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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Appeal(MD) Nos.1264 and 1265 of 2015

and

M.P(MD)Nos.1 and 1 of 2015

B.Ponnambalam ... Appellant in W.A(MD)No.1264/2015
K.Rajasekaran ... Appellant in W.A(MD)No.1265/2015
Vs.

1.The Chairman,
Institute of Banking and Personnel Section,
IBBS House,
90 Feet D.P.Road,
Near Thakur Polytechnic
Off.Western Express Highway,
P.B.No.8587, Kandivali (E),
Mumbai 400 101.

2.The Regional Manager,
Indian Overseas Bank,
Regional Office, Anna Nagar,
Madurai 625 020.

... Respondents in both WAS

Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 29.04.2014 made in W.P.(MD)No.6149 and 6150 of 2014.

Prayer in WP(MD). 6149/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the 1st respondent to consider the petitioner s representation dated 02.04.2014 and process the petitioner s candidature providing scores to the interview performance of the petitioner and consequently direct to appoint the petitioner as a Probationary Officer in the Banking Sector.

Prayer in WP(MD). 6150/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the 1st respondent to consider the petitioner s representation dated 02.04.2014 and process the petitioner s candidature providing scores to the interview performance of the petitioner and consequently direct to appoint the petitioner as a Clerk in the Banking Sector.

For Appellants in both WAS : Mr.I.Suthakaran
For 2nd Respondent : Mr.K.M.Vijayakumar
(in both W.As)



JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J)

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The candidature of the appellants in these appeals for appointment respectively to the posts of Clerk and Probationary Officer were rejected by the Institute of Banking and Personnel Selection on the ground that both these appellants could not produce a community certificate to the effect that they belonged to the other backward communities and that they belonged to non creamy layer section. The writ petitions filed by the appellants were dismissed by the learned Judge upholding the action of the respondents in rejecting the candidature of the appellants. Therefore, the appellants are before us.

2. Heard Mr. I. Suthakaran, learned counsel for the appellants. Mr. K. M. Vijayakumar, learned counsel takes notice for the respondents.

3. In the Employment News dated 24.08.2013 -30.08.2013, an advertisement was published inviting applications for recruitment to the post of Clerks in the nationalized banks as against vacancies for the year 2014-2015. A similar advertisement was issued in the Employment News dated 27.07.2013-02.08.2013 inviting applications for recruitment to the post of Probationary Officers.

4. The appellant in W.A(MD)No.1264 of 2015 by name B. Ponnambalam applied for the post of Probationary Officer. The appellant in the other appeal applied for appointment to the post of Clerk.

5. In the written examination held on 19.10.2013 for selection of Probationary Officers, the appellant in the first writ appeal secured 71 marks. The cut off mark for OBCs was only 60.

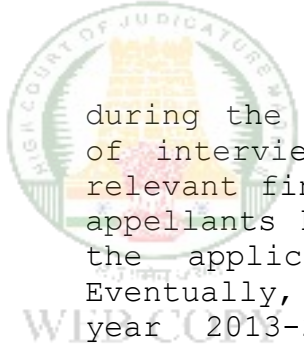
6. Similarly, in the written examination held on 08.12.2013 for recruitment to the post of Clerks, the appellant in the second writ appeal secured 108 marks while the cut off mark was 80.

7. An interview was held on 04.01.2014 for the post of Probationary Officer and an interview was held on 14.02.2014 for the post of Clerk. Both the appellants participated in the interview and produced community certificates issued during the year 2012-2013 to the effect that both of them belonged to OBC. But the notification for recruitment required the appellants to produce the community certificate obtained during the financial year 2013-2014 in view of the fact that the persons who came within the creamy layer among OBCs were not entitled to the benefit of reservation.

8. The question as to whether some one belonged to the creamy layer or not had to be decided only with reference to the financial year relevant to the recruitment year. This is why the respondents insisted in their notification for recruitment, upon production of a community certificate issued during the relevant financial year namely 2013-2014.

<https://hcservices.ecourts.gov.in/hcservices/>

9. Since the appellants had only a community certificate issued



during the financial year 2012-2013, they produced the same at the time of interview and sought time to produce a fresh certificate for the relevant financial year. But unfortunately, the Taluk from which both the appellants hail, got bifurcated into Madurai South and North. Therefore, the applications of the appellants got entangled in red tapes. Eventually, the appellants got community certificates for the financial year 2013-2014 on 06.02.2014 and 19.03.2014 respectively. These community certificates were also produced by the appellants.

10. However, when the respondents published the results of the selection on 01.04.2014, the names of the appellants were left out on the ground that these certificates ought to have been produced at the time of interview and not thereafter.

11. Aggrieved by the stand taken by the respondents, the appellants filed writ petitions. The writ petitions were dismissed by the learned Judge by a common order dated 29.04.2014 in limine at the time of admission. Aggrieved by the said order, the appellants are before us.

12. Since there are no disputes on facts and also since the question involved in both the writ appeals is the same, we have taken up the writ appeals together for disposal.

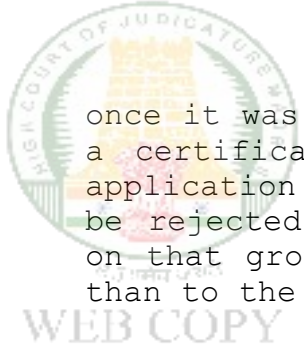
13. The relevant clause that dealt with the requirement to produce a community certificate as found in the notification for recruitment is extracted as follows, for better appreciation of the controversy involved in these appeals:-

"In case of candidates belonging to OBC category, certificate should specifically contain a clause that the candidate does not belong to creamy layer section excluded from the benefits of reservation for Other Backward Classes in Civil post & services under Government of India. OBC caste certificate containing the Non-creamy layer clause should be issued during the period 01.04.2013 to 31.03.2014. Caste Name mentioned in certificate should tally letter by letter with Central Government list/notification.

Candidates belonging to OBC category but coming under creamy layer are not entitled to OBC reservation. They should indicate their category as General in the online application form".

14. There is no dispute about the fact that on the date of interview the appellants were not in possession of a OBC certificate containing a creamy layer clause relevant for the financial year 2013-2014. But the fundamental question is as to whether the non production of the said certificate at the time of interview, would disentitle the appellants from having their applications considered for recruitment or not.

15. In V.Premanand Vs.The State of Tamil Nadu and others AIR 1995 Madras 316, a question arose before a Division Bench of this Court as to whether the non production of a community certificate to the effect that the applicant for admission to the first year MBBS Course was born of inter-caste marriage would disentitle the candidate from seeking the benefit of reservation or not. A Division Bench of this Court held that



once it was found that the candidate had applied in time for the issue of a certificate and once it was found that the processing of the said application was entangled in bureaucratic delays, the candidature cannot be rejected. A Division Bench held that the rejection of an application on that ground would tantamount to giving greater value to the procedure than to the substantive right.

16. In yet another case decided by another Division Bench in *Dr.A.Rajapandian Vs.State of Tamil Nadu* (decided on 07.11.2006), this Court was concerned with the rejection of the application of few persons for appointment to the post of Veterinary Assistant Surgeon on the ground of non production of a registration certificate from the Veterinary Council.

17. Though the decision in *V.Premanand* was relied upon by the counsel, the Division Bench distinguished the decision in *V.Premanand* on the ground that the ruling in *V.Premanand* related to the substantive right.

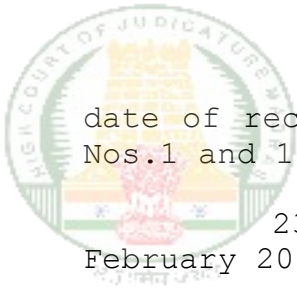
18. In other words, in *Dr.A.Rajapandian*, the Division Bench did not hold the decision in *V.Premanand* to be not a good law. On the contrary, the Division Bench pointed out that the certificate was only a piece of evidence to prove that the candidate belonged to a particular community.

19. In another decision in *The Secretary, Tamil Nadu Public Service Commission Vs.M.Chitra* (in W.A(MD)No.585 of 2009 decided on 11.11.2009), another Division Bench of this Court went into greater detail. Relying upon the decision of the Supreme Court in *Dolly Chhanda Vs.Chairman, Jee and others AIR 2004 SC 5043*, the Division Bench answered the very same question that has arisen in this case, in favour of the candidates therein. Therefore, the issue raised in these writ appeals is no longer *res integra* and the issue is covered in favour of the appellants.

20. Moreover, the decision dated 11.11.2009 in W.A(MD)No.585 of 2009 was taken on appeal by the Tamil Nadu Public Service Commission to the Supreme Court in *S.L.P(Civil).No.6083 of 2010*. But the Supreme Court dismissed the SLP by an order dated 12.05.2010.

21. However, learned counsel for the respondents relies upon a decision of the Division Bench of the Allahabad High Court in W.A(MD) no.20547 of 2014 dated 09.04.2014. But a crucial look at the judgment of the Allahabad High Court would show that there was no discussion on the question as to whether the requirement to produce certificate of this nature, was a condition precedent to be followed without exception or not. Moreover, the Allahabad High Court did not take note of the judgment of the Supreme Court in *Dolly Chhanda*. Therefore, we find no reason to take a different view from the view taken by at least two Division Benches of this Court in *Dr.A.Rajapandian* and *M.Chitra*.

22. Hence, the writ appeals are allowed and the order of the learned Judge is set aside and the writ petitions would stand allowed. The respondents are directed to pass orders on the basis of the community certificates produced by the appellants in February and March 2014 even before the results were published within a period four weeks from the



date of receipt of a copy of this order. No costs. Consequently, M.P(MD) Nos.1 and 1 of 2015 are closed.

23.Post the matter for reporting compliance in the first week of February 2016.

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Sd/-
Assistant Registrar(AS)

Sub AssistantRegistrar

To

1.The Chairman,
Institute of Banking and Personnel Section,
IBBS House,
90 Feet D.P.Road,
Near Thakur Polytechnic
Off.Western Express Highway,
P.B.No.8587, Kandivali (E),
Mumbai 400 101.

2.The Regional Manager,
Indian Overseas Bank,
Regional Office, Anna Nagar,
Madurai 625 020.

3.The Section Officer, Judicial Department,
Maduria Bench of Madras High court, Madurai.
(to follow the compliance report)

Copy to:The Registrar(Judicial)
Madurai Bench of Madras High court, Madurai.

+2cc to M/s.Sekar, Advocate in SR.No.329 & 35/16
+2cc to M/s.K.M.Vijaiyakumar, Advocate SR.No.22,23

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