

Prajakta/Vidya

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3712 OF 2021

Union Territory of Dadra & Nagar
Haveli and Daman & Diu & Ors.

..Petitioners

versus

Hemant Hiralal Chudasama

..Respondent

.....

Mr.Hiten Venegaonkar for Petitioners.
Mr.Rahul Walia for Respondent.

.....

**CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE :- AUGUST 04, 2021.

PC :

1. This writ petition filed by the Union Territory of Dadra & Nagar Haveli and Daman & Diu challenges the judgment and order dated September 16, 2019 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai (for short "the tribunal") whereby the respondent's original application came to be allowed by the tribunal in terms of the following directions as contained in paragraph 8 of the impugned order which reads thus:-

"8. In the facts and circumstances and more particularly, in view of the law laid down by the Hon'ble Apex Court in case of **Abhinav DipakBhai Patel (supra)**, the OA deserves to be allowed and the same is allowed with following directions:

(i) The respondents are directed to consider the appointment of the applicant on the post of Junior Engineer (Civil) under PWD without insisting on a fresh caste certificate for the one already submitted by the applicant.

(ii) The applicant shall be entitled for fixation of seniority keeping in view his merit position in the selection process and he will also be entitled for fixation of pay keeping in view the date on which the other selected candidates have been appointed. However, the applicant is not entitled for any arrears of pay."

2. The facts are:

The petitioners issued an advertisement on July 15, 2014 inviting applications for filling up nine posts of Junior Engineer (Civil)/(Electrical) and one post of Junior Engineer (Electrical) in the Public Works Department (PWD) from the eligible Indian Citizen candidates. Out of the 9 posts, 2 posts were reserved for the candidates belonging to Other Backward Caste (OBC) and 2 posts for Scheduled Caste category. For the post of Junior Engineer (Electrical) there was no reservation. In regard to the eligibility of candidates, two paragraphs of the advertisement are required to be noted, which read thus:-

" Any Indian citizen can apply for the post. However, applicant having Domicile of Daman & Diu shall be given Weightage in accordance with O.M. No.1-1-87-CS/PF/2823 dated 16.12.2013 subject to him/her producing Domicile Certificate issued by the Mamlatdar, Daman & Diu.

The candidates claiming OBC/SC status shall be required to furnish a self attested copy of Certificate issued by the Competent Authority that he/she belongs to OBC/SC community."

3. It is seen from such advertisement that any 'Indian citizen' could apply for the post and an applicant having Domicile of Daman

& Diu was to be given weightage. Further candidates claiming OBC/SC status were required to furnish a self attested copy of the certificate issued by the competent authority, that he belonged to the respective reserved category.

4. The respondent was born and brought up in Daman and Diu, and hence was a domicile of Daman & Diu. On July 31, 2014 he submitted an application under the said advertisement for appointment as a Junior Engineer (Civil). As he belonged to the Scheduled Caste category, alongwith his application, he annexed a Caste Certificate dated February 4, 2002 issued to him by the Mamlatdar, Daman (competent authority) certifying that he belonged to "Vankar" caste which was recognized as Scheduled Caste under the Constitution (Scheduled Caste) Order, 1950. The certificate recorded that the same was issued to the respondent on the basis of a scheduled caste certificate dated June 30, 1982 issued to respondent's father Shri.Hiralal Dahyabhai of village Mahuwa, District of Bhavnagar, Gujarat State, certifying that his father belonged to the caste Harijan-Vankar recognized as a Scheduled Caste in the State of Gujarat, as issued by the Bhavnagar District Social Welfare Officer. The certificate also recorded that the respondent and his parents are residents of Fort Area, Moti Daman of Daman District of the Union Territory of Daman and Diu.

5. A written test was conducted by the petitioners on August 2, 2015, result of which was uploaded on the petitioners website on August 7, 2015. A merit list of the candidates based on the marks secured in the written test/domicile/educational qualification was notified which included the respondent's name at serial no.9 for appointment as Junior Engineer (Civil).

6. The petitioners through its Superintending Engineer's letter dated 10 August 2015 informed the respondent to report on September 2, 2015 in his office for a medical examination. Such letter also called upon the respondent to submit a fresh caste certificate in original, issued by the competent authority i.e. Mamlatdar, Diu & Daman, failing which opportunity would be provided to the next meritorious candidate in the respective category from the waiting list. A similar letter was addressed by the Superintending Engineer to the respondent on September 4, 2015 that a fresh caste certificate be submitted by the respondent, by September 9, 2015, again stating that, failing which the next meritorious candidate in the waiting list in Scheduled Caste category would be appointed.

7. The respondent felt aggrieved by the said communications addressed by the Superintending Engineer and his insistence for a

fresh caste certificate to be obtained by the respondent. He, accordingly, approached this Court by filing Writ Petition (L.) No.2635 of 2015. A co-ordinate Bench of this Court on September 9, 2015, while issuing notice to the petitioners (respondents therein), noting the fact that the respondent already possessed a caste certificate which he had submitted, directed that no coercive steps be taken against the respondent on the impugned communication dated September 4, 2015, till the adjourned date.

8. It appears that in the intervening period the respondent, notwithstanding the Caste Certificate dated February 4, 2002 held by him and produced alongwith the application under the advertisement, on August 17, 2015, made an application to the Mamlatdar, Daman for issuing a fresh caste certificate. On such application of the respondent, the Mamlatdar, Daman on January 15, 2016 passed an order inter-alia observing that on verification of the documents as submitted by the respondent, it was revealed that the caste certificate, on the basis of which a claim was made by the respondent that he belonged to Harijan- Vankar, Scheduled Caste category, was relying on the certificate issued by the Gujarat authority. The Mamlatdar observed that the respondent was a migrant to the Union Territory and did not belong to a category of being a Scheduled Caste from the Union Territory of Daman & Diu.

He, accordingly, informed the petitioners that on the basis of such documents, it was not possible to consider the request of the respondent, for issuance of a caste certificate.

9. On such backdrop, the writ petition filed by the respondent was listed for hearing before a co-ordinate bench of this Court on August 20, 2016 when this Court passed an order disposing of the petition on the ground that an alternate remedy was available to the respondent to approach the Central Administrative Tribunal. The Court, however, continued the operation of the interim order dated September 9, 2015 for a period of three weeks from the said order.

10. The respondent approached the Central Administrative Tribunal by the Original Application in question, which was filed in September 2016. In the Original Application, the respondent prayed that the communication dated August 10, 2015 and the communication dated September 4, 2015 issued by the Superintending Engineer, directing the respondent to furnish a fresh Caste Certificate be quashed and set aside. A prayer was also made that the petitioners be directed to appoint the respondent on the post of Junior Engineer (Civil) in the Scheduled Caste category from the date the other selected candidates were

appointed with consequential benefits. The respondent also prayed for a declaration that the Scheduled Caste Certificate dated February 4, 2002 as issued in favour of the respondent was legal and appropriate and that the respondent cannot be treated as a migrant for the purpose of appointment of Junior Engineer (Civil) in the Union Territory of Dadra & Nagar Haveli and Daman & Diu.

11. The petitioners contested the respondent's original application. The Tribunal by the impugned order referring to the decision of the Supreme Court in **Director, Transport Department, Union Territory Administration of Dadra and Nagar Haveli, Silvassa and Others Versus Abhinav Dipakbhai Patel**, (2019) 6 Supreme Court Cases 434, allowed the original application directing the petitioners to consider the appointment of the respondent without insisting on a fresh caste certificate. The Tribunal also directed that the respondent would be entitled for fixation of seniority keeping in view his merit position in the selection process as also would be entitled for fixation of pay keeping in view the date on which the other selected candidates have been appointed, however, without any arrears of pay.

12. Mr. Venegaonkar, learned counsel for the petitioners has limited issues to urge. He would contend that the petitioners were

justified in directing the respondent to obtain a fresh caste certificate, as the earlier caste certificate dated February 4, 2002 issued to him was based on his father's caste certificate issued from the State of Gujarat. According to Mr. Venegaonkar, the requirement of a fresh caste certificate to be issued on the basis of documents of the respondent showing that he belonged to the Scheduled Caste as notified for Daman and Diu, was imperative for the respondent to be eligible to stake his claim for the reserved vacancy in the selection process undertaken by the petitioner. Mr. Venegaonkar would thus submit that the reasons attributed by the Tribunal in allowing the Original Application are untenable and deserve to be set aside. Mr. Venegaonkar would however not dispute that on the basis of a caste certificate issued by the Mamlatdar, Daman (competent authority), the respondent had participated in the selection process and was placed in the merit list as notified by the petitioner. Mr. Venegaonkar has also not disputed that the Caste Certificate dated February 4, 2002 issued by the Union Territory Administration in favour of the respondent, certifying that he belonged to the Vankar caste recognized as Scheduled Caste under the Constitution (Scheduled Caste) Order, 1950, had continued to remain valid and was not cancelled by any process known to law.

13. On the other hand, Mr.Walia, learned counsel for the respondent in supporting the impugned order passed by the Tribunal, would submit that, as rightly observed by the Tribunal, the respondent's case was squarely covered by the decision of the Supreme Court in **Abhinav Dipakbhai Patel's case (supra)**. He submits that there was no material that the caste certificate dated February 4, 2002 issued in favour of the respondent was, in any manner, annulled. Mr.Walia would hence urge that it was incumbent for the petitioners to consider such certificate to be valid and not demand a fresh caste certificate from the respondent. Mr. Walia would next submit that the respondent had successfully participated in the selection process and when he was about to be appointed, such insistence of fresh caste certificate was made by the Superintending Engineer without any authority in law. He would submit that the Superintending Engineer could not have discarded the valid caste certificate submitted by the respondent alongwith the application. He has, accordingly, prayed that the petition is thoroughly misconceived and ought to be dismissed.

14. Having heard learned counsel for the parties and having perused the materials on record, at the outset, we must record that the first petitioner itself through its Mamlatdar, Daman and Diu had issued to the respondent, the caste certificate dated February 4, 2002 which was on the application made by him on December 3,

2001. It certifies that the respondent belonged to the Vanker caste, which is recognized as Scheduled Caste under the Constitution (Scheduled Caste) Order, 1950 as amended. It also certifies that the respondent and his parents are residents of Fort Area of Daman. Significantly, the application for caste certificate was made by the respondent on December 3, 2001 when he was 16 years of age (his date of birth being July 19, 1985). Such caste certificate since then, at all material times, remained legal and valid and so is it till date. It is well settled that a caste certificate if issued would remain valid until it is annulled and/or nullified by a process known to law. There is no material shown by the petitioners which could be taken into consideration to conclusively infer that such caste certificate issued in favour of the respondent was invalid and could not have been utilized by him in participating in the selection process as a reserved category candidate belonging to the SC category.

15. Be that as it may, it is quite clear that on the basis of such caste certificate, the respondent participated in the selection process adopted by the petitioners to fill up the posts of Junior Engineer (Civil) from the Scheduled Caste category. His application, supported by such caste certificate, was accepted to be valid, as also the respondent was declared to be a meritorious candidate. However, subsequent to the declaration of the merit list, the

respondent was not much fortunate in as much as the Superintending Engineer by his letters dated August 10, 2015 and September 4, 2015 insisted that the respondent obtain a fresh caste certificate from the Mamlatdar, Daman and Diu, being the competent authority, latest by September 9, 2015, failing which the respondent would lose his claim and the next meritorious candidate in the waiting list in the Scheduled Caste category would be appointed. In our opinion, such approach on the part of the Superintending Engineer was per-se illegal for more than one reason. Firstly, such insistence was in patent oblivion of the caste certificate dated February 4, 2002 issued by the Competent authority/Mamlatdar in favour of the respondent. There was no material indicating that such caste certificate was not legal or was invalid.

16. Secondly, the Superintending Engineer had no authority to assume that the respondent's caste certificate was not legal, when the same was issued by the competent authority of the Union Territory Administration. Also there was no material which would show that the same was obtained fraudulently or was ex-facie unacceptable when considered by a reasonable body of persons. It appears to us that there was something more than what would meet the eye, for the Superintending Engineer deciding to act against the respondent in the absence of any material so as to

discard the respondent's caste certificate and insist for a fresh caste certificate. Thus, there is a grave doubt as to why such opinion was formed by the Superintending Engineer and more particularly when he set down a very short time-limit for the respondent to obtain a fresh caste certificate by September 9, 2015 failing which the next meritorious candidate in the waiting list in the Scheduled Caste category would be considered.

17. Thirdly, and most importantly, the Superintending Engineer in insisting for a fresh caste certificate from the respondent, completely neglected the fact that he was acting in the teeth of the terms and conditions of the advertisement. Such advertisement clearly invited applications from all over the country, which is clear from the contents of the advertisement as noted by us above. A candidate claiming OBC/SC status was required to furnish a self-attested certificate issued by the competent authority that he or she belonged to the respective reserved category. Hence, candidates belonging to the reserved category from places other than the Union Territory were eligible to apply, if they possessed a caste certificate issued by the competent authority. The only exception which was made for the local candidates having domicile of Daman & Diu, was to the effect that such candidates were to be given a weightage in accordance with the office memorandum dated December 16, 2013 subject to him/her producing domicile

certificate issued by Mamlatdar, Daman & Diu. Hence it was not a selection process restricted and/or confined to the candidates belonging to Scheduled Caste category, hailing only from Daman. In these circumstances, it is quite surprising as to how the Superintending Engineer could doubt the caste certificate dated February 4, 2002 of the respondent and insist for a fresh caste certificate from the respondent. If this be so, considering that the first petitioner is an Union Territory which would be administered by the President by virtue of Article 239 of the Constitution, the law as laid down by the Supreme Court in **S. Pushpa & Others versus Sivachanmugavelu & Others** (2005) 3 Supreme Court Cases 1, in our opinion, would squarely apply. In such decision, the Supreme Court was considering a question whether selection and appointments of migrant Scheduled Caste candidates from the other States, against quota reserved for Scheduled Castes, in recruitment to the posts of Selection Grade Teachers, in the Union Territory of Pondicherry, was illegal and invalid. The Tribunal had held such selection and appointments to be illegal and invalid. The Supreme Court reversing the decision of the tribunal held that the migrants belonging to the reserved category were eligible to apply for the post in question, when the selection was not confined to candidates belonging to the State or Union Territory. It was further held that the Union Territory by virtue of its peculiar position being

governed by the President as laid down in Article 239 had extended the benefit of reservation even to such migrant Scheduled Castes or Scheduled Tribes who were not mentioned in the Schedule to the Presidential Order issued for such Union Territory. It was held that such approach would not violate Clause (4) of Article 16 of the Constitution. The observations relevant to the facts of the present case are contained in paragraph 21 of the said decision which reads thus:-

"21. If a State or Union territory makes a provision whereunder the benefit of reservation is extended only to such Scheduled Castes or Scheduled Tribes which are recognized as such, in relation to that State or Union territory then such a provision would be perfectly valid. However, there would be no infraction of clause (4) of Article 16 if a Union territory by virtue of its peculiar position being governed by the President as laid down in Article 239 extends the benefit of reservation even to such migrant Scheduled Castes or Scheduled Tribes who are not mentioned in the schedule to the Presidential Order issued for such Union territory. The U.T. of Pondicherry having adopted a policy of Central Government whereunder all Scheduled Castes or Scheduled Tribes, irrespective of their State are eligible for posts which are reserved for SC/ST candidates, no legal infirmity can be ascribed to such a policy and the same cannot be held to be contrary to any provision of law. "

(emphasis supplied)

18. In the present case, the tribunal by the impugned order has allowed the original application of the respondent following the decision of the Supreme Court in **Abhinav Dipakbhai Patel's**

case (supra). The facts of **Abhinav Dipakbhai Patel's case** are quite similar to the facts in hand. In such case, an advertisement was issued by the Union Territory for filling up posts of Assistant Motor Vehicle Inspector. The advertisement was quite similar to the advertisement in question in the present proceedings. The respondent therein was a candidate belonging to the Scheduled Tribe category. Although he was a domicile of the Union Territory, he held a caste certificate which was issued by the competent authority from the State of Gujarat. The respondent had shifted his residence from Gujarat to Union Territory of Dadra and Nagar Haveli. He had a residential accommodation and also a voter's identity card which showed that he was a resident of Dadra and Nagar Haveli. He participated in the selection process; his application however was not considered. He approached the National Commission for Scheduled Tribes, Government of India, which passed an order recommending that the respondent be appointed. Despite such order, the Union Territory Administration did not appoint him. He accordingly approached this Court in a writ petition which came to be allowed by a Division Bench of this Court. The Division Bench in allowing the writ petition, held that the respondent was found to be resident of Union Territory of Dadra & Nagar Haveli, and although he had migrated from the State of Gujarat, he was entitled to be considered for appointment as a

reserved category candidate in Union Territory of Dadra & Nagar Haveli and accordingly directed the Union Territory to appoint the respondent as Assistant Motor Vehicle Inspector. The orders passed by this Court were assailed by the Union Territory before the Supreme Court. The contention of the Union Territory was similar to the one raised in the present petition, namely that in so far as reserved category candidates are concerned, only local candidates would be considered and/or a migrant cannot obtain benefit of reservation in the matter of employment in the petitioner-Union Territory. In short, the contention of the Union Territory was that the benefit of reservation under the reserved category was restricted only to the local candidates and not to the migrants. The Supreme Court referring to the decision in **S. Pushpa & Others (supra)** held that a person belonging to a Scheduled Caste or a Scheduled Tribe which is notified by the President for a Union Territory was entitled to be considered as a reserved candidate provided he was a resident of the said Union Territory. In our considered opinion, the respondent's case stands squarely covered by the principles of law as laid down in the decision of the Supreme Court in **Abhinav Dipakbhai Patel's case (supra)** and in **S. Pushpa's case (supra)**.

19. There is yet another aspect which needs to be stated. The petitioners' Superintending Engineer after completion of the

selection process and before an appointment order could be issued to the respondent, had questioned the eligibility of the respondent on the ground that a fresh caste certificate be obtained by the respondent, when the advertisement merely required a caste certificate issued by the competent authority to be submitted by the participating candidate. The respondent had already fulfilled the conditions prescribed in the advertisement when he had submitted caste certificate issued to him by the competent authority. The respondent being foisted with a condition to obtain a fresh caste certificate, it was an insistence contrary to the representation made in the advertisement. It was not permissible for the Superintending Engineer to apply a new norm or a new eligibility criteria, different from what was prescribed in the advertisement and prevailing on the date of respondent making his application. The law in this regard is well settled. The Supreme Court in **Ashok Kumar Sharma Vs. Chander Sekhar** reported in (1997) 4 SCC 18 has held that the eligibility of the candidates is required to be judged on the date of the application and that date alone. It was held that an advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it, is bound by such representation. It cannot act contrary to it.

20. In view of the above discussion, we are of the clear opinion that the tribunal had rightly allowed the respondent's original application. We find no perversity in the findings recorded by the tribunal. The writ petition lacks merit. It is accordingly rejected. The petitioners are directed to give effect to the Tribunal's order within two weeks from today.

21. No costs.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)