

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

+ **W.P.(C) No.5743/2014**

% 11th February, 2015

AMIT PAL Petitioner
Through: Mr. Harpreet Singh, Advocate.

Versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Jaswinder Singh, Advocate with
Ms. Shipra Shukla, Advocate for
respondent Nos.1 and 2.
Mrs. Harvinder Oberoi, Advocate for
respondent No.3.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks quashing of the action of the respondents in cancelling the candidature of the petitioner for the post of Assistant Grade-III (General, Depot, technical & Accounts Cadre) in the Food Corporation of India/respondent no.3. Petitioner had participated in the selection process for the post in terms of the advertisement dated 25.8.2012 and which entitled the petitioner to be employed in the post. Petitioner appeared as an OBC candidate in the selection process.

2. The limited issue which is called for decision by this Court in the present case is whether petitioner within time gave the necessary OBC certificate in terms of the requirements of the respondent no.2, and which is the body which undertakes the selection process on behalf of different central government organizations. The respondent no.2 vide its letter dated 30.9.2013 issued the call letter to the petitioner for computer proficiency test and in which letter with regard to furnishing of the OBC certificate there exists the following clause:-

“3. You must bring this call letter (in Original) alongwith original and photocopies for proof of date of birth, graduation certificate (all three years marksheet), OBC certificate in cases of OBC candidates, caste certificate in case of SC/ST candidates and discharge certificate in case of Ex-serviceman candidates, OH/HH/VH certificates in prescribed format in case of candidate belonging to Physically Handicapped category, duly self attested for verification and six recent passport size photographs alongwith ID proof (Voter card/Identity card issued by the college etc) for CPT. While appearing for the CPT following notes should be kept in mind:-

XXXX

XXXX

XXXX

XXXX

iii) You should furnish the OBC candidate in the format prescribed in the notice of the exam. Candidates claiming OBC status may note that OBC certificate mentioning the creamy layer status should have been obtained within three years as on 01.08.2012 (02.08.2009 to till date of CPT). You should bring the Caste certificate in case of SC/ST candidate, Discharge certificate in case of Ex-servicemen candidates, OH/HH/VH certificate in prescribed format in case of Physically Handicapped category, duly self attested for verification along with ID proof (Voter card/Identity card issued by the college etc) at the time of Computer Proficiency Test.”

(underlining added)

3. Though the language of para 3(iii) is not clear but it is conceded before me by both the parties that what is required is that OBC certificate should be issued on or before 1.8.2012. The object of the particular date is to check the OBC status of a candidate for three years on or before 1.8.2012 and that he does not fall in the creamy layer. Petitioner appeared and admittedly gave the following OBC certificate pursuant to the letter of the respondent no.2 dated 30.9.2013:-

“No.OBC/06/63/14445/20/7/2011/9511050822/531 Dated:24/8/2011

This is to certify that Sh/Smt/Ku: **AMIT PAL**

S/o,W/o,D/o: **CHAMAN LAL**

Resident of: **118, MALIKPUR, MODEL TOWN-IST, DELHI-09**

Belongs to the community **GADARIA** Which is recognized as a backward class under the Govt. of N.C.T. of Delhi notified vide Notification No. F.28(93)/91-92/SC/ST/P&S/4384 dated 20/1/95 published in the Gazette of Delhi Extraordinary Part-IV dated 20/1/95 and/or his family ordinary reside(s) at **118, MALIKPUR, MODEL TOWN-IST, DELHI-09** Union Territory of Delhi.

This is also to certify that he/she does not belong to the persons/sections (Creamy layer) mentioned in column 3 of the Schedule to the Govt. of India, Department of Personnel and Training O.M. No. 36012/22/93-Estt.(SCT) dated 8/9/1993,O.M. No.36033/3/2004-Estt(Res) dated 9/3/2004 and 14/10/2008.

Sd/-

Dated: 24/8/2011

(M.P. KUSHWAHA)

Executive Magistrate, MODEL TOWN”

4. On behalf of the respondents, it is argued that the aforesaid certificate dated 24.8.2011 could not be accepted because the certificate ought to have been in the form of Annexure-VIII of the subject advertisement dated 25.8.2012 and which reads as under:-

“ANNEXURE-VIII

**(FORMAT OF CERTIFICATE TO BE PRODUCED BY OTHER
BACKWARD CLASSES APPLYING FOR APPOINTMENT TO
POSTS UNDER THE GOVERNMENT OF INDIA)**

This is to certify that _____ son/daughter of _____ of village _____ District/Division _____ in the _____ State _____ belongs to the _____ Community which is recognized as a backward class as under:-

i) Resolution No.12011/68/93-BCC dated the 10th September, 1993, published in the Gazette of India Extraordinary-Part I, Section I, No.186 dated 13th September, 1993.

ii) Resolution No.12011/9/94-BCC, dated 19.10.1994 published in Gazette of India extraordinary Part I Section I No.163, dated 20th October, 1994.

iii) Resolution No.12011/7/95-BCC dated the 24th May 1995 Published in the Gazette of India extraordinary Part-I Section I No.88 dated 25th May, 1995.

iv) Resolution No.12011/96/94-BCC dated 9th March, 1996.

v) Resolution No.12011/44/96-BCC, dated the 6th December, 1996, published in the Gazette of India- Extraordinary-part I, Section-I, No.210, dated the 11th December, 1996.

vi) Resolution No.12011/13/97-BCC dated 3rd December, 1997.

vii) Resolution No.12011/99/94-BCC dated 11th December, 1997.

viii) Resolution No. 12011/68/98-BCC dated 27th October, 1999.

ix) Resolution No. 12011/88/98-BCC dated 6th December, 1999, published in the Gazette of India, Extra Ordinary Part-1, Section-1 No. 279, 65h December, 1999.

x) Resolution No. 12011/36/99-BCC dated 4th April, 2000, published in the Gazette of India, Extra Ordinary Part-1, Section-1, No. 71 dated 4th April, 2000.

xi) Resolution No. 12011/44/99-BCC dated 21.9.2000, published in the Gazette of India, Extra Ordinary Part-1, Section-1, No. 210 dated 21.9.2000.

Shri _____ and/ or his family ordinarily reside(s) in the _____ District/Division of the _____ State.

This is also to certify that he/she does not belong to the persons/sections (Creamy Layer) mentioned in column 3 of the Schedule to the government of India, Department of Personnel & Training OM No. 36012/22/93-Estt. (SCT,) dated 08.09.1993 and modified vide Govt. of India Dept. of personnel and Training Om No. 36033/3/2004-Estt(Res) dated 09.03.2004 & 14.10.2008.

Dated: _____ District Magistrate or

Seal: _____ Deputy Commissioner etc.

Note-I(a) The term ‘Ordinarily’ used here will have the same meaning as in Section 20 of the Representation of the People Act, 1950.

(b) The authorities competent to issue Caste Certificate are indicated below:-

(i) District Magistrate/Additional Magistrate/Collector/Dy. Commissioner/Additional Deputy Commissioner/Deputy Collector/Ist Class Stipendiary Magistrate/Sub-Divisional Magistrate/Taluka Magistrate/Executive Magistrate/Extra Assistant Commissioner (not below the rank of Ist Class Stipendiary Magistrate).

(ii) Chief Presidency Magistrate/Additional Chief Presidency Magistrate/Presidency Magistrate.

(iii) Revenue Officer not below the rank of Tehsildar.

(iv) Sub-Divisional Officer of the area where the candidate and/or his family resides.

NOTE-II: The closing date for receipt of application will be treated as the date of reckoning for 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 Certificate in the prescribed format issued by the competent authority on or before the completion of CPT.”

5. It is argued on behalf of the respondents that whereas the Proforma Annexure-VIII requires various resolutions to be mentioned with respect to the OBC status and that too of the central government, the certificate which is given by the petitioner however does not refer to the OBC status of the petitioner in terms of a central government notification and that status is mentioned only in terms of the notification of the Government of NCT of Delhi.

6. To complete the narration, I would like to state that the respondents issued its letter dated 22.7.2013 (*sic*: 22.7.2014) in which the petitioner was called upon to furnish an OBC certificate and the relevant para 5 of this letter reads as under:-

“5. OBC certificate in support of his/her claim in Central Govt Performa as per Annexure VII of the Notice of exam issued by the Competent Authority on or before 01.08.2012. For determining the creamy layer status OBC certificate should be issued between 22.03.2009 to 21.12.2013.”

7(i) Once again, para 5 though gives garbled language, however it is agreed before me that what is the requirement of para 5 of the letter dated 22.7.2014 is that the OBC certificate should be issued on or before 1.8.2012 (as also stated/required in the earlier letter dated 30.9.2013) and which is in order to determine whether or not the petitioner falls in the creamy layer status for being denied the appointment to the OBC post.

(ii) Petitioner pursuant to the letter dated 22.7.2014 thereafter gave another OBC certificate again issued by the Government of NCT of Delhi, and which is dated 8.8.2014.

8. The argument on behalf of the respondents as regards the second OBC certificate given is that the certificate is dated 8.8.2014 i.e the same is not issued on or before 1.8.2012, and therefore, the petitioner has failed to comply with the requirements of the selection process and as per which the OBC certificate has to be issued before 1.8.2012. Respondents also have argued, and as stated above, that the certificate originally submitted pursuant to the letter of the respondent no.2 dated 30.9.2013 is not in compliance because it is issued on the basis of a resolution of the Government of NCT of Delhi whereas the resolution in terms of the Proforma given in Annexure-VIII to the advertisement must refer to the central government resolutions as stated in the said Annexure-VIII.

9. In my opinion, the arguments urged on behalf of the respondents are very shallow and deserve rejection by this Court inasmuch as what is important is the substance and not the form. It cannot be said that there is a mandate with respect to complying of the form, and in law, once a certificate complies with the necessary requirements of law which is that the petitioner must be a person of OBC status not falling in the creamy layer, then, the form of the certificate is immaterial because I fail to understand what is achieved by being unnecessarily insistent on a particular language although all the substantial requirements of the form Annexure-VIII of the petitioner are satisfied of the petitioner being an OBC candidate not belonging to the creamy layer status and the certificate in this regard is issued on or before 1.8.2012. After all it is not disputed that an OBC certificate can be issued not only by the central government but also by the Government of NCT of Delhi noting that admittedly the petitioner resides in Delhi and he took the examination conducted on behalf of respondent no.2 at a centre in New Delhi. There is therefore nothing unusual for an OBC certificate having been obtained by the petitioner from a competent authority under the Government of NCT of Delhi and once the certificate is otherwise issued by a competent authority which could have issued the certificate (and which in this case is the Government of NCT of Delhi) then I fail to

understand as to how it can be argued on behalf of the respondent no.2 that petitioner has failed to comply with the requirements of the selection process. Also, and finally, it needs to be noted that the form in Annexure-VIII is not a mandate in terms of a statutory provision, and which is another reason for this Court to hold that the substance has to be seen and not the form because after all the employment and thus the livelihood of a person is at stake. The action of the respondents being thus arbitrary and violative of Article 14 of the Constitution of India is struck down.

10. In view of the above, the writ petition is allowed. Respondents are directed to appoint the petitioner to the subject post noting that one such post was ordered to be reserved for the petitioner in terms of an interim order of a learned Single Judge of this Court dated 17.9.2014. Appointment letter be issued to the petitioner within a period of four weeks from today. No costs.

FEBRUARY 11, 2015
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VALMIKI J. MEHTA, J