

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

+ **W.P.(C) No. 11817/2016**

% **19th December, 2016**

YOGITA GODARA Petitioner

Through: Ms. K.B. Hina, Advocate with
petitioner in person.

versus

FOOD CORPORATION OF INDIA & ANR. Respondents

Through: Ms. Neemlima Tripathi, Advocate for
R-1.

Mr. Harish Kumar Garg and Ms.
Puuram Kumari, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 46613/2016 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) No. 11817/2016 and C.M. Appl. No. 46612/2016 (for stay)

1. By this writ petition under Article 226 of the Constitution of India the petitioner impugns the order dated 17.11.2016 of the respondent no. 1/Food Corporation of India/employer terminating the services of the

petitioner on the ground that the petitioner was only an OBC in the list of Government of National Capital Territory of Delhi but was not an OBC in the Central list of Union of India, and thus it was found that the petitioner had obtained employment by wrongly claiming benefit of an OBC category although petitioner was not in the OBC category as per the Central List and as required by the recruitment process in question.

2. The facts of the case are that the respondent no. 1 issued an advertisement on 31.7.2010 for recruiting personnel in the category of Assistant Grade III. 59 out of the total 250 vacancies were reserved for OBC-Non Creamy Layer in the Central List. As per the advertisement the format of the OBC certificate had to be downloaded from the link given on the website and the format of the certificate so downloaded made it clear that a candidate seeking benefit of OBC category for appointment must be an OBC as per the Central List. Petitioner filled up her form as an OBC candidate. Petitioner was successful in the recruitment process and after verifying the documents of the petitioner, the petitioner was given a letter of appointment to join as a probationer on 4.4.2011. Petitioner completed her probationary services and was confirmed in her services on 10.7.2012. After around one and a half year thereof, i.e. on 6.12.2013, the petitioner received a show cause notice dated 6.12.2013 asking the petitioner to show cause as to why her services should not be terminated because petitioner

was not an OBC candidate as per Central List of OBC but was an OBC only as per the Delhi State List of OBCs. Full fledged enquiry proceedings were conducted by the Enquiry Officer who gave his report dated 1.4.2015 against the petitioner that the petitioner was not an OBC as per the Central List and hence it was concluded by the Enquiry Officer that the petitioner had wrongly obtained employment. Accordingly, the impugned order dated 17.11.2016 was passed terminating the services of the petitioner.

3. The issue before this Court is as to whether petitioner though is not an OBC as per Central List of OBC, whether still the petitioner's services should not be terminated because the respondent no. 1 and its nominee being the recruiting agency were at fault in not correctly scrutinizing the document being OBC certificate, and now the petitioner, in fact, after completion of her probationary services has been confirmed in her services, and the petitioner today is 28 years of age and allegedly is over age for appointment to a post under the respondent no.1.

4. The counter issue and argument raised on behalf of the respondent no.1 is that a person who has obtained employment by fraud, even though there may be lack of application by some employees of the respondent no.1, should not result in a person who is not entitled to seek appointment to continue in appointment, more so, because it will amount to

perpetuating fraud. It is argued that there cannot be estoppel against the respondent no.1 or equities in favor of the respondent no.1 as the petitioner knew all along that she had wrongly got the employment and that she knew that she did not fall under the requisite OBC category for getting the employment with the respondent no.1.

5. As per the subject advertisement it was specifically prescribed that in case information furnished by a candidate is found to be defective or the candidate is found to be deliberately suppressing information, then, the candidature of the candidate will be rejected when it comes to the notice of the management. This relevant paragraph of the advertisement reads as under:-

“Candidates should satisfy themselves that they fulfill the required qualification including Computer Qualification, age etc., before applying for the post. In case it is found that the information furnished by a candidate is defective in any manner or that the candidate has deliberately suppressed information, the candidature will be summarily rejected as and when it comes to the notice of the Management. The candidates are advised to satisfy themselves fully about the correctness of the information furnished, if found ineligible at any stage the candidature would be rejected.”

6. The present is also not a case where there is only a technical shortcoming on the part of the petitioner such as a format being not as per the format or format of an OBC certificate being submitted beyond the due date, etc, but the issue is that the petitioner, in fact, does not fall under the reserved OBC category for seeking employment under the reserved category

and which employment she has got by concealing the facts. Doctrine of benefit of inaction on the part of any employer can create equity in favour of an employee only if an employee himself/herself does not know the correct facts and it is not the case that the employee did not know the correct facts. The fact that the petitioner did not fall under the Central List of OBC is an admitted fact and hence she was not entitled to seek employment in the reserved category, and this becomes clear from the following paragraph of the Enquiry Officer's report dated 1.4.2016 and which para reads as under:

“It was further stated on behalf of CO that in the subsequent advertisement published by FCI in the year 2012, the format of OBC caste certificate to be submitted by OBC candidate was clearly specified. Therefore any isolated action against CO is nothing but absolute discrimination. It was further insisted on behalf of CO that the Caste Certificate was fully valid and genuine for an OBC-NCL candidate. However, its applicability and acceptability for any post of FCI was to be validated by FCI itself, not by the CO. A bare perusal of the Application Form of CO, on record reveals that under CheckList at Point 3 it has been categorically mentioned that “Category Certificate for SC/ST/OBC-NCL/Kashmiri Migrant : OBC CERTIFICATE. Performa for Category certificate can be downloaded from website <http://specialtest.in/fci/NORTHGROUPAG/DownloadProforma.htm>.” Further as per records in the Call Letter for Document Verification to CO it has been clearly stated “Click the following Format to download: Check-List Format | Undertaking Format | SC/ST Certificate Format | PH Certificate Format | OBC Certificate Format | View Job Profile for Category –III ...” Thus it is evident that the format of OBC certificate to be submitted was clearly specified.”

7. Endeavour of the petitioner before this Court to canvass that there was no format given along with the advertisement is misplaced because the advertisement specifically takes every candidate to a link and which link gives the specific format and a reference to that format would have shown that employment can be sought by a candidate in the OBC

category only if the candidate falls in the Central List of OBCs. Petitioner is admittedly not in the Central List of OBCs. In fact even before this Court petitioner is guilty of concealment of facts because the petitioner has not filed her application form of which point no. 3 at the check list would have shown the link on the website which gives the format, and which would have made clear that the format submitted by the petitioner was only showing the petitioner as OBC in the State List and not in the Central List as is required by the prescribed format for employment. In fact, the petitioner is disentitled from claiming equity in her favor in view of the observations of the Supreme Court in the case of ***Kumari Madhuri Patil and Another Vs. Addl. Commissioner, Tribal Development and Others, (1994) 6 SCC 241***, wherein in paragraph 16 the Supreme Court has observed that a person who seeks equity must come to Court with clean hands and a person who comes to the Court with a false claim cannot plead equity and nor would the Court be justified in exercising equity jurisdiction in such persons favour. For the self-same reason the Supreme Court held that doctrine of promissory estoppel would also not apply in favour of a candidate who does not come to the Court with clean hands. In fact, the Supreme Court has stated that there is no estoppel as no promise of the social status is made by the State when a false plea is put forth for the social status by a candidate. Paragraph

16 of the judgment in the case of ***Kumari Madhuri Patil (supra)*** which makes such observations reads as under:-

“16. Whether appellants are entitled to their further continuance in the studies is the further question. Often the plea of equities or promissory estoppel would be put-forth for continuance and completion of further course of studies and usually would be found favour with the courts. The courts have constitutional duty and responsibility, in exercise of the power of its judicial review, to see that constitutional goals set down in the Preamble, the fundamental rights and the Directive Principles of the Constitution, are achieved. A party that seeks equity, must come with clean hands. He who comes to the Court with false claim, cannot plead equity nor the court would be justified to exercise equity jurisdiction in his favour. There is no estoppel as no promise of the social status is made by the State when a false plea was put-forth for the social status recognised and declared by the Presidential Order under the Constitution as amended by the SC & ST (Amendment) Act, 1976, which is later found to be false. Therefore, the plea of promissory estoppel or equity have no application. When it is found to be a case of fraud played by the concerned, no sympathy and equitable considerations can come to his rescue. Nor the plea of estoppel is germane to the beneficial constitutional concessions and opportunities given to the genuine tribes or castes. Courts would be circumspect and vary in considering such cases.”

8. In fact, the Supreme Court in the case of ***Kumari Madhuri Patil (supra)*** in paragraph 13 has observed that when appointments are wrongly obtained on the basis of false social status certificate the same necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates of the benefits conferred upon them by the Constitution because the genuine candidates are denied admission or appointment to office or posts on account of ineligible persons who gain false entry. This relevant portion of paragraph 13 of the judgment of the Supreme Court in the case of ***Kumari Madhuri Patil (supra)*** reads as under:-

“13. The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily have the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. ...”

9. Therefore, persons such as the petitioner can neither claim equity nor estoppel having wrongly obtained employment in a category in which the petitioner actually did not fall.

10. Petitioner sought to place reliance upon the judgment of the Supreme Court in the case of *Kavita Solunke Vs. State of Maharashtra and Others*, (2012) 8 SCC 430, however, the said judgment would not apply to the facts of the present case because the facts of the said case shows that when the candidate obtained appointment, the candidate was to be treated under the reserved category, but only because of a subsequent judgment of the Supreme Court in the case of *State of Maharashtra Vs. Milind and Others*, (2001) 1 SCC 4, that certain categories lost the benefit of reservation and hence the Supreme Court held that when a person who otherwise fell in the reserved category on the date of appointment but was not to be treated in the reserved category as per the subsequent events on

account of exposition of law by the Supreme Court, then such subsequent facts cannot nullify an appointment already obtained on the basis of reservation which was a valid reservation at the point of time when the appointment is obtained. In the case of ***Kavita Solunke (supra)*** the candidate belonged to the reserved category of 'Halba' (Scheduled Tribe) and had obtained an appointment, but after a decade the caste certificate was invalidated on the ground that being a 'Koshti' did not belong to the Halba tribe recognized as a Scheduled Tribe although 'Halba-Koshti' was treated as Halba before the judgment of the Supreme Court in the case of ***Milind (supra)***. Accordingly the ratio of the judgment of the Supreme Court in the case of ***Kavita Solunke (supra)*** has no application to the facts of the present case.

11. On behalf of the petitioner reliance was then placed upon the judgment of the Division Bench of the Bombay High Court in the case of ***Anil Vasantrao Shirpurkar Vs. State of Maharashtra and Others, 2003 (2) BomCR 205***, to argue that if an appointment is wrongly obtained but the appointment is not cancelled within a reasonable period and the candidate has completed probation then since proceedings for termination are not initiated within a reasonable period, a person's appointment should not be cancelled.

12. Firstly, on facts, the judgment in the case of *Anil Vasantrao Shirpurkar (supra)* is distinguishable because in the advertisement in question in this case or in any rule of respondent no. 1 it is not found that the appointment can only be terminated within a reasonable period. Also, it is seen that the judgment of the Division Bench of the Bombay High Court in the case of *Anil Vasantrao Shirpurkar (supra)* does not refer to the binding ratio of the judgment of the Supreme Court in the case of *Kumari Madhuri Patil (supra)* which holds that with respect to a person who is guilty of representing falsehood no equitable relief can be granted and there is no promissory estoppel against the State, more so, because it amounts to depriving genuine persons of public appointment. Accordingly, the petitioner cannot seek any benefit of the judgment of the Division Bench of the Bombay High Court in the case of *Anil Vasantrao Shirpurkar (supra)*.

13. In view of the above the following conclusions can be drawn:-

(i) Petitioner was only an OBC in the Delhi State List but was not an OBC in the Central List of OBC and which was required for the purpose of seeking appointment with the respondent no. 1 under the advertisement in question and which advertisement required format to be submitted showing that the candidate must be an OBC in the Central List of OBC.

(ii) Taking the fact that the respondent no. 1 is guilty of negligence in not properly scrutinizing the documents, yet, a person who conceals facts is not entitled to benefit of equity or promissory estoppel, and which principles are in fact against a person who takes illegal appointment by fraud and concealment of facts in view of the ratio of the judgment of the Supreme Court in the case of *Kumari Madhuri Patil (supra)*.

14. However, in the peculiar facts of the present case, in view of the admitted lack of application of respondent no. 1 in failing to scrutinize the documents at the correct point of time, so far as the petitioner is concerned, the petitioner will have the benefit of extension of age beyond that stipulated in the advertisement for the period for which the petitioner served the respondent no. 1 i.e. from 4.4.2011 till the impugned order was passed on 17.11.2016 i.e. to the maximum age as required for appointment, petitioner will have an additional period thereto being the period from 4.4.2011 to 17.11.2016.

15. In view of the above, the present writ petition is accordingly dismissed, however, benefit to the petitioner with respect to relaxation of age limit will be given by respondent no. 1 as stated above in case the petitioner applies for and is legally successful in a future recruitment process. The writ petition is disposed of accordingly.

DECEMBER 19, 2016

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VALMIKI J. MEHTA, J