

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

+ **W.P.(C) 5364/2014**

% **Reserved on:** 20th February, 2017
Date of Decision: 31st May, 2017

RAVINDER KUMAR

..... Petitioner

Through: Mr. Krishna Kumar Mishra,
Advocate

Versus

UNION OF INDIA & ANR.

.....Respondents

Through: Dr. Ashwani Bhardwaj,
Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

Relevant Facts

The Staff Selection Commission, respondent No.2 before us, had issued an advertisement inviting applications from candidates belonging to various categories for the Combined Graduate Level Examination-2010, for recruitment to various posts. The advertisement was published in the employment news on 30.01.2010 and the closing date for applications mentioned therein was 02.03.2010. The Tier I examinations were to be held on 16.05.2010. As per Clause 5C to Note 1 and Annexure VII, the closing date for the receipt of application was treated as the date for reckoning for

Other Backward Class (OBC) status of the candidates. The advertisement, however, clearly stipulated that the Certificates from the competent authority for claiming the benefit of reservation under any category were to be submitted when sought by the Regional/Sub-Regional officers after the result of tier I was declared.

2. The petitioner-Ravinder Kumar, in response thereto, submitted his application, enclosing therewith an OBC certificate dated 21.5.2002, issued in the prescribed format by the competent authority. The petitioner was allowed to participate as an OBC candidate and having cleared the examinations was called for an interview. The petitioner subsequently secured another OBC certificate dated 31.7.2010 and produced the two certificates at the time of the interview, on 18.10.2010. The aforesaid certificates were not accepted. Instead, an undertaking was taken that the petitioner would not claim any appointment under the OBC category and he would be considered as a general category candidate. The petitioner was considered under the general category and in the final result notified on the website on 7.1.2011, the petitioner was recommended in the unreserved category for appointment to the post of Auditor/Junior Accountant/UDC.

3. Thereafter, the petitioner made a representation dated 30.01.2011 praying for recommendation of his name to the posts higher up in the list of preferences as per his application, treating him as an OBC candidate, on the ground that the petitioner had secured 475 marks, whereas the minimum marks secured by the last candidates selected under the OBC category for Inspector (Central Excise) were 467 and for Sub Inspector, Central Bureau of Investigation (CBI) were 465. However, no heed was paid to the representation.

4. The petitioner consequently filed OA No.3244/2011 before the Principal Bench of the Central Administrative Tribunal (Tribunal, for short), praying for a direction that his name be recommended for appointment as Inspector (Central Excise, PO, Exam) or Sub-Inspector (CBI) as per the preference exercised in the application, and seniority and other consequential benefits be granted to him. The OA has been dismissed by the Tribunal along with OA No. 3985/2010 and OA No. 3245/2011 vide detailed common order dated 24.9.2012.

5. The petitioner has filed the present writ petition impugning the aforesaid order of the Tribunal dated 24.9.2012.

Order of the Tribunal

6. The Tribunal has dismissed the OAs filed by the petitioner and two others holding that the petitioner having given an undertaking and on being recommended for appointment against certain posts, was thereafter agitating the claim for preferred posts. The petitioner was deficient in submitting the requisite OBC certificate along with the application form for consideration of his claim as an OBC candidate. The subsequent certificate obtained and submitted would not make any difference, even if the petitioner was an OBC candidate, in view of the clear and unequivocal stipulation in the advertisement itself.

Decision

7. The legal question which arises for consideration, in view of the facts of the present case, is whether the petitioner, who had appeared in the examination under the OBC category and procured the requisite and valid certificate as per the requirements after the last date mentioned in the advertisement, would be eligible for selection to the post under the OBC category or under the unreserved category. The legal effect of the undertaking signed by the petitioner is also to be examined. The question is whether an undertaking by the candidate that he would not claim

appointment under the OBC category, but as a general category candidate, which it is contended by the petitioner was taken under coercion, would be legally binding and operate as an estoppel on the petitioner.

8. In Civil Appeal No.1691/2016 titled ***Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board & Anr.***, (2016) 4 SCC 754, the question before the Supreme Court was whether a candidate who appears in an examination under the OBC category and submits the certificate after the last date as specified in the advertisement would be eligible for appointment to the post under OBC category. Answering the question in the affirmative, the Court held as under:

“13.After hearing both the parties at length and perusing the impugned judgment and order passed by the Division Bench of the High Court, we are of the view that the Division Bench erred in setting aside the judgment and order passed by the learned single Judge. We record our reasons hereunder.

14. The Division Bench of the High Court erred in not considering the decision rendered in the case of Pushpa (supra). In that case, the learned single Judge of the High Court had rightly held that the petitioners therein were entitled to submit the O.B.C. certificate before the provisional selection list was published to claim the benefit of the reservation of O.B.C. category. The learned single judge correctly examined the entire situation not in a pedantic manner but in the backdrop of the object of reservations made to the reserved categories, and keeping in view the law laid down by a Constitution Bench of this Court in the case of Indra Sawhney v. Union of India, 1992 (Supp) 3 SCC 217 as well as Valsamma Paul v. Cochin University & Ors., (1996) 3 SCC 545 The learned single Judge in

the case of Pushpa v. Government of NCT of Delhi & Ors. also considered another judgment of Delhi High Court, in the case of Tej Pal Singh (supra), wherein the Delhi High Court had already taken the view that the candidature of those candidates who belonged to the S.C. and S.T. categories could not be rejected simply on account of the late submission of caste certificate.

15. The relevant paragraph from the judgment of this Court in the case of Indra Sawhney (supra) has been extracted in the case of Pushpa (supra) along with the speech delivered by Dr. Ambedkar in the constituent assembly and reads thus :-

“9.....251. Referring to the concept of equality of opportunity in public employment, as embodied in Article 10 of the draft Constitution, which finally emerged as Article 16 of the Constitution, and the conflicting claims of various communities for representation in public administration, Dr Ambedkar emphatically declared that reservation should be confined to ‘a minority of seats’, lest the very concept of equality should be destroyed. In view of its great importance, the full text of his speech delivered in the Constituent Assembly on the point is appended to this judgment. But I shall now read a few passages from it. Dr Ambedkar stated:

“... firstly, that there shall be equality of opportunity, secondly, that there shall be reservations in favour of certain communities which have not so far had a ‘proper look-in’ so to say into the administration Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in

operation ... we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, ...". Constituent Assembly Debates, Vol. 7, pp. 701-702 (1948-49).

These words embody the raison d'être of reservation and its limitations. Reservation is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, in so far as one group is preferred to the exclusion of another, must necessarily be narrowly tailored to the achievement of the fundamental constitutional goal."

16. In the case of Pushpa (supra), relevant paragraphs from the case of Tej Pal Singh (supra) have also been extracted, which read thus :-

"11.....15. The matter can be looked into from another angle also. As per the advertisement dated 11th June, 1999 issued by the Board, vacancies are reserved for various categories including 'SC' category. Thus in order to be considered for the post reserved for 'SC' category, the requirement is that a person should belong to 'SC' category. If a person is SC his is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that

he belongs to 'SC' category and act thereon by giving the benefit to such candidate for his belonging to 'SC' category. It is not that petitioners did not belong to 'SC' category prior to 30th June, 1998 or that acquired the status of being 'SC' only on the date of issuance of the certificate. In view of this position, necessitating upon a certificate dated prior to 30th June, 1998 would be clearly arbitrary and it has no rationale objective sought to be achieved.

16. While taking a particular view in such matters one has to keep in mind the objectives behind the post of SC and ST categories as per constitutional mandate prescribed in Articles 15(4) and 16(4) which are enabling provisions authorising the Government to make special provisions for the persons of SC and ST categories. Articles 14(4) and 16(4), therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a right enshrined for protection of society. The right in social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular Arts. 14, 15, 16, 21, 38, 39 and 46 are to make the quality of the life of the poor, disadvantaged and disabled citizens of the society meaningful.”

17. Further, in the case of Pushpa (supra), relevant portion from the judgment of Valsamma Paul’s case (supra) has also been extracted, which reads as under:-

“11.... 17.... 21. The Constitution through its Preamble, Fundamental Rights and Directive Principles created a secular State based on the principle of equality and non-discrimination, striking a balance between the rights of the individuals and the duty and commitment of the State to establish an egalitarian social order.”

18. In our considered view, the decision rendered in the case of Pushpa (supra) 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 (supra) 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 (supra). 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 W.P. (C) No. 382 of 2009 is hereby restored.

19. The appeals are allowed. No costs.”

9. A Division Bench of this Court dealt with a similar case in WP(C) No.7304/2010 titled **Manjusha Banchhore v. Staff Selection Commission & Anr.** decided on 06.05.2013. In that case, candidates who were claiming benefit of reservation were informed that requisite certificates for the

category of reservation claimed were to be furnished at a subsequent stage as per the prescribed format. Selection was to be provisional, subject to verification of documents at any stage as per the Staff Selection Commission. The petitioner therein- Majusha Banchhore had submitted an OBC certificate dated 12.12.2003 along with the application on 21.05.2004. Thereafter, on being informed that the said certificate was not as per the prescribed format, she had obtained a certificate dated 02.08.2004 as per proforma. The petitioner had cleared both the final exam and the physical efficiency test. A communication dated 12.2.2008 was sent to the petitioner calling her to appear for an interview on 4.3.2008. At the time of the interview, the petitioner-Manjusha Banchhore was informed that the caste certificate furnished by her with the application form was not in the prescribed proforma and the second certificate was beyond the cut-off date and could not be accepted. In order to appear for the interview, she was required to sign an undertaking to the effect that she would be considered as an unreserved category candidate. The choice she faced was 'take it or leave it'. The petitioner accordingly gave the following undertaking:-

“UNDERTAKING

*Sub: Combined Graduate level, 2004 Examination – Interviews
for the post of Sub-Inspector in Delhi Police.*

With reference to my candidature for the above mentioned examination, I Manjusha Banchhore, Roll No.2293293, hereby undertake that although I applied and qualified written part of subject examination in OBC category, I could not furnish the OBC certificate in the prescribed proforma for Central Govt. Offices issues by the Competent Authority on or before 21.05.2005, which was the last date for submission of application forms for the Mains Examination as per annexure VII of the Notice of the said Examination which was mandatory. It is, therefore requested that my candidature may be considered in Unreserved category instead of OBC.

I will not claim for OBC status later and I shall abide by the decision of the Commission with regard to status of my candidature.

Signature: sd/-

Name: Manjusha Banchhore

Roll No.2293293

Date: 04.03.2003”

10. The Division Bench in **Manjusha Banchhore** (supra) held that it was not a case of acquiring eligibility after the prescribed cut-off date, but was a case of producing a certificate as per proforma prescribed which the petitioner did later on. The factual matrix and assertions made had shown that the candidates were faced with no choice but to sign the undertaking. The Division Bench took notice that similar undertakings had been questioned in other cases. It was observed that the Staff Selection Board having consciously left open the filing and scrutiny of certificates at a subsequent stage, they could not have compelled the petitioner to furnish an undertaking to the effect that she would be treated as an unreserved

category candidate. The Division Bench, after discussing the issue at length, held that the only conclusion which can be drawn was that the petitioner was compelled to submit the undertaking. Relying upon the decision in ***Delhi Subordinate Services Selection Board & Anr. v. Anu Devi & Anr.*** in WP(C) No.13870/2009, and other connected petitions decided vide a common order and judgment on 17.02.2010, it was held that a person becomes a member of a caste by birth and the certificates issued to members of the Schedule Caste (SC), Scheduled Tribe (ST) or OBC categories are not akin to certificates certifying that a person has acquired a degree. Caste certificates are more in the nature of a memorandum, recording a fact pertaining to birth.

11. The Division Bench, in the matter of ***Anu Devi & Anr.*** (supra), emphasised that reservations for SC, ST and OBC are beneficial legislations and that submission of an OBC certificate to claim reservation could not be equated with the acquisition of educational qualifications.

Accordingly, in ***Manjusha Banchhore*** (supra), it was ordered as under:

“19. Accordingly, we dispose of the writ petition setting aside the impugned decision dated August 16, 2010 and dispose of OA No.2414/2009 filed by the petitioner issuing a mandamus to the first respondent to take into account the marks obtained by the petitioner treating her as an OBC candidate and thereafter process her candidature accordingly. The second respondent

shall also process the candidature of the petitioner and subject to antecedent character verification if appointment is made, the petitioner would be entitled to all consequential benefits i.e. her seniority as per merit position, notional increments etc. for future service except back wages which we deny on the principle of 'No work No Pay'."

12. Similarly, a Single Judge of this Court in WP(C) No.405/2013 titled **Anil Kumar v. Union of India** and WP(C) No.5416/2012 titled **Rakesh Kumar v. Union of India & Ors.**, has held:-

"11. In the light of the above order, it is held that the production of certificates dated 25.01.2011 before the last stage of the selection process, i.e. interview on 01.02.2011 conforms to the Office Order No. 1/4/2010-P&P. In any event, subject to this verification by the respondents, the petitioners' applications are entitled to be further processed. Similarly, the production of the acceptable format of the OBC certificate in Anil Kumar's case also merits consideration of his candidature and further processing, subject to verification.

12. In the light of the above discussion, directions are issued to the respondents to process the candidature of the two writ petitioners in W.P.(C) 405/2013 and W.P.(C) 5416/2012 and take into consideration the subsequent OBC certificates produced by them and intimate each of them directly about the outcome, within four weeks. In case they are selected and have to be appointed and there is consequently impediment in their being accommodated in one or the other batch for training, consequent directions are issued to the respondents to accommodate these petitioners at the relevant slot in the succeeding batch or batches of recruits for the purpose of training. The writ petitions and pending application are allowed in the above terms."

13. The petitioner, in the present case, submitted the OBC certificate dated 21.05.2002 along with the application form. This certificate was not in the prescribed format. The second OBC certificate dated 13.07.2010 was furnished at the time of the interview, before the preparation of the final merit list and was as per the prescribed format. Identical undertakings have been adversely commented upon in *Manjusha Banchhore* (supra) and rejected on the ground of force and coercion. When a candidate is informed that unless an undertaking is furnished, he/she would be treated as disqualified, the same amounts to leaving the candidate with no choice or option. It would be unjust and unfair to pin down the petitioner for the said reason, for consent to such an undertaking would not be free, having been obtained under the threat of disqualification. Hence, the same, cannot be said to have any legal and binding effect to negate the legal claim and right. Entitlement for consideration for appointment under the reserved categories is by virtue of the said status being by birth, and when the status and certificate is not in dispute, relief should be granted as held in *Anu Devi & Anr.*(supra). The certificate issued by the competent authority, to this extent, is thus only an affirmation and declaration of the status already in existence.

14. Accordingly, we allow the present writ petition and set aside the impugned order of the Tribunal. The respondents are directed to take into account the marks obtained by the petitioner, treating him as an OBC candidate and thereafter accordingly process his candidature as per the order of preference, subject to character and antecedent verification. The petitioner, on appointment, would be entitled to consequential benefits with regard to seniority, notional increments counting of period for further promotion etc. The petitioner, however, would not be entitled to back wages. Compliance shall be made within 8 weeks from the date of this judgment. The parties are left to bear their own costs.

(CHANDER SHEKHAR)
JUDGE

(SANJIV KHANNA)
JUDGE

MAY 31, 2017

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