

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

Judgment reserved on July 15, 2015

Judgment delivered on July 22, 2015

+ **W.P.(C) 1543/2015 & CM No. 2745/2015**

SARITA KUMARI VERMA

..... Petitioner

Through: Mr.Chandra Shekhar, Adv.
with Mr.Ajesh Luthra,
Ms.Jyotsna Kaushik,
Advocates

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr.Bhagwan Swaroop
Shukla, Adv. with Mr.Suyosh
Kr., Adv. for R1 and R2
Mr.Manoj, Adv. with
Ms.Aparna Sinha, Adv. for
R3-FCI

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition is to the order dated December 12, 2014 passed by the respondent No. 2 whereby the candidature of the petitioner for the post of Assistant, Grade-III (Technical) in the respondent No. 3-Food Corporation of India was rejected.

The facts:

2. The case of the petitioner is that she belongs to “Sumar” community and was issued Other Backward Classes (OBC) certificate on June 25, 2001 by the Deputy Commissioner of Delhi. On August 25, 2012, the respondent No. 2 Staff Selection Commission issued advertisement in the Employment News/Rozgar Samachar for the recruitment of Assistant Grade-III in General Depot, Technical and Accounts Cadres in the Food Corporation of India-respondent No. 3 herein. According to the petitioner, the advertisement stipulated that candidates who wanted to claim the benefits of OBC reservation, had to submit, along with the original testimonials/documents, the certificate of OBC on December 21, 2013, when after short listing, the candidates are subject to Computed Proficiency Test (CPT).

3. It is the case of the petitioner that she applied for Assistant Grade Exams for all posts as a candidate belonging to the Other Backward Class (OBC). The petitioner cleared the written examination of Paper No. I followed by the subsequent tests of Paper No. II and Paper No. III. Thereafter, she was shortlisted for the purpose of CPT, which was held on December 21, 2013, when she submitted her original documents for verification by the officials of the Staff Selection Commission (respondent No. 2). It is her case that

she applied for obtaining the OBC certificate on December 26, 2013 as December 21, 2013 to December 25, 2013 were holidays being Sunday and Christmas. It appears that the certificate dated June 25, 2001 submitted by her was not accepted by the respondent No. 2. On January 28, 2014, after she was issued OBC certificate by Tehsildar/Executive Magistrate, Govt. of NCT of Delhi, she submitted the same to the officers of the respondent No. 2, much prior to March 5, 2014 when the final result was declared by the respondent No. 2. Her name appeared at Serial No. 569 as one of the successful candidates recommended for appointment as Assistant Grade III (Technical). On August 4, 2014 when she visited the office of the respondent No. 2 for verification of papers, it was, for the first time, informed to her that she has to submit OBC certificate from Govt. of India for the period prior to December 21, 2013. On August 6, 2014, she made representation to the Chairman of the respondent No. 2, annexing therewith the letter of the Under-Secretary dated July 30, 2014, OBC certificates dated June 25, 2001 and January 25, 2014 and requested that her OBC certificates be considered and Joining Letter be issued to her. However, no response for the same was received by her from the respondent No. 2. It is her case that she was orally told that the certificate which was submitted by her, does not answer the

requirement of the eligibility considerations prescribed in the examination notice. Accordingly, she approached this Court by way a writ petition being W.P.(C) 5820/2014, praying for a direction to the Commission (respondent No. 2) to consider her candidature for the post of Assistant Grade-III (Technical) on the basis of OBC certificates submitted by her. The said writ petition was disposed of on September 3, 2014 by this Court, extending the time line for the petitioner to furnish the requisite document(s) by September 4, 2014 in terms of the show cause notice dated August 19, 2014 and also directed the respondent No. 2 to consider the reply furnished by the petitioner to the show cause notice after examination of the said documents and duly communicate the decision taken in that regard to the petitioner. It was pursuant thereto, the respondent No. 2 issued the impugned order dated December 12, 2014, thereby intimating the petitioner that the OBC certificates submitted by her for claim of reservation, have not been accepted by the Commission because the certificates are not in accordance with the provisions of the notice of the examination as already mentioned in para 2.

4. The respondent No. 2 contested the present writ petition filed by the petitioner on the ground that the OBC certificate submitted by the petitioner was not acceptable as the certificate produced by the

petitioner was not as per prescribed format as given in Annexure-VIII of the notice of the Food Corporation of India (respondent No.3) Exam, 2013. The respondent No. 2 also highlighted Point No. (9) Pare E of the notice of the exam, which stipulated *“if a candidate is unable to produce all the original documents due to whatsoever reasons at the time of verification, his candidature would be rejected. Under no circumstances, additional time would be provided. Thus, only those candidates are advised to apply who can produce all the relevant documents in original at the time of verification”*. Note-II of the Annexure-VIII of the notice of the Food Corporation of India Exam, 2013 stated *“the closing date for receipt of application will be treated as the date of reckoning of OBC status of the candidate and also for assuming that the candidate does not fall in the creamy layer. The candidate should furnish the relevant OBC certificates in the prescribed format issued by the competent authority on or before the completion of CPT”*. According to the respondent, at the time of CPT, the petitioner has submitted the OBC certificate issued on June 25, 2001 by the SDM, Najafgarh along with the separate Creamy Layer certificate issued by the Executive Magistrate, Dwarka dated May 10, 2013. She was provisionally allowed to appear in CPT on December 21, 2013 on the basis of an undertaking submitted by her in

which, she has agreed that she may submit the required OBC certificate within 10 days. During process of nomination, on scrutiny of her dossier, it was observed that her OBC certificate was not in accordance with the provisions of the notice of the said examination as it was not in format required for Central Government jobs, as per Annexure-VIII of notice. Accordingly, she was issued a memorandum and subsequently a show cause notice for submission of the required OBC certificate. Then, she submitted the OBC certificate in the requisite proforma issued on January 25, 2014 and the same was also not as per the provisions of the notice because it was issued after the last date of CPT examination. It is reiterated that Note-II of the Annexure-VIII of the notice of exam clearly stipulated that the relevant OBC certificate is to be submitted on or before completion of CPT. Therefore, the petitioner was not considered for selection under the OBC category.

The submissions:

5. The learned counsel appearing for the petitioner would submit that the respondents cannot take the hyper-technical view of the whole issue inasmuch the community certificate in respect of OBC community is required by the respondent No. 2 in the prescribed format which consists of two parts; the first part indicates that the

concerned person belongs to a community listed as OBC and; the second part indicates that the candidate does not fall in the creamy layer. While the OBC status of a candidate may change only when the community of the concerned candidate is removed from the OBC list, his/her Creamy Layer status may change any time. In view of this, it is not possible to determine a fixed validity period for the OBC certificate. Hence, it was of no significance so long as the petitioner continues to remain on the list of OBC community and also does not cease to be a person belonging to the Non-Creamy Layer within the specified period, and in the petitioner's case, the petitioner falls in both the above referred conditions. He would also state that conduct of the respondents is contrary to the law and the Constitution of India guarantees of preferential treatment to the socially backward communities with a view to imparting them level playing field. He would rely upon the judgment of the Division Bench of this Court in ***W.P.(C) 608/2015 decided on January 21, 2015, Ajay Kumar Vs. Staff Selection Commission through its Regional Director (North Region)***.

6. On the other hand, learned counsel for the respondents, reiterating the stand taken by the respondent No. 2 in its reply, would state that any deviation contrary to the advertisement would have

repercussions in the working of the Staff Selection Commission. He would rely upon the judgment of this Court decided on July 17, 2013 in *W.P.(C) 2342/2012 Dr. Jyoti Hyankey Vs. Union Public Service Commission; (2011) 12 SCC 85 Bedanga Talukdar Vs. Saifudaullah Khan and Ors.*; judgment of the High Court of Punjab and Haryana in the case of *Indu Gupta Vs. Director (Sports), Punjab and Anr., Civil Writ Petition No. 9699/1997 decided on May 31, 1999* in support of his contention.

7. Having heard the learned counsel for the parties, the only question which needs to be decided is whether the certificate submitted by the petitioner issued after the date of December 21, 2013 was a valid one in terms of the advertisement. There is no dispute that the advertisement issued by the respondent No. 2 did contain format of certificate to be produced by the OBC candidates applying for the post in terms of Annexure-VIII. It is also stipulated in Note-II of the said Annexure that the closing date for receipt of application will be treated as the date of reckoning of OBC status of a candidate and also for assuming that the candidate does not fall in the Creamy Layer. Suffice to state, the closing date of submission of the applications was September 21, 2012. That apart, it was required that candidate should furnish the relevant OBC certificate in the prescribed format by the

competent authority on or before the completion of the CPT. There is no dispute that the petitioner did not submit the OBC certificate issued, on or before December 21, 2013. Rather, on the date of CPT i.e. December 21, 2013, she submitted an undertaking that she would submit the required OBC certificate within 10 days. The required OBC certificate necessarily means a certificate issued on or before December 21, 2013. The date of December 21, 2013 attains relevancy inasmuch as it is the said date, which would determine whether the caste to which the candidate belongs, is an Other Backward Class (OBC) and the candidate does not belong to Creamy Layer. There is no dispute that such was the requirement of the advertisement. The petitioner has not challenged the prescription of the cut off date as December 21, 2013. In this regard, I need to refer to the judgment of this Court in the case of *Dr. Jyoti Hyankey (supra)*, wherein, this Court has agreed with the view taken by the Tribunal that certificate obtained by the persons claiming benefit of reservation must strictly confirmed to the requirement of the Union Public Service Commission (UPSC) in that case and specially, when the formats of the certificates are made known to the candidates. The reason is that Union Public Service Commission in that case conducts hundreds of selection to thousands of posts each year and receives applications

from millions. It is humanly not possible for the staff of the Commission to go about verifying the correctness of the contents of the certificates earlier submitted by the candidates. In the case in hand, it is noted that the petitioner had sufficient notice with regard to the type of certificate she had to produce, for claiming the benefit of the OBC as well as the Non-Creamy Layer inasmuch the advertisement was issued on August 25, 2012 and the CPT was held on December 25, 2013. She could have got the certificate from the authorities within this period. There is no dispute to the fact that the certificates which she has submitted of June 25, 2001 and May 10, 2013 does not conformed with the formats prescribed by the respondent No. 2 for the OBC candidates.

8. The reliance placed by the learned counsel for the petitioner on the judgment of this Court in the case of *Ajay Kumar (supra)* would not be applicable to the fact of this case inasmuch in the said case this Court was concerned with the facts wherein the petitioner who belong to OBC Category applied for the post of Multi Tasking (Non-Technical) Staff ('MTS' in short) in pay band at Rs.5200-20200 with grade pay of Rs.1800 in various Central Government Ministries, departments, offices in different States and Union Territories in terms of recruitment notice published in the employment news dated

December 04, 2010. He submitted his application on December 31, 2010. He belonged to Saini Community, which is recognized as backward class. The petitioner took the written examination as a OBC candidate on February 27, 2011. In the mean time, the petitioner was suggested by his cousin to obtain a fresh OBC Certificate prescribed in the recruitment notice, which the petitioner applied for and got issued on March 11, 2011. The petitioner was successful in the written examination and the Ministry of Defence was named as his user department. However, he was kept in the reserved list at rank No.241. The result of the reserved list was declared on November 04, 2011 in which the petitioner was declared recruited. The respondent vide its letter dated November 15, 2011 asked him to submit his original documents and appear before the authorities of the respondent on December 01, 2011 for this purpose. He appeared before the respondent authorities on the said date along with the original documents including two OBC certificates issued to him on February 06, 2008 and March 11, 2011. These documents were kept on record and he was asked to wait for his appointment letter. It was the case of the petitioner in that case that he received a memorandum dated February 10, 2012 from the office of the respondent authorities informing him that his recruitment to the post of MTS has been

annulled since he did not submit the requisite OBC certificate as per the recruitment notice. He approached the Central Administrative Tribunal which dismissed the petition filed by the Tribunal. The grievance of the petitioner before this Court was that he is admittedly the other backward classes candidate and had submitted his application under the same category and along with the application he had annexed the OBC Certificate dated February 06, 2008 but his candidature was cancelled vide memorandum dated February 10, 2012 on February 15, 2012 on the ground that he did not submit the proper OBC certificate as per the notice for examination. This Court while allowing the writ petition was of the view that any candidate who seek appointment to a particular post pursuant to any advertisement need to scrupulously go through the instructions laid down but where there is inconsequential lapse on the part of the candidate and the same is rectified duly then ordinarily one should not be denied appointment on that sole ground. This Court was of the view that there was insignificant lapse on the petitioner's part, wherein he did not submit the proper OBC certificate issued by the Government of India, the said lapse was duly rectified at the time he was called upon to submit his original documents to the Competent Authorities on December 01, 2011. This Court was also of the following view:-

“10. The petitioner had proved himself meritorious enough, hope gleamed in his eyes, he had dreams aplenty and having qualified his examination, he had an earnest belief that his candidature will be selected for the said post. Given the serious dearth of jobs in our country, it is very rare that a candidate lands a plum job offer. It is for the recruiting bodies like the SSC to ensure that the deserving candidates are not denied appointment based on some insignificant or unconvincing ground or by adopting a hyper technical approach. We are nowhere suggesting that these recruiting bodies should not abide by the laid down recruitment norms, but where there is an iota of chance and scope to take a liberal view, like in the present case, where it is not disputed that the petitioner was an OBC candidate, such a rigid approach should have been avoided.”

This Court also relied upon the judgment in the case of **DSSSB and Anr. vs. Mrs. Anu Devi**, W.P.(C) 13870/2009, decided on February 17, 2010, wherein para No.19 reads as under:-

“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 Rekhawati (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.”

9. Whereas, in the case in hand, it is not only the certificate being not in format in terms of Annexure-VIII, but, also of a date after December 21, 2013, contrary to the advertisement, which stipulated, the certificate should be by the competent authority on or before completion of CPT, which was held on December 21, 2013. Further, the petitioner had applied for the certificate only on December 26, 2013, after the relevant date.

10. The Supreme Court in ***Bedanga Talukdar’s case (supra)*** has held as under:

“The selection process has to be conducted strictly in accordance with stipulated selection procedure which needs to be scrupulously maintained. There cannot be any relaxation in terms and conditions of advertisement unless such power is specifically reserved in relevant rules and/or in advertisement. Even where the power of relaxation is or is not provided in relevant rules, it must be mentioned in advertisement. Such power if exercised should be given due publicity to ensure that those candidates who become eligible due to relaxation are afforded equal opportunity to apply and compete. The relaxation of any condition in advertisement without due publication is contrary to mandate of equality in Articles 14 and 16 of the Constitution”.

11. In the case of *Indu Gupta (supra)*, the petitioner in that case, sought admission to professional colleges under the Sports Category. In terms of the brochure, it was necessary that the applicant should submit Sports Gradation Certificate issued by the Director (Sports), Union Territory of Chandigarh. The petitioner in the said case submitted her Gradation Certificate for counter signature on June 27, 1997 under diary No. 5660, but, the respondent-Director (Sports), Punjab did not sign the certificate and as such she could not produce the certificate on the date of interview on July 5, 1997 at Punjab Technical University, Jalandhar. One of the issues before the Full Bench was; *“is it obligatory on the part of the applicant to annex the requisite certificate along with the application prior to the last date for submission of such application or not”*. The Full Bench of the Punjab and Haryana High Court held that as the Gradation Certificate was not submitted by the petitioner along with the application nor copy thereof was annexed, respondents were not under obligation to consider her application for allotment of a seat under Sports Category because her application as submitted was not complete in respect as postulated under terms and conditions of brochure.

12. Further, I note, the relief of certiorari/mandamus as sought by

the petitioner cannot be issued by this Court when the action of the respondents is in conformity with the advertisement issued by them for making selection for the post of Assistant Grade-III in the respondent No. 3. In fact, the relief sought for would be in contravention with the advertisement. It is also noted that there is no clause in the advertisement where a discretion is vested with the authority to relax/extend the date of submitting the certificate.

13. In view of my above discussion, I do not find any merit in the writ petition. The same is dismissed.

14. No costs.

(V.KAMESWAR RAO)
JUDGE

JULY 22, 2015

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