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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2616-2016

Date of Decision:15.01.2024

RAKESH KUMAR

..... Petitioner

Versus

STAFF SELECTION COMMISSIONER AND ANR

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Ganesh Kumar Sharma, Advocate
for the petitioner.

Ms. Puneeta Sethi, Senior Panel Counsel
for the respondents-UOI.

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 03.07.2015 (Annexure P-8) whereby claim of the petitioner to consider him in OBC category has been rejected.

2. The petitioner belongs to OBC category and pursuant to an advertisement dated 05.02.2011 applied for post of Constable (GD) in Indo Tibetan Border Police (for short 'ITBP'). A written examination was conducted on 01.05.2011. The petitioner participated in said written examination and cleared the same. The petitioner alongwith application form filed OBC Certificate, however, it was not in the format prescribed by respondent. The petitioner secured OBC Certificate dated 01.08.2011 in prescribed format, however, at the time of scrutiny of documents, the Certificate dated 01.08.2011 was not considered whereas Certificate filed

at the time of application was taken care of. As OBC Certificate filed by petitioner was not in the prescribed format, the petitioner was not considered under OBC category, thus, petitioner submitted an undertaking to the effect that he may be considered under General category. The petitioner could not compete with the candidates of General category, accordingly, candidature of the petitioner was rejected under OBC category as well as General Category. The petitioner preferred CWP No.135 of 2015 before this Court seeking directions to respondent to consider him under OBC category. The said petition came to be disposed of vide order dated 13.01.2015 with a direction to respondent to pass speaking order. The respondent vide impugned order dated 03.07.2015 (Annexure P-8) has rejected claim of the petitioner on the ground that petitioner was bound to submit OBC Certificate in the prescribed format which he failed and he has further filed undertaking dated 09.11.2011 at the time of document verification to the effect that he may be considered in General category, thus, claim of the petitioner is not sustainable.

3. Learned counsel for the petitioner submits that candidature of the petitioner has been rejected on the sole ground that OBC Certificate was not submitted in the prescribed format alongwith the application. The case of the petitioner is squarely covered by judgments of Hon'ble Supreme Court in ***Ram Kumar Gijroya Versus Delhi Subordinate Services Selection Board and Another; 2016 (4) SCC 754*** and ***Karan Singh Yadav Versus Govt. of NCT of Delhi and Others (SLP (c) No.14948 of 2016)***.

4. Per contra, learned counsel for the respondents submits that

petitioner was duty bound to furnish OBC Certificate in the prescribed format before the last date meant for filing application and he has further furnished undertaking at the time of scrutiny of documents, thus, claim of the petitioner has been rightly rejected.

5. I have heard the arguments of both sides and with the able assistance of learned counsels perused the record.

6. A three Judge Bench of Supreme Court in *Karan Singh Yadav (supra)* has adverted with similar question. In the said case, the appellant submitted OBC Certificate after cut off date and his candidature was rejected. The Supreme Court relying upon its earlier judgment in *Ram Kumar Gijroya (supra)* disposed of the petition.

7. In *Ram Kumar Gijroya (supra)*, a two Judge Bench of Supreme Court while dealing with question of submission of OBC Certificate at a later stage has held that candidature cannot be cancelled due to late submission of OBC Certificate. The relevant extracts of the judgment read as:

“2. The important question of law to be decided in these appeals is whether a candidate who appears in an examination under the OBC category and submits the certificate after the last date mentioned in the advertisement is eligible for selection to the post under the OBC category or not?

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13. After hearing both the parties at length and perusing the impugned judgment and order passed by the Division Bench of the High Court, we are of the view that the Division Bench erred in setting aside the judgment and order passed by the learned Single Judge. We record our reasons hereunder.

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16. *In Pushpa (supra), relevant paragraphs from Tej Pal Singh (supra) have also been extracted, which read thus:*

“11. ...

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‘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.'

17. Further, in *Pushpa (supra)*, relevant portion from the judgment of *Valsamma Paul (supra)* case has also been extracted, which reads as under:

"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.

18. In our considered view, the decision rendered in *Pushpa (supra)* 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* and *Valsamma Paul (supra)* 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 and Valsamma Paul (supra). Therefore, the impugned judgment and order 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 WP (C) No. 382 of 2009, order dated 24-11-2010 (Del)] is hereby restored.”

8. In the case in hand, the petitioner submitted OBC Certificate alongwith application, however, it was not in the prescribed format. The petitioner secured OBC Certificate in the prescribed format before the date fixed for scrutiny of documents, however, it was not considered because petitioner was not having the said Certificate at the time of filing application. The petitioner furnished undertaking to the effect that he may be considered under General Category. The Certificate of the petitioner was not considered, thus, petitioner at this stage had no option except to file said undertaking. There is scarcity of Government job and there are all possibilities that left with no other option, the petitioner has furnished said Certificate.

9. In view of law laid down by Hon'ble Supreme Court in afore-cited judgments, the petitioner cannot be denied substantial benefit. It is apt to notice here that Supreme Court in **Karan Singh Yadav** (supra) has disposed of petition relying upon its earlier judgment in **Ram Kumar**

Gijroya (supra), however, appellant therein was not granted substantial relief in view of the fact that appellant therein was never appointed to the post and there was a long gap in selection and order passed by Court.

10. In the case in hand, the selection process was initiated in 2011 and finally completed in 2014, thus, a quite long period has expired from the date of completion of selection process. There is no delay or lapse on the part of petitioner because petition is pending before this Court since 2016 and it is second round of litigation. Actually, he has approached this Court in 2015. It is settled proposition of law that no one can be made to suffer on account of lapse on the part of Court.

11. In the wake of above discussion and findings, this Court is of the considered opinion that impugned order deserves to be set aside and accordingly set aside. The respondents are directed to re-consider case of the petitioner subject to availability of post and physical fitness of the petitioner. The needful shall be done within 6 months from today. It is made clear that if the petitioner is appointed, his date of joining shall be his date of appointment for all service benefits.

12. Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

15.01.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>