

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.03.2017

CORAM

THE HONOURABLE MR. HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.A. NO. 68 OF 2017

AND

C.M.P. NO. 1147 OF 2017

1. The Secretary
National Level Eligibility Test (NET)
NET Bureau, UGC South Campus
University of Delhi
Benito Juarez Marg
New Delhi 110 002.
 2. The University Grants Commission
rep. By its Secretary
Bahadur Shah Zafar Marg
New Delhi 110 002.
- ..Appellants/Respondents 2 & 3
- Vs -
1. R.Ramamurthy ..1st Respondent/Petitioner
 2. The Government of Tamil Nadu
rep. By its Principal Secretary
Dept. of Higher Education
Fort St. George, Chennai 600 009
... 2nd Respondent/1st respondent

Writ appeal filed against the order dated 16.04.2013 passed by the learned single Judge in W.P. No.8925 of 2013 petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus directing the third respondent to declare that the petitioner has passed and qualified in NET, June 2012 examination in Management Subject.

For Petitioner : Mr. P.R.Gopinathan

For Respondents : Mr. R.Subramanian for R-1
Mr. R.Vijayakumar, AGP for R-2

JUDGMENT

(DELIVERED BY THE HON'BLE ACTING CHIEF JUSTICE)

This writ appeal is directed against the order passed by the learned single Judge wherein direction has been given to the appellants herein to issue certificate to the petitioner.

2. It is the case of the petitioner that at the time of applying for appearing in the NET examination, he had applied under the General Quota, since the quota was prescribed only for the purpose of payment of fees and had nothing to do with the selection/passing criteria. Since, categorywise qualifying marks were prescribed at a later point of time by the UGC, the petitioner submitted his caste certificate certifying him to be belonging to OBC category. But the said certificate was not accepted by the authorities and they rejected his claim for certifying him as having come out successful in the NET examination. Therefore, the petitioner filed the writ petition.

3. Learned single Judge, placing reliance on a judgment of the Kerala High Court in W.P. No.22187 of 2012, etc., which was followed by this Court in W.P. No.29373 of 2012, etc., allowed the writ petition directing the authorities/appellants herein to declare the petitioner as pass in the OBC category. Aggrieved against the said order, the present appeal has been preferred by the appellants herein.

4. It is the submission of the learned counsel appearing for UGC that the 1st respondent having applied under the general category and having not satisfied the requirements of marks for being eligible to be conferred with a pass, at a later point of time, cannot be allowed to plead that he belongs to OBC category to save himself from the rigors by trying to produce a caste certificate and such a concession cannot be granted to the 1st respondent. It is the submission of the learned counsel for the appellants that the order passed by the learned single Judge is patently illegal inasmuch as such a concession, if extended, in the absence of any such plea by the petitioner at the first instance would stampede the whole selection process, which has been done by the UGC. If the 1st respondent had submitted the OBC certificate and applied under the OBC category, there would not have been any impediment for him to be selected under the OBC category. But an action such as the one done by the petitioner to apply under the general category and at a later point of time claiming himself to belong to OBC category would be nothing but trying to subserve the process of selection to his benefit. The petitioner having failed to obtain the minimum marks prescribed for general category cannot take a devious route at a later point of time claiming backward category from which he is estopped. Such a concession cannot be extended to him and to that extent the order passed by the learned single Judge is liable to be set aside.

5. Per contra, it is the submission of the learned counsel for the 1st respondent that the 1st respondent applied under the general category as there was no reservation, but only payment of fees insofar as general category is concerned. However, at a later point of time, the marks having been prescribed for the different categories, based on the advertisement in the website of the appellants calling upon the candidates to submit their caste certificate, the 1st respondent submitted his caste certificate certifying him to belong to OBC category. Therefore, it is not open to the appellants to contend that the 1st respondent has approached the appellants at a later point of time to claim the benefit of lower marks for OBC, since the lower marks was secured, at a later point of time, which made the 1st respondent to claim the benefit of his category. Considering the above aspect of the matter, learned single Judge, following the decisions of this Court as well as the Kerala High Court has allowed the petition in favour of the 1st respondent herein, which is a well considered order and calls for no interference at the hands of this Court.

6. This Court has given its anxious considerations to the rival contentions advanced by the learned counsel on either side and also perused the materials available on record.

7. Before advertng to the factual matrix of the matter, a perusal of the order passed by the learned single Judge would shed much clarity on the issue, which is extracted hereunder :-

"7. When identically placed candidates approached this Hon'ble Court, questioning the action of the UGC in prescribing higher percentage of aggregate of marks as the qualifying criteria, this Court in W.P. No.29373/2012, etc., in a batch of cases on 31.01.2013 allowed all the writ petitions as prayed for and the learned single Judge was in agreement with the law laid down by the Kerala High Court and accordingly held that the UGC has no jurisdiction to prescribe the higher percentage of aggregate of marks than what has been stated in the notification.

8. Following the judgment of this Court dated 31.01.2013 in W.P. No.29373/2012, etc., I also allowed a number of writ petitions in W.P. No.4039/2013, etc., in a batch of cases on 19.03.2013, by holding that the writ petitioners ought to be declared as cleared the NET held on 24.06.2012, if they had obtained the minimum required marks prescribed in all the three papers, as mentioned in the notification.

* * * * *

10. Hence, the above writ petition is allowed and since the petitioner is qualified to be declared as pass as he belongs to OBC (Non Creamy Layer) and the aggregate mark obtained is 60% as per the revised criteria, the third respondent is hereby directed to declare that the petitioner has passed and qualified in NET, June, 2012 examination in Management subject and issue necessary certificate to that effect within 30 days from the date of receipt of a copy of this modified order."

8. The stand of the appellant that it is not open to the 1st respondent to opt for a category of his choice as and when it suits him, though, on the face of it is justified, however, in the case on hand, the principle cannot be applied on the ground that there is an inordinate delay on the part of the appellants in filing the appeal to reverse the findings of the learned single Judge, by which time much water has flown under the bridge. The approach of the Department being casual in not being vigilant in filing the appeal at the earliest point of time and the 1st respondent having enjoyed the benefit of the order passed by the learned single Judge for quite a long length of time, cannot be asked to forego the same at this belated point of time.

9. However, on the principle of balance of convenience and equity, the appellants may have a case on hand, since the defence taken by the 1st respondent in the writ petition as well as in this appeal, lacks substance. However, the 1st respondent having enjoyed the benefit of the order of the learned single Judge, cannot be stripped of the said benefit at this belated point of time. Therefore, in the facts and circumstances of the case and considering the factual matrix involved in this appeal, this Court is not inclined to set aside the order passed by the learned single Judge. However, the contentions on the application of principle as argued by the learned counsel appearing for the appellants is kept open to be agitated in some other matter.

10. Accordingly, this writ appeal is dismissed with the aforesaid observations. Needless to state it is for the appellants to issue the certificate to the 1st respondent within a period of two months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. It is stated that a contempt petition is pending. In the event of non-issuance of certificate, it is open to the 1st respondent to pursue the contempt petition. However, it is made

clear that this case cannot be cited as a precedent for the purpose of grant of similar relief or on principles. In the circumstances of the case, there shall be no order as to costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

GLN

To

1. The Secretary

National Level Eligibility Test (NET)
NET Bureau, UGC South Campus
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2. The Secretary

The University Grants Commission
Bahadur Shah Zafar Marg
New Delhi 110 002.

3. The Principal Secretary to Government

Government of Tamil Nadu
Dept. of Higher Education
Fort St. George, Chennai 600 009.

+4cc to Mr.P.R.Gopinathan,Advocate sr.14391(24/3/2017)

+1cc to Government Pleader sr.14168

+1cc to Mr.R.Subramanian,Advocate sr.13790

rsy(co)
ss(23/3/2017)

W.A. NO.68 OF 2017

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