

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

+ **W.P.(C) 5643/2013**

BAL KISHAN YADAV Petitioner
Through **Mr. Sanjay Kumar, Advocate**

versus

UNION OF INDIA AND ANR Respondents
Through **Mr. Vijay Kinger, Advocate**

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

20.11.2014

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KAILASH GAMBHIR, J. (ORAL)

1. The petitioner has filed the present Writ Petition under Article 226 of the Constitution of India to challenge the impugned order No.7/2/2010-ND-2 dated 29.05.2012 whereby his representation seeking appointment to the post of Sub-Inspector in Central Police Organisation 2010 (*hereinafter referred to as 'CPO 2010'*) in Other Backward Classes (*in short 'OBC'*) category has been rejected. The petitioner also seeks directions to the respondents to offer appointment to the petitioner in Special Examination for recruitment of Sub-Inspectors in CPOs, 2010 under the OBC category on the basis of his merit alongwith all

consequential benefits of seniority and pay at par with his batchmates.

2. In brief, the facts of the case are that the petitioner belongs to the OBC category, he had applied to the post of Sub-Inspector in CPOs 2010, pursuant to the notice advertised by the Staff Selection Commission (*in short* 'SSC') in the Employment News/ Rojgar Samachar dated 09.10.2010 for recruitment of Sub-Inspectors in CPOs. Being an OBC category candidate, the petitioner was required to submit an OBC Non-Creamy Layer Certificate within three years of the specified closing date i.e., 02.11.2010. The petitioner took the written examination as an OBC candidate on 12.12.2010, he was declared successful in it and was issued a Call Letter dated 06.05.2011 for an interview which was held on 14.06.2011. At the time of his interview, the petitioner was required to bring all the documents including the caste certificate. It was made clear to the petitioner in the Call Letter for the interview that in case a candidate is found to be not fulfilling the educational qualifications or the age limit or any other eligibility criteria, then he would not be allowed to sit for the interview.

3. As per the petitioner, he had appeared for the interview on 14.06.2011 as an OBC candidate and had produced all the original

documents including the caste certificate and only after scrutiny of the documents produced by him, was he allowed to participate in the interview.

4. The petitioner contends that on 12.10.2011 the respondents declared the final result of the Special Examination for Sub- Inspectors in CPOs 2010, but his name was not found in it although he had secured 206 marks after combining the marks scored by him in the written examination and in the interview, which is much above the marks of the last selected male candidate in the OBC category in BSF, CRPF and in SSB. It is also the case of the petitioner that he had submitted his latest OBC certificate dated 31.10.2011 as was issued in his favour by the Tehsildar, Bhiwani and this latest OBC certificate manifested that the petitioner continued to be under the OBC category and he does not belong to the creamy layer.

5. The petitioner's grievance is that his case was wrongly considered by the respondents under the Unreserved Category (*in short 'UR category'*) to deny him an appointment to the post of Sub- Inspector as he did not meet the cut off fixed for UR category in written examination Paper- I and II, which was 166.25 marks, while the aggregate marks

secured by the petitioner in both these papers was 152.

6. Mr. Sanjay Kumar, the learned counsel for the petitioner emphatically urged that the respondents cannot dispute the fact that the petitioner is not an OBC candidate as he had duly submitted his OBC certificate alongwith his application form and had produced the original of the same at the time of his interview. The learned counsel also submits that although the said OBC certificate, which was submitted by the petitioner was of the year 2003 and not a latest certificate as per the requirement of the respondents, it was the duty of the respondents to have pointed out the said deficiency on the part of the petitioner so as to afford him at least one opportunity to produce his most recent OBC certificate. The learned counsel also submits that in the OBC category the total marks secured by the petitioner in both the examinations, i.e. Paper-I and II are much higher than the cut off marks fixed under the said category. The learned counsel also submits that a Call Letter for the interview was issued to the petitioner in the OBC category, and at the time of his interview, the petitioner was neither informed that he was being considered in the UR category nor was he apprised of any deficiency on his part in not furnishing his latest OBC certificate. Based on these

submissions, the learned counsel for the petitioner submits that the petitioner, who had secured a total of 206 marks in his written exam and interview, should be appointed either in BSF, CRPF or in SSB, as the last selected male candidate in the OBC category had secured marks lower than that of the petitioner. As per the petitioner, the cut off marks secured by the last selected male candidate in the OBC category was 193.75 in BSF, 195.25 in CRPF and 197.75 in SSB. In support of his arguments, the learned counsel relied on a judgement of a Division Bench of this Court in the case of *Hari Singh v. Staff Selection Commission & Anr.*, **2010 V AD (DELHI) 599**.

7. In reply, Mr. Vijay Kinger, the learned counsel for the respondents submits that the petitioner failed to file his latest OBC certificate as per the requirement specified in the advertisement, whereby it was clearly stipulated that the applicants should submit their OBC Non-Creamy Layer Certificate, issued in their favour within a period of three years prior to the date of closing. The learned counsel also submits that the OBC certificate dated 31.10.2011 filed by the petitioner was of no consequence as the same was filed much after the deadline fixed in the advertisement and therefore, the petitioner was rightly treated as UR

category candidate, in which he had secured much lower marks than the last selected candidate in UR male category, i.e. in the written examination the petitioner had secured 152 marks while the last selected candidate in the UR category had secured 166.25 marks. The learned counsel also submits that the notice inviting applications from the candidates also clearly stipulated that the candidates applying for the examination should ensure that they fulfil all the eligibility conditions for admission to the examination and it was further made explicitly clear that the admission to all stages of the examination will be purely provisional, subject to their satisfying the prescribed eligibility conditions. The notice also stipulated that if on verification, at any time before or after the written examination and interview, it is found that they do not fulfil one of the eligibility conditions; their candidature for the examination will be cancelled by the Commission. The learned counsel also submits that the notice also contained an important instruction that the candidates should be in possession of the certificates in the format prescribed by the Government of India in support of their claim at the time of application, though the copies of the certificates will be sought only after the written examination. Another important caveat in the notice was that the

applicant should have an OBC Non-Creamy Layer Certificate issued within three years of the date of closing. The learned counsel for the respondents submits that the petitioner had failed to produce a valid OBC certificate issued in his favour of the specified period within the stipulated time therefore, the respondents were left with no option but to treat the petitioner in the UR category and unfortunately his marks in the written examination Paper-I and II were much lower than the marks secured by the last selected candidate in the said category.

8. We have heard the learned counsel for the parties at a considerable length and given our thoughtful consideration to the arguments advanced by them.

9. This petitioner has not been considered for appointment in the OBC category as he had failed to furnish his latest OBC Non-Creamy Layer certificate as per the requirement laid down in the advertisement instead the petitioner filed an OBC Non-Creamy Layer certificate which was issued in his favour in the year 2003. It is not disputed between the parties that if the candidature of the petitioner is considered under the category of OBC then he had secured higher marks than the last selected candidate in the OBC male category at least in BSF, CRPF and in SSB.

The reason for denial of appointment to the petitioner was that he had secured lower marks in his written examination Paper-I and II, i.e. 152 marks while the cut off fixed for the UR category in written examination Paper- I and II was 166.25 marks, However, we note that the petitioner was called for an interview on 14.06.2011 at which time he had produced all his original certificates including his OBC certificate. This fact has not been denied by the respondents in their counter affidavit. If there was any deficiency or shortcomings in his OBC certificate, then the best course for the respondents was to inform the petitioner about it i.e. the certificate was not issued within a period of three years from the closing date. The petitioner was interviewed as an OBC candidate as per the Call Letter received by him. Even after his interview, the said deficiency was not pointed out by the respondents. A little effort on the part of the respondents could have resolved the issue gracefully.

10. It has been poignantly observed: "*An unemployed existence is a worse negation of life than death itself*"- Jose Ortega Y Gasset. Our country is progressing by leaps and bounds, but unemployment continues to be a daunting problem. Fear of unemployment, far from being abolished, is felt as strongly as ever. We must be conscious of the fact

that in our country to get an employment in any Government or Public Body is like a dream come true and therefore, recruiting bodies like the SSC owe a public duty to see to it that appointment to the meritorious candidates are not denied on flimsy grounds or by adopting any hyper technical approach. We are not suggesting here that these recruiting bodies should not adhere to the instructions or guidelines incorporated in the recruitment rules or in the advertisement but certainly where there is room to take a liberal approach, like in the present case, where the respondents knew fully well that the petitioner belongs to an OBC category but did not produce his latest Non-Creamy Layer OBC Certificate, he could have easily been given a reminder for producing the same. The respondents, however, did not choose this path and adopted the easy route to deny appointment to the petitioner merely on the ground that the petitioner failed to file a Non-Creamy Layer OBC certificate issued in his favour within a period of three years from the closing date.

11. The Division Bench of this Court in a case being ***W.P. (C.) No. 13870/2009, titled as Delhi Subordinate Service Selection Board and Anr. v. Ms. Anu Devi and Anr. , decided on 17.02.2010*** observed as follows:

“13 Similarly, in *Shyam Sunder and Ors (Supra)* it

was held that if it is found that there is a doubt in regard to the meaning of a provision or words used in the provisions of an enactment, it is permissible for the court to apply the rule of benevolent construction to advance the object of the Act. Ordinarily, the rule of benevolent construction has been applied while construing welfare legislations or provisions relating to the relationship between weaker and stronger contracting parties. While interpreting "accidental falling off a passenger from a train carrying passengers" it was held by the Supreme Court in Union of India Vs Prabhakaran Vijaya Kumar (supra) that adopting a restrictive meaning will deprive a large number of railway passengers from getting compensation in railway accidents. In the circumstances it was held that the expression "accidental falling of the passengers from the train carrying passengers" would include accidents when a bone fide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. It was held that a purposive and not literal interpretation should be given to the expression.

14. In Govt. Of NCT of Delhi and anr. Vs 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 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.

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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 Rekhwati (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.

20. As already considered hereinbefore, the petitioners themselves did not treat the respondents in different petitions as ineligible for selection under the OBC category as none of the notices given to the candidates stipulated that they cannot be selected under the OBC category as they had failed to furnish the requisite certificate before the closing date for submission of the application forms. Rather the notices were given by the petitioners extending the date for submission of the OBC certificate and all the candidates in different writ petitions submitted the OBC certificate before the last date notified in the notices. In the circumstances it will not be appropriate and in the interest of justice to infer that the order of the Tribunal holding that the respondents/candidates in different writ petitions are entitled for selection under the reserved category in accordance with their marks, are bad in law and are liable to be quashed.”

12. Undoubtedly, the candidates seeking appointment pursuant to any

advertisement issued in the newspapers are required to scrupulously and carefully go through the instructions and follow the same, but any minor or insignificant lapse which could be rectified or remedied before the date of final selection, in such like cases, should not prove fatal to the extent of denying appointment to the meritorious candidates who otherwise have qualified all the requisite tests, including interview, etc. The petitioner here had secured 206 marks in his written examination and interview and therefore, he is more meritorious than the last selected in OBC male category in BSF, CRPF and in SSB. It would also be in the interest of the CPO's to recruit a more meritorious candidate.

13. During the course of the hearing the present matter, the learned counsel for the respondents apprised the Court that now no vacancy exists for the post of Sub-Inspector in any of these CPOs concerning the said examination of 2010 and therefore the petitioner cannot be given an appointment to the post of Sub-Inspector in OBC male category in any of the CPOs so far the examination of the 2010 is concerned. The learned counsel has also informed that the recruitment process to fill the post of Sub-Inspector in CPOs for the examination held in the year 2014 is not yet complete.

14. In the above circumstances, while allowing the present writ petition, we direct the respondents to appoint the petitioner against the vacancy of Sub-Inspector in OBC male category against an existing vacancy of the year 2014. We also direct that the petitioner shall be given notional seniority alongwith his batchmates and his pay shall also be fixed notionally. However, the petitioner shall be entitled to pay and allowance only from the date he actually joins the CPOs, as per rules.

15. With above direction, the present writ petition is disposed off.

KAILASH GAMBHIR, J.

NAJMI WAZIRI, J.

NOVEMBER 20, 2014

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