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

+ **W.P.(C) 1256/2016**

BIKRAM SINGH

..... Petitioner

Through : Mr. A.K. Trivedi, Advocate.

versus

UNION OF INDIA & ANR

..... Respondents

Through : Mr. Rakesh Kumar, CGSC with
Mr. Jitendra Kumar Tripathi, Central
Govt. Pleader and Mr. Ramesh Tiwari,
Advocate for R1, R2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

ORDER

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16.05.2017

1. The petitioner Bikram Singh challenges the order dated 20th January, 2015 rejecting his candidature in the Other Backward Class ('OBC') category for the post of Constable (General Duty) on the ground that the 'OBC' certificate submitted by him was not valid as per notice of examination. This order also records that petitioner had not been considered in the 'General' category as he was above 23 years of age.
2. Pursuant to advertisement issued by the Staff Selection Commission for selection for the post of Constable (GD) in Central Police Organization (CPO) and Rifleman (GD) in Assam Rifles in the year 2012, the petitioner had participated and was placed in the select list published in June, 2012.

The name of the petitioner was included in the 'General' category, despite the fact that the petitioner was eligible and had applied as an OBC candidate.

3. The petitioner had enclosed an 'OBC' certificate dated 24th December, 2011 issued by Deputy Commissioner (West District), Delhi. This certificate acknowledges that the petitioner belongs to the 'Gujjar' community, recognized as a backward class by the Government of NCT of Delhi. The certificate records that the petitioner did not belong to creamy layer as per relevant notifications issued by the DoP&T.

4. The petitioner was called for medical examination, which was held on 13th August, 2012.

5. Thereafter, no appointment letter was issued to the petitioner, though he had scored higher marks than the last OBC candidate selected and appointed in Assam Rifles as well as Indo-Tibetan Border Police (ITBP).

6. The petitioner, therefore, filed W.P. (C) No.333/2014 which was disposed of on 6th February, 2014 giving the petitioner liberty to make a representation to the respondents to be accommodated against the 'OBC' category vacancies.

7. The petitioner's representation dated 6th February, 2014 was rejected

vide order dated 20th January, 2015, which as noticed above has been impugned in the present writ petition.

8. It is an undisputed position that the petitioner belongs to the 'OBC' category. To this extent there is no lis and dispute. The respondents' contention is that the petitioner had not furnished the 'OBC' certificate in the requisite format on, or before, the date of medical examination i.e. 13th August, 2012 and, therefore, he cannot be appointed against vacancies in the OBC quota.

9. The petitioner was issued another OBC certificate dated 3rd December, 2012 by the Deputy Commissioner (West District), this time in the prescribed format, which was submitted to the respondents.

10. We have considered the differences between the two certificates dated 24th December, 2011 and 3rd December, 2012. The second certificate refers to several notifications issued by the Government of India, whereas the first certificate refers to the notifications issued by the Government of NCT of Delhi. Except for the said difference, other assertions and contents of the two certificates are identical.

11. The issue in our opinion is covered by the decision of the Supreme Court in *Ram Kumar Gijroya v. Delhi Subordinate Services Selection*

Board & Anr. (2016) 4 SCC 754. The Supreme Court allowed appeals preferred before them against the Division Bench's decision of the Delhi High Court and had held that the question of submission of 'OBC' certificate has to be examined not in a pedantic manner but in the backdrop of objective and purpose behind the reservation policy. Reference was made to ratio laid down by the Supreme Court in ***Indra Swahney v. Union of India, 1992 SUPB (3) SCC 217*** and ***Valsamma Paul v. Cochin University & Ors. (1996) 3 SCC 545***, to hold and direct that the candidates of such categories should not be rejected simply on the ground of late submission of caste certificate.

12. In ***Ram Kumar Girjroya (supra)*** the Supreme Court specifically approved the earlier decision of the Delhi High Court in ***Pushpa v. Government of NCT of Delhi and Ors***, Writ Petition (C) No. 9112 of 2008, dated 11th February, 2009, which in turn refers to ***Tejpal Singh & Ors. v. GNCTD ILR 2001 Delhi 298. Tejpal Singh case (supra)*** affirmatively and clearly holds that a person belongs to reserved category or caste by birth and does not acquire the said category by any event at a later date. The certificate issued by the Competent Authority is only an affirmation of the fact, already in existence.

13. Learned counsel for the respondents, however, submits that there is delay and laches and therefore, the petitioner is not entitled relief under Article 226 of Constitution of India. Further, the unfilled vacancies in the 'OBC' category were carried forward in the next recruitment cycle.

14. We have considered the said contention and express our inability to agree with the counsel for the respondent. This is the third round of litigation by the petitioner. The first writ petition was filed by the petitioner in the year 2014 being W.P. (C) No.333/2014, which was disposed of vide order dated 6th February, 2014 with liberty to the petitioner to approach the respondent with a representation and request to be accommodated in the 'OBC' category. Approaching the court, besides being expensive, is the last and not the first option. W.P.(C) No.333/2014 was not dismissed/rejected for delay and laches. There was hope that the respondents themselves would take remedial and corrective steps. The respondents took about a year to decide the representation and thereafter passed the impugned order dated 20th January, 2015. The petitioner had challenged the order dated 20th January, 2015 in W.P.(C) 1745/2015. This writ petition was disposed of as withdrawn reserving the right of the petitioner to file a fresh writ petition as necessary averments relating to the 'creamy layer; was missing in the writ

petition. Obviously, the error was on the part of the draftsman who had failed to mention the said fact. The two caste certificates dated 24th December, 2011 and 3rd December, 2012 clearly mention and certify that the petitioner does not fall in the creamy layer. The Competent Authorities had issued the said certificates after necessary verification.

15. Thereafter, the petitioner filed the present writ petition. In the aforesaid facts, this petition should not be dismissed on the ground of delay and laches.

16. There were vacancies in the 'OBC' category which were not filled up. These vacancies were carried forward for recruitment undertaken in 2013 and even thereafter. In fact, there is a contradiction in the stand taken by the respondents. In the letter dated 22nd July, 2016 written by the Under Secretary to the Government of India to the Chairman of Staff Selection Commission, reference is made that the vacancies for 2015 had been carried forward to the next recruitment year. This letter refers to 64,066 vacancies including 14,666 vacancies in the 'OBC' category. The affidavit verified on 23rd August, 2016 and filed by the respondents acknowledges that unfulfilled vacancies including those relating to 'OBC' category in 2012 examination, were carried forward to the next recruitment cycle. In the

second affidavit filed by the respondents verified on 19th September, 2016, avers that backlog of 4177 vacancies in the 'OBC' category in the year 2012 were filled and hence none were carried forward. Similarly, backlog of 1389 OBC vacancies in 2013 were filled. The said certificate relates to backlog and does not refer to the current vacancies. In any case, it is not the stand of the respondents that the petitioner would not have qualified given his marks, in the 'OBC' category. The petitioner had qualified in the 'General' category but was not appointed because he was over age for the 'General' category.

17. For the aforesaid reasons, the second arguments raised by the respondent has to be rejected.

18. In view the aforesaid discussion, we allow the present writ petition and direct that the petitioner would be considered for appointment along with the next batch in the 'OBC' category. The petitioner would not be entitled to back wages or claim seniority etc. The seniority position in the next batch would be fixed keeping in view the marks obtained by the petitioner in the 2012 examination. We have passed the said direction, as the petitioner has to undergo training and thereafter join active service. This would be fair and just, as giving benefit of seniority from back date etc. in the

facts of this case, would not be justified inspite of the fact we have rejected the argument of delay and laches. The writ petition is disposed of in the above terms, without any order as to costs.

SANJIV KHANNA, J

PRATHIBA M. SINGH, J

MAY 16, 2017

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