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

% *Date of Judgment: 13th December, 2019*

+ W.P.(C) 13142/2019

UJJAWAL

..... Petitioner

Through Mr. T.D. Yadav, Advocate

versus

THE CHAIRMAN DELHI SUBORDINATE SERVICES
SELECTION BOARD AND ORS.

..... Respondents

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

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

1. Petitioner is aggrieved by the decision dated 09.10.2019 rendered by Central Administrative Tribunal ('Tribunal') by which an O.A. bearing No.. 2988/2019 filed by the petitioner stands rejected.
2. The necessary facts required to be noticed for the disposal of the present writ petition are that pursuant to an advertisement bearing No.2/17 issued on 07.08.2017 by respondents No.1 and 2, the petitioner made an application for the post of Primary Teacher in the General Category under Post Code-16/17.
3. The examination was conducted on 29.10.2017 only to be cancelled in the month of December, 2017. A fresh advertisement bearing No.1/18

was issued on 26.06.2018, wherein it was mentioned that the candidates who had applied in response to the earlier notification need not apply. The examination was held on 13.10.2018. In the said examination the petitioner secured 112.50 marks and candidates who secured upto 111 marks in the OBC category were accommodated. However, the cut-off marks in the General Category were 117. The case of the petitioner is that she in fact belongs to the OBC Category; but at the time she was uploading the documents with necessary particulars, there was a computer glitch and she was compelled to apply under the General Category. She subsequently made a representation that her category be changed to OBC; and having received no favourable response, she filed the O.A.

4. Mr. Yadav, learned counsel for the petitioner very fairly submits, that at the time the petitioner applied, she did so under the General Category on account of a computer glitch and did not apply under the OBC Category. It is submitted however that since the petitioner in fact belongs to the OBC Category, it would not make any difference under which category she had applied, except that at the time of final declaration of result, she ought to have been treated as belonging to the reserved category. Strong reliance is placed on a decision rendered by the Madras High Court in the case of *Minor V. Harshan Vs. The Chairman, JEE-2012*, W.P. (MD). No.7078/2012 decided on 20.07.2012.
5. Mrs. Ahlawat, who enters appearance on advance copy, submits that having made an application in the year 2017 in the General Category, the petitioner did not make any attempt to seek any rectification to the

OBC Category. As far as the examination of 2018 is concerned, it is submitted that since the earlier exam was cancelled, an option was given to the candidates who had already applied that they did not need to apply again. The petitioner was however free to apply again if she wanted to apply in the reserved category and there was no bar to so applying; however, the petitioner chose not to do so.

6. Learned counsel for the respondent further submits that the claim of the petitioner, who states that she made a representation on 29.09.2017, is factually incorrect as no such representation was filed alongwith the O.A. Learned counsel places reliance upon a decision rendered by the Apex Court in the case of **Rajasthan High Court, Jodhpur & another Vs. Neetu Harsh & another**, Civil Appeal No.6696/2019, para 15 of which reads 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.”

7. Mr. Yadav submits that the aforesaid decision is not applicable to the facts and circumstances of the present case since this is not a case where the candidate did not have an OBC certificate at the relevant time.
8. We have heard the learned counsels for the parties and have considered their rival submissions.
9. It is not in dispute that the petitioner filled her application as a person who belongs to the General Category in the year 2017. Due to cancellation of the exam however, an opportunity came the petitioner's way to apply afresh pursuant to the advertisement for the year 2018

examination as the first examination stood cancelled. However, the petitioner decided not to make a fresh application in the OBC Category. Mr. Yadav vehemently submits that the petitioner did not apply again in view of the Vacancy Notice in the advertisement no. 01/18. The relevant paragraph of the said notice is reproduced below:

“Candidates must apply online through the website <http://dsssbonline.nic.in>. The closing date for submission of online application is 30/07/2018 after which the link will be disabled. Applications received through any other mode would not be accepted and summarily rejected.

Note:- Candidates who have already applied for the post code 16/17 w.e.f. 25/8/2017 to 15/9/2017 need not apply again, they be given One time age relaxation upto the new cut off date.”

10. We are of the considered opinion that the instruction quoted above that candidates who had already applied need not do so again, was not a prohibition to putting-in a fresh application but only in the nature of an option available to candidates who had already applied in the earlier round. However in view of the fact that the petitioner had made a faulty entry in the first application, the petitioner ought to have availed the opportunity to correct her mistake of having applied in the General Category, and should have filed a fresh application, had the petitioner been more vigilant. It is also hard to believe that at the time of first application, the system accepted her selection of ‘General Category’ but did not accept her selection of ‘OBC Category’; and that the petitioner neither took any steps to ensure rectification of the first application nor exercised the option of a fresh application in the year 2018. It is only when the petitioner was not declared successful in the General Category

in the examination for 2018 that she made efforts to get accommodated in the OBC Category.

11. In the circumstances, we do not find any infirmity in the order dated 09.10.2019 passed by Tribunal.
12. The writ petition is accordingly dismissed.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

DECEMBER 13, 2019/ck

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