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02.12.2021.
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**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**W.P.A 2039 of 2021
(Via Video Conference)**

**Sanghamitra Sadhukhan
-versus
State of West Bengal & Ors.**

**Mr. Debabrata Saha Roy,
Mr. Indranath Mitra,
Mr. Subhankar Das,
Mr. Neil Basu.
...For the Petitioner.**

**Mr. Subir Sanyal,
Mr. Ratul Biswas.
...For the Board.**

**Mr. Arindam Chattopadhyay,
Ms. Lipika Chatterjee.
...For the State.**

In response to an advertisement published by the West Bengal Board of Primary Education for recruitment of primary teachers on 23rd December, 2020, the petitioner participated in the said recruitment process.

The petitioner claims that she belongs to the OBC-B category and she is entitled to the relaxation as mentioned in the notification.

On the date the interview was conducted by the West Bengal Board of Primary Education, the petitioner relied upon an OBC certificate dated 28th February, 2007 issued by the Sub-Divisional Officer, Sadar, Hooghly wherein it has been mentioned that the petitioner belonged to the 'Teli' Community which is recognized as backward class.

The grievance of the petitioner is that though the petitioner's candidature has been taken up for consideration under the OBC category, but thereafter, the respondents did not permit her to participate in the interview as she did not have the proper OBC certificate. The certificate which the petitioner was carrying, did not mention whether she belongs to OBC 'A' or OBC 'B' category.

The petitioner relies upon a notification published in the Kolkata Gazette Extraordinary, Government of West Bengal dated 22nd May, 2012 to show that the caste in which she belongs is included in the OBC 'B' category.

The petitioner made an application before the concerned authority for obtaining the caste certificate mentioning the category of her caste. The current OBC certificate issued in favour of the petitioner mentions that the petitioner belongs to the OBC 'B' category. The number of the certificate which was earlier issued is reflected in the latter certificate issued by the concerned authority.

The petitioner submits that she ought to be treated as a candidate in the OBC 'B' category and necessary steps ought to be taken by the respondent authorities.

The respondent authorities have opposed the prayer of the petitioner. It has been submitted that on the date of the interview, the petitioner did not possess any certificate mentioning in which category she belongs.

Admittedly, on the date the interview took place, the petitioner did not have a proper caste certificate in terms of the recruitment notice that is mentioning the category of her caste.

Be that as it may, it is by now well settled that an individual is placed in a caste on the date the individual is born. The petitioner at the time of her birth was born in the OBC category. Caste certificate was issued in her favour in 2007.

The Hon'ble Supreme Court by a judgment dated 24th February, 2016 in the matter of Ram Kumar Gijroya -vs- Delhi Subordinate Services Selection Board & Anr. in Civil Appeal No. 1691 of 2016 arising out of SLP (C) 27550 of 2012 decided the issue as to whether a candidate who appears in an examination under the OBC category and submits the certificate after the last date mentioned in the advertisement is eligible for selection to the post under the OBC category or not.

The court held that in order to be considered for the reserved category post the requirement is that a person should belong to the reserved category. If a person is in a reserved category it is so by birth and not by acquisition of the category because of any other event happening at a later stage. A certificate issued by competent authority is only an affirmation of fact which is already in existence. It is not that the petitioner did not belong to the category prior to issuance of the certificate and that he acquired this status only on the date of issuance of the certificate.

The bifurcation, OBC 'A' and 'B' was introduced later on in the year 2012. The petitioner did possess a certificate of the other backward class issued in her

favour in year 2007. Though the petitioner ought to have updated her OBC status and have produced proper documents in support of the recruitment notice but nonetheless, the non-submission or delayed submission of the caste certificate mentioning the proper category will not change the status of the petitioner from the caste in which she actually belongs.

The petitioner is still a member of the other backward classes and now according to the fresh notification of the Government of West Bengal in the year 2012 she is categorized in the OBC-B category.

As there is no dispute with regard to the caste of the petitioner at present, accordingly, the instant writ petition is disposed of by directing the West Bengal Board of Primary Education to take into consideration the caste certificate issued in favour of the petitioner wherein it has been mentioned that she belongs to the OBC 'B' category.

The authority concerned shall consider the candidature of the petitioner treating her as a candidate in the OBC 'B' category and take necessary steps in the matter at the earliest, but positively within a period of eight weeks from the date of communication of a copy of this order.

W.P.A. 2039 of 2021 stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)