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

+ W.P.(C) 12563/2018

POOJA SEHRAWAT

..... Petitioner

Through: Mr. U. Srivastava, Adv.

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondent

Through: Mrs. Avnish Ahlawat, standing
counsel GNCTD with Mr. N.K. Singh
and Ms. Aarushi, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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26.11.2018

1. The petitioner assails the order dated 05.10.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 3299/2015. The Tribunal has rejected the said original application preferred by the petitioner. The petitioner applied for the post of Welfare Officer Grade-II (Post Code-148/2014) in response to Advertisement No. 01/14, dated 20.01.2014 issued by the Delhi Subordinate Services Selection Board (DSSSB). The last date for submission of the application was 27.02.2014. The petitioner applied as an unreserved category candidate. The written test was conducted on 22.06.2014. The marks of the candidates were declared on 07.07.2015 by the Board and the result for the post in question was declared by DSSSB on 24.07.2015 vide office order No. 421.

2. On 26.06.2015, it appears that the petitioner made a representation stating that she is actually an OBC candidate and she sought reservation in that category. However, the respondent did not pay heed to the said

representation while declaring the result and, consequently, the petitioner was not selected. The petitioner preferred the Original Application before the Tribunal vide O.A. No. 2539/2015 which was disposed of on 20.07.2015 with a direction to the DSSSB to consider the petitioner's representation of 26.06.2015. The respondent then passed the order dated 18.08.2015 which was assailed by the petitioner before the Tribunal. The stand taken by the respondent in the said order dated 18.08.2015 was the following

“In compliance of the above, the case of the applicant i.e. Ms. Pooja Sehwat has been examined and it is found that the applicant applied under the UR category for the post of Welfare Officer, Grade – II, Post Code 148/14 and accordingly, the Master Data for the Post Code 148/14 was prepared for evaluation of marks and thereafter the declaration of result. The marks of the candidates were declared on 07-07-2015 by the Board and the result of the post of Welfare Officer, Grade-II under post code 148/14 has also been declared by the Board on 24.07.15 vide Office Order No.421. Therefore, her category cannot be changed from UR to OBC now. Further, in her representation, the applicant has given wrong submission that the Board changes the category of an OBC candidate from OBC to Gen/UR category, which is denied and is a misunderstanding on the part of the applicant.”

3. The petitioner sought the relief that she be considered as an OBC category candidate and given appointment as Welfare Officer Grade II on the ground that she had secured higher marks than the selected candidates in that category.

4. The submission of Mr. Srivastava, learned counsel for the petitioner is that the petitioner had placed reliance on several decisions before the Tribunal. However, the Tribunal has not considered those decisions and

passed the impugned order contrary to the view taken by the Courts in those decisions. The submission of Mr. Srivastava is that since the petitioner had informed the respondent that she is an OBC category candidate on 26.06.2015 whereas the results were declared on 07.07.2015 and 14.07.2015, the respondents were bound to take note of the said fact and declare the results accordingly.

5. He has particularly placed reliance on the judgment of a learned single Judge of Madras High Court, titled ***Minor V. Harshan vs. The Chairman JEE and Anr***, W.P.(MD) No. 7078/2012, decided on 20.07.2012.

6. Mrs. Ahlawat appears on advance notice for the respondents. She submits that there is no merit in this petition since the petitioner had applied as an unreserved category candidate and she could not be considered as a candidate falling in the OBC category post the application made by her. She further submits that another OBC candidate already stands appointed to the posts in question. She further places reliance on the judgment of Division Bench of this Court in ***Union Public Service Commission & Anr. v. Govt. of NCT of Delhi & Anrs.***, W.P.(C.) No. 10058/2009 along with other writ petitions, decided on 25.01.2010.

7. Though we agree with the first grievance of the petitioner that the Tribunal should have dealt with the decisions relied upon by the petitioner in the impugned order, on consideration of all the aspects of the matter, we are of the view that there is no merit in this petition and the same deserves to be dismissed.

8. Admittedly, the petitioner applied as an unreserved category candidate and did not provide any proof at the time of her filing the

application that she was an OBC category candidate. She only, subsequently, made a representation on 26.06.2015 after appearing in the examination and before the declaring of the result that she is an OBC category candidate.

9. The decision relied upon by the petitioner in the case of ***Minor V. Harshan*** (supra) is not apposite in view of the fact that in that case it was open to the candidates to change their category even at a subsequent stage. That is not the position in the present case. The stand taken by the respondent is that it was not open to the petitioner to change her category once having applied as an unreserved category candidate.

10. The decision relied upon by Ms. Ahlawat in ***Union Public Service Commission*** (supra) is more apposite. Applications had been invited to fill up posts of Assistant Public Prosecutor in the office of the Director of Prosecution, GNCTD. Under the scheme of examination, candidates were required to first appear in the examination, and post the result they were required to fill in a Detailed Application Form (DAF). Along with DAF they were required to submit copies of their documents. The applications of some of the candidates were rejected on account of non submission of copies of the documents such as LLB degree certificate etc. The arguments raised on their behalf was that since they were already enrolled as advocates with the Bar Council and practicing law, it was obvious that they had secured the LLB degree.

11. The Division Bench of this Court rejected this submission by observing as follows:

“14. Insofar as the failure of the Respondents to produce the LLB degree certificate is concerned, the common explanation given by them in all the cases is that the degree certificate was not made available by the

concerned University and, therefore, it was not furnished with the DAF. It is submitted on their behalf that since they have been enrolled with the Bar Council, that by itself is sufficient proof of their having passed the LLB examination.

15. In our opinion, it is difficult to believe that the LLB degree certificate was not issued to the Respondents for several years. It may be mentioned that one of the requirements for the applicants is to have three years experience at the Bar, which they all had. It is, therefore, extremely unlikely that these Respondents did not get their LLB degree for three years. In any event, there is no evidence of this, except their bald averment.

16. That apart, we find that soon after the rejection of their candidature on 30th December, 2008 these Respondents managed to produce their LLB degree certificates within a few days. It is obvious that these Respondents, if they were in possession of the LLB degree certificate, did not make any effort to attach it to the DAF and took the matter very casually until they found that their DAF was rejected. If what these Respondents say is correct and if they did not have the LLB degree certificate in their possession, they did not make any special effort to obtain the LLB degree certificate despite the requirement. Nor did these Respondents place on record any material to show the special efforts made by them (if any), in spite of which they were unable to obtain the LLB degree certificate.

17. We are of the opinion that these Respondents were aware well in advance, that is, from the issue of the Employment News dated 22-28 March, 2008 that they would be required to submit the LLB degree certificate on their passing the written examination scheduled for 3rd August, 2008. These Respondents, therefore, had sufficient time (from March, 2008 at least till August, 2008 if not November, 2008) to obtain their LLB degree certificate for submission along with the DAF. These Respondents, who did not make even this minimum effort for such a long time, have only themselves to blame for their cavalier and casual approach.

18. These Respondents say that because they were enrolled with the Bar Council, therefore it must be assumed that they had a valid LLB degree certificate. This is neither here nor there. There was no requirement for a candidate to attach the proof of enrolment with the Bar Council. Consequently, if an applicant attached such a document, the UPSC was not obliged to take note of it. What was required to be attached was a valid LLB degree certificate, nothing more or less.”

12. The situation which arises, in cases such as the present, can give rise to two different lines of arguments and approach. One line of argument -

which the petitioner would raise, is that since the candidature of the petitioner as an OBC category candidate was claimed before the declaration of the result, it was possible for the respondents to consider the petitioner as a candidate falling in that category, and while formulating the result place the applicant appropriately in the merit list. The argument would be that a more meritorious candidate in the reserved category should be offered appointment, and merely on account of non-submission of the OBC category certificate and non declaration of the fact that the candidate is an OBC candidate, should not be fatal for such a candidate, when he or she had declared his or her candidature in that category before the declaration of the result.

13. The other line of argument - which the administration would advance, is that if such relaxation were to be granted either by the respondent on its own, or by the Court, the same would make it very difficult for the body conducting the examination to formulate the result and declare the same, since such last minute applications could keep flowing in, leading to utter confusion and difficulty in formulation of the result. It would also lead to injustice to such other candidates who may have similarly not provided the documents and made their applications in the desired reserved category initially, and may have accepted the fact that they have applied in the unreserved category and that their merit would be assessed in that category alone. In *Union Public Service Commission* (supra), it is the second line of arguments which has been accepted by this Court.

14. We are bound by the said decision which is rendered by a co-ordinate Bench. We are of the view that unless there is an inconsequential and unintended minor mistake/ error in the filling up of the form, such like

conscious declarations made by a candidate in the application form should not be allowed to be changed at a subsequent stage.

15. The reason given by the petitioner for not applying as an OBC category candidate was that the OBC certificate was not available with the petitioner on the relevant date. If that was so, then the petitioner should take the consequences of her lapse in not securing the certificate in time. She knew of her caste status and the fact that she is entitled to reservation in public employment. She clearly missed the bus. She cannot demand that the selection process should be set back to accommodate her. After all, there could be many situations where meritorious candidates may miss out on their chances of getting selected for public office. The candidate may fall ill, suffer an accident, get stuck up in a traffic jam or due to some other reason not be able to appear in the selection process. Can he/ she claim that his/ her candidature should still be considered. The position is no different when it comes to non-submission of a crucial document by a candidate on which his/ her candidature is determined. The petitioner should have applied for and obtained the certificate by making the requisite application. Not having done so, she cannot expect the entire administration to work as per her wishes, at the cost of serious administrative inconvenience. If such relaxations were to be made, it would lead to an unending process, leading to confusion and chaos and delay in the declaration of the results. It would also not be fair to other similarly placed candidates who may have applied as general category candidates because they did not possess the caste certificate at the time of making the application.

16. There is another aspect which we may take note of in the present case. Though, the results were declared after the disposal of the first Original

Application preferred by the petitioner, no interim directions were passed by the Tribunal while hearing the petitioner's Original Application from which the present petition arises. Consequently, the respondent has already appointed an OBC category candidate, who has not had any notice of the pendency of the petitioner's claim.

17. It would be unfair, if either the said candidate is asked to vacate the post for the petitioner, or his or her merit position is altered so as to accommodate the petitioner.

18. Consequently, we find no merit in this petition and dismiss the same.

19. Dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

NOVEMBER 26, 2018

N.Khanna