



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 17.08.2022

% **Judgment delivered on: 29.08.2022**

+ LPA 181/2022 and C.M. Nos. 12301/2022 & 12303/2022

PRIYANKA RANI

..... Appellant

Through: Mr. Rajinder Pal Singh and Mr. Sahil
Goel, Advocates.

versus

GOVERNMENT OF INDIA & ANR.

..... Respondent

Through: Mr. Anand Varma and Ms. Apoorva
Pandey, Advocates for respondent/
AIIMS.
Mr. R. K. Yadav, Sr. Govt. Counsel
with Mr. Mahesh Pal, Head Clerk for
respondent/ Dr. R.M.L. Hospital.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present Letters Patent Appeal (“LPA”) has been preferred by the Appellant under Clause 10 of Letters Patent against the Judgment and Order dated 17.02.2022 passed by the learned Single Judge of this Court in W.P. (C.) No. 2614/2022 (“Impugned Order”). Vide the Impugned Order, the



Writ Petition preferred by the Appellant herein, seeking appointment to the post of 'Nursing Officer' has been dismissed.

2. The Appellant through the present Appeal has prayed for setting aside the Impugned Order passed by the learned Single Judge dated 17.02.2022, thereby allowing the present LPA. The Appellant has also prayed for accepting her Other Backward Castes (**"OBC"**) Non-Creamy Layer (**"NCL"**) Certificate as valid for the purposes of recruitment, directing the Respondents to issue an appointment and joining letter to the post of Nursing Officer and to quash the Office Memorandum dated 11.01.2022 issued by the Respondents, by which her name was included in the list of rejected candidates.

3. The facts of the case reveal that the Respondent Nos. 1, 3 and 4 had issued a Recruitment Notice No. 1/2019 for a large number of vacancies/ posts in the capacity of a 'Nursing Officer'. As per Clause 9 of the Recruitment Notice, it was stated that the candidates applying under OBC Category are under an obligation to provide a caste certificate as per format provided by the Department of Personnel and Training (**"DoP&T"**) vide Office Memorandum No. 36036/2/2013-Estt.(Res) dated 30.05.2014 and the caste certificate should be issued not earlier than a year from the last date of online registration.

4. The scheme of examination was made available vide Notice No. 72/2019 dated 23.08.2019 and applications were to be submitted from 01.08.2019 to 21.08.2019. The Appellant had applied for the post of Nursing Officer under the category of OBC (NCL). The Appellant was allotted Roll



No. 303272 vide online registration and she appeared in an online examination which took place on 15.09.2019. The result was declared on 28.09.2019 and the Appellant obtained 119 marks, bearing 1138 rank.

5. The Respondent Nos. 1 and 4 informed the Appellant vide email communication dated 19.08.2021 that the second round of recruitments/ document verification would be carried out between 06.09.2021 and 17.09.2021. Pursuant to the E-mail dated 19.08.2021, the Appellant on 13.09.2021 submitted her OBC (NCL) caste certificate dated 12.09.2015 bearing Certificate No. 90500000020586 and Certificate No. THE/SLP/2020/156 dated 21.08.2020 in the prescribed format along with other requisite documents, as part of the document verification process. The Appellant on 07.12.2021 also got her OBC (NCL) certificate renewed by the concerned Magistrate bearing F. No. Non-Creamy/ The/ SLP/ 2021/ 744. However, on 24.12.2021, the Appellant received a communication bearing F.No. 5-80/ 2019/ RMLH/ NS/ 5955 from Deputy Director (Admn.) vide email, wherein it was stated that certain discrepancies have been observed in the OBC (NCL) category certificate submitted by the Appellant upon scrutiny of her documents and she was being granted a final opportunity to furnish a certificate in compliance with the prescribed format and standards latest by 31.12.2021, failing which her candidature will be treated as rejected/ unreserved.

6. The Respondent Nos. 1 and 4 on the same date i.e. 24.12.2021 issued an 'Important Notice' F. No. 5-80/ 2019/ RMLH/ NS/ 5956. Referring to paragraph 1(b) of DoP&T Office Memorandum dated 31.03.2016, the 'Important Notice' stated that OBC(NCL) Certificates issued during any



month of the financial year would be valid for appointments during that year and that OBC candidates are required to furnish their OBC (NCL) certificate in the format provided by DoP&T Office Memorandum dated 30.05.2014. Further, the OBC (NCL) certificate should be issued between 01.04.2018 and 31.03.2020, inclusive of both dates, thereby changing the requirements of Paragraph 9 of the Recruitment Notice.

7. The Appellant attempted to submit the renewed Certificate dated 07.12.2021 to the Recruitment Cell on 27.12.2021, however, the Recruitment Cell informed the Appellant that the Certificate should explicitly state that during the period of 01.04.2018 to 31.03.2020, she belongs to OBC (NCL) and her father's annual income is less than INR 8,00,000/- (Rupees 8 Lacs Only).

8. The Appellant therefore, on 29.12.2021 again submitted the requisite documents to the Medical Superintendent of Respondent No.4 along with an affidavit duly attested by the Executive Magistrate, Seelampur, Delhi complying with the language demanded.

9. That on 12.01.2022, the Appellant checked the website of the Respondent No. 4 and vide Office Memorandum dated 11.01.2022 uploaded on the website, she came to know that her name was included in the list of rejected candidates. The reason assigned for rejection was that her OBC (NCL) Certificates were dated 21.08.2020 and 29.12.2015, whereas, the stipulated time frame under which the certificate was required to be issued was between 01.04.2018 and 31.03.2020. The Appellant being aggrieved by the rejection of her candidature, submitted a representation to the Deputy



Director of Respondents and submitted an application dated 13.01.2022 for clarification to the Medical Superintendent of Respondent No. 4. The Appellant once again submitted a representation on 17.01.2022 to the Medical Superintendent of Respondent No. 4 praying for reconsideration of her candidature. However, the Appellant was informed vide reply letter No. 5-80/ 2019-RMLH/ NS/ 1914 dated 13.04.2022, that her request cannot be acceded to.

10. The Appellant's contention is that the first caste certificate issued in her favor was issued on 29.12.2015 and for the period thereafter, she again submitted her caste certificate issued from time to time as desired by the Respondents. Her father being a government servant, at no point of time has the income of her father has exceeded INR 8 Lacs per annum and she therefore she belongs to OBC (NCL) category. Hence, by no stretch of imagination her candidature should have been rejected.

11. The learned Single Judge has dismissed the Writ Petition and the operative paragraphs of the order passed by the learned Single Judge reads as under:

“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.”

12. Learned counsel appearing for the Appellant has vehemently argued before this Court that the learned Single Judge has committed an error in law and fact in wrongly dismissing the Writ Petition preferred by the Appellant, without even seeking a reply from the Respondents on merits.

13. The learned counsel for the Appellant has argued that the action of the Respondents has violated the principle mandate and duties enshrined in the Constitution and has denied the Appellant equity and justice. It has been further argued that the Respondents have violated the concept of equality of opportunity in public employment and grave miscarriage of justice would be meted out to the Appellant in case she is not appointed. It has been further contended that the Appellant has provided all documents substantiating her category, specifically for the Financial Year 01.04.2018 to 31.03.2020 and on this ground, the Impugned Order deserves to be set aside.

14. Learned counsel for the Appellant has submitted that the learned Single Judge did not consider the essential question arising out of the instant proceedings i.e., the action of the Respondents arbitrarily and unjustifiably calling for OBC (NCL) certificates pertaining only to Financial Years starting from 01.04.2018 to 31.03.2020 and not through Financial Years starting from 01.04.2020 to 31.03.2022. Since the entire process of appointment of nurses ranged from 2019 to 2022.



15. The learned counsel further submitted that the OBC (NCL) certificates dated 17.12.2021 and 21.08.2020 were issued on the basis of Income Tax Return of the year 2018-2019, 2019-2020, 2020-2021 of her father, substantiating that she does not belong to creamy layer of OBCs well before the cut-off date, keeping in view the Office Memorandum of DOP&T dated 31.03.2016. It was submitted that Paragraph 1(b) of the Office Memorandum of DOP&T dated 31.03.2016 relied upon by the government for validating OBC (NCL) Certificates, states that the same can be issued during any month of a particular Financial Year.

16. The learned counsel for the Appellant has further submitted that the OBC (NCL) Certificate of the Appellant submitted pursuant to Recruitment Notification No. 1/2019, was issued in the same year as the Recruitment Notification. Thus, it was an unjust practice and action taken without application of mind by the Respondents, to reject the Appellant's OBC (NCL) Certificate. It has been further argued that the recruiting governmental authority did not apply its mind while issuing 'Important Notice' dated 24.12.2021 and just 6 days before the cut-off date of 31.12.2021, the Respondents have deviated from the Office Memorandum of 2016 while issuing 'Important Notice' dated 24.12.2021.

17. The learned counsel for the Appellant has argued before this Court that the so-called 'Important Notice' itself deserves to be quashed as it is contrary to the Office Memorandum of DOP&T dated 31.03.2016. Learned counsel has further argued before this Court that the learned Single Judge has incorrectly applied the observations of this Court in W.P. (C.) No. 1543/2015 and LPA No. 488/2019 to the instant case and the Judgments relied



upon by the Appellant have not been considered.

18. Lastly, it has been argued that the Appellant belongs to OBC category since birth. Her father is a government servant and falls within the Non-Creamy layer. The OBC (NCL) Certificates were on record right from 2015 till date and therefore, by no stretch of imagination the Appellant could have been denied her legitimate right of appointment by not treating her as an OBC belonging to the Non-Creamy Layer. Hence, the action of Respondents is against the settled principle of law that if a person is an OBC, they are so by birth and not by acquisition of this category due to any other events happening at a later stage.

19. The learned counsel for the Appellant has prayed for quashing of the Order dated 11.01.2022 passed by the Respondents by which the Appellant has been placed in the list of selected candidates and a prayer has been made for issuance of a direction to the Respondents to grant an appointment keeping in view the merit/ position of the Appellant in the examination which has taken place.

20. The Respondents on the other hand, have prayed for dismissal of the Writ Petition as being devoid of merits and substance. It was submitted before this Court that the order passed by the learned Single Judge does not warrant any interference and the Office Memorandum of the DOP&T dated 31.03.2016 is of no help to the Appellant. The Respondents have placed heavy reliance upon 'Important Notice' dated 24.12.2021 and Office Memorandum of DOP&T dated 31.03.2016 to contend that the Appellant does not have a caste certificate for the relevant period. The Respondents



have stated that the Appellant was given clear period of 21 days to get her OBC (NCL) certificate to comply with the conditions of the 'Important Notice' dated 24.12.2021 and the Appellant failed to bring her OBC (NCL) certificate within the stipulated timeline i.e. between 01.04.2018 to 31.03.2020 as required under 'Important Notice' dated 24.12.2021.

21. The Respondents' contention is that the OBC (NCL) Certificates are issued every financial year and a person applying for a government job ought to be vigilant enough to get such certificates issued every financial year. The Respondents have contended that the Appellant cannot claim relaxation because of her own lapse and relaxation to any candidate at this stage would be contrary to the mandate of equality as envisaged under Articles 14 and 16 of the Constitution of India.

22. The Respondents have further contended that the last candidate selected under unreserved category for recruitment to the post of 'Nursing Officer' had secured an All-India Rank of 1103 whereas the Appellant had secured 1138.

23. The Respondents further contend that the representation of the Appellant dated 17.01.2022 against her rejection was considered by a committee of 4 CGHS Hospitals and cogent reasons have been assigned as to why she cannot be appointed on the post of Nursing Officer. The Respondents have submitted that the process of recruitment has already been concluded and 15 Nursing Officers have already joined and, therefore, the question of allowing the present LPA does not arise.

24. This Court has heard the learned counsels for the parties at length and



perused the record.

25. The undisputed facts of the case reveal that an advertisement was issued inviting applications for the post of Nursing Officer, Level 07 in the pay matrix of Rs.9300-34800 with Grade Pay of Rs.4600/- in the year 2019 vide Recruitment Notice No. 1/2019.

26. The Recruitment Notice was issued by All India Institute of Medical Sciences for recruitment of Nursing Officers in 4 CGHS Hospitals (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)). The Appellant, as she was holding the qualification of B.Sc.(Post Certificate)/ Post Basic B.Sc. Nursing from an institute recognized by Indian Nursing Counsel was eligible to participate in the process of selection.

27. The general conditions as per the Recruitment Notice No. 1/ 2019, as contained in Clauses 2, 3 and 9 are reproduced as follows:

“2. The aspiring applicants satisfying the eligibility criteria in all respect can submit their application only through ON-LINE mode. The On-line registration of applications will be made available on AIIMS web site www.aiimsexams.org from 01.08.2019 to 21.08.2019 upto 5:00 P.M. No documents including the Registration Slip of on—line application form is required to be sent, however, all the applicants are advised to keep a copy of registration slip with them, alongwith proof of payment for their record.

3. The On-line Registration will be closed by 05:00 PM on 21.08.2019. The candidature of such applicants who fails to complete the online registration by the stipulated date and time



will not be considered and no correspondence in this regard will be entertained.

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 applied reserved category and will be treated as UR.

iii) For Persons with Disability, Disability Certificate issued by duly constituted and authorized Medical Board in the proforma prescribed by the Department of Personnel & Training Vide O.M. No. 3603513/2004-Estt. (Res.) dated 29.12.2005. The details regarding PWBD may seen at Annexure-I

iv) The vacancies advertised under EWS Category is as per the instructions issued by DoPT, Ministry of Personnel, Public Grievances & Pension, Govt. of India, vide OM. No. 36039/1/2019-Estt (Res), dated 31.01.2019. EWS category will be considered subject to submission of Income and Assets certificate on a prescribed format issued by the competent authority and subject to verification of genuineness of the certificate by the issuing authority."

28. It is evident from the aforesaid clauses of the Recruitment advertisement that a candidate applying under any reserved category was required to submit a caste certificate in a prescribed format issued by a competent authority. (format provided by the DoP&T vide O.M. No.



36036/2/2013-Estt. (Res) dated 30/05/2014).

29. The condition also prescribed that the caste certificate should not be older than a year from the date of online registration of OBC (NCL) candidates. Further, the eligibility of OBC (NCL) candidates would be based on castes borne in the Central List of Government of India and it was mandatory that the OBC candidates should not belong to the creamy layer.

30. The Appellant did submit an application form. She was assigned Roll No. i.e. 303272 and a combined test for all the institutes took place on 15.09.2019.

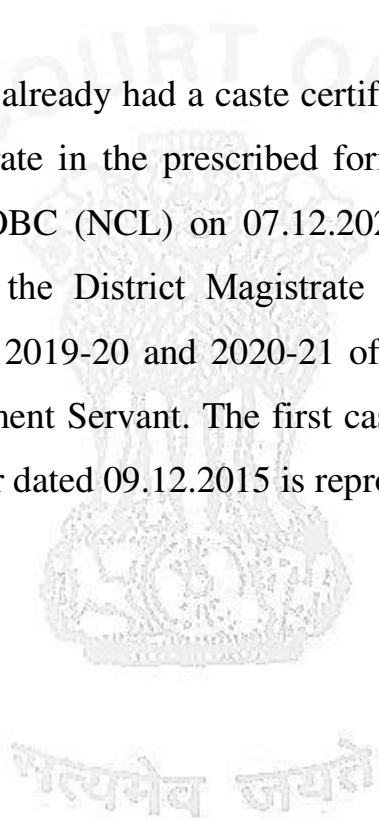
31. The result was declared on 28.09.2019 and the Appellant obtained 119 marks and was placed at 1138 position. The Appellant received an email from ABVIMS and RML Hospital on 19.08.2021 informing her that the second round joining process of Nursing Officer in four Central Govt. Hospitals shall be conducted with effect from 06.09.2021 to 17.09.2021 and in the case of the Appellant, the document verification took place on 13.09.2021. She submitted all the requisite documents, including caste certificate of OBC (NCL) Category. However, on 24.12.2021, she received an email from Deputy Director (Admn.) stating that there was some discrepancy in her OBC (NCL)/EWS category certificate and she was being given a final opportunity to furnish the OBC (NCL)/EWS category certificate latest by 03.00 PM on 31.12.2021.

32. That the Respondents also issued an 'Important Notice' dated 24.12.2021 referring to Government of India notification issued by the DoP&T vide O.M No. 36036/2/2013-Estt. (Res-1) dated 31.03.2016, stating



that the Non-Creamy Layer certificates issued during any month of the financial year would be valid for appointments during that year. The 'Important Notice' also prescribed that the OBC candidates are required to furnish the OBC (NCL) certificate in the format provided by the DoP&T vide O.M. No. 36036/2/2013-Estt. (Res) dated 30.05.2014 and the OBC (NCL) certificate should have been issued between 1.04.2018 to 31.03.2020 (inclusive of both dates)

33. The Appellant who already had a caste certificate OBC (NCL) issued by the concerned Magistrate in the prescribed format, again got her caste certificate renewed i.e., OBC (NCL) on 07.12.2021 and a certificate was issued by the Office of the District Magistrate based on the ITR's of Financial Years 2018-19, 2019-20 and 2020-21 of her father Shri Mukesh Kumar, who is a Government Servant. The first caste certificate which was submitted by the petitioner dated 09.12.2015 is reproduced as under:





Annexure-J

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REVENUE DEPARTMENT, GOVT OF NCT OF DELHI
OFFICE OF THE DISTRICT MAGISTRATE
SEELAMPUR ; NORTH EAST DISTRICT

OBC CERTIFICATE
For applying for appointment to Posts under the Government of India

 CERTIFICATE NO: S05C0000020505 

This is to certify that PRIYANKA RANI D/o MUKESH KUMAR R/o C-324 GALI NO-85 BHAJANPURA DELHI 110053 INDIA belongs to the NAJ community which is recognized as Other Backward Class under the Government of India, Ministry of Social Justice and Empowerment's Resolution No. 130117/SS-BOC Dated 1985-05-24.

PRIYANKA RANI and her family ordinarily resides at C-324 GALI NO-85 BHAJANPURA DELHI 110053 INDIA.

This certificate is issued on the basis of OBC certificate issued to PRIYANKA SELF of PRIYANKA RANI R/o C-324, BY NO-85, BHAJANPURA DELHI-110053 belongs to NAJ community of DELHI State vide Certificate No. 36968 dated 03/04/2006 issued by the TEHSILDAR SEELAMPUR.

This is also to certify that she does not belong to the person/positions (Creamy layer) mentioned in column 3 of the Schedule to the Govt. of India, Department of Personnel & Training, O.M. No. 36012/22/SS-Ext(I/SGT), 86038/9/2004-Ext(I/Rac), 36032/1/2013-Ext(I/Rac) dated 3/8/1999 86032/2004 & 14/10/2008 and 27/5/2019 respectively.

Digitally signed by RAJESH DHANAL,
Tehsildar,
2015.12.09 18:35:16

1. This Certificate is valid as per Information Technology Act 2008 as amended from time to time
2. The authenticity of this document should be verified at <http://delhi.nct.gov.in>. Any discrepancy in the details on this document, when compared to those available on the website renders it invalid.
3. The cause of checking the authenticity is on the user of this document.
4. In case of any discrepancy please inform the authority issuing this Certificate.
5. The creamy layer status of the applicant has been certified based on the information provided by the applicant in this effect.

34. Another caste certificate as desired by the Respondents was issued on 21.08.2020 and the same is reproduced as under:

No. 77451, P. 2020/156 .

DATE: 31/08/2020

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Appendix-V

- (i) Resolution No. 1201/188/93-BCC dated 10/09/93 published in the Gazette of India Extraordinary Part I Section 3 No. 148 dated 12/09/93.
- (ii) Resolution No. 1201/19/94-BCC dated 19/10/94 published in the Gazette of India Extraordinary Part I Section 3 No. 163 dated 20/10/94.
- (iii) Resolution No. 1201/170/95-BCC dated 29/05/95 published in the Gazette of India Extraordinary Part I Section 3 No. 88 dated 25/05/95.
- (iv) Resolution No. 1201/170/94-BCC dated 30/3/96.
- (v) Resolution No. 1201/104/95-BCC dated 6/12/95 published in the Gazette of India Extraordinary Part I Section 3 No. 210 dated 11/12/95.
- (vi) Resolution No. 1201/173/97-BCC dated 03/12/97.
- (vii) Resolution No. 1201/159/94-BCC dated 13/12/97.
- (viii) Resolution No. 1201/168/98-BCC dated 23/10/99.
- (ix) Resolution No. 1201/168/98-BCC dated 03/12/99 published in the Gazette of India Extraordinary Part I Section 3 No. 220 dated 06/12/99.
- (x) Resolution No. 1201/136/99-BCC dated 04/04/2000 published in the Gazette of India Extraordinary Part I Section 3 No. 71 dated 06/04/2000.
- (xi) Resolution No. 1201/144/99-BCC dated 21/09/2000 published in the Gazette of India Extraordinary Part I Section 3 No. 210 dated 21/09/2000.
- (xii) Resolution No. 1201/59/2000-BCC dated 06/08/2001.
- (xiii) Resolution No. 1201/11/2001-BCC dated 19/06/2002.
- (xiv) Resolution No. 1201/14/2002-BCC dated 13/12/2004.
- (xv) Resolution No. 1201/102/2004-BCC dated 16/12/2006 published in the Gazette of India Extraordinary Part I Section 3 No. 210 dated 16/01/2006.

Shri/Smt./Kum. PRIYANKA RANI and/or his family ordinarily reside(s) in the ABOVE ADDRESS District/Division of DELHI State. This is to certify that he/she does not belong to the persons/sections (Category Layer) mentioned in Column 3 of the Schedule to the Government of India, Department of Personnel & Training, O.M. No. 36012/2291-Est.(SC7) dated 08/09/97, modified vide G.O. No. 360330/2006 Est.(Res.) dated 06/03/2006, or the latest notification of the Government of India.

This certificate is being issued based on the annual income status of the parents / guardian of the applicant as on financial year ending March 31, 2025. Consider signed on the basis of verification from system. OBC Certificate was issued with OBC Certificate No 9090000020586 DATED:- 09/12/2025.

Cited:

EXECUTIVE MAGISTRATE (SUZAMPUR)
Sd/-
(DALBIR SINGH)
Executive Magistrate (Section)
G.T. Road, SDM Office Comp.
Solanpur, Delhi-110057

- [illegible]

35. A third caste certificate was issued on 07.12.2021.

36. Meaning thereby, the petitioner who belongs to OBC (NCL) category submitted a caste certificate of the year 2015 as well as certificates issued subsequently – establishing her status based upon the ITR's of her father and



till date she falls under the category of OBC (NCL) as the income of her father as on date, is still less than Rs.8 Lacs per annum.

37. In spite of submission of caste certificate, issued in the prescribed format, on 12.01.2022 when the Appellant noticed that her name was included in the list of rejected candidates, she approached the authorities and submitted representations. However, the same was rejected and she was forced to file a Writ Petition before this Court.

38. The learned Single Judge has also dismissed the Writ Petition and the fact remains that the Appellant did submit an OBC (NCL) certificate while applying for the post in question, in the prescribed format as provided vide O.M. of DOP&T dated 30.05.2014 and the Respondents, as the wisdom prevailed upon them, issued 'Important Notice' dated 24.12.2021 directing all the candidates to furnish OBC (NCL) Certificate in the prescribed format. The Important Notice further stated that the OBC (NCL) Certificate should have been issued between 01.04.2018 and 31.03.2020.

39. The certificate issued in favour of the Appellant dated 21.08.2020 was a certificate issued on the basis of the annual income of 3 years of her father and the fact is that the father of the Appellant is a government servant and right from 2015 till date, there is no increase in his income. His income is still less than Rs.8 Lacs per annum. Thus, the same entitles the Appellant to be included in the OBC (NCL) Category.

40. The documents on record establish that the Appellant belongs to the OBC (NCL) category and she was OBC (NCL) category candidate on the cut-off date for submission of the documents i.e., 31.12.2021. She was in



the OBC category at the time of issuance of the advertisement and today also she belongs to the OBC (NCL) category.

41. This Court, keeping in view the totality of the circumstances of the case, is of the opinion that the respondents have taken a hyper-technical approach by denying the right of appointment to the petitioner especially when undisputedly, right from 2015 till date she is a member of OBC (NCL) category.

42. The Appellant has placed reliance upon the case of ***Ms. Pushpa v. Govt. of NCT of Delhi & Ors.***, 2009 SCC OnLine Del 281. The case of ***Pushpa*** (*supra*) is one which has a factually similar matrix to the instant case. In the case of ***Pushpa*** (*supra*) the Petitioner had approached this Hon'ble Court in Writ Jurisdiction under Article 226 of the Constitution, seeking directions against the Respondents to consider her appointment as a staff nurse under the category of OBC. She was unable to submit her caste certificate before the cut-off date as the same took time to be obtained from the office of the concerned SDM. This Hon'ble Court in the case of ***Pushpa*** (*supra*) rightly held that if a person is an OBC, she is so by birth and not by acquisition of this category at a later stage. A certificate issued by competent authority is only an affirmation of fact which is already in existence. This Hon'ble Court, placing reliance on Paragraph 251 of ***Indra Sawhney v. Union of India***, 1992 Supp (3) SCC 217 and the words of Dr. B.R. Ambedkar cited therein, held as under –

“ 9. Referring to the reasons for reservation, the Hon'ble Apex Court in Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217, observed as under:



“251. Referring to the concept of equality of opportunity in public employment, as embodied in Article 10 of the draft Constitution, which finally emerged as Article 16 of the Constitution, and the conflicting claims of various communities for representation in public administration, Dr Ambedkar emphatically declared that reservation should be confined to ‘a minority of seats’, lest the very concept of equality should be destroyed. In view of its great importance, the full text of his speech delivered in the Constituent Assembly on the point is appended to this judgment. But I shall now read a few passages from it. Dr Ambedkar stated:

“... firstly, that there shall be equality of opportunity, secondly, that there shall be reservations in favour of certain communities which have not so far had a ‘proper look-in’ so to say into the administration... Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity... Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation ... we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, ...”. Constituent Assembly Debates, Vol. 7, pp.701-702 (1948-49).

These words embody the raison d'etre of reservation and its limitations. Reservation is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To



attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, in so far as one group is preferred to the exclusion of another, must necessarily be narrowly tailored to the achievement of the fundamental constitutional goal.”

10. Keeping this in mind and considering that the petitioner applied for the OBC certificate to the concerned office of SDM much before January 2008, when the advertisement was made by DSSSB and since the certificate was made available to the petitioner on 13/5/2008, the petitioner cannot be made to suffer for the lapse on the part of the SDM office. But at the same time it is made clear that in all such cases caste certificate should reach the Board prior to their making provisional selection as while making provisional selection, the Board verifies & satisfies itself with authenticity of documents and eligibility as per the recruitment rules. Herein, the petitioner had sent the documents vide letter dated 3/7/2008, prior to publication of the provisional results on 25/7/2008.

11. The issue is also no more res integra as in the case of Tej Pal Singh v. Govt. of NCT of Delhi, (2005) 120 DLT 117 this Court has already taken a view that the candidates who belong to ‘SC’ and ‘ST’ categories but could not file certificate in proof of the same could not have been rejected simply on account of the late submission of the certificates and submission of such certificates cannot be made a pre-condition for accepting the application forms. The relevant para of the said judgment is reproduced as under:

“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 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.

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.

19. One can usefully draw sustenance from the following words of wisdom spoken by the Apex Court in Valsamma Paul (Mrs.) v. Cochin University, (1996) 3 SCC 545:— "The Constitution through its Preamble, Fundamental Rights and Directive Principles created a Secular State based on the principle of equality and nondiscrimination, striking a balance between the rights of the individuals and the duty and commitment of the State to establish an egalitarian social order. The emphasis, therefore, is on a citizen to improve excellence and equal status and dignity of person with the advancement of human rights and constitutional philosophy of social and economic



democracy in a democratic polity to all the citizens on equal footing.....”

12. Mr. Anjum Javed counsel for the respondents urged that the relief in the said judgment is meant only for the ‘SC’ & ‘ST’ category and not for ‘OBC’ category and therefore, the respondents have rightly not considered the application of the petitioner against the ‘OBC’ category. I do not find any merit in the submission of the counsel for the respondent. The petitioner cannot be denied the right to be considered for appointment to the said post under the ‘OBC’ category once there is no dispute that she belongs to OBC Category. Admittedly, there was no lapse on the part of the petitioner who had applied to obtain the said certificate in the OBC Category much prior to the date of the advertisement and she cannot be made to suffer simply on account of the fact that the authorities have taken considerable time in making available the OBC certificate.

13. In view of the above discussion and considering the ratio of Tejpal Singh's judgment (Supra), I extend the benefit of OBC category to the petitioner. The respondents are directed accordingly to consider the application of the petitioner against the OBC category within a period of one month and accordingly announce the result taking in view the relaxation available to the OBC candidates.

14. With these directions the petition is disposed of.”

43. Further, in the case of **Raj Kumar Gijroya v. Delhi Subordinat Services Selection Board & Anr.**, (2016) 4 SCC 754 the main question before the Hon’ble Supreme Court was

“Whether a candidate who appears in an examination under OBC category and submits the certificate after the last date mentioned in the advertisement is eligible for selection to the post under OBC category or not?”

44. In the case of **Raj Kumar Gijroya** (supra) the Appellant had



submitted an application form under OBC category before the due date, in respect to an examination to be conducted by the Respondent for selection to the post of ‘Staff Nurse’ in the Department of Health and Family Welfare, Govt. of NCT of Delhi. Subsequent to being shortlisted, candidate was rejected as he failed to submit the application form along with OBC Certificate within stipulated time period. The Hon’ble Supreme Court, reiterating the case of **Pushpa** (*supra*) and **Indra Sawhney** (*supra*), held that the interpretation of Articles 14, 15, 16, 39-A and the Directive Principles of State Policy have been construed to mean that the reason of providing reservations to SC/STs and educationally and socially backward classes of society is to improve inequality in public employment as candidates from these categories cannot compete with general category students. The relevant findings of the Hon’ble Apex Court are reproduced hereunder -

“15. The relevant paragraph from the judgment of this Court in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] has been extracted in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] along with the speech delivered by Dr Ambedkar in the Constituent Assembly and reads thus: (Pushpa case [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] , SCC OnLine Del para 9)

“9. ... ‘251. Referring to the concept of equality of opportunity in public employment, as embodied in Article 10 of the Draft Constitution, which finally emerged as Article 16 of the Constitution, and the conflicting claims of various communities for representation in public administration, Dr Ambedkar emphatically declared that reservation should be confined to “a minority of seats”, lest the very concept of equality should be destroyed. In view of its great importance, the full text of his speech delivered in the Constituent Assembly on the point is



appended to this judgment. But I shall now read a few passages from it. Dr Ambedkar stated:

“... firstly, that there shall be equality of opportunity, secondly, that there shall be reservations in favour of certain communities which have not so far had a ‘proper look-in’ so to say into the administration. ... Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity. ... Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, [Ed.: The matter between two asterisks has been emphasised in Indra Sawhney case, 1992 Supp (3) SCC 217.] must be confined to a minority of seats [Ed.: The matter between two asterisks has been emphasised in Indra Sawhney case, 1992 Supp (3) SCC 217.] . It is then only that the first principle could find its place in the Constitution and effective in operation. ... we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State....” [Constituent Assembly Debates, Vol. 7, pp. 701-02 (1948-1949).]

These words embody the raison d'être of reservation and its limitations. Reservation is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, insofar as one group is preferred to the exclusion of another, must necessarily be narrowly tailored to the achievement of the fundamental



constitutional goal.’ (Indra Sawhney case [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] , SCC pp. 433-34, para 251)”

16. In Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] , relevant paragraphs from Tej Pal Singh [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092 : ILR (2000) 1 Del 298] have also been extracted, which read thus: (Pushpa case [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] , SCC OnLine Del para 11)

“11. ... ‘15. The matter can be looked into from another angle also. As per the advertisement dated 11-6-1999 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 he 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 30-6-1998 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 30-6-1998 would be clearly arbitrary and it has no rationale objective sought to be achieved.

16. 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 Articles 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.’ (Tej Pal Singh case [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092 : ILR (2000) 1 Del 298] , SCC OnLine Del paras 15-16)”

17. Further, in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] , relevant portion from the judgment of Valsamma Paul case [Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] has also been extracted, which reads as under: (Pushpa case [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] , SCC OnLine Del para 11)

“11. ... ‘17. ... “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.” (Valsamma Paul case [Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] , SCC pp. 560-61, para 21)’ (Tej Pal Singh case [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092 : ILR (2000) 1 Del 298] , SCC OnLine Del para 17)”

18. In our considered view, the decision rendered in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] 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 Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] and Valsamma Paul [Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] wherein this



Court after interpretation of Articles 14, 15, 16 and 39-A of the directive principles of State policy held that the object of providing reservation to the SCs/STs 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 39-A 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 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 Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] and Valsamma Paul [Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713]. Therefore, the impugned judgment and order [Delhi Subordinate Services Selection Board v. Ram Kumar Gijroya, 2012 SCC OnLine Del 472 : (2012) 128 DRJ 124] 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 Ram Kumar Gijroya v. Govt. (NCT of Delhi) [Ram Kumar Gijroya v. Govt. (NCT of Delhi), WP (C) No. 382 of 2009, order dated 24-11-2010 (Del)] is hereby restored.”

45. In the considered opinion of this Court, the Appellant who was a member of OBC (NCL) Category did submit a certificate to that effect and the fact is that she was a member of OBC (NCL) Category while she appeared in the examination and as on date also, she is a member of OBC (NCL) Category. The same has not been disputed by the Respondents, thus,



the question of depriving her of the right to be considered for appointment under OBC (NCL) category does not arise.

46. Resultantly, the Impugned Office Memorandum dated 11.01.2022 passed by the Respondents and the Impugned Order passed by the learned Single Judge is set aside. The Respondents are directed to treat the petitioner as OBC (NCL) Category candidate and to take consequential action in accordance with law.

47. It is made clear that as per the marks obtained by the Appellant, she is found eligible to be appointed as Nursing Officer under OBC (NCL) Category candidate. The Appellant will be entitled for all consequential benefits, including seniority from the date of appointment of identical OBC (NCL) Category candidates. However, she will not be entitled to back wages.

48. In view of the aforesaid, the LPA stands allowed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

AUGUST 29, 2022