

Court No. - 20

Case :- WRIT - A No. - 7483 of 2023

Petitioner :- Prashant Kumar Pandey

Respondent :- State Of U.P. Thru. Prin. Secy. Minor Irrigation And 2 Others

Counsel for Petitioner :- Anand Dubey, Anupam Shukla

Counsel for Respondent :- C.S.C., Gaurav Mehrotra, Utsav Mishra

Hon'ble Manish Mathur, J.

1. Heard Mr. Anand Dubey, learned counsel for petitioner, learned State Counsel for opposite parties 1 and 3 and Mr. Utsav Mishra, learned counsel for opposite party no.2. In view of order being passed, notices to opposite parties 4 to 52 stand dispensed with.

2. Petition has been filed seeking quashing of final select list dated 22.08.2023 pertaining to recruitment on the post of Assistant Boring Technician so far as it relates to Economically Weaker Section(EWS) category. Further prayer for considering petitioner's appointment on aforesaid post under the said quota has also been sought.

3. It has been submitted that an advertisement dated 14.08.2019 was issued for selection of 486 posts of Assistant Boring Technician in the Minor Irrigation Department whereunder 48 posts were reserved for the EWS. The last date of submission of forms was 04.09.2019. Petitioner being eligible applied for same and was declared successful in the written examination whereafter he was required to present himself for document verification on 30.05.2023. It is submitted that in the advertisement, it had been stipulated that a certificate issued by competent authority indicating an applicant to be under EWS was required to be furnished for Financial Year 2018-19 but petitioner although had been issued such a

certificate but having lost the same, indicated the said fact on the date of document verification i.e. 30.05.2023 due to which he was granted provisional selection. It is submitted that subsequent thereto, petitioner applied for a duplicate copy of the said certificate which was issued to him after declaration of select list on 22.08.2023 and submitted the same on 13.09.2023. It has been submitted that perusal of duplicate certificate will make it evident that the said certificate is dated 25.07.2019 and was valid for year 2019-20 and therefore is in conformity with stipulations required under the advertisement.

4. Learned counsel for petitioner has also drawn attention to the fact that in the select list, thirteen persons have been indicated to have been granted provisional selection under the EWS category which clearly indicates that the said persons also did not have the relevant certification and were thereafter granted time to produce the same as in the case of petitioner. It is also submitted that document verification of said thirteen persons is due tomorrow, i.e. 29.11.2023. The said date being after the date of final select list dated 22.08.2023 is indicative of fact that no finality as such was attached to the inclusion of these thirteen persons with regard to selection being made. It is submitted that since petitioner has already submitted a certificate which is in conformity with conditions of the advertisement prior to next date of verification of documents, he has a right to be considered for the same and his exclusion in fact amounts to discrimination on part of opposite parties. Learned counsel has also submitted that one of the provisionally selected persons having Roll No.00012986 has joined another department as per best knowledge of petitioner and therefore petitioner can very well be adjusted in place of said person.

5. Mr. Utsav Misra, learned counsel for opposite party no.2 has

refuted submissions advanced by learned counsel for petitioner with the submission that as per the terms and conditions indicated in the advertisement dated 14.08.2019, there is a clear stipulation that E.W.S. Certificate was required as having been issued prior to the last date of submission of application and was to be for Financial Year 2019-20 based on the income of Financial Year 2018-19. It is submitted that said stipulation was clearly indicated in paragraph-3 of advertisement which also adverted to Government Order dated 18.02.2019 to indicate that conditions of aforesaid Government Order would be applicable upon the present selection. He has also adverted to paragraph-6 of the advertisement to submit that certificates with regard to reservation being sought should have been issued prior to last date of submission of Application Forms. Learned counsel has thereafter adverted to paragraph 4 of Government Order dated 18.02.2019 to submit that EWS certificate was required to be issued in terms of income of family being below Rupees eight lakh per annum pertaining to one year prior to the Financial Year in which application is being made.

6. It has been submitted that petitioner's application form is a clear indicative of fact that although petitioner was seeking reservation under the EWS quota but has not indicated any certificate being annexed to application. However, it has been submitted that petitioner even otherwise has been considered under the EWS quota. It has further been submitted that keeping a humanitarian approach, petitioner had been selected provisionally on 30.05.2023 in order to permit him to submit the certificate, which however having not been submitted till 22.08.2023, being the date of issuance of select list, no benefit can be granted to petitioner.

7. On the aspect of discrimination, learned counsel for opposite party no.2 has produced original records in pursuance of

directions issued earlier to submit that the other thirteen candidates under the EWS quota were granted provisional selection only on account of fact that their EWS Certificates were issued prior to last date of submission of Application Form but there were certain inconsistencies therein whereas in the case of petitioner, no EWS certificate as required in terms of advertisement was ever provided at all.

8. Learned counsel for petitioner has placed reliance on a judgment rendered by Hon'ble the Supreme Court in **Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board and another** reported in (2016) 4 SCC 754 whereas learned counsel for opposite party no.2 has placed reliance on judgment of Hon'ble the Supreme Court in **Divya v. Union of India and others**, 2023 SCC OnLine SC 1305 and a Full Bench of this Court in **Gaurav Sharma v. State of U.P. and 3 others**, 2017 SCC OnLine ALL 1286.

9. Upon consideration of submissions advanced by learned counsel for the parties, it is admitted that an advertisement was issued on 14.08.2019 with 04.09.2019 being the last date for submission of Application for recruitment on post of Assistant Boring Technician. It is also submitted that 48 out of 486 posts were reserved under the EWS category. It is also admitted that vide Circular dated 16.05.2023, the date of document verification was indicated as 30.05.2023 whereafter final select list was notified on 22.08.2023. It is also admitted between the parties that neither as on 04.09.2019 nor on 30.05.2023 did the petitioner produce any certificate under the EWS Quota as per the conditions of advertisement. It is also admitted that vide Circular dated 16.05.2023, applicants were required to produce their original documents on 30.05.2023. On the said date, petitioner had appeared before the Selection panel and had specifically indicated the fact that his EWS certificate was

issued on 19.07.2022 but for the Financial Year 2022-23 with base year of 2022-23. He prayed for provisional selection for production of the said document. It was on the basis of petitioner's prayer that he was granted provisional selection vide noting dated 30.05.2023. Despite time having been granted, petitioner was unable to produce such a certificate till 22.08.2023 which was the date of notification regarding select list and subsequently did produce the aforesaid certificate on 13.09.2023.

10. It is also admitted between the parties that thirteen persons who had applied under the EWS quota were granted provisional selection subject to document verification, which admittedly is going to take place tomorrow i.e. 29.11.2023.

11. It is, however, a relevant factor as to whether the date indicated in the said advertisement dated 14.08.2019 as the last date of Application would be construed to be the last date of submission of documents for subsequent verification or not. A perusal of advertisement dated 14.08.2019, particularly paragraph-3 thereof indicates the conditions required pertaining to certificates to be submitted by applicants under the EWS quota. The said paragraph in turn places reliance on Government Order dated 18.02.2019 and the conditions indicated therein. Paragraph-6 of the advertisement pertains to reservation and states that document on which reliance has been placed by an applicant for seeking reservation should be one which has been issued prior to last date of submission of application forms and the original of which is to be produced as and when required by the Selection Commission.

12. Government Order dated 18.02.2019 in paragraph 4 elaborates the conditions required for consideration of such certificates to the effect that total annual income of applicant

should be less than eight lakh rupees from all modes of income and the certificate should pertain to one Financial Year prior to date of application.

13. A conjoint reading of the terms of advertisement with Government Order dated 18.02.2019 thus makes it evident that the EWS certificate on which petitioner places reliance should have been one issued prior to 04.09.2019(the last date of Application) and should have been for the Financial Year 2019-20 with the base year being 2018-19.

14. Admittedly, neither on 04.09.2019 nor on 30.05.2023 (document verification date) did the petitioner produce any such document. However, a document in conformity with the conditions of the advertisement read with the Government Order was actually produced on 13.09.2023. In such circumstances, the only question required to be adjudicated is whether petitioner has been deprived as a measure which can be termed discriminatory or not since admittedly he did not ascribe to the conditions either of the advertisement or the Government Order.

15. On the aspect of discrimination, it is admitted that thirteen persons who had applied under the EWS quota were granted provisional selection in view of certain discrepancies in the documents produced by them on 30.05.2023. Despite final select list having been issued on 22.08.2023, the said 13 persons have now been called for final document verification tomorrow i.e. on 29.11.2023.

16. Learned counsel for opposite party no.2 has produced the original documents pertaining to selection of aforesaid thirteen person who were granted provisional selection under the EWS quota. This Court has carefully gone through the aforesaid documents which reveal that as on 30.05.2023 all the said

thirteen persons had produced their certificate pertaining to EWS Quota which was issued prior to 04.09.2019(the last date of submission of Application). However, discrepancy noticed in almost all the certificates is that they pertained to Financial Year 2019-20 although they were required to be issued for the base year 2018-19. In such circumstances, it is evident that aforesaid thirteen persons did in fact produce a certificate which has been issued by competent authority prior to 04.09.2019 but were of a different base year but with Financial Year also being correctly indicated.

17. In the case of petitioner however, even as on 30.05.2023, the EWS Certificate produced by petitioner, by his own admission, was dated 19.07.2022 with the Financial and Base years being 2022-23. Aforesaid facts make it quite evident that petitioner's case stood on a different footing from aforesaid thirteen persons and therefore his exclusion from the provisional select list cannot be said to be discriminatory. It is also on record that petitioner has thereafter submitted the certificate as per conditions of the advertisement and the Government Order but only on 13.09.2023 which is much after issuance of select list on 22.08.2023.

18. So far as submission of learned counsel for petitioner is concerned that on the submission made by petitioner, he was provisionally allowed as a selectee on 30.05.2023 is concerned, it is a relevant fact that opposite parties adopting a humanitarian approach had provided provisional selection to petitioner on 30.05.2023 probably in order to enable petitioner to produce a certificate which would be in conformity with the conditions of advertisement read with the Government Order but despite passing of almost three months till notification of select list dated 22.08.2023, no such certificate was ever produced by petitioner for whatever reasons.

19. In the considered opinion of this Court, once time had been granted by opposite parties to petitioner for providing a certificate which was in conformity with the terms and conditions of the advertisement read with the Government Order, such a certificate should have been supplied within a reasonable time and the subsequent submission of such certificate almost twenty days after notification of final select list cannot and should not have been taken into account. Even otherwise, it is trite that there is no estoppel against law and therefore once a specific condition had been indicated in the advertisement and the Government Order, all the parties to the same were required to adhere to it.

20. On the aspect of non-submission of the relevant certificate within the cut off date mentioned in the advertisement, learned counsel for petitioner has placed reliance on judgment rendered by Hon'ble the Supreme Court in **Ram Kumar Gijroya**(supra) which in turn has placed reliance on decisions rendered in **Pushpa v. Government (NCT of Delhi)**, 2009 SCC OnLine Del 281 as well as in **Tej Pal Singh v. Government (NCT of Delhi)**, 1999 SCC OnLine Del 1092. A perusal of aforesaid judgment however makes it evident that it is inapplicable in the present facts and circumstances particularly since in the aforesaid case, Hon'ble the Supreme Court was dealing with a certificate pertaining to reservation under the Scheduled Caste category and has held that if a person is a scheduled caste, he is so by birth and not by acquisition of this category only on issuance of the certificate.

21. Aforesaid Judgment of **Ram Kumar Gijroya**(supra) has thereafter been held to be per incurium in the subsequent judgment of Hon'ble the Supreme Court in **Divya**(supra) on the ground that it is directly in conflict with judgment rendered by a Bench of three Hon'ble Judges of the Supreme Court in **Ashok**

Kumar Sharma v. Chander Sekhar, (1997) 4 SCC 18.

22. In view of distinction having been drawn herein above, it is evident that even otherwise the judgment of **Ram Kumar Gijroya**(supra) would not be applicable in the present case which pertains to issuance of certificate under EWS quota which is not a birth right of any person and in fact keeps changing with financial status of a family as per subsequent events.

23. In **Divya**(supra), the aspect of cut off date and its implications have been considered in detail in following manner:-

"50. It is also very well settled that if there are relevant rules which prescribe the date on which the eligibility should be possessed, those rules will prevail. In the absence of rules or any other date prescribed in the prospectus/advertisement for determining the eligibility, there is a judicial chorus holding that it would be the last date for submission of the application. (See Rekha Chaturvedi v. University of Rajasthan [[1993 Supp \(3\) SCC 168](#)]; Bhupinderpal Singh v. State of Punjab [[\(2000\) 5 SCC 262](#)]; Ashok Kumar Sonkar v. Union of India [[\(2007\) 4 SCC 54](#)]."

" 59. The judgment in Ram Kumar Gijroya case (supra) is also directly in conflict with the judgment of three Hon'ble Judges in Ashok Kumar Sharma v. Chander Shekhar (1997) 4 SCC 18 wherein in para 6, it was held as under:—

"... So far as the first issue referred to in our Order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr. T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date, cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis...."

24. The distinction between a technical irregularity in a certificate issued by the competent authority although for the correct Financial Year has also been drawn by Hon'ble the Supreme Court vis-a-vis a certificate which was not at all in conformity with the norms prescribed in the advertisement or Rules. Relevant portion of the judgment on the said aspect is as follows:-

"61. Be that as it may, we are bound by the judgment of the three-Judge Bench in Ashok Kumar Sharma (supra) and we follow the said judgment and reiterate the principle laid down thereon. It is also interesting to note that even in Deepak Yadav (supra), a judgment, strongly relied upon by the learned counsel for the petitioners, the principle in Ashok Kumar Sharma (supra) has been reiterated. However, because of what the Court called an abnormal and cataclysmal year, an exception was made due to the ongoing pandemic, lockdown and restrictions imposed thereof. In Alok Kumar Singh (supra), no rules like the ones present in this case are shown to have existed. In the present case, there are clear prescriptions as to eligibility, as has been discussed herein above."

"62. In Gaurav Singh's case (supra), this Court has held as under:—

"A technical irregularity in a certificate issued by the competent authority in respect of the correct financial year cannot be equated with an Income and Asset Certificate in respect of a different financial year when the Income and Assets for the particular financial year prior to the year of submission of the application, goes to the root of eligibility of a candidate to qualify in the EWS category.

The Respondent-Writ Petitioners were well aware that they had to furnish Income and Asset Certificates issued by the Competent Authority for the financial year prior to the year of application. If the applications were made pursuant to a notification published on 24th April 2019 with 20th May 2019 notified as the last date for submission of the applications, the financial year prior to the year of submission of application could not possibly be the financial year 2019-2020, to which the Certificates related. The observation in the impugned judgment and order of the High Court of the expediency of specifying the financial year in the notification for recruitment is in the nature of an advisory, which may be kept in mind when recruitment notifications are issued by the Appellant in future. The Respondent writ petitioner Nos. 2 and 4, in whose Income and Asset certificates were not in order, did not have any legal right to be considered EWS candidates.

The Respondent-Writ Petitioners were required to submit Certificates for the relevant financial year. The negligence of the Respondent-Writ Petitioners in not checking if the Certificate related to the correct financial year, cannot be lightly brushed aside as inadvertent lapses of the certifying authority. A candidate applying for a post pursuant to an advertisement, cannot afford to be negligent. Documents required to be submitted have to be carefully checked by the candidate concerned before submission. An appointing authority proceeds on the basis of what is stated in a certificate. When a certificate pertains to a different financial year, the same is liable to be outright rejected. No candidate can, in such case, claim any legal right to reconsideration of his/her candidature by submission of a fresh certificate and/or rectified certificate.

....

In the case of Respondent-Writ Petitioner No. 3, the Income and Asset certificate, which had initially been questioned as having been issued by an authority not competent, was later accepted as it was found that the authority issuing the certificate was in fact competent. The certificate of the Respondent-Writ Petitioner No. 1 was also accepted as there was no discrepancy in either the date of issuance or the year. It was just that the seal had been stamped without the full name of the officer concerned and that was accepted as an error not attributable to the candidate concerned."

(Emphasis is ours)

25. Upon applicability of aforesaid judgments in the present facts and circumstances of the case, it transpires that the cut off date as indicated in an advertisement which is in conformity with the relevant rules and Government Orders is sacrosanct and no deviation therefrom can be permitted. In the present case, in exceptional circumstances, a deviation was taken by opposite parties pertaining to provisionally allowing petitioner to produce his documents on 30.05.2023 but the petitioner has failed to take advantage of that deviation for at least three months. Submission of certificate subsequent to issuance of the select list therefore cannot be taken into consideration. The aspect of discrimination as alleged by petitioner has also failed as indicated herein above.

26. Consequently, the petition being devoid of merits is dismissed. The parties shall bear their own costs.

Order Date :- 28.11.2023

kvg/-