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

Date of Decision: 15.11.2019

+ W.P.(C) 11940/2019 & CM APPL. No. 48918/2019 (interim relief)

AMARDEEP

..... Petitioner

Through: Mr. A.K. Bhardwaj, Advocate
with Mr. Yashpal Rangi,
Advocate.

versus

GOVT. OF NCT OF DELHI AND ORS. Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel for GNCTD with Mr.
N.K. Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

Petitioner is aggrieved by the order dated 14.12.2018 passed by the Central Administrative Tribunal ('Tribunal' for short) by which O.A. No.2549/2017 has been dismissed. Petitioner also impugns order dated 04.09.2019 passed in review.

2. With the consent of the parties, the writ petition is set-down for final hearing at the admission stage itself.

3. Respondent No.3 issued an advertisement for selection to the post of TGT (Computer Science) in Directorate of Education, Government of NCT of Delhi under Post Code 192/2014 in the month of January, 2014. The total number of vacancies of TGT (Computer Science) are 2026, out of which 547 vacancies are reserved for the OBC category. The applications were to be filled-up online and the last date for submission of application form was 27.02.2014.

4. Although the petitioner was an OBC candidate, he submitted his online application in the 'General' Category for the reason that he did not possess an OBC certificate as on the date of the application. It is the case of the petitioner that if he had submitted the form in the OBC category, he would have had to fill-up the date of issuance of the OBC certificate, which was not available with him at that time. It is also the case of the petitioner that he had applied for an OBC certificate for the first time in November, 2013 and thereafter on 30.05.2014; and that the OBC certificate was issued to him on 13.01.2015, i.e. admittedly after the cut-off date for submission of application.

5. After obtaining a receipt of the OBC certificate however, the petitioner made a representation to respondent No.3 on 25.08.2015, seeking change of his category from 'General' to 'Reserved OBC' alongwith a copy of his OBC certificate.

6. The Admit card was issued to the petitioner on 21.05.2017 without deciding upon his representation and his category was shown as “unreserved”. The petitioner appeared in the examination, and subsequently, his marks were released on 13.07.2017. The marks secured by the last candidate selected in the unreserved category were 90 and in the OBC category 68.6. The petitioner secured 73.75 marks and considering his marks, the petitioner was not shortlisted and was not selected in the unreserved category.

7. In this backdrop, the petitioner filed an O.A. on 25.07.2017. The Tribunal directed the respondents to consider the candidature of the petitioner provisionally; however, after hearing arguments, the O.A. was dismissed, which has led to filing of the present petition.

8. Mr. A.K. Bhardwaj, learned counsel for the petitioner has contended that an OBC candidate would remain an OBC candidate irrespective of whether a certificate was available with him or not. He further contends that since the application was to be filled-up online, the petitioner was compelled to give the category as unreserved since he was unable to fill-up any date of the OBC certificate, which was the mandatory requirement for filling up the online application form in the reserved category.

9. He further submits that once the OBC certificate was received, there was no bar in changing the category of the

petitioner from unreserved to reserved. It is further contended that notice dated 12.10.2017 issued by the respondents provided an opportunity to shortlisted candidates for uploading their deficient documents within 10 days; but such opportunity was not granted to the petitioner; and accordingly the action of the respondents is arbitrary, *mala fide* and discriminatory. Additionally, Mr. Bhardwaj contends that since 140 vacancies are still lying vacant, the respondents should even now examine the case of the petitioner and place his name in the list of selected candidates in the reserved category.

10. Mrs. Avnish Ahlawat, learned Standing Counsel for Government of NCT of Delhi has opposed the petition. She submits that the issue in the present case is not *res integra*. She relies on a recent decision of the Apex Court in the case of ***Rajasthan High Court, Jodhpur & Anr. Vs. Neetu Harsh & Anr.*** in Civil Appeal No.6696/2019. She submits that a similar view has been taken by a Coordinate Bench of this court in the case of ***Pooja Sehrawat Vs. Govt. of NCT of Delhi and Ors.*** in W.P.(C) No.12563/2018 decided on 26.11.2018 and in somewhat similar matter titled ***Sonal Panwar Vs. DSSSB, Through its Secretary and Anr.*** in W.P.(C) No.9464/2019. She submits that much has transpired from the time applications were filled-in, since results of the examination have been compiled and forwarded to the concerned department. She submits that vacancies which are lying unfilled are being

carried-forward; and even in this case specifically they have been carried forward to the next examination, for which an advertisement is likely to be issued shortly. She further submits that the petitioner cannot be allowed to change his category mid-way through the selection process.

11. We have heard learned counsel for the parties and have considered their rival submissions.

12. A somewhat similar question had arisen for consideration in the case of ***Pooja Sehrawat*** (supra). It would be useful to reproduce para 15 of that judgment, which reads as under:-

“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.”

13. In another case of ***Union Public Service Commission and Ors. Vs. Government of NCT of Delhi and Ors.*** in W.P.(C) No.10058/2009 decided on 25.01.2010, this court has in paras 14, 17, 18 and 19 observed as under:-

“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.

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“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.

“19. We also find that exactly a similar situation exists with regard to other certificates required to be produced by some other Respondents such as the Scheduled Tribe certificate, Physically Handicapped certificate and Matriculation certificate. In all these cases, the Respondents had adequate time (from March, 2008 till November, 2008) to have their certificates ready in the prescribed proforma but they chose to take it easy and woke up only when their DAF was rejected.”

14. The Apex Court in the case of **Rajasthan High Court, Jodhpur & Anr. (supra)** has held as under:-

*“15. That apart, though it is contended by the private respondent that it was a mistake in indicating “No” against the Column 3.1 – ‘Person with Disability’, what is necessary to be taken note is that against Column 2.4 – ‘Category’, it has been stated as “General”. That apart the examination fee fixed for General candidates is Rs.250/ while for the eligible disabled applicant it is fixed at Rs.50/. The private respondent in addition to indicating her category as ‘General’ has paid the fee of Rs.250/ as applicable. Further, though the disability certificate dated 05.07.2010 is presently relied upon, there is no material to indicate that the same was enclosed along with the application or produced till the completion of interview. On this aspect, to contend that the private respondent cannot make a contrary claim, the learned senior counsel for the appellants herein has relied on the decision in the case of **J&K Public Service Commission vs. Israr Ahmad and Ors.** (2005) 12 SCC 498 wherein it is held in para 5 as hereunder:*

“5. We have considered the rival contentions advanced by both the parties. The contention of the first respondent cannot be accepted as he has not applied for selection as a candidate entitled to get reservation. He did not produce any certificate along with his application. The fact that he has not availed of the benefit for the preliminary examination itself is sufficient to treat him as a candidate not entitled to get reservation. He passed the preliminary examination as a general candidate and at the subsequent stage of the main examination he cannot avail of reservation on the ground that he was successful in getting the required certificate only at a later stage. The nature and

status of the candidate who was applying for the selection could only be treated alike and once a candidate has chosen to opt for the category to which he is entitled, he cannot later change the status and make fresh claim. The Division Bench was not correct in holding that as a candidate he had also had the qualification and the production of the certificate at a later stage would make him entitled to seek reservation. Therefore, we set aside the judgment of the Division Bench and allow the appeal. No costs.”

*“16. Further the decision in the case of **Registrar General, Calcutta High Court vs. Shrinivas Prasad Shah & Ors.** (2013) 12 SCC 364 is relied on, wherein this Court has disallowed the claim in a case where in the application the category of reservation was indicated but certificate was not produced and the fee applicable to general candidate was paid. In addition, the learned senior counsel for the appellants herein also refers to the inherent contradictions in the claim of the private respondent apart from the fact that the claim for consideration under the category reserved for Differently Abled Persons is not made.*

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“18. Therefore, in a circumstance where the issue is whether the disability claimed is locomotor disability or visual impairment and the same itself being a question to be debated, it would not be possible for the Court to act as an expert and in such circumstance a mandamus to consider the same in a particular manner

would not also be justified. It is no doubt true that the employment opportunities to the differently abled persons is to be provided as a matter of right when a case is made out and there is no need for sympathetic consideration. However, in the instant facts when the claim was not made and there are debateable issues, though we could empathise with the cause of the private respondent the nature of direction issued by the High Court in any event cannot be considered as justified. This is more so, in a circumstance where the appellants had acted in terms of the Rajasthan Judicial Service Rules, 2010 when no other claim was available and had appointed a candidate from the other category and when such appointment has been made, disturbing such candidate at this juncture also will not be justified. Hence for all the afore stated reasons, we find the order dated 04.05.2017 passed by the High Court to be unsustainable and the same is accordingly set aside.”

15. In our view, the present case stands covered against the petitioner in light of the aforecited judgments of this court and the Supreme Court, relevant paras of which have been extracted above. It is not in dispute that the petitioner had made an application in the general category at the relevant time. The petitioner admittedly did not even possess an OBC certificate as on the application date, since as petitioner's own case, he had once applied for an OBC certificate in November 2013, when he was told in April 2014 that his application was not traceable; and that he again applied for an OBC certificate on 30.05.2014, which was issued to him on 13.01.2015, that is well after the

date of application i.e. 27.02.2014. In our view, once the petitioner applied in the general category, it is not possible to change the category once the process had commenced. As far as the plea that an opportunity should have been given for uploading the deficient documents within 10 days in terms of notice dated 12.10.2017, we are of the view that this would not be available to the petitioner. Notice of 12.10.2017 reads as under:-

“GOVERNMENT OF NCT OF DELHI

DELHI SUBORDINATE SERVICES SELECTION BOARD

FC-18, INSTITUTIONAL AREA, KARKARDOOMA, DELHI-110092

No.F.82/Rect./TGT Comp. Science/Int.Cell/DSSSB/2017-18/243

Dated 12/10/2017

NOTICE

Kind Attention:- Candidates for the Post of TGT (Computer Science) Post Code-192/14

Some of the shortlisted candidates for the post of TGT (Computer Science) Post Code 192/14 have not uploaded all the required documents/clarification in the e-dossiers. The candidature of these candidates have been kept pending for want of requisite documents/clarification. These candidates were given an opportunity and their e-dossiers were recalled for submitting the deficient documents but they failed to upload the same.

The Competent Authority is pleased to give a last & final opportunity to these candidates for uploading their deficient documents within ten days. Therefore, such candidates are advised to check the e-dossier module for the deficient

documents and upload the same w.e.f. 13/10/2017 to 22/10/2017, failing which their candidature will be rejected and no further opportunity will be given on what so ever ground.

Dy. Secretary, DSSSB

No.F 73/Rect./Int. Cell/DSSSB/2016-17/243 Dated 12/10/2017

Copy for information to:-

- 1. PS to Chairman, DSSSB.*
- 2. PS to Member, DSSSB.*
- 3. PA to COE, DSSSB*
- 4. PA to Secretary, DSSSB*
- 5. System Analyst, with the request to upload notice on the Board's Website.*
- 6. Notice Board.*

Dy. Secretary, DSSSB”

A reading of the aforesaid notice would show that this notice pertains only to ‘short-listed candidates’ whereas the petitioner was never short-listed. There was no occasion to allow the petitioner to submit any deficient documents once the application form had already been processed for the petitioner as an applicant in the general category; and he had failed to make it to the short-list based on his marks in that category.

16. As far as the plea of vacancies lying unfilled is concerned, we find force in the submission made by Mrs. Ahlawat that the vacancies have already been carried-forward, by reason of which no prejudice would be caused to anyone.

17. Accordingly, we find no infirmity in the view taken by the Tribunal; and no merit in the writ petition. The same is accordingly dismissed.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 15, 2019

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