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

+ **LPA 722/2018**

SUMANT Appellant

Through: Mr. O. P. Gehlaut, Advocate.

versus

PUNJAB NATIONAL BANK Respondent

Through: Mr. Jagat Arora, Mr. Niraj Kumar and
Mr. Murad Khan, Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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19.12.2018

CM APPL. 53603/2018 (delay)

1. For the reasons stated in the application, the delay in filing the appeal is condoned and the application is disposed of.

LPA 722/2018 & CM APPL. 53602/2018

2. This is an appeal against the order dated 14th August 2018 passed by the learned Single Judge in W.P.(C) 7586/2016.

3. The aforementioned writ petition was filed by the Appellant being aggrieved by his non-selection in the recruitment conducted by the Respondent for the post of Peon. Among the conditionalities attached to the appointment was the production of a Caste Certificate as prescribed by the Ministry of Welfare, Government of India. A certificate had to further be

submitted to the effect that the OBC candidate does not belong to the 'creamy layer'.

4. The Appellant's case before the learned Single Judge was that he had submitted an OBC certificate which showed him as belonging to the *Jat* caste which was recognized as OBC by the Government of NCT of Delhi. Although the Appellant was issued an appointment letter on 9th April 2015, his candidature was subsequently cancelled by the Respondent on the ground that the caste certificate produced by the Appellant was not on the basis of any notification of the Central Government.

5. Before the learned Single Judge, it was sought to be contended by the Appellant that there was in fact a notification dated 4th March 2014 issued by the Central Government notifying by the *Jat* community as a backward class for, *inter alia*, the NCT of Delhi as well. As noted by the learned Single Judge, the said notification of the Central Government was struck down by the Supreme Court in ***Ram Singh v. Union of India (2015) 4 SCC 697***. A subsequent application filed before the Supreme Court seeking clarification that the decision would be prospective was also dismissed on 21st July 2015. Consequently, the Appellant's candidature on the basis of the OBC certificate issued by the Government of NCT of Delhi could not be acted upon by the Respondent Bank.

6. Before the learned Single Judge, an alternative plea was raised by the Appellant on the basis of an averment in para 13 of the writ petition that the Appellant had obtained a "rank higher than some of the General Category candidates" and was, therefore, eligible to be appointed as a General

Category ('GC') candidate.

7. The learned Single Judge has negated this plea on the basis that it was a bald averment which did not provide any particulars and did not identify any candidate who may have scored a lower rank in marks in the GC category and was yet appointed.

8. Learned counsel for the Appellant before us at the outset stated that that he did not wish to pursue a line of argument that on the basis of the OBC certificate issued by the Government of NCT of Delhi, the Appellant was entitled to be appointed in that category. He confined his plea to the Appellant being entitled to be appointed as a GC candidate.

9. Learned counsel for the Appellant submitted that the Bank was refusing to disclose information about the rank of the last GC candidate and without such information, it would not be possible for the Appellant to demonstrate that the list of successful GC category candidates published by the Bank was 'manipulated' or 'discriminatory' *qua* the Appellant.

10. It is seen from the prayers made in the writ petition that there was no specific prayer that the Appellant should be considered in the quota of GC candidates and should be appointed as GC candidate. As rightly pointed out by the learned Single Judge, it is only in para 13 that a bald averment was made that the Appellant had obtained "a rank higher than some of the GC candidates".

11. When this Court inquired as to the basis of such averment, learned

counsel for the Appellant stated that the Appellant had somehow learnt that he had a rank higher than the selected GC candidates. This is obviously based on hearsay and not based on any fact or record. This Court is not inclined to now enter into an inquiry as to the marks obtained by the last appointed GC candidate. Some factual foundation had to be laid by the Appellant to enable the learned Single Judge to further examine the matter. At the very least, the Appellant should have made a prayer in that regard.

12. To this Court, it appears that the Appellant's entire case was based on his OBC certificate and therefore he never really pursued the line that he should be considered for being appointed as a GC candidate. Consequently, no factual basis was laid and therefore no prayer also made for that relief.

13. The Court is therefore not prepared at this stage to inquire into whether the last appointed GC candidate secured marks lower than the Appellant. The Court is unable to find any error committed by the learned Single Judge in dismissing the writ petition.

14. The appeal and the pending application are dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

DECEMBER 19, 2018

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