

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

20 28.8.2023
Sc Ct. no. 2

WPA 1619 OF 2023

Marjina Khatun

Vs.

The State of West Bengal & Ors.

Mr. S. M. Obaidullah
Ms. Ankita Dey.

....For the Petitioner

Mr. Subir Kumar Saha
Mr. Momenur Rahman.

....For the State

Mr. S. M. Obaidullah, learned advocate
appeared for the petitioner.

Mr. Momenur Rahaman, learned advocate led
by Mr. Subir Kumar Saha, learned Additional
Government Pleader appeared for the respondents.

The petitioner in 2009 applied for the post of
Anganwadi Helper under the category **Other
Backward Class** (for short “**OBC**”). The petitioner
did not produce her **OBC Certificate** at that
juncture. By a communication dated **March 14,
2022 issued by the respondent no.7, Annexure-
P2 at page 16 to the writ petition** the petitioner
was provisionally appointed subject to the terms
and conditions mentioned therein. The provisional
appointment was made under the **General**

Category. By a communication dated **May 27, 2022** issued by the respondent no.7, **Annexure-P3 at page 17** to the writ petition, the State authority had asked the petitioner to produce and submit the relevant document in connection with her candidature in terms of the recruitment notice dated November 20, 2009. The petitioner was asked to produce all relevant documents including the **OBC Certificate** on June 8, 2022. The petitioner on June 8, 2022 then produced the relevant **OBC Certificate** which was issued by the jurisdictional authority dated **March 17, 2022, Annexure – P5 at page 20** to the writ petition. On **March 14, 2023** the respondent no.7 passed the **impugned order, Annexure-P4 at page 18** to the writ petition cancelling the provisional appointment of the petitioner on the ground of non-production of the **OBC Certificate**. The said impugned cancellation dated **March 14, 2023** is assailed through the instant writ petition.

Learned advocate for the petitioner has relied upon a decision of a coordinate Bench dated **June 7, 2023 rendered in WPA 1064 of 2023** in which the relevant certificate in question was **Scheduled Caste/Scheduled Tribe Certificate**. He submitted that, in view of the said decision of the coordinate

Bench which is still governing the field, the instant writ petition should be allowed.

Learned advocate for the State submitted that, the appointment made by the State authority in favour of the petitioner was provisional and the terms therein specifically mentioned under **Clause 7 of the Provisional Appointment Letter** that, if the candidate fails to comply with the terms of appointment either by suppression or by misrepresentation of any information, the candidature shall be cancelled. He submitted that, in due application of law and the provisions for appointment, the Provisional Appointment for the petitioner was cancelled on the ground that, the petitioner did not produce his **OBC Certificate** at the relevant point of time of her appointment.

After considering the rival contentions made on behalf of the parties and upon perusal of the materials on record, at the out set, this Court is of the firm view that, ***whether a candidate is a candidate under the OBC category being an OBC candidate is the result by birth and not otherwise.*** If a candidate falls within the meaning and scope of the relevant schedule under the Constitution of India by virtue of his or her birth by belonging to that category, any right accrues

therefrom cannot be taken away on any procedural ground. Issuance of certificate by the appropriate State authority signifying a candidate being **OBC**, is **merely an administrative work and a procedural job** for which a **valuable right** of an **OBC** candidate which is otherwise **recognized in law and reserved under the employment terms, cannot be taken away.**

Upon reading of the judgment of the coordinate Bench dated **June 7, 2023, In the matter of : Parul Bala Das & Ors. -vs.- The State of West Bengal & Ors.**, relied upon by the learned counsel for the petitioner, I am in respectful agreement with the view and decision thereunder.

In the facts of this case, it is admitted that the petitioner has already produced the **OBC Certificate** before the State authority. Mere delayed production of such **OBC Certificate** shall not take away the employment of the petitioner.

For the foregoing reasons and discussions the **impugned cancellation of appointment dated March 14, 2023, Annexure-P4 at page 18 to the writ petition stands set aside and quashed.**

With the above observation this writ petition, **WPA 1619 of 2023** stands allowed, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)