

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CWP-13954 of 2020 (O&M)**

**Date of Decision: 23.02.2021.**

**Sunil Kumar**

**...Petitioner**

**Versus**

**Union of India & Ors.**

**....Respondents**

**CORAM: HON'BLE MR JUSTICE ARUN MONGA**

**Present : Mr. Sumit Sangwan, Advocate  
For the petitioner.**

**Ms. Sonia Singh, Standing counsel  
Union of India.  
(Presence marked through video conference).**

**ARUN MONGA, J. (ORAL)**

1. Grievance of the petitioner is qua rejection of his candidature for the post of Tradesman Mate in Indian Navy pursuant to an advertisement (Annexure P-1) ostensibly for not providing the requisite certificate to claim benefit of OBC Category.
2. The petitioner was neither informed to make good the deficiency nor otherwise called to render any explanation.
3. Before rejection of his candidature, petitioner was issued an admit card pursuant to his application followed by his participation in written examination. He secured 86 marks as against 75 marks secured by the last selected candidate in OBC Category. As per the selection process stated in the advertisement, there was to be no interview for the post. After successfully qualifying the written examination, only documents were to be verified followed by the medical examination.

4. Petitioner has pleaded that after conducting written examination the respondents issued provisional select list of Tradesman Mate(Annexure P-7) without mentioning the cut-off marks in written examination. The name of the petitioner was not mentioned therein, leaving him under impression that marks obtained by him were less than cut-off marks. On issuance of final list, the petitioner came to know through his selected colleagues that they had secured 80 marks in the competition. The petitioner through his brother immediately applied for information under Right to Information Act, which was belatedly provided to him due to Covid-19 pandemic. Hence the instant petition.

5. The respondents first time disclosed to the petitioner through the return filed in response to the instant proceedings that it was at the stage of documents verification, the candidature of the petitioner was rejected, since he did not provide the OBC Certificate before the cut-off date prescribed in the advertisement.

6. The score of petitioner obtained in written examination is not disputed in the response filed to the writ petition.

7. Last date for giving the requisite documents was 15.03.2019. The petitioner states that as on that date he already had a validly issued OBC Certificate dated 11.03.2017 (Annexure P-11). He had duly uploaded the same on-line along with his application form.

8. Learned counsel for the petitioner contends that since the validity of an OBC Certificate is three years, petitioner had been timely applying for issuance of OBC Certificate after every three years. He argues that at the time of uploading his application form, petitioner had also

appended another OBC Certificate issued earlier in 2014 as well as the later one dated 11.03.2017(Annexure P-11). Both the said certificates have also been annexed with the replication.

9. The issuance of OBC certificates is not controverted by respondents.

10. What is asserted by the respondents is that the petitioner had appended 2014 OBC certificate and not the certificate issued on 11.03.2017. On that ground rejection of his candidature is sought to be justified saying that OBC certificate (Annexure P-11) was not appended/submitted before the cut-off date and for the first time it has been produced only in the present proceedings.

11. On the face of it, the justification offered by the official respondents seems impalatable and illogical. The petitioner has throughout been conscious of the fact that he has to apply for OBC Certificate every three years and admittedly he had appended his certificate issued in 2014. It is most unlikely and unnatural that he did/would intentionally not append the certificate dated 11.03.2017 along with his application, which was already in his possession much prior to the cut-off date. In the normal sequence of documents, the OBC certificate of a later date i.e. 11.03.2017 would have been appended below the earlier certificate of 2014. It is quite likely that during scrutiny/ verification of the documents, probably the concerned official, by an over sight, noticed only the 2014 OBC certificate and not the 2017 certificate though appended along with the application.

12. In this context, reference may be had to Apex Court judgment in **Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board**

**&Anr.** <sup>1</sup>. Facts therein were that the candidate had not submitted the OBC certificate along with application for consideration against reserved vacancy of staff nurse. The OBC certificate had been applied 10 days before the application. But it was issued by the competent authority only after the cut off date for submission of the application. Candidate appeared in the examination and was shortlisted for selection. However, ultimately he was not selected for the reason that he had failed to submit the OBC certificate along with the form before last date of submission of the application form. Learned Single Bench of the High Court of Delhi, allowed the writ petition filed by the aggrieved candidate and directed the respondent to reconsider the application of the petitioner and other aggrieved candidates. An intra court appeal by way of LPA against Single Bench order was allowed by a Division Bench, *inter alia*, observing that till the cut off date for submitting the application, the competent authority had not even issued the OBC certificate to the candidate. The Supreme Court, however, set aside the order of the Division Bench and upheld that of the learned Single Judge.

13. Paras 15-16 of Apex Court judgement in the case of **Ram Kumar Gijroya** are as under:-

*“15. In the case of Pushpa (supra), relevant paragraphs from the case of Tej Pal Singh (supra) have also been extracted, which read thus :-*

*“11.....*

*xxx            xxx            xxx*

*17. The matter can be looked into from another angle also. As per the advertisement dated 11th June, 1999 issued by the Board, vacancies are reserved for various categories including 'SC' category. Thus in order to be considered for the post reserved for 'SC' category, the requirement is that a person should belong to 'SC' category. If a person is SC his is so by birth and not by*

*acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to 'SC' category and act there on by giving the benefit to such candidate for his belonging to 'SC' category. It is not that petitioners did not belong to 'SC' category prior to 30th June, 1998 or that acquired the status of being 'SC' only on the date of issuance of the certificate. In view of this position, necessitating upon a certificate dated prior to 30th June, 1998 would be clearly arbitrary and it has no rationale objective sought to be achieved.*

*18. While taking a particular view in such matters one has to keep in mind the objectives behind the post of SC and ST categories as per constitutional mandate prescribed in Articles 15(4) and 16(4) which are enabling provisions authorising the Government to make special provisions for the persons of SC and ST categories. Articles 14(4) and 16(4), therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a right enshrined for protection of society. The right in social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular Arts. 14, 15, 16, 21, 38, 39 and 46 are to make the quality of the life of the poor, disadvantaged and disabled citizens of the society meaningful.”*

*Further, in the case of Pushpa (supra), relevant portion from the judgment of Valsamma Paul’s case (supra) has also been extracted, which reads as under:-*

*“21. The Constitution through its Preamble, Fundamental Rights and Directive Principles created a secular State based on the principle of equality and non-discrimination, striking a balance between the rights of the individuals and the duty and commitment of the State to establish an egalitarian social order.”*

*16. In our considered view the decision rendered in the case of Pushpa supra is in conformity with the position of law laid down by this Court which have been referred to supra. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned Single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in the cases of Indra Sawhney and Valsamma Paul supra, wherein this Court after interpretation of Articles 14, 15, 16 and 39A of the Directive Principles of State Policy held that the object of providing reservation to the SCST and educationally and*

*socially backward classes of the society is to remove inequality in public employment as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39A of the Directive Principles of State Policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench thus erred in reversing the judgment and order passed by the learned single Judge. Hence the impugned judgment and order passed by the Division Bench in the Letters Patent Appeal No 562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in the cases of Indra Sawhney and Valsamma Paul supra. Therefore the impugned judgment and order passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside. The judgment and order dated 24.11.2010 passed by the learned single Judge in WP C No 382 of 2009 is hereby restored.”*

14. In present case, the OBC certificate dated 11.03.2017 (Annexure P-11) is prior to the cut-off date. Petitioner claims that he had actually submitted it with the application form. As observed above, his version is more plausible than the contrary version of the respondents. Petitioner's case is thus on a higher pedestal and stronger than that of the petitioner in **Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board &Anr.** supra

15. In view of the aforesaid legal position as enunciated by the Apex Court, the petitioner is entitled to be given the benefit of OBC Certificate.

16. As an upshot of above discussion, the writ petition is allowed. Respondents are directed to consider the candidature of the petitioner for appointment to the post of Tradesman Mate in accordance with his merit in the OBC category subject, of course, to other parameters being fulfilled by

him in accordance with advertisement (Annexure P-1). Let the needful be done within a period of three months.

17. Pending application(s), if any stand disposed of accordingly.

February 23, 2021  
Jiten

(ARUN MONGA)  
JUDGE

|                            |        |
|----------------------------|--------|
| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |