

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4477 of 2013

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VISHAL KUMAR, SON OF KAMESHWAR RAY, RESIDENT OF VILLAGE
AND POST OFFICER SHILHOWRI(WEST TOLA) POLICE STATION
MARHOWARAH, DISTRICT SARAN Petitioner

Versus

1. THE UNION OF INDIA THROUGH THE SECRETARY, MINISTRY OF PERSONNEL PG PENSION, DEPARTMENT OF PERSONNEL AND TRAINING, NEW DELHI
2. THE SECRETARY, MINISTRY OF PERSONNEL PG PENSION, DEPARTMENT OF PERSONNEL AND TRAINING, NEW DELHI
3. THE DIRECTOR, SSC, BLOCK NO.12 CGO COMPLEX, LODHI ROAD, N.DELHI
4. THE DIRECTOR MWR, SSC BLOCK NO.3, GROUND FLOOR KENDRIYA SADAN, SECTOR 9, CHANDIGARH
5. THE DY DIRECTOR, MWR, SSC BLOCK NO.3, GROUND FLOOR KENDRIYA SADAN, SECTOR 9, CHANDIGARH
6. THE DY DIRECTOR, SSC CR, 21-23 LOWTHER ROAD ALLAHABAD
7. THE DY DIRECTOR, MINISTRY OF PERSONNEL AND TRAINING DEPARTMENT, SSC CR, 8 AB BAILY ROAD, ALLAHABAD
8. THE SECRETARY, SSC CR ITBP (RECRUITMENT), ALLAHABAD

..... Respondents

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Appearance :

For the Petitioner : Mr. Ashok Kumar Yadav and Alok Ranjan
For the Respondent no.1 : Mr. SD Sanjay, ADDL.SGI
For the respondents 2 to 8 : Mr.Anjani Kr.Sharan, CGC

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGEMENT

9 01-12-2015 The petitioner applied for the post of constable (GD) in Indo Tibet Border Police (herein after referred to as the 'ITBP') for the year 2011-12, pursuant to advertisement issued by the Staff Selection Commission (herein after referred to as the 'SSC') on 5.2.2011.

2. The instruction with respect to examination and mode of selection were detailed in the Notice containing important instructions to the candidates for recruitment of Constables (GD) in ITBP, 2011 published by the 'SCC' in the Employment



News dated 5.2.2011. A copy of the same is contained in Annexure R/1 to the counter affidavit. The petitioner qualified in PST/PET, written test and medical examination. However, he was not issued joining letter as during detailed scrutiny of documents, it was found that the OBC certificate submitted by him was not as per notice. Accordingly, memo was issued on 28.9.2012 requiring the petitioner to submit his documents. In response to the said memo, the petitioner submitted his OBC certificate, dated 22.1.2008. As the OBC certificate was beyond the prescribed range (4.3.2008 to 16.7.2011), his candidature was rejected vide memo dated 7.1.2013 contained in Annexure 8, issued under the signature of the Deputy Director, (CR), SSC, Allahabad.

3. Being aggrieved, the petitioner has filed the instant writ petition praying for setting aside said order dated 7.1.2013. He has also sought a direction to the respondents to issue appointment letter, as he qualified in PST/PET, written test and medical examination conducted by the SSC for the post of constable (GD) in ITBP Exam 2011.

4. The challenge is primarily based on the ground that the certificate dated 22.1.2008 issued by the Competent authority ought to have been considered valid in view of Government



circular, which states that non creamy layer certificate issued between 1st April, 2011 to 31st March, 2012 would be valid for the period 1.4.2011 to 31.3.2012 (i.e. financial year 2011-12). The petitioner submits that as per the said circular, non creamy layer certificate issued on 22.1.2008 would hold good up to 31.3.2008 and thus would fulfill the requirement of non creamy layer certificate to be obtained between 4.3.2008 up to 4.3.2011.

5. On the other hand, Mr. S.D.Sanjay, learned Assistant Solicitor General appearing for the Union of India submits that the petitioner was required to produce the 'No Creamy Layer' certificate strictly in terms of the advertisement as per which a candidate claiming on basis of belonging to other backward class category, was required to produce such certificate within three years before the closing date eg. 4.3.2011. In other words, the creamy layer certificate obtained should not have been issued beyond 4.3.2008 or 4.3.2011. In support of his submissions, learned counsel refers to clause 4(C) of the Notice as Annexure R/1. As per the said clause, the certificate in question should be in prescribed format and candidates claiming OBC status should have obtained such certificates issued within three years before the closing date i.e. 4.3.2011 He submits that clause 4(C) of the Notice stands

further clarified by information contained in clause 4 at page 2 of the notice.

6. I have heard learned counsel for the parties.

7. It is not in dispute that the petitioner passed all the four tests. However, on scrutiny of the documents, it was found that he has obtained his creamy layer certificate on 22.1.2008, which was beyond the prescribed date of 4.3.2008 for obtaining such certificate. As per the advertisement, creamy layer certificate should have been obtained within three years before the closing date of 4.3.2011. In other words the creamy layer status certificate should have been obtained of any date between 4.3.2008 up to 4.3.2011. The petitioner admittedly obtained his creamy layer certificate on 22.1.2008.

8. The main case of the petitioner is that certificate obtained on 21.2.2008 was valid on 4.3.2008 as per circular dated 27.6.2011 and as it could be also inferred from paragraph 17 of the counter affidavit. The issue is not about duration of validity of creamy layer certificate, but one of being obtained within prescribed period. In my view, when there is specific instruction in the advertisement that such certificate should not be beyond the prescribed range of 4.3.2008 to 16.7.2011, candidates were strictly required to conform to such conditions.

The non fulfillment of mandatory conditions, if otherwise not conforming to the requirements, cannot be explained by interpretation. Any interpretation, which would dilute the conditions of selections, would amount to relaxing the terms of conditions, which would be impermissible in law, in absence of statutory provisions, save and except in ends of justice. It is not the case of the petitioner that the prescribed range for obtaining the OBC certificate was arbitrary or unreasonable. To the contrary, in case the submission of the petitioner is accepted, then there was no reason for prescribing such conditions by the Commission that the date for obtaining creamy layer certificate should not be beyond three years of the closing date. In other words, the certificate should have been obtained between 4.3.2008 and 4.3.2011 and not beyond it, which the petitioner failed to produce. In the result, I find no infirmity with the impugned actions of respondents.

9. The writ petition is accordingly dismissed.

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(Samarendra Pratap Singh, J)

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