 .2010*

*4. OA475/2010 (Rajbir Singh Vs. GNCTD & Ors.)
decided on 06.07.2010. 5. OA 130/2010 (Ms.
Seema Vs. MCD & Anr.) decided on 04.05.2010"*

7. It is not disputed in this case that the applicant had applied for issuance of the OBC Caste certificate before the closing date of the application. It is also not disputed that as a proof the same and acknowledgement slip had been attached along with the application form. Further the fact of the applicant having scored more marks than the last selected candidate in the OBC category also go in her favour. Even through the respondents have stated that initially 49 vacancies in OBC category had been modified to 23, still a number of vacancies were left to be fulfilled.

8. To briefly state regarding the judicial rulings relied upon by the applicant, the decision in CWP 548/2008 (Govt. of NCT of Delhi & Anr. Vs. Punam Dahiya) had decided on 09.07.2008 and the WP (C) No. 18111/2006 (Sh. Pradeep Kumar Vs. The Chairman DSSSB) decided on 12.02.2009. In these cases the view had been taken that if a person belonged to OBC category or reserved category and had taken the steps for obtaining necessary certificate from the concerned department within the permissible time and had filed such a certificate before the completion of the provisional selection process then such a candidate had to be considered in the same category for which he/she had applied at the time of filling of the application for the said post. Again in the WP 13870/2009 while considering six writ petitions, including the decision of the Tribunal in Anu Devi's case, the Hon'ble High Court had not found it fit to interfere with the Tribunal's decision whereby the OAs in all cases had been allowed. While dealing with these cases, the Hon'ble High Court had also dealt with the plea of there being such clear stipulations as per the terms of the advertisement as in the present case. However, despite such stipulations, the fact of the submission of the OBC Caste certificate s had not found to have invalidated the claims of the applicants therein. In fact, it has been observed by the Hon'ble High Court about the relevant office memorandum not specifying about the caste certificate issued subsequent to the date of closing of receipt of application as not being considered or looked into (para 14). It is true that these were cases in which the DSSSB had subsequently issued notices to the applicants to submit the OBC Caste certificates within a particular time frame which conditions had been complied with by the concerned candidates. Taking this as a ground for deemed extension, the Hon'ble High Court had considered it fit to exercise this discretionary power of interference with the orders of the Tribunals. Particularly significant are the findings in para 14 of this order which had run as follows:-

"9. In any case the submission of OBC Caste 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 case he belongs to is notified by the appropriate authority as a backward class. Though the learned counsel for the petitioners had 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 education qualification to become eligible for a post.”

9. To conclude, the objections raised by the respondents regarding the stipulations in the terms of the advertisement would not stand as an impediment in consideration of the candidature of the applicant, as per the view taken by the Hon'ble High court of Delhi referred to about in WP 13870/2009 along with several others. We also cannot brush aside the view being consistently taken by the coordinate Benches of the Tribunal that where an applicant has applied for an OBC Caste certificate before the closing date of application, though the issuance has been subsequent, depriving such a person of employment on such a ground alone would not be a valid ground, as the right to be considered for fair and equitable basis for appointment constitutes a fundamental right. Further the obiter dicta by the Hon'ble High court of Delhi regarding the qualification for being treated under a reserved category of OBC not being equated with the acquisition of educational qualification and the same being primarily determined by the notification by the appropriate authority and determination under the non-creamy layer status would also be the relevant factors.

In this background, the only factor that needs further

clarification is whether or not the applicant had in fact submitted this OBC Caste certificate to the DSSSB after issuance of the same by the competent authority of GNCTD on 08.06.2007. As the result in this case had been declared on 18.01 .2010, there was a long intervening gap of more than 2 and 1/2 years between. A verification on this aspect would also be consistent with the decision taken in CWP 548/2008 and the WP (C) 18111/2006 where in submission of the OBC Caste certificate s before the completion of the provisional selection process had been considered as a relevant factor.

10. In view of the foregoing, with a view to meet the ends of justice and equity, this OA is disposed with a direction to the respondents to give an opportunity to the application to prove her case as to whether or not, she had taken reasonable steps for submission of the OBC Caste certificate soon after its issuance by the competent authority of GNCT. In the event of the same being found factually correct, the respondents would consider her case of appointment as an OBC candidate on the basis of this advertisement. We further direct to pass a reasoned and speaking order, keeping our observations in the body of the order in view, within a period of three months from the date of receipt of a copy of this order. No costs.”

(Emphasis supplied)

14. This order of the Tribunal passed in O.A. No.1930/2010 attained finality. The respondents accepted the enunciation of the legal principle applicable to the facts of the present case. Consequently, irrespective of the view that could be taken by the Tribunal on further scrutiny of the several decisions rendered by this Court, *inter partes* the view taken by the Tribunal in its order passed in O.A. No.1930/2010 could not have been reviewed, particularly in a subsequent *inter partes* proceedings. The only aspect that the Tribunal required the respondent to examine was as to whether, or not, the petitioner had taken reasonable steps for submission of the OBC Caste

certificate soon after its issuance by the competent authority of the GNCTD. It was directed that in case the same was found to be factually correct, the respondent would consider her case for appointment as an OBC candidate on the basis of the advertisement in question, namely, Advertisement No.17/2007. Therefore, in our view, the extremely detailed and academic exercise undertaken by the Tribunal in the petitioner's case was not even called for, and the Tribunal should have focused its consideration on whether the petitioner had indeed taken reasonable steps for submission of the OBC caste certificate soon after its issuance to the respondent. The validity of the speaking order passed by the respondent was all that the Tribunal was called upon to consider.

15. The decisions relied upon by the Tribunal in the case of ***Ram Kumar Gijorya*** (supra) was, in our view, not applicable in the facts of the present case. This is for the reason that when the petitioner made her application in response to the advertisement under post code 17/2007, she admittedly, did not furnish the OBC Caste certificate. She only furnished a copy of her application/ acknowledgment to show that she had applied for issuance of the OBC Caste certificate about ten days prior to her making the application. The respondent – despite the OBC Caste certificate itself not being disclosed, treated the petitioner as an OBC candidate. It is no answer, in our view, to say that the respondent does not undertake verification of the status of a candidate when the application is made. It is one thing to say that where such a certificate is enclosed by a candidate who claims reservation as an OBC candidate, the candidate is provisionally treated as an OBC

category candidate and its verification may be taken up later. However, it is quite a different thing to say that the application would not be verified-even to the extent to determine whether, or not, an OBC caste certificate has been enclosed with the application. The respondent, itself, having entertained the petitioner's application along with – not the OBC caste certificate, but only a copy of her application/acknowledgment for issuance of OBC Caste certificate, there was no question of equating the requirement of furnishing OBC Caste certificate with the requirement of meeting the eligibility criteria qua qualifications. Nothing prevented the respondent from rejecting the petitioner's application as an OBC candidate in respect of the advertisement under post code 17/2007 at the threshold, and by treating her as a general category/UR category candidate. However, that was not the course adopted by the respondent. The direction issued by the Tribunal in the earlier round-while disposing of O.A. No. 1930/2010 has to be appreciated in this light.

16. We may also observe that though, in *Ram Kumar Gijorya* (supra), the Division Bench sought to make a distinction between a case where the candidate has made an application for issuance of the caste certificate much before the date of close of the application, and those cases where the same was not made much in advance, no cut off period was specified as, obviously, it is not possible to lay down a general norm in this regard. The principle that – no relaxation could be granted qua the requirement of submission of the caste certificate along with the application, could not have been invoked in the facts of the present case, since, the said principle had neither been applied by the respondent – who dealt with the petitioner's

application as an OBC candidate, nor by the Tribunal – which itself, while disposing of O.A. No.1930/2007 had not applied the said principle. Had that been the position, the said O.A. would have been simply dismissed on that short ground. As aforesaid, that decision of the Tribunal attained finality *inter partes* and could not have been overturned by the Tribunal in the second round by any amount of reasoning.

17. Reliance placed by the petitioner on ***Hope Plantations Ltd. v. Taluk Land Board Peermade & Anr.***, (1999) 5 SCC 590 has, in our view, not been given due consideration by the Tribunal. In this decision, the Supreme Court, *inter alia*, observed as follows:

*“It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrably wrong. **When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation.** These two aspects are “cause of action estoppel” and “issue estoppel”. These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. **The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in***

which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.

As to what is issue estoppel was considered by this Court in Gopal Prasad Sinha v. State of Bihar [(1970) 2 SCC 905 : 1970 SCC (Cri) 584] . This case arose out of criminal prosecution; the accused was tried on a charge under Section 409 IPC for having committed criminal breach of trust for Rs 27,800 during the period between 31-1-1960 to 30-11-1960, when he was acting as cashier in the Public Works Department of the State. The accused contended that he had been put up on a trial in a previous case under Section 409 IPC for having committed criminal breach of trust with respect to certain amounts during the period 8-12-1960 to 17-8-1961 and in that case, the High Court had acquitted him holding that he was not in charge of the cash. The point of issue estoppel was, thus, raised by the accused. The trial court held that the aforesaid finding of the High Court could not operate as res judicata. The High Court affirmed the decision of the trial court. In this Court, it was contended that substantially it was the same issue that was tried during the earlier trial and if the accused was not the cashier from 8-12-1960 to 11-8-1961, he could not be held to be the cashier from 31-1-1960 to 11-11-1960. The accused contended that the defence in both the cases was identical and the evidence also almost the same. This Court observed as under: (SCC p. 907, para 7)

“7. In our opinion, the High Court came to the correct conclusion. The basic principle underlying the rule of issue estoppel is that the same issue of fact and law must have been determined in the previous litigation. The question then arises: Was it the same issue of fact which was determined in the earlier case? A person may be acting as a cashier at one period and may not be acting as a

cashier at another period, especially as in this case it was found that the appellant had never been appointed as a cashier. He was a temporary senior accounts clerk who was alleged to be doing the work of a cashier. If there is any likelihood of facts or conditions changing during the two periods which are under consideration then it is difficult to say that the prosecution would be bound by the finding in a previous trial on a similar issue of fact. It seems to us that the later finding must necessarily be in contradiction of the previous determination. There can be no such contradiction if the periods are different and the facts relating to the carrying on of the duties of a cashier are different.”

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Law on res judicata and estoppel is well understood in India and there are ample authoritative pronouncements by various courts on these subjects. As noted above, the plea of res judicata, though technical, is based on public policy in order to put an end to litigation. It is, however, different if an issue which had been decided in an earlier litigation again arises for determination between the same parties in a suit based on a fresh cause of action or where there is continuous cause of action. The parties then may not be bound by the determination made earlier if in the meanwhile, law has changed or has been interpreted differently by a higher forum. But that situation does not exist here. Principles of constructive res judicata apply with full force. It is the subsequent stage of the same proceedings.”

(Emphasis supplied)

18. The Tribunal takes note of the three judgments relied upon by the petitioner in the case of **Anil Kumar & Ors. V. Union of India**, W.P. (C)

No.405/2013; **Rakesh Kumar v. Union of India**, W.P. (C) No.5416/2012; and **Manjusha Banchhore v. Staff Selection Commission & Anr.**, W.P. (C) No.7304/2010 – which were subsequent to the decision of the Division Bench in the case of **Ram Kumar Gijorya** (supra) , and yet has not followed the same. The decision in **Anil Kumar** (supra) has been analysed by the Tribunal in the following manner:

“22. The case of *Anil Kumar* (supra) relates to the SSC examination conducted for recruitment to the post of Assistant Sub Inspector (Executive) with the Central Industrial Security Force, for which the advertisement was issued on 29.05.2010, and the last date for applying for the same was 28.06.2010. Two cases were decided by the Hon’ble Delhi High Court through the same common judgment. In the second case WP(C) No.5416/2012, the applicant *Rakesh Kumar* had in his possession an old OBC Caste certificate dated 05.07.2005, and in view of the stipulation that only a certificate issued within three years from the date of the advertisement would be valid, he had even applied for a fresh certificate, which was issued to him on 25.01.2011, i.e. before the date of interview. The applicant in the first case before the Hon’ble Delhi High Court in *Anil Kumar* (supra) had in his possession an OBC Caste certificate issued to him on 24.09.2007, and he had also applied for securing a newer and fresher certificate, which he was able to secure on 02.12.2011, and the written examination had taken place on 05.06.2011 and the medical examination was dated 13.09.2011.

23. It was argued before the Hon’ble Delhi High Court that the status of a candidate belonging to a reserved category, either SC, ST, or OBC, is similar to the factum of his birth, and his date of birth, and in that sense, that is unalterable, and that a certificate issued in respect of that Reserved Caste status is merely an evidence of such status, which always existed since birth. The Hon’ble High Court accepted this line of argument, and then distinguished the cases of the caste certificates from

the case of an educational qualification, where the production of a document evidences whether the candidate has acquired or is yet to acquire the necessary requisite educational qualification. The Hon'ble High Court, therefore, went on to hold that even the production of a defective or old caste certificate, or one which does not conform to a preordained format, as prescribed, is at best an irregularity, which can be set right, or cured, by the candidate, and cannot be a ground for his disqualification, while non-possession of the educational qualification certificate amounts to a disqualification, which is incurable. The Hon'ble High Court further held that the issuance of a caste certificate at a later date does not mean that the candidate acquires the status as belonging to the OBC/SC/ST on a later date.

24. Later on, after examining the law as laid down by the Hon'ble Delhi High Court itself in Hari Singh Vs. Staff Selection Commission & Another: 170 (2010) DLT 262 (DB), and two earlier rulings in D.S.S.B. and Another Vs. Ms. Anu Devi (WP (C) No.13870/2009) and in GNCTD and Anr. Vs. Poonam Chauhan, 152 (2008) DLT 224 (DB), the Hon ble High Court also noticed the judgment of the Hon'ble Apex Court in Mrs. Valsamma Paul vs. Cochin University and Others AIR 1996 SC 1011. It was also mentioned by the Hon'ble Delhi High Court in para 10 of its judgment that in Delhi Subordinate Services Selection Board & Another vs. Ram Kumar Gijroya & Ors.(supra), the decision in Hari Singh Vs. Staff Selection Commission (supra) was not noticed at all, and nor was the judgment of the Hon ble Apex Court in Mrs. Valsamma Paul (supra) noticed. The Hon ble High Court was further persuaded by an office order/ clarification issued by the S.S.C. on 01.06.2011, through which, after receipt of the clarification from the DoP&T in this regard on 06.05.2011, the final prescription was adopted. Therefore, the Hon'ble Delhi High Court had ultimately directed the respondents to also process accordingly the candidature of the two Writ Petitioners before it, and to take into consideration the later or subsequent OBC Caste certificate s produced by them, and to intimate each of them directly about the outcome of their candidatures

concerned. The first sentence of the relevant para 10 of this judgment may be reproduced here as below:-

“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.....”

19. The Tribunal also noticed that in **Manjusha Banchhore** (supra), the Division Bench – while commenting on **Ram Kumar Gijorya** (supra) and **Krishan Kumar** (supra), observed as follows:

“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 Caste certificate to claim reservation could not be equated with acquisition of Educational Qualifications.”

20. Despite the aforesaid being the position, the Tribunal has preferred to

apply the decision in ***Ram Kumar Gijorya*** (supra) in the facts of the present case. In our view, this approach of the Tribunal is not legally sustainable for the reason that once later Division Bench judgments of this Court in ***Anil Kumar*** (supra) and ***Manjusha Banchhore*** (supra) have considered and commented upon the earlier decision of the Division Bench in ***Ram Kumar Gijorya*** (supra), the Tribunal should have followed the later judgments aforesaid, and not ***Ram Kumar Gijorya*** (supra). In this regard, reference may be made to ***Jabalpur Bus Operators Association & Ors. Vs. State of M.P.*** AIR 2003 MP 81.

21. ***Anil Kumar*** (supra) was sought to be discarded by observing that the judgment in ***Hari Singh*** (supra) had been considered in ***Ram Kumar Gijorya*** (supra). A perusal of the judgment of ***Ram Kumar Gijorya*** (supra), however, shows that para 17 of the said decision merely records that ***Hari Singh*** (supra) had been relied upon by the respondent candidate in that case. A perusal of that decision, however, does not show that the said decision was specifically dealt with by the Division Bench in any part of its reasoning. Therefore, to observe that ***Hari Singh*** (supra) had been noticed and discussed in para 17 of ***Ram Kumar Gijorya*** (supra) is only partly accurate, as the said decision, though noticed, had not been discussed. It is not the respondent's case that the petitioner, though an OBC, was covered by creamy layer on the cut off date, i.e. the date when the applications were invited in respect of the advertisement post code 17/2007 – that was not the ground for non consideration of the petitioner as an OBC candidate post the declaration of the results.

22. Pertinently, even before the last date for making application in respect

of the advertisement under post code 17/2007 arrived, there were already several pronouncements rendered by this Court and the Supreme Court, wherein the view had been taken that it was not essential that-to claim reservation as an OBC candidate, the candidate must submit the OBC Caste certificate along with the application itself, and that the non submission of the certificate only tantamounted to a curable irregularity. Therefore, the argument that the other OBC candidates-who may not have been possessed of a valid OBC Caste certificate at the relevant time, were put to a disadvantage, as they may not have submitted their application on account of their reeling under the belief that they were not eligible, cannot be accepted. Those who did not apply can have no grievance of their non consideration. It is only those who apply, and are eventually not appointed – though initially entertained as belonging to the OBC category, who would be aggrieved.

23. We are also of the view that there was no basis to reject the petitioner's claim that she had sought to tender the OBC Caste certificate obtained by her in June 2007. A candidate, who has consciously applied as an OBC category candidate and has also appended a copy of her application/acknowledgment in respect of her application for issuance of such a certificate, would, naturally, in the ordinary course make an effort to tender the same to the respondent as soon as the same is issued. There is nothing to suggest that the respondent/DSSSB had a system in place for accepting such like certificates after the date of close of the applications but before the examinations are held, or the results are declared. Moreover, admittedly, the petitioner submitted the said certificate while applying in

response to the advertisement under post code 163/2007. Had the two examination process not been clubbed, it would have been a different situation. However, the respondents clubbed the two processes and held a common examination. Merely because, subsequently, the advertisement under post code 163/2007 was scrapped, it does not follow that the factum of the petitioner having submitted the OBC Caste certificate could also be scrapped. Had the respondent not scrapped the advertisement under post code 163/2007, it is quite likely that the petitioner would not have faced the situation that she finds herself in, in the first place.

24. We may also refer to the pleadings of the parties in relation to the petitioner's claim that she had made an effort to submit the OBC Caste certificate soon after its issuance to the respondent, but that the respondent had not accepted the same – stating that the same shall be accepted subsequently. In para 4.11 of the O.A., the petitioner made reference to her communication dated 27.09.2010 wherein she had, inter alia, stated, '*the applicant vide this letter submitted to them that after the receipt of OBC Caste certificate issued in June, 2007, the applicant had visited this office of DSSSB along with her cousin in the month of June, 2007, itself for submitting a copy of her OBC Caste certificate. Upon her visit, the person sitting at the reception, after reading the covering letter refused to accept the document and stated that DSSSB never accept the documents in the manner and on the contrary letters are issued by DSSSB at appropriate stage of selection for completion of documents and the applicant will also be called for completion of documents by the Board itself.*' In her grounds, set out in the original application, the petitioner stated in grounds (E), (I) and (J)

as follows:

“E. Because the applicant reiterates that she had visited the office of DSSSB along with her cousin in the month of June, 2007 for submitting a copy of OBC Caste certificate where the person sitting at the reception after reading the contents of covering letter refused to accept the document saying that documents are ever accepted by DSSSB in this manner and contrarily, letters are issued by DSSSB at appropriate stages of selection for completion of documents and she will also be called for completion of documents by the DSSSB itself.

I. Because a visit receptions of DSSSB does not require any gate pass. No gate pass is issued till the reception desk. Thus, the applicant had no documentary evidence to be submitted in this context.

J. Because the applicant did not mention these facts in the previous OA as there were not the issues to be raised for adjudication before the Hon’ble Tribunal. Only such pleadings were made which were essentially required to determine the legal issue. Therefore, the averments relating to facts are wrongly taken to be an afterthought.”

25. In response, the respondents, in their counter affidavit, stated in para 4.11, as follows:

“4.11 That the contents of para 4.11 are matter of record. Further, the claim of the applicant that she has visited the Board for submission of OBC Caste certificate is afterthought and without any substance. As regards to her application form under post code 163/2007, the result of the said post code was not processed on the directions of the user department. Thus, the question of determining of her eligibility for the post of Librarian under post code 017/07 on behalf of her eligibility for the post of Librarian under post code 017/07 on behalf of her application under post code 163/2007 does not arise.”

26. Pertinently, averments made in the grounds were not responded to at all, and it was only stated, '*that all the grounds are made out need no reply*'. The respondents claimed that the averment of the petitioner that she had made an endeavour to submit the OBC Caste certificate soon after its issuance in 2007, was an afterthought. This cannot be read as a denial of the fact pleaded by the petitioner that she had, indeed, made such an endeavour. It is not the respondent's case that the respondent accepts such caste certificates after the closing date of submission of applications, or that it maintains any record of the same. It was also not the respondent's case that in respect of other candidates, it had accepted such like castes certificates after the closing date. There is no basis for the respondents' claim that the averment of the petitioner in this respect was an afterthought. Pertinently, there is no denial of the specific averment of the petitioner that a visit to the reception of DSSSB does not require any gate pass, and no gate pass was issued. The respondent also does not dispute the explanation furnished by the petitioner for not making a specific plea on the aforesaid aspect in her earlier original application. In the light of the aforesaid discussion, there was no basis to return the finding that the petitioner had not, indeed, made an effort to submit her OBC Caste certificate soon after its issuance in 2007.

27. We may also observe that the results of the examination in question were declared much later i.e. on 18.01.2010. In these circumstances, it is clear that the OBC Caste certificate had been submitted by the petitioner, in any event, much prior to the declaration of the result.

28. We have already noticed that in the present case, the petitioner had obtained 94 marks, which were far in excess of the last selected OBC

category candidate of 70 marks and as opposed to 49 vacancies (reduced to 23) reserved for the OBC category, only 11 had been filled. As observed by this Court in *Anil Kumar* (supra), in such like matters, a liberal view has to be adopted. Therefore, to deny the petitioner the right to be considered as an OBC candidate in respect of her application made against advertisement under post code 17/2007 was completely unjustified in the present case.

29. For the aforesaid reasons, the impugned order cannot be sustained. It is accordingly set aside. We allow this petition and direct the respondents to treat the petitioner as an OBC candidate provisionally, subject to verification of her creamy layer status on the last date of submission of application in response to the advertisement under post code 17/2007, and if after verification she is found to be belonging to the OBC category, to appoint her and grant her merit position/seniority deserving of her on the basis that she had secured 94 marks. At the same time, the petitioner shall be only entitled to notional fixation of pay, and all consequential benefits including seniority etc. from the notional date of appointment.

30. The writ petition stands disposed of.

VIPIN SANGHI, J

S. RAVINDRA BHAT, J

AUGUST 25, 2014

sl/sr