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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 15th February, 2022
Pronounced on: 17th February, 2022

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W.P.(C) 2614/2022 & CM APPLN No.7480/2022

PRIYANKA RANI

..... Petitioner

Through : Mr.Rajinder Pal Singh, Advocate.

versus

GOVERNMENT OF INDIA & ANR.

..... Respondents

Through : Mr.Rajkumar Yadav, Sr.Panel
counsel, Mr.Animesh Kumar
Sham, Mr.Anshuman, Advocates.

CORAM:**HON'BLE MR. JUSTICE YOGESH KHANNA****YOGESH KHANNA, J.** (Through Video Conferencing)

1. This Writ petition is filed with the following prayers:

*“a. Allow the present petition and pass a writ of mandamus or any other writ, order or direction in the nature of mandamus and / or any other appropriate writ, directing respondents to accept all OBC(NCL) certificates and OBC(NCL) Affidavit /document of petitioner as submitted by her with respondents as valid and applicable **fulfilling the requirement** for the post of Nursing Officer-2019 in OBC(NCL) category vide Recruitment Notice No. 1/2019 by All India Institute of Medical Sciences, Ansari Nagar New Delhi-110029 and four CGHS Hospital (Dr. Ram ManoharLohia Hospital (RMLH), Safdarjung Hospital (SJI-I), Lady Harding Medical College (LHMC) & Smt. Sucheta Kriplani Hospital (SSKH) and Kalawati Saran Children Hospital (KSCH) all situated at New Delhi and consider her application for the post of Nursing Officer and her candidature in true perspective and in the light of the factual position of petitioner belonging to OBC(NCL) category as per criteria demanded by the respondents, for the post of Nursing Officer;*

b. Allow the present petition and pass a writ of mandamus or any other writ, order or direction in the nature of mandamus and / or any other appropriate writ, directing respondents to issue appointment letter and joining letter to the petitioner for the post of Nursing Officer-2019 in OBC(NCL) category vide Recruitment Notice No. 1/2019 by All India Institute of Medical Sciences, Ansari Nagar New Delhi-110029 and four CGHS Hospital (Dr. Ram ManoharLohia Hospital (RMLH), Safdarjung Hospital (SJI), Lady



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Harding Medical College (LI-IMC) & Smt. Sucheta Kriplani Hospital (SSKH) and Kalawati Saran Children Hospital (KSCH) all situated at New Delhi and announce the result accordingly by taking/including the petitioner into the job/post of Nursing Officer;

c. Allow the present petition and pass a writ of mandamus or any other writ, order or direction in the nature of mandamus and / or any other appropriate writ, directing respondents to not to proceed with the process of appointments and joining pursuant to their advertisement for the post of Nursing Officer-2019 in OBC(NCL) category vide Recruitment Notice No. 1/2019 by All India Institute of Medical Sciences, Ansari Nagar New Delhi-110029 and four CGHS Hospital (Dr. Ram Manohar Lohia Hospital (RMLH), Safdarjung Hospital (SJH), Lady Harding Medical College (LHMC) & Smt. Sucheta Kriplani Hospital (SSKH) and Kalawati Saran Children Hospital (KSCH) all situated at New Delhi, till the candidature of petitioner is accepted by the respondents for the post of Nursing Officer;

d. Allow the present petition and pass a writ of mandamus or any other writ, order or direction in the nature of mandamus and / or any other appropriate writ, directing respondents to modify the result dated 11/01/2022 declared by the respondents by including the petitioner in the list of selected candidates and by removing her name from the list of rejected candidates accordingly in respect of post of Nursing Officer-2019 in OBC(NCL) category vide Recruitment Notice No. 1/2019 by All India Institute of Medical Sciences, Ansari Nagar New Delhi-110029 and four CGHS Hospital (Dr. Ram Manohar Lohia Hospital (RMLH), Safdarjung Hospital (SJH), Lady Harding Medical College (LHMC) & Smt. Sucheta Kriplani Hospital (SSKH) and Kalawati Saran Children Hospital (KSCH) all situated at New Delhi”

2. The brief facts are:

a) In the year 2019 applications were invited for the post of Nursing Officer. The petitioner has applied through common application online registration for recruitment for Nursing Officer-2019 vide recruitment notice No. 1/2019 by All India Institute of Medical Sciences, Ansari Nagar New Delhi-110029 (AIIMS) and four other CGHS Hospital (Dr. Ram Manohar Lohia Hospital (RMLH), Safdarjung Hospital (SJH), Lady Harding Medical College (LHMC) & Smt. Sucheta Kriplani Hospital (SSKH) and Kalawati Saran Children Hospital (KSCH), all situated at New Delhi;



- b) on 15.09.2019 petitioner has applied in OBC(NCL) category and after being eligible in the requisite criteria and eligibility as per the invited application, was given one online admit card and allotted **303272** as roll number and as such combined online computer based test/examination was held on 15/09/2019 at Sector-62, Noida;
- c) on 28/09/2019 results were declared in which the petitioner obtained total 119 marks and got 1138 rank;
- d) on 19/08/2021 petitioner received an e-mail from ABVIMS and RML Hospital that second round of joining process of Nursing Officer in four CGHS Hospitals shall be conducted with effect from 06/09/2021 to 17/09/2021 at Auditorium, ABVIMS and RML Hospital, New Delhi in which the petitioner according to her rank, her document verification was conducted on 13/09/2021;
- e) on 13/09/2021 the petitioner went to ABVIMS and RML Hospital auditorium for her document verification and submitted her documents to all four CGHS hospital team. The documents submitted includes print out of online application, admit card, aadhar card, birth certificate, 10th class certificate, registration certificate by Haryana Council, Diploma certificate by Holy Family Hospital, Experience certificate by Holy Family Hospital, Cast certificate of OBC (NCL) in the format of central govt. date of issuance of original certificate renewal of certificate, NOC letter by BHU, Varanasi, two passport size photographs;
- f) on 07/12/2021 petitioner again renewed her OBC(NCL) certificate issued by the Magistrate's office which clearly



transpires that on the basis of ITR on 2018-2019, 2019-2020, 2020-2021 of Shri Mukesh Kumar i.e. father of applicant/petitioner does not belong to the person/section pertaining to Creamy Layer;

g) on 24/12/2021 petitioner received email from approval of competent authority through Shri R.B. Kushwaha, Dy. Director (Admn.) that “the document verification committee has observed some discrepancies in your OBC (NCL)/EWS category certificate.” “you are given final opportunity to furnish your OBC (NCL)/EWS category certificate, whichever is applicable, as per the criteria mentioned in attached document, if available latest by 03.00 PM of 31st December, 2021” failing which their candidature will not be considered under any of the applied reserved category and will be treated as UR;

h) on 24/12/2021 Government of India, Ministry of Health and Family Welfare, ABVIMS & Dr. Ram Manohar Lohia Hospital, New Delhi through Shri R.B. Kushwaha, Dy. Director (Admn.) issued an “important notice” dated 24/12/2021 that “For OBC Candidate — Further, as per Para 1(b) of DoPT O.M. No. 36036/2/2013-Estt. (Res-1) dated 31st March 2018, the Non-Creamy Layer certificates issued during any month of the financial year would be valid for appointments during that year” “The OBC candidates are required to furnish the OBC(NCL) certificate in the format provided by the DoPT vide O.M. No. 36036/2/2013-Estt. (Res) dated 30/06/2014 issued between 1.04.2018 to 31/03/2020 (inclusive of both dates)”



- i) on 27/12/2021 petitioner submitted the required OBC(NCL) certificate dated 07/12/2021 in recruitment cell but they insisted the particular language to be mentioned in the said certificate that “During the period of 01/04/2018 — 31/03/2020, I belong to OBC(NCL) and my father annual income is less than Rs. 8,00,000/-;
- j) on 29/12/2021 Petitioner again submitted her application (against receiving from authority) to the Medical Superintendent, ABVIMS and RML Hospital, New Delhi recruitment cell with affidavit duly attested by Executive Magistrate, Seelam Pur complying with the terms of certificate demand;
- k) on 31.12.2021 respondent closed process of considering candidature of incumbents as stated above;
- l) on 12/01/2022 petitioner checked the website in which she noticed that her name was included in the rejected list of candidates in the Office Memorandum of ABVIMS and RML Hospital dated 11/01/2022 for the reason mentioned in the column of “Type of Discrepancy” that Date of issuance of OBC (NCL) certificates are 21/08/2020 and 09/12/2015. However, the date of issuance of OBC(NCL) certificate is required between 01.04.2018 to 31.03.2020 (inclusive of both dates);
- m) on 13/01/2022 petitioner went to Deputy Director Office and narrated all her grievances and on advise, the petitioner again submitted her application dated 13/01/2022 for clarification regarding OBC(NCL) Certificate and again submitted photocopy of OBC(NCL) Certificate 21/08/2020 and current renewal of



OBC(NCL) certificate of 07/12/2021 to Medical Superintendent of ABVIMS and RML Hospital in Diary section against receiving;

n) on 17/01/2022 petitioner again made a representation for her non recruitment for the abovementioned post and had submitted all the relevant documents as per said representation for the subjective satisfaction of concerned authority but till date her case was not considered in its true perspective and context;

o) in January, 2022 despite a clear language in OBC(NCL) Certificate dated 21/08/2020 that “This certificate is being issued based on the annual income/status of the parents/guardian of the applicant as on financial year ending March, 2020; counter signed on the basis of verification from system. OBC Certificate was issued vide OBC Certificate No. 90500000020586 Dated 09/12/2015,” candidature of petitioner was rejected illegally and unconstitutionally. The respondents also rejected and did not consider petitioners other OBC(NCL) documents dated 07/12/2021 and 28/12/2021 showing her valid eligibility for the OBC(NCL) category, illegally and unconstitutionally . Her candidature is rejected unconstitutionally notwithstanding she belongs to OBC Caste borne in the Central List of Govt. of India and she does not belong to Creamy Layer, which ultimately fulfils the eligibility criteria of Para No.9 of the advertisement, hence this petition.

3. Heard.

4. The argument raised by the learned counsel for the respondent is the application of petitioner was not accompanied by the certificates as were required *per* advertisement Notice No.01/2019.



5. However it is the grievance of the learned counsel for the petitioner vide notice dated 24.12.2021 the respondent had changed the criteria earlier given in advertisement dated 01/2019 as under:

“For OBC candidates

9(i) xxx

Accordingly. (i) The OBC category candidates are required to furnish the OBC (NCL) certificate in the format provided by the DoPT vide O.M No. 36036/2/2013-Estt. (Res) dated 30.05.2014 issued between 1.04.2018 to 31.03.2020 (inclusive of both dates) having their sub caste matching with the entries in central list of OBC failing which their candidature will not be considered under OBC category and will be treated as UR.

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6. The advertisement though in para 9 noted as follows:

“9. Candidates applying under any of the reserved category viz. SC/ST/OBC will be considered subject to submission of Caste certificate on a prescribed format issued by the competent authority. Candidates applying under OBC category must bring the caste certificate in the format provided by the DoP&T vide O.M. No. 36036/2/2013-Estt. (Res.) dated 30.05.2014 which has been issued not earlier than one year from the last date of online registration Certificate must be valid for employment in Central Government Institutions. OBC candidate's eligibility will be based on Castes borne in the Central List of Govt. of India. OBC candidates should not belong to Creamy Layer. Their Sub-caste should match with the entries in Central List of OBC, failing which their candidature will not be considered under any of the i applied reserved category and will be treated as UR.”

7. It is argued the petitioner had submitted the certificates dated 09.12.2021 and dated 21.08.2020 and in fact the certificate dated 21.08.2020 rather disclosed she complied with the requirement of advertisement as was not in creamy layer from 2015 till 2021.

8. The learned counsel for the petitioner referred to *Tejpal Singh & Others vs. Govt. of NCT of Delhi and Another* 2000 (52) DRJ 791 wherein the issue was a certificate of being a Scheduled Caste, issued after the cut-off date could be considered by the respondents. The Court



held:-

“ Thus it can be concluded that as per the government's own guidelines as well as respondent's own advertisement, petitioners were entitled to submit the SC certificate issued by competent authority of government of NCTD after 30th June, 1998 and these certificates were submitted by the petitioners within reasonable time. It was not appropriate for the respondents to reject the candidature of these petitioners on the ground that the certificates are dated after 30th June, 1998.

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 thereon 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.”

9. In *Pushpa vs. GNCT of Delhi* 2009 SSC OnLine Del 281 the issue was OBC certificate sent after the cut-off date could be relied upon by the respondent and the Court relying upon decision in *Tajpal Singh & Others (Supra)* allowed the petition.

10. The foremost question, however, is *if* the certificates submitted were as per requirement of the advertisement and/or notice (supra) issued by the respondent.

11. Admittedly the advertisement 01/2019 required the certificate **should be issued not earlier than the last date of online registration.**



The petitioner herein registered herself online in August-September, 2019 but the certificate filed was of 09.12.2015, hence she did not comply with the conditions of the advertisement No.01/2019. Later when she was asked to file the certificate per notice dated 24.12.2021 she again filed certificate of dated 21.08.2020 i.e. not of dated between 01.04.2018 to 31.03.2020, thus her candidature was rejected by the respondent.

12. Now, the issue in *Tejpal and Pushpa* (supra) was the late submission of caste certificates but whereas the issue herein is the certificates itself are not of dates specified in advertisement 01/2019 and/or notice dated 24.12.2021.

13. In *Sarita Kumar Verma vs. Union of India and Others* W.P.(C) No.1543/2015 decided on 22.07.2015, this Court noted:-

7. Having heard the learned counsel for the parties, the only question which needs to be decided is whether the certificate submitted by the petitioner issued after the date of December 21, 2013 was a valid one in terms of the advertisement. xxxxxxxx

10. The Supreme Court in Bedanga Talukdar's case (supra) has held as under:

"The selection process has to be conducted strictly in accordance with stipulated selection procedure which needs to be scrupulously maintained. There cannot be any relaxation in terms and conditions of advertisement unless such power is specifically reserved in relevant rules and/or in advertisement. Even where the power of relaxation is or is not provided in relevant rules, it must be mentioned in advertisement. Such power if exercised should be given due publicity to ensure that those candidates who become eligible due to relaxation are afforded equal opportunity to apply and compete. The relaxation of any condition in advertisement without due publication is contrary to mandate of equality in Articles 14 and 16 of the Constitution".

12. Further, I note, the relief of certiorari/mandamus as sought by the petitioner cannot be issued by this Court



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when the action of the respondents is in conformity with the advertisement issued by them for making selection for the post of Assistant Grade-III in the respondent No. 3. In fact, the relief sought for would be in contravention with the advertisement. It is also noted that there is no clause in the advertisement where a discretion is vested with the authority to relax/extend the date of submitting the certificate.

13. In view of my above discussion, I do not find any merit in the writ petition. The same is dismissed.

14. Further in *Mohit Sharma vs. AIIMS & Others* LPA No.488/2019 decided on 31.07.2019, the Division Bench of this Court noted:-

4. Clause (vii) (b) is to be read in consonance with the relevant instructions forming a part of the Prospectus dated 19.2.2019. Condition 3 under the head „Registration & Submission of Application Form” and Condition 4.1 under the head „Number of Seats & Reservation” read as under:-

“3. The OBC-NCL certificate must be valid for admission for Central Government institutions. The date of validity of certificate shall be one day prior to the date of 1st Counselling/seat allocation.”

“4.1 CRITERIA FOR OTHER BACKWARD CLASSES (NON-CREAMY LAYER) [OBC] (Common to AIIMS, New Delhi & Fourteen other AIIMS):

Reservation for OBC (Non-Creamy Layer) shall be according to the rules of the Government of India. Applicants are required to ensure that he/she does not belong to the persons/sections (Creamy Layer) mentioned in Column 3 of the Schedule to the Government of India, Department of Personnel & Training O.M. No.36012/22/93-Estt. (SCT) dated 08/09/93 which is modified vide OM No.36033/3/2004 Estt. (Res.) dated 09/03/2004 or the latest notification of the Government of India (i.e. Central list). A format is provided at the end of the Prospectus. Certificate to be produced during counselling should NOT be older than ONE year on date of First Counseling(sic). ”

13. Even otherwise, eligibility must be determined on the cut off date prescribed by the respondent No.1/AIIMS and no



relaxation can be extended for the reason that any relief granted to a particular candidate, who approaches the Court, would amount to giving a benefit to him to the prejudice of others. If the validity of the OBC certificate is allowed to be determined as on the date the candidate appears before the Registrar, AIIMS with the relevant documents etc., then the same would act to the detriment and prejudice of other candidates, who assuming that they were ineligible in terms of the Prospectus and the Information Brochure, did not apply in the OBC category. [Refer: Karnataka State Road Transport Corporation vs. Ashrafulla Khan (2002) 2 SCC 560; FCI vs. Ram Kesh Yadav (2007) 9 SCC 531; Maharishi Dayanand University vs. Surjeet Kaur JT 2010 (7) SC 179; State of West Bengal vs. Subhas Kumar Chatterjee (2010) 11 SCC 694 and Delhi Subordinate Services Selection Board and Ors. vs. Ram Kumar Gijroya and Ors. 2012(128)DRJ 124]

14. This is not a case where the requirements prescribed in the Prospectus came as a bolt out of the blue for the appellant/petitioner. The Prospectus for admission to the MBBS-2019 Course was published on 19.02.2019. Condition No.3 therein had clearly stated that the OBC certificate must be valid for admission for Central Government Institutions and the date of validity of the said certificate should be one day prior to the date of first counselling/seat allocation. As per the schedule declared by the respondents, the first round of online counselling was to commence on 26.06.2019 and close on 27.06.2019. In such circumstances, there was no good reason for the appellant/petitioner to have sat back from 19.02.2019, right upto 01.06.2019, when he finally woke up to approach the Competent Authority for issuance of an OBC certificate as per the Central Government format. By then, it was too late as the validity of the OBC certificate prescribed in the Prospectus was one day prior to the date of first counselling/seat allocation and the said certificate was required to be not older than one year, on the date of first counselling.

15. The procedure prescribed in the Prospectus casts an obligation on the applicants to apply in terms thereof and they cannot be heard to state later on that their applications should have been accepted even if they did not adhere to the conditions prescribed therein. For the said reason, rejection of the OBC certificate submitted by the appellant/petitioner on the ground that it was not in order, cannot be faulted and nor can the said condition prescribed by the respondent No.1/AIIMS be diluted for the benefit of the appellant/petitioner, to the exclusion of other similarly placed candidate.



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15. Admittedly, the first advertisement was issued on 01.08.2021 and certificate was to be filed on or before 31.08.2021, hence a clear period 21 days were given to the petitioner to file such certificate *issued not earlier than one year from the last date of online registration*. She again failed to submit certificate issued between 01.04.2018 to 31.03.2020 (both dates inclusive) in the time given. Admittedly such *Creamy Layer Certificates* are issued every financial year and hence the submission of respondent that a person in need of a government job ought to be vigilant enough to get such certificate(s) issued every financial year cannot be ignored. The petitioner cannot claim the relaxation to her because of her lapse, *per* W.P.(C)1543/2015 (supra) and LPA No. 488/2019 (supra). Thus, I find no ground for interference. The petition is hereby dismissed. Pending application(s), if any, also stands disposed of.

February 17, 2022
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YOGESH KHANNA, J.

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