

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION NO.41275 OF 2017

ORDER

(Per Hon'ble Sri Justice Sanjay Kumar)

The petitioner is the applicant in O.A.No.834 of 2017 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'). Her prayer therein was to declare the action of the authorities in not selecting her for the post of Sub-Inspector (Civil) under Backward Class reservation category, on the ground that she belongs to the creamy layer, as illegal. She sought a consequential direction to the authorities to select her by considering the certificate dated 24.12.2016 issued by the Tahsildar, Nellore Mandal, clearly indicating that she belonged to the non-creamy layer and to appoint her as a Sub-Inspector (Civil) in Zone-III pursuant to the recruitment undertaken in 2016. By order dated 11.09.2017, the Tribunal dismissed the O.A. Aggrieved thereby, she filed the present writ petition.

The State Level Police Recruitment Board, Andhra Pradesh, issued Notification dated 17.09.2016 proposing to recruit Stipendiary Cadet Trainee Sub-Inspectors of Police (Civil). The petitioner applied for the said post. She belongs to BC-B category. In her application, she asserted that she did not belong to the creamy layer. She secured 189 marks in the written test. The fifth respondent herein also secured the same marks. However, as the petitioner is older than the fifth respondent, she would take priority over the fifth respondent, when it comes to choosing between them. But the State Level Police Recruitment Board selected the fifth respondent and not the petitioner.

Significantly, though the fifth respondent entered appearance before this Court through Sri Kesapuram Sudhakar, learned counsel, she did not

choose to file any counter-affidavit. Further, there was no representation on her behalf when the matter was heard on 04.04.2018, as Sri Kesapuram Sudhakar, learned counsel, did not appear on the said date. The matter was accordingly directed to be posted for orders on 10.04.2018. On that day also, there was no representation by or on behalf of Sri Kesapuram Sudhakar, learned counsel, during the morning session when the case was taken up. It was accordingly passed over but the same situation continued when the case was taken up during the afternoon session. Orders were then reserved. This Court is therefore constrained to adjudicate without hearing the fifth respondent, whose counsel chose to remain absent all through.

The issue essentially turns upon the certificate dated 24.12.2016 produced by the petitioner from the Tahsildar, Nellore Mandal. The certificate reads as under:

'CERTIFICATE BY THE ISSUING AUTHORITY

The particulars mentioned above have been verified and found that

- a) ✓ The applicant does not come under creamy layer of BCs/OBCs under any of the categories.
- b) ✓ The applicant comes under creamy layer of BCs/OBCs under the category of GOWDA BC- (A/B/C/D/E/F) mentioned above.

Signature of the VRO

Signature of the Tahsildar'

The Tribunal took note of the fact that the Tahsildar is expected to authenticate either of the options: (a) or (b). However, as the certificate dated 24.12.2016 produced by the petitioner bore ✓ marks against both options and there were corrections thereon without any clarity as to which of the options was to be adopted, the Tribunal opined that no fault could be

found with the State Level Police Recruitment Board in not placing reliance on the said certificate. The Tribunal was not inclined to give any credence to the income certificate produced by the petitioner and accordingly concluded that the petitioner could not be taken to be a person belonging to the non-creamy layer. On that ground, the Tribunal denied relief to the petitioner and dismissed her O.A.

Sri K.R.K.V.Prasad, learned counsel for the petitioner, produced the original certificate dated 24.12.2016 issued by the Tahsildar, Nellore Mandal. Perusal thereof reflects that the Village Revenue Officer used a blue ink pen therein, while the Tahsildar, Nellore Mandal, used a green ink pen. The Village Revenue Officer first ticked (✓) clause (a) which states to the effect that the applicant does not come under the creamy layer of BCs/OBCs under any of the categories and thereafter struck off the tick mark by 5 slashes across the tick mark. He then ticked (✓) clause (b) which states that the applicant comes under the creamy layer of BCs/OBCs under the category of Gowda, BC-B. However, the Tahsildar reversed these tick marks by ticking (✓) clause (a) and putting (✗) mark against clause (b). As the Tahsildar is the competent authority, his finding would weigh and not the markings of the Village Revenue Officer. Therefore, the Tahsildar, Nellore Mandal, must be taken to have certified that the petitioner did not come under the creamy layer of BCs/OBCs. It appears that the Tribunal did not peruse the original which has now been placed before this Court.

Further, in the event there was any doubt as to this certificate, the proper course for the State Level Police Recruitment Board would have been to address the Tahsildar, Nellore Mandal, for a clarification, instead of discarding the candidature of the petitioner altogether. Once it is admitted that the petitioner and the fifth respondent secured the same marks and

weightage would have to be given to the petitioner as she is older, her candidature cannot be sacrificed for the fault committed by the Certificate issuing authorities.

In the light of the discussion hereinabove, this Court finds that the petitioner's case was dealt with unfairly. The Tribunal however failed to take note of the same.

The writ petition is accordingly allowed setting aside the order dated 11.09.2017 passed by the Tribunal in O.A.No.834 of 2017. The State Level Police Recruitment Board, the third respondent, is directed to seek a clarification from the Tahsildar, Nellore Mandal, as to the status of the petitioner in terms of being a creamy layer or non-creamy layer Backward Class-B candidate. In the event she is found to belong to the non-creamy layer, the State Level Police Recruitment Board shall decide as to whether she merits selection as a Stipendiary Cadet Trainee Sub-Inspector of Police (Civil) (Woman) over and above the fifth respondent and take steps accordingly. This exercise shall be completed expeditiously and, in any event, not later than three weeks from the date of receipt of a copy of this order.

Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

P.KESHAVA RAO, J

20th APRIL, 2018

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