

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

109

CWP-14925-2016 (O&M)
Date of decision: 01.04.2024

KAILASH

...PETITIONER

Vs.

UNION BANK OF INDIA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Sandeep Kotla, Advocate
for the petitioner.

Mr. K.K. Gupta, Advocate
for the respondents.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 10.05.2016 (Annexure P-3) whereby he was asked to submit fresh caste certificate. He further seeks direction to respondents to permit him to join in view of appointment letter dated 06.06.2016 (Annexure P-4).

2. On 24.07.2017, the following order was passed:

“Petitioner is a candidate for the post of House Keeper-cum-Peon in the respondent Bank. Petitioner's candidature is required to be considered under OBC. Perusal of Annexure P-2-communication dated 10.5.2016 by the respondent Bank to the petitioner they are insisting for caste certificate, Other Backward Classes (not older than 2 years). Similarly petitioner has been informed by subsequent date of also vide Annexure P-5 dated 14.7.2016. Petitioner is stated to have obtained OBC certificate as his caste is “Bishnoi Caste”. The respondents cannot insist for production of caste certificate or Other Backward Classes for a particular period. Person's caste like SC, ST and OBC would not change from time to time. On the other

hand, Economically Backward Classes person's certificate is concerned, respondents can insist for production of latest Economically Backward certificate for the reasons that income is required to be examined in respect of Economically Backward Classes. Whereas, certificate of Other Backward Classes SC ST would not change from time to time. In view of these facts, respondent-Bank is hereby directed to accept the petitioner's caste certificate of Bishnoi Caste which is part and parcel of OBC. If the petitioner furnishes original certificate, consequential action of issuance of order of appointment be taken by the respondents and place it on record, on the next date of hearing. Petitioner is hereby directed to approach the respondent-Bank by producing original caste certificate along with his counsel and, thereafter, necessary action be taken by the respondents, in accordance with law.

List this matter on 29.8.2017.”

2. The respondent preferred Intra Court Appeal against said order. The LPA No. 1574 of 2017 has been disposed of vide order dated 07.07.2022 passed by a Division Bench of this Court. The operative part of the said order reads as:

“Counsel for the appellants has pointed out that the certificate dated 24.12.2013 (Annexure P-2), was based on Government instructions dated 24.01.2013 whereby the petitioner-respondent allegedly belongs to 'Bishnoi' caste and was shown as in the list of Special Backward Class. It is further pointed out that the said instructions dated 24.01.2013 (Annexure R-3) were stayed in CWP-9132-2015 by the Division Bench of this Court and thereafter the writ petition was decided on 12.04.2016 by noting that the said instructions were withdrawn by notification dated 31.03.2016. The recruitment notice is dated 14.09.2015, with the cut off date being 20.10.2015 and thus the instructions prima facie were not in force, and at the time of passing of order stood withdrawn.

Keeping in view these circumstances, we are of the considered opinion that the learned Single Judge has practically steam rolled over the said issues by passing the interim order in

affirmative without noticing all these facts. Resultantly, the order cannot be held with justified. The said writ petition is still stated to be pending adjourned sine die vide order dated 25.10.2017.

Keeping in view the above, we are of the considered opinion that the order cannot stand and the matter is to be decided on merits keeping in view the above facts which have not been appreciated by the learned Single Judge while passing the order. Resultantly, the said order is set aside. The writ petition stands restored to its original number. Office shall list the same as per roster before the learned Single Judge.

Appeal stands allowed.”

3. Mr. Sandeep Kotla, Advocate submits that despite stay of notification dated 24.01.2013 by Division Bench of this Court in CWP-9132-2015, the petitioner was entitled to reservation under OBC category. There was restrain order against State of Haryana whereas petitioner was appointed by the instrumentality of Union of India.

4. Concededly, the petitioner was considered a candidate belonging to OBC as per notification dated 24.01.2013 and writ petition assailing said notification was filed before this Court. A Division Bench of this Court vide order dated 27.07.2015 restrained State of Haryana to give any employment in Government service and admission in Education institutions on the basis of notification dated 24.01.2013. The said notification was withdrawn by State Government vide notification dated 31.03.2016. The petitioner was issued appointment letter on 06.06.2016. Meaning thereby, the caste of the petitioner was declared OBC by way of notification dated 24.01.2013 which was stayed by Division Bench of this Court and subsequently withdrawn by State Government. The petitioner was issued appointment letter after withdrawal of said notification.

5. This Court is of the considered opinion that petitioner cannot take advantage of a notification which was withdrawn prior to issuance of appointment letter and was principally stayed by Division Bench of this Court prior to advertisement.

6. In the wake of above discussion and findings, this Court is of the considered opinion that present petition sans merit and deserves to be dismissed and accordingly dismissed.

7. Pending miscellaneous application(s), if any, shall also stand disposed of.

01.04.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No