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

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Judgement delivered on: 23.11.2015

+ **W.P.(C) 4400/2014**

DIVYA CHOUDHARY (MINOR)

..... Petitioner

versus

GGSSIP UNIVERSITY & ANR.

..... Respondents

AND

+ **W.P.(C) 4401/2014**

AKANKSHA CHOUDHARY

..... Petitioner

versus

GGSSIP UNIVERSITY & ANR.

..... Respondents

AND

+ **W.P.(C) 4742/2014**

BHRIGU PAL SURAIYA & ANR

..... Petitioners

versus

GGSSIP UNIVERSITY & ANR.

..... Respondents

AND

+ **W.P.(C) 5142/2014**

ANSHUL KUMAR KATHERIA

..... Petitioner

versus

GGSSIP UNIVERSITY & ANR.

..... Respondents

Advocates who appeared in these cases:

For the petitioners: Mr R.K. Saini, Advocate in WP(C) Nos. 4400/2014, 4401/2014 & 5142/2014.

Mr K.G. Mishra, Advocate in WP(C) No. 4742/2014

For the respondents: Ms Anita Sahni, Advocate for R-1.

Ms Roma Bhagat, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

WP(C) No. 4400/2014 & CM No. 8791/2014

WP(C) No. 4401/2014 & CM No. 8792/2014

WP(C) No. 4742/2014 & CM No. 9451/2014

WP(C) No. 5142/2014 & CM No. 10239/2014

1. These are writ petitions, in which a common question of law arises for consideration. The common question of law which arises for consideration is this: Whether the respondent no.1 university could decline admission to the petitioners in the B.A. (LL.B) /BBA (LL.B) integrated course in the Scheduled Caste (SC) category only on the ground that a certificate issued in that behalf, in their favour, was based on a SC/ ST certificate issued to their parents from a State Government, other than Govt. of NCT of Delhi (in short GNCTD)?

1.1 It is not in dispute that the petitioners sat and cleared entrance exams of the respondent no.1 university, and that they sought admission with the respondent no.1 university in SC category.

2. Concededly, a similar question had arisen before a Single Judge of this court in WP(C) No. 5228/2013, titled: *Jyoti Rani vs Guru Gobind Singh Indraprastha University & Anr.*, which was allowed vide judgement dated 30.09.2013.

2.1 The stand taken by the respondent no.1 university in *Jyoti Rani's*

case, for denying her admission, was two-fold. First, that the petitioner in that case was not a permanent resident of Delhi, her family having migrated from Punjab, and hence, was not entitled to admission as a SC candidate. Second, the SC certificate was issued to the petitioner, in that case, based on a SC certificate of her father.

2.1 The court rejected both pleas of respondent no.1 university. In fact, in respect of the plea taken by respondent no.1 university that though the nomenclature of the caste was the same, both in Delhi and in Punjab (in *Jyoti Rani's* case the case in issue was *Balmiki*), they were two different communities, the court in paragraph 7 of the judgement observed that, in absence of such a plea and contention in the counter affidavit, the same could not be considered. In addition to this, the court also observed that a citizen, who has no access to the material, on the basis of which a caste/ community is notified as SC, in a State/ Union Territory, would never be in a position to establish that a community bearing the same nomenclature in two different States, were different communities. The court thus observed that the onus in this behalf could not be laid on the citizen.

2.2 Thus, the court, having regard to the fact the *Balmiki* was notified as SC in Delhi, and given the fact that the petitioner in that case had permanently moved to Delhi, proceeded to grant relief to the petitioner.

3. In the captioned cases, there is no dispute that petitioners belong to a caste which is notified as SC in NCT of Delhi. It is also not disputed that the petitioners in each of these cases have obtained SC/ ST certificates from the concerned authority in GNCTD.

3.1 Furthermore, it is also not disputed that the petitioners are permanent residents of NCT of Delhi.

3.2 The only reason, as noticed above, the petitioners were denied admission, was that the SC certificate obtained by them was issued on the basis of SC/Tribe certificate issued to their parents from another State. The relevant extract of the certificate, based on which this objection is taken, is set out hereinbelow:

“.... This certificate is issued on the basis of the Scheduled Caste/ Tribe certificate issued to Shri/ Smt. / Kumari SUDESH KUMAR Father of Sh./ Smt./ Kumari DIVYA CHOUDHARY resident of VILL- SONEPAT AMBALA, STATE- HARYANA who belongs to DHANAK caste/ tribe in the State/ U.T. HARYANA issued by the TEHSIL-SONEPAT vide their no. 1163 Dated: 11/9/2009.....”

4. At the time when notice was issued in the captioned writ petitions, interim orders were passed in their favour. Pursuant to the interim orders, the petitioners, I am told, were given provisional admission by respondent no.1 university. Pleadings in the matter, in the meanwhile, stood completed.

5. A perusal of both the writ petition and the replies would show that the decision in *Jyoti Rani's* case is pending adjudication before the Division Bench in LPA No. 934/2013.

5.1 It is, however, conceded before me by counsels for parties that no interim order has been granted by the Division Bench.

6. Ms Anita Sahni, who appears for respondent no.1 university says that for the academic year 2015-2016, the regime for admission has changed, which, inter alia, provides that benefit of reservation would be extended to all candidates who hold SC certificates issued by GNCTD, provided that the caste indicated in the certificate so issued, is also shown in the list of SC as specified in the Presidential Order 1951, as amended from time to time in

respect of Delhi.

6.1 She further submits that in so far as candidates, who have been issued SC certificates by GNCTD on the basis of certificates issued to their parents by other States, will also be given benefit of being SC candidates upon submitting an affidavit on a Rs. 10 stamp paper in the proforma enclosed. This regime is incorporated in an Academic Division Circular dated 18.06.2015, issued by respondent no.1 university. The relevant part of the said circular is extracted hereinbelow for the sake of convenience :

“..... The University has received number of representation from candidates seeking admission to various programme of GGSIPU during 2015-16, that their claims for admission under Delhi Schedule Category is not being entertained at the designated centres on the pretext that the certificate issued by competent authority of NCT of Delhi has a clause stating that certificate is issued on basis of certificate parent issued by competent authority of a State/ UT other than NCT of Delhi.

The University took a legal opinion on the matter in respect and taking a considerable view in wider interest of candidates, the competent authority of the University has approved, that the benefits of reservation should be extended to all candidates who hold scheduled castes certificate issued from Government of National Capital Territory of Delhi and provided such a caste is also enlisted in the list of Scheduled Caste as specified in Presidential Order 1951 as amended from time to time in respect of Delhi subject to fulfilment of other conditions specified therein. The candidates, who have been issued scheduled caste certificate from GNCTD on the basis of certificate of parents issued from other States, are also required to submit an affidavit on Rs. 10/- stamp paper in the proforma as enclosed.....”

6.2 The proforma affidavit which the candidates have to file, requires them to state the following:

“..... Affidavit to be Submitted

1. That I ____ S/o ____ aged ____ R/o _____ belong to ____ (Caste) which is notified as a Scheduled Caste in relation to NCT Delhi as well as in relation to ____ (State), and in both States the above said caste is from the same community. That I have permanently shifted to NCT Delhi for all practical purposes.
2. That I satisfy all the conditions for availing reservation as per Presidential Order for reservation to Scheduled Caste candidates in relation to NCT Delhi with respect to the concerned State.
3. That I undertake that I shall not avail similar benefit of reservation on the basis of Caste in any State other than NCT Delhi.

Verification

Deponent

Verified at New Delhi on this ____ day of ____ (Month), 2015, that the contents of above affidavit are true and correct to the best of knowledge and belief and nothing material has been concealed therefrom.

Deponent...”

6.3 Ms Sahni says that the aforementioned regime, however, applies only from the academic year 2015-2016. The instant cases concerned academic year 2014-2015.

7. In my view, in so far as this court is concerned, the issue raised in these writ petitions appears to be clearly covered by the judgement of a Co-ordinate Bench, in the case of, ***Jyoti Rani***’s case. The view taken therein seems to have been now accepted by respondent no.1 university, as well, albeit for academic year 2015-2016. Therefore, having regard to the fact that the petitioners approached this court at the earliest, and thereafter, upon having been granted provisional admission, have continued to prosecute

their studies, relief in these petitions would also have to be granted to them.

8. Accordingly, the writ petitions are allowed. The provisional admission of the petitioners would be regularized by respondent no.1 university.

9. The writ petitions and the pending applications are, accordingly, disposed of.

10. There shall, however, be no orders as to costs.

RAJIV SHAKDHER, J

NOVEMBER 23, 2015

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