



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 28.04.2022

ORDER PRONOUNCED ON : 06.06.2022

CORAM

HON'BLE MR.JUSTICE S.VAIDYANATHAN
AND

HON'BLE JUSTICE MRS.JUSTICE.N.MALA

W.P.No. 9672 of 2022

A.Arul Jothi

...Petitioner

Vs.

1.The Union of India, rep by its
Under Secretary,
Union Public Service Commission,
Special Cell II Section, Dholpur House,
Shahjahan Road,
New Delhi- 110 069.

2.The Union of India rep. by its
Secretary,
Ministry of Health and Family Welfare,
New Delhi.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus in the nature of writ calling for the records on the file of the Central Administrative Tribunal, Chennai with regard to the order passed in O.A.No.1627 of 2016 dated 01.12.2021 and quash the same and direct the respondents to select and appoint the petitioner as Drug Inspector as per provisional list issued by the 1st respondent dated 08.04.2016.

For Petitioner : Mr.V.S.Jagadeesan
Respondent for R1 : Mr.V.Chandrasekaran
for R2 : Mr.C.Kulanthaivel



O R D E R

[Order of the Court was made by S.VAIDYANATHAN, J. and N.MALA, J.]

The Writ Appeal is filed against the order dated 01.12.2021 dismissing the O.A.No. 1627 of 2016 which was filed challenging the rejection of the petitioner's application for the post of Drug Inspector.

2. The summary of the facts are as follows:

The petitioner passed the degree in Pharmacy in 2004 and applied for the post of Drug Inspector which was notified in the employment newspaper dated 28.02.2015-06.03.2015, calling for applications from eligible candidates for filling up for the post of 147 Drug Inspectors in Central Drug Standard Control Organisation (CDSCO), Ministry of Health and Family Welfare.

3. The communal reservation in the said notification was given as 18 for SC, 13 for ST, 38 for OBC and 78 for UR. The age limit for the general category was fixed as 30 years and relaxation of age was given as 5 years for SC/ST and 3 years for OBC. According to the petitioner, he was fully qualified for the post of Drug Inspector, hence he submitted an application through online as required. According to the petitioner he belongs to OBC category particularly Vanniya Kula kshatriya community which is a Non-Creamy layer community and so he was entitled to age relaxation of 3 years. According to the petitioner he had applied only as a OBC candidate and his application was also accepted by the respondents. The petitioner was issued with a call letter on 24.07.2015 and was allotted Roll No. with instructions to appear for the recruitment test on 26.07.2015 for the notified post. The petitioner appeared for the recruitment test and was successful in the written test.

4. The petitioner's Roll No. figured in the short listed candidates in the results published by the respondents. The petitioner was waiting for call letter for the interview but he was issued with the impugned order dated 06.07.2016, wherein, it was stated that his application was cancelled by the commission on the ground of overage. According to the petitioner the impugned order referred to a judgment of Hon'ble Supreme Court dated 17.03.2015, wherein the notification including the JAT community in the central list of OBC's was set aside. On the basis of the said judgment the writ petitioner's candidature was treated as general category and not under OBC "JAT" community. The petitioner contended that he never applied under JAT quota as he belonged to the OBC/Non-Creamy layer category of Vanniya Kula kshatriya community which is a OBC community of Tamil Nadu. The petitioner therefore submitted that the impugned order was



5. The respondents filed a counter in the O.A and contended that the order dated 06.07.2016 inadvertently mentioned that the candidature of the petitioner for the post of Drug Inspector was cancelled as he was treated as general category candidate, following the judgment of Hon'ble Supreme Court wherein the notification dated 04.03.2014 of the Ministry of Social Justice and Empowerment including JAT community in the central OBC list was set aside. According to the respondents the said mistake was immediately rectified by the communication dated 13.07.2016 in which it was categorically stated that as the petitioner belonged to OBC Creamy layer category, he was treated as general category candidate and as he was found to be overaged for the said category, his application was cancelled.

7. The Hon'ble Tribunal on the basis of the pleadings of the respective parties and the arguments of the counsels dismissed the O.A. vide order dated 01.12.2021 on the specific finding that the error committed by the applicant as regards the Creamy layer cannot be treated as minor error and the petitioner should have read the instructions correctly and filled the entries properly. The Tribunal was of the view that the petitioner must bear the consequences of the failure in filling up the application correctly. Aggrieved by the order of the Hon'ble Tribunal, the petitioner has filed the writ petition.

9. The counsel for the petitioner submitted that the respondents were trying to take advantage of the inadvertent error in the application which is of no consequence because in



the application itself the petitioner sought age relaxation of 3 years as he belonged to OBC community and gave order number and date of his community certificate. The counsel further denied the receipt of the corrected rejection letter dated 13.07.2016. The learned counsel for the petitioner therefore submitted that as the receipt of the letter dated 13.07.2016 was denied, it was incumbent on the respondents, to prove that such a letter was served on him.

10. The counsel for the respondent submitted that the order passed by the Tribunal is to be upheld because the Tribunal has rightly held that the petitioner cannot take advantage of his own wrong and that the error in the application regarding OBC/Creamy layer category was not a minor error and therefore prayed for the dismissal of the writ petition.

11. We have heard the learned counsel for the petitioner and the learned counsel for the respondents and have perused the records.

12. In the application filed by the petitioner, no-doubt in the column relating to community etc. it is stated as follows:

Community Subcaste/State /Creamy Layer:	Vaniyar, Vania Chettiar (including Gandla, Ganika, Telikula and Chekkalar)/(Tamil Nadu)/ YES.
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But in the next page in the column age relaxation the following entries are seen

Age Relaxation:

Age Relaxation:	Yes
Under special provision/order:	Yes
Order No. & Date:	201/2011/04 25-01-2011
No. of year(s)/month(s)/day(s):	3 Years 0 Months 0 Days

Therefore it is clear that the petitioner has clearly mentioned that he belongs to the OBC category (non creamy layer) and has sought age relaxation of 3 years on the basis of his community certificate. The order number and the date of his community certificate is given in the application. As rightly contended by the petitioner's counsel, the error in the application as regards Creamy layer is only an inadvertent mistake and if the application is read as a whole it will be seen that the petitioner claimed age relaxation on the basis that he belonged to OBC (non creamy layer) category. The contention of the respondents counsel that the certificates were scrutinised subsequently and therefore at the stage of submission of application there was no necessity to scrutinise the certificate



and therefore the rejection was made subsequent to the scrutiny is untenable.

13. The fact that the respondents permitted the petitioner to participate in the written examination is not disputed. If really the petitioner was considered as general category candidate then the respondent would have rejected his application at the threshold, because in the application his Date of Birth was given as 16.05.1982, which means that on the date of the application the petitioner was over 30 years of age which is the upper age limit for general category candidates. The fact that the respondents permitted the petitioner to take the written examination shows that the respondents treated him only as a OBC candidate and not as a general category candidate on the basis of the details furnished by him in the application particularly the clause relating to Age relaxation.

14. It is relevant to note here that initially the petitioner's candidature was rejected on the basis of the judgment of the Hon'ble Supreme Court with reference to the JAT community and it was only later vide letter dated 13.07.2016 that the mistake was found out and the reason for the rejection was converted into one of overage for OBC non creamy layer category. Though copy of the said letter was given across the bar the receipt of the same is disputed by the writ petitioner.

15. As rightly submitted by the petitioner's counsel, there is no endorsement of receipt by the petitioner and only despatch register is annexed with letter. When the petitioner was not served with the letter dated 13.07.2016, he could not have challenged it. The contention of the petitioner's counsel that the new ground for rejection of his application is an after thought is probable.

16. We are therefore of the considered view that the rejection of the petitioner's application is un-justified in the facts and circumstances of the case.

17. We therefore set aside the order dated 01.12.2021 passed by the Hon'ble Tribunal and further direct the respondents to consider the selection and appointment of the petitioner as Drug Inspector as per the provisional list issued by the first respondent dated 08.04.2016.

In view of the above this Writ petition is allowed. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar



1.The Under Secretary,
Union Public Service Commission,
Special Cell II Section, Dholpur House,
Shahjahan Road,
New Delhi- 110 069.

2.The Secretary,
Ministry of Health and Family Welfare,
New Delhi.

+1 cc to Mr.V.Chandrasekaran, Advocate Sr.NO.32374

+1 cc to Mr.V.S.Jagadeesan, Advocate Sr.NO.32229

+1 cc to Mr.C.Kulanthaivel, Advocate Sr.NO. 32743

W.P.No. 9672 of 2022

bp (CO)

A.SK(16/06/2022)