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

+ LPA 312/2017

DR SUCHETA

..... Appellant

Through: Ms.Bhakti Pasrija Sethi, Adv.

versus

UNION OF INDIA & ANR

..... Respondent

Through: Nemo.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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28.04.2017

CM No.15935/2017

Exemption is allowed, subject to all just exceptions.

CM No.15937/2017

By this application, the applicant seeks condonation of one day's delay in filing the appeal. For the reasons stated in the application, delay in filing the appeal is condoned.

CM stands disposed of.

CM No.15936/2017

By way of this application, the applicant seeks permission to annex the experience certificates regarding her past employment which she had left for the purpose of joining the respondent No.2.

Given the issues which arise for consideration in the writ petition and which are pressed here, these experience certificates are irrelevant.

This application stands dismissed.

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LPA 312/2017 & CM No.15934/2017 (stay)

1. The appellant assails the order dated 15.03.2017 passed in W.P.(C) No.2347/2017 by the learned Single Judge.
2. The facts giving rise to the present appeal are within a narrow compass which, the extent relevant, are set out hereunder.
3. It appears that the Central Government by a Notification dated 04.03.2014 issued by the Ministry of Social Justice and Empowerment, included the 'Jat' community - non-creamy layer, in the Central List of Other Backward Classes (OBC). The appellant belongs to the Jat community.
4. The respondent No.2 herein had initiated the selection process for the post of Senior Scientific Officer and Scientific Assistant by issuing Circular No.2/14 inviting the applications for the eligible candidates to fill up the said posts. In view of the Notification dated 04.03.2014, the candidature of the appellant in the reserved OBC category was accepted by the respondent No.2, and by a letter dated 30.06.2016, appointment was offered to her as a Senior Scientific Officer.
5. It appears that this reservation was overruled the judicial pronouncement dated 17.03.2015 of the Supreme Court in ***Ram Singh and Others vs. Union of India*** (2015) 4 SCC 697 whereby the Notification dated 04.03.2014 issued by the Ministry of Social Justice and Empowerment, which included the Jat community – non-creamy layer in the Central List of Other Backward Classes (OBC), was set aside. A review petition filed there against has also been dismissed by order dated 21.07.2015.
6. It is trite that in view of the law laid down by the Supreme Court in ***Ram Singh (supra)***, no appointment could be effected in any organization

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of a candidate claiming reservation on account of his/her belonging to the Jat caste under OBC category in the Central List.

7. It appears that after the above pronouncement of the Supreme Court, yet another application was moved for clarification in ***Ram Singh (supra)*** as to what would be the fate of the appointment under the reserved category, of a person who belonged to the Jat caste, which stood effected prior to the passing of the said judgment by the Supreme Court on 17.03.2015. The clarificatory order by the Supreme Court came to be passed on 12.04.2016, which has been extracted by the learned Single Judge in the impugned order.

The relevant extract of the order dated 12.04.2016 reads as follows:

“1. Application(s) for impleadment are allowed.

2. The interlocutory applications before us can be conveniently divided into three categories. The first is where the applicants have been appointed as Probationary Officers before the date of the judgment i.e. 17.03.2015 in Writ Petition (C) No.274 of 2014, titled as Ram Singh & Ors vs. Union of India.

3. The second category of applicants are those who had commenced the diploma/training course in Banking prior to the date of judgment i.e. 17.03.2015. The advertisement issued and the offer to undergo the diploma/training course, which followed a due selection, clearly stipulated that on successful completion of the diploma/training course the concerned persons would be eligible to be appointed as Probationary Officers. Following the judgment of this Court in Ram Singh (supra) the course has been terminated mid way.

4. The third category of applicants had commenced the similar training/diploma course after the date of the judgment i.e. 17.03.2015 and the same has been discontinued pursuant thereto.

5. While undoubtedly the decision laid down in Ram Singh (supra) has not been made prospective, yet, in exercise of the power under Article 142 of the Constitution it will be open for this Court to protect the vested rights that might have accrued in

an appropriate case.

6. Having considered the matter at length and after hearing the rival contentions advanced at the Bar, we are of the view that though the judgment in *Ram Singh (supra)* itself is not prospective and the declaration of law therein would have its retrospective effect, nonetheless, in exercise of the jurisdiction vested in us under Article 142 of the Constitution, we are of the view that the rights vested in the first category of applicants i.e. who had been appointed as Probationary Officers in the State Bank of India would be entitled to have the benefit of such appointments. It is Ordered accordingly.

7. The applicants in the second category would be entitled to complete their diploma/training course and on successful completion thereof would be entitled for consideration for their appointments.

8. However, the third category of applicants having commenced the diploma/training course after the date of the judgment, we find it difficult to afford any protection to the said group of the applicants before us.

9. All interlocutory applications shall stand disposed of in the above terms.”

(Emphasis by us)

8. Therefore, so far as persons belonging to the Jat caste who had been given appointment in the reserved category as falling under OBC, who were granted appointment prior to the judgment by the Supreme Court rendered on 17.03.2015 were exempted from cancellation of appointments as falling in the first category enumerated in the judgment on 12.04.2016 in *Ram Singh (supra)*.

9. The second category of candidates were those who had commenced the diploma/training course in banking prior to the date of judgment dated 17.03.2015 and only formal letter of appointments were yet to be issued. The order dated 12.04.2016 protected this category as well. So far as

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persons who commenced their training after 17.03.2015, when the judgment in *Ram Singh (supra)* was passed are concerned, as per the order dated 12.04.2016 of the Supreme Court, they were not protected.

10. The above orders of the Supreme Court came to be considered by the respondent No.2 and a review regarding the implementation of the reservations in respect of being granted under the OBC category to persons belonging to the Jat non-creamy layer for appointments. Upon such consideration, it was found that the appointment of the appellant by the respondent No.2 on 29.08.2016 was in contravention of the orders of the Supreme Court in *Ram Singh (supra)*.

11. The appellant was admittedly appointed with the respondent No.2 only on 29.08.2016 as a Jat upon giving her the benefit of reservation in the OBC category, cannot be disputed that this was after the passing of the judgment of the Supreme Court on 17.03.2015; dismissal of the review petition on 21.07.2015 and issuance of the order of clarification on 12.04.2016. Therefore, it cannot be disputed that the petitioner does not fall under either of the two exempted categories mentioned above.

12. The order dated 03.03.2017 was passed by the respondent No.2 holding that the appellant was not entitled to the benefit of the reservation under the OBC category and her appointment to the post of Senior Scientific Officer in such category stood cancelled. In this background, the appellant was released from the duty with immediate effect.

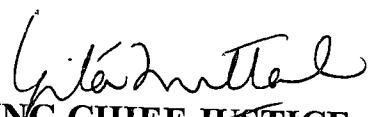
13. This cancellation of the appointment was assailed in W.P.(C) No.2347/2017, which came to be rejected on a consideration by the learned Single Judge of the law laid down by the Supreme Court. The appellant assails the dismissal of the writ petition by the order dated 15.03.2017

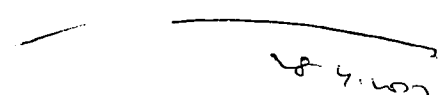
hereby.

14. It is contented by Ms. Bhakti Pasrija Sethi, learned counsel for the appellant that in order to accept the appointment which was offered by the respondent No.2, the appellant had to forego the job she was then holding. It is submitted that the appellant was working as an Assistant Professor of Pharmaceutical Chemistry in the Delhi Pharmaceutical Science and Research University (DPSRU), Govt. of NCT of Delhi at that time. We find that the learned Single Judge has noted this submission, as well as the statement of the appellant that her appointment with DPSRU was only on contractual basis and not an appointment of permanent nature. The appellant, therefore, would have no right to claim the post of Assistant Professor with the DPSRU.

15. It is clearly evident from the above narration that the petitioner could not have legally been granted the benefit of consideration or appointment on 30.06.2016 under the OBC reserved category, given the authoritative and binding judicial pronouncement in *Ram Singh (supra)*, which was made as far back as on 17.03.2015.

16. The appointment of the appellant is, therefore, in contravention of the law. No relief could have been granted to her in the writ petition and the order dated 15.03.2017 is unassailable. We, therefore, find no merit in this appeal, which is accordingly dismissed.


ACTING CHIEF JUSTICE


ANU MALHOTRA, J

APRIL 28, 2017/pmc