

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-938-2014 (O&M)

Date of Decision:-18.09.2017.

Sunil Kumar

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. P.S. Khurana, Advocate for the petitioner.

Mr. Karminder Singh, Advocate for respondent Nos.1 to 3.

Mr. Karnail Singh, Advocate for respondent No.4.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioner has challenged the communication dated 15.6.2013 (Annexure P-11) whereby his candidature for apprenticeship in the Fitter Cadre Trade, has been rejected.

Official respondents notified applications from the eligible candidates for Apprenticeship Training under the Apprenticeship Act, 1961 for various trades including Fitter Cadre on 31.1.2013 while fixing the last date for submission of application as 28.2.2013. Petitioner is a candidate under OBC category for undergoing Fitter Apprenticeship. His candidature has been rejected on the sole ground that the certificate of OBC was not within the time limit stipulated in the advertisement i.e. within 31.10.2012. On 14.5.2013, petitioner and others were called for scrutiny of documents. Petitioner appeared and produced relevant documents including OBC certificate. He had certificates dated 14.10.2011, 22.11.2012 and 10.5.2013.

The respondents while taking notice of the certificate dated 10.5.2013 rejected petitioner's claim. Whereas the persons who have secured lesser

marks than the petitioner like the private respondents, their names have been considered for the purpose of apprenticeship in the Fitter Trade. Hence, the present petition.

Learned counsel for the petitioner submitted that petitioner's OBC certificate is with reference to caste of '*Kumhar*' and not the income so as to appraise the respondents contention that on a particular date, OBC certificate is required to be taken into consideration. In other words, it was submitted that caste will not change from time to time. On the other hand, income would change. Therefore, insisting for an OBC certificate (caste certificate) for a particular date, is arbitrary therefore, the respondents have erred in rejecting the petitioner's claim. In support of the petitioner's claim, learned counsel for the petitioner relied on Supreme Court decision reported in ***2016 (4) SCC 754 (Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and another)*** wherein it has been held as under:-

“In our considered view, the decision rendered in Pushpa is in conformity with the position of law laid down by this Court, which have been referred to supra. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in the cases of Indra Sawhney and Valsamma Paul wherein this Court after interpretation of Articles 14,15,16 and 39A of the Directive Principles of State Policy held that the object of providing reservation to the SC/ST and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general

category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39A of the Directive Principles of State Policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus, erred in reversing the judgment and order passed by the learned single Judge. Hence, the impugned judgment and order passed by the Division Bench in the Letters Patent Appeal No. 562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in the cases of Indra Sawhney and Valsamma Paul.. Therefore, the impugned judgment and order passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside. The judgment and order dated 24-11-2010 passed by the learned single Judge in Ram Kumar Gijroya Vs. Govt. (NCT of Delhi) is hereby restored.”

Per contra learned counsel for the official respondents submitted that in the advertisement, the official respondents have insisted that OBC certificate should be as on 31.10.2012 and so also with reference to the condition how to apply they have indicated as on 31.10.2012. In view of the age limit and how to apply clause in the advertisement dated 31.1.2013, the petitioner's OBC certificate dated 10.5.2013 cannot be accepted. Therefore, there is no infirmity in the communication dated 15.6.2013

Learned counsel for respondent No.4 submitted that respondent No.4 has undergone the Apprenticeship in the Fitter Cadre and he was not

appointed. Therefore, he seeks protection for the training undergone by

respondent No.4 in the Fitter Trade as an apprentice.

Heard learned counsel for the parties.

Crux of the matter in the present petition is as to whether petitioner is required to produce OBC certificate issued as on 31.10.2012 or not. On 14.5.2013 while advertising for Fitter Trade Apprenticeship, the respondents have incorporated the following clauses:-

“Age Limit:-

15 to 24 years of age candidates should be eligible for trades of mechanical, Fitter, Electrician on date 31.10.2012, relaxation of 5 years of age be given to S.C. Or S.T. And relaxation of 3 years in age be given to O.B.C. 15 to 22 years in age candidates should be eligible for Welder (Gas & Electric) on dated 31.10.2012, relaxation of 5 years in age be given to S.C. or S.T. and relaxation of 3 years in age be given to O.B.C.

How to Apply:-

Only those candidates should be filling up applications who have (National Trade Certificate) or minimum (PNTC) Provisional National Trade Certificate (as per attached proforma:- I/II/III) issued by N.C.V.T. on 31.10.2012. Whom candidates obtain technical qualification from four Model I.T.I., those candidates should be taken part in training of training rebate as per application of 08.10.2002.

Candidates fulfilling the technical & educational qualification or other instructions, who wants to apply can visit web site www.dmw.indianrailway.gov.in under News and information in apprentices section can click on Misc. Activities of Personnel Departments.”

Perusal of the aforesaid column, it is evident that cut off date as

31.10.2012 has been stipulated only for the purpose of age for both unreserved and reserved category candidates. Insofar as how to apply clause is concerned, it is relating to acquisition of educational qualification like ITI etc. as on 31.10.2012. In other words, there is no cut off date fixed for the purpose of production of OBC certificate that such certificate shall be within the date of 31.10.2012. In the absence of clause to the extent that OBC certificate is required to be obtained prior to 31.10.2012, the respondents cannot insist that the petitioner has to produce OBC certificate prior to 31.10.2012. Therefore, rejection of certificate dated 10.5.2013 produced by the petitioner is arbitrary and illegal. That apart, if a candidate claims reservation under SC/ST or OBC with reference to the caste, the selecting/appointing authority cannot insist for certificate to be produced with reference to any particular date for the reasons that caste will not change from time to time. They can insist for income certificate with reference to any reservation for the reasons that family income may vary from time to time. Therefore, Annexure P-11 dated 15.6.2013 is hereby set aside. The respondents are hereby directed to consider petitioner's name for Fitter Trade Apprenticeship for the ensuing Notification and permit him to undergo Fitter Trade Apprenticeship.

With the above observations, petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

September 18, 2017.

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Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.