

\$~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4246/2015**

%

Date of Judgment : 17.11.2015

UNION OF INDIA & ORS.

..... Petitioner

Through : Mr. Ruchir Mishra, Advocate.

versus

RAJ SINGH

..... Respondent

Through : Mr. M. K. Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

W. P. (C) 4246/2015

1. Challenge in this writ petition is to the order passed by the Central Administrative Tribunal on 13.11.2013.
2. With the consent of the learned counsel for the parties, the writ petition is set down for final hearing and disposal.
3. In the year 2008, an advertisement was released in the Employment News advertising various vacancies for post of Group 'C' on a temporary basis in Vardhaman Mahavir Medical College (VMMC) and Safdarjung Hospital, New Delhi. Amongst the posts advertised, applications were invited for 6 posts of 'Dissection Hall Attendant', 5 posts were for unreserved (UR) category and 1 post was for OBC category. The respondent made an application in the reserved category and produced along with his application form a certificate of a reserved category (JAT) issued by the Delhi Government. The interviews were carried out. The respondent was selected against the OBC category and an offer of appointment vide memorandum no.

5-13/2006-Admn-II was issued by Safdarjung Hospital to the respondent whereby the respondent was offered appointment to the post of 'Dissection Hall Attendant' on 08.11.2008. On 27.01.2009, the Office of Deputy Commissioner (South West District) Delhi issued certificate to respondent. In terms of the said aforesaid certificate, the respondent belongs to community namely JAT recognized as Backward Class under the Government of NCT of Delhi. On 17.03.2010, the respondent submitted a fresh OBC certificate. On 27.03.2010, a memorandum was issued by Safdarjung Hospital to the effect that the respondent has not submitted OBC certificate in the prescribed format which was provided to him at the time of joining the hospital, accordingly, under this memorandum, he was directed to submit OBC certificate in the prescribed form. On 28.06.2010, two OBC certificates dated 27.02.2003 and 10.02.2009 submitted in another similar case by one 'Sangeeta', who was appointed as 'Medical Social Worker' in Safdarjung Hospital against OBC category, were verified by SDM (Narela) and verification report being No. SDM/NI/2010/731 dated 28.06.2010 was received from Sub Divisional Magistrate (Narela) Delhi with conclusion that both certificates are not valid for posts under the Government of India. Since, the OBC certificate of JAT Community issued by Government of NCT of Delhi was found not to be valid for appointment in the post under Government of India, and a verification report dated 28.06.2010 was received in respect of two OBC certificates of JAT community submitted by one 'Sangeeta' a memorandum dated 09.09.2010 was issued to the respondent to the effect that OBC certificate of JAT

community of Delhi has been verified by the office of Sub Divisional Magistrate, Narela and the same is not valid for posts under Government of India. In the aforesaid memorandum, the respondent was informed as to why his services should not be terminated for providing OBC caste certificate which is not valid for posts under Government of India. The aforesaid memorandum dated 09.09.2010 was replied by the respondent vide his representation dated 14.09.2010. In the aforesaid representation, it was stated by the respondent that OBC certificate has been issued by the office of SDM, Nazafgarh, New Delhi, therefore, the memorandum should be withdrawn as SDM Narela verification is nothing to do with his certificate, which has been issued by SDM Nazafgarh. Challenging the memorandum dated 09.09.2010 issued by Safdarjung Hospital and order dated 22.03.2012 passed by the office of the Addl. Medical Superintendent, Safdarjung Hospital, New Delhi, the respondent filed OA before the Tribunal which was allowed and which has led to the filing of the present writ petition.

4. The submission of learned counsel for the petitioners is that the appointment made in favour of the respondent is bad in law, illegal and based on a reservation certificate which was neither in the prescribed performa nor the respondent was covered in the OBC category of the Central List.
5. It is also submitted that the respondent was aware of the fact that in order to seek reservation, he should have been of an OBC community as per the Central List which is evident upon reading the advertisement.

6. Mr. Mishra, learned counsel for the petitioner has placed strong reliance on Clause 9 & 10 of the offer of appointment, which read as under :
- “9. If any document, declaration or information furnished proves to be false or any material information is suppressed wilfully, the services will be terminated without any further notice.
10. The appointment is provisional and is subject to the caste certificate being verified through the proper channels. If the verification reveals that the claim of the candidates to belong to reserved category (SC/ST/OBC) is false, the services of such candidates will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Penal Code for production of the false certificate.”
7. Learned counsel for the respondent submits that the respondent had produced the caste certificate and there was no malafide intention on his behalf. Counsel further submits that the caste certificate is a genuine certificate obtained from the Delhi Government. Counsel further submits that the petitioners were negligent and overlooked the lapse, if any, and granted him employment. Counsel submits that the respondent has worked for a period of more than 8 years and at this stage if his services are terminated, serious prejudice would be caused to his rights as he has become over age and he will not be eligible for any government job. Mr. Bhardwaj submits that the family of the respondent will also suffer and it would be to the advantage of none as in these 8 years, the posts cannot now be carried forward. Counsel

submits that the respondent undertakes not to claim any benefit on the basis of the reservation during the course of his employment with the petitioners.

8. Counsel for the respondent also submits that in identical circumstances, the order of the Tribunal was not interfered with by a Division Bench of this court in the case of ***Union of India Vs. Smt. Manju Lochav***, W. P. (C) No. 2842/2013 and reliance is also placed on an order passed by the Supreme Court of India in the case of ***Iqbal Khatri & Ors. Vs. Employees State Insurance Corp. & Ors.***, Civil Appeal No. 9042/2013. The order reads as under :

“Leave granted.

Heard learned counsel for the parties.

We find from the impugned order that the only reason why the appellants had been denied appointment is because they belong to the OBC category (Jat) in the Delhi State List but this community is not included in the Central List. It is not disputed that the appellants have been in service for a period of 4-5 years and they have an unblemished record. It is also not disputed that they did not make a misrepresentation at any point of time in this regard.

In the circumstances of the case, we consider it appropriate in the interest of justice to direct to respondents to accommodate the appellants. We must observe that this order is being passed in the circumstances of the case as the posts belong to Class IV employees. We further observe that this shall not act as a precedent. It is made clear that the appellants shall not be entitled to any back wages for the period they have not worked but they shall be entitled to all consequential benefits.

The appeals stand disposed of accordingly.”

9. We have heard the learned counsel for the parties.
10. While there is no quarrel to the fact that the respondent cannot be considered as OBC candidate for the post advertised as the said community is not an OBC community as per the Central List.

However, we find that the respondent had provided caste certificate of OBC issued by the State Government which it seems was overlooked at the time when the form of the respondent was scrutinized and appointment letter was issued. No doubt, as per Clause 9 & 10 of the advertisement and offer letter, it was made clear that should it be detected at later stage that the documents furnished were not in order, the services of the respondent would be terminated but we are persuaded by the submissions made by the learned counsel for the respondent that the respondent has worked for 8 years and has an unblemished record and also in view of the order passed by the Supreme Court of India in the case of *Iqbal Khatri & Ors. Vs. Employees State Insurance Corp. & Ors.*, we may also take into account that in case the services of the respondent are terminated after 8 years, it would be to the benefit of none as the reserved posts at this stage cannot be carried forward.

11. Accordingly, we dismiss the writ petition and make it clear that this order is passed in the facts and circumstances of this case and it would not be treated as a precedent.

CM APPL. 7686/2015 (Stay)

12. In view of the order passed in the writ petition, the application is also dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

NOVEMBER 17, 2015/sc