



2024:DHC:9843-DB



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

+ **W.P.(C) 15630/2023 & CM APPL. 62589/2023**

**GOVERNMENT OF NCT OF
DELHI AND ORS**

.....Petitioners

Through: Mrs. Avnish Ahlawat, Standing
Counsel for GNCTD with Mr. Nitesh Kumar
Singh, Ms. Laavanya Kaushik, Ms. Aliza
Alam and Mr. Mohnish Sehrawat,
Advocates.

versus

PRIYANKA

.....Respondent

Through: Mr. Rajat Aneja and Ms. Alka,
Dwivedi, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT (ORAL)

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13.12.2024

C. HARI SHANKAR, J

1. This petition, under Article 226 of the Constitution of India, raises a very elementary issue, viz. the entitlement, or otherwise, of the respondent Priyanka for selection and appointment to the post of Pharmacist in the Department of Health and Family Welfare, Government of NCT of Delhi¹ as a candidate belonging to the Other Backward Classes², consequent on advertisement dated 5 July 2018.

¹ DoHFW

² OBC



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2. To our mind, the question is easily answered. However, for the sake of the record, a brief recitation of facts is necessary.

3. The Delhi Subordinate Services Selection Board³, by advertisement dated 5 July 2018, invited applications for appointment to the post of Pharmacist in the DoHFW. The advertisement also envisaged reservation for OBC candidates. Clause 5 of the advertisement provided thus:

“5(iv) Only following two types of certificates will be accepted as valid certificates for grant of benefit of reservation to OBCs:

(A) OBC certificate (Delhi) issued by the Revenue Department of GNCT of Delhi, *on the basis of an old certificate issued to any member of individual's family from GNCT of Delhi.*

(B) OBC certificate issued by a competent authority outside Delhi to a person belonging to a community duly notified as OBC by GNCT of Delhi. This certificate should have mandatorily been issued on the basis of OBC certificate issued by Govt. of NCT of Delhi to a family member of the concerned person who had been residing in Delhi before 08/09/1993.”

4. The respondent applied for the post. She underwent the selection in which she was declared successful by the DSSSB. An offer of appointment, albeit provisional, was issued to the respondent *vide* Memorandum dated 18 August 2020. This was followed by an Office Order dated 29 September 2020 issued by the DoHFW, appointing the respondent as Pharmacist.

5. On 10 March 2021, the respondent was served with an Office

³ DSSSB



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Order issued by the Chief District Medical Officer⁴, DoHFW, cancelling her candidature for the post of Pharmacist. The said Office Order was stated to have been issued on the basis of an e-mail received by the CDMO from the DoHFW on 2 November 2020 which, in turn, was stated to have been issued on the basis of rejection notice dated 29 September 2020 issued by the DSSSB, cancelling the candidature of the respondent. The reason for cancellation of the candidature was stated to be that the respondent had been selected by treating her as an OBC candidate whereas the OBC certificate provided by her did not conform to the requirement of para 5 of the advertisement dated 5 July 2018.

6. After unsuccessfully representing against the cancellation of her candidature, the respondent moved the Central Administrative Tribunal⁵ by way of OA 772/2021. By judgment dated 13 July 2023, the Tribunal has allowed the said OA and quashed the rejection notice dated 29 September 2020 issued by the DSSSB and the order dated 10 March 2021 issued by the CDMO. The petitioners have also been directed to allow the respondent to resume her duties.

7. Aggrieved thereby, the Govt. of NCT of Delhi has approached this Court by means of the present writ petition.

8. We have heard Mr. Nitesh Kumar Singh, learned Counsel for the petitioners and Mr. Rajat Aneja, learned Counsel for the respondent at length.

⁴ CDMO

⁵ “the Tribunal” hereinafter



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9. Before proceeding on merits, the OBC certificate dated 17 December 2016 issued to the respondent is required to be reproduced as under:

“REVENUE DEPARTMENT, GOVT OF NCT OF DELHI
OFFICE OF THE DISTRICT MAGISTRATE
KAPASHERA: SOUTH WEST DISTRICT

OBC CERTIFICATE

CERTIFICATE NO: 90500000200986

This is to certify that PRIYANKA D/o SANJEEV KUMAR R/o 21, VILLAGE PANDWALA KALAN DELHI 110043 INDIA belongs to the AHIR community of HARYANA State which is recognised as Other Backward Class under

Resolution No. 12011/68/93-BCC(C) dated 10/09/1993, published in the Gazette of India Extraordinary Part I, Section I. No. 186, dated 13/9/1993, Resolution No. 12011/9/91-BCC(C) dated 19/10/1991, published in the Gazette of India Extraordinary Part I. Section I. No. 88, dated 20/10/1995.

Resolution No. 12011/7/95-BCC(C) dated 24/05/1995, published in the Gazette of India Extraordinary Part I, Section I. No. 88, dated 25/05/1995.

Resolution No. 12011/44/96-BCC(C) dated 06/12/1996, published in the Gazette of India Extraordinary Part I, Section I. No. 88, dated 11/12/1996.

Notification No. F(8)/11/99-2000/DSCST/SCP/OBC/2855 dated 31/05/2000. Notification No.F(6)/2000-01/DSCST/SC/OBC/11677 dated 05/02/2004.

PRIYANKA and her family ordinarily resides at 21, VILLAGE PANDWALA KALAN DELHI 110043 INDIA

This certificate is issued on the basis of OBC certificate issued to SANJEEV KUMAR FATHER of PRIYANKA R/o DISTRICT GURGAON STATE HARYANA belongs to AHIR community of HARYANA State vide Certificate No. 050341501005161 dated 21/07/2015 issued by the TEHSILDAR.



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This is also to certify that she does not belong to the person/sections (Creamy layer) mentioned in column 3 of the Schedule of the Govt. of India, Department of Personnel & Training O.M. No. 36012/22/93-Estt.(SCT), 36033/3/2004-Estt.(Res), 36033/1/2013-Estt.(Res) dated 8/9/1993 9/03/2004 & 14/10/2008 and 27/5/2013 respectively.”

10. It is not necessary to advert in detail to the respective contentions of both sides, as, in our view, it is plain, from a reading of the OBC certificate issued to the respondent and extracted *supra*, that it does not conform to para 5 of the advertisement dated 5 July 2018.

11. Para 5 envisages two kinds of OBC certificates, which could be treated as valid for grant of OBC reservation. Of these, para 5(iv)(B) refers to an OBC certificate issued by an authority outside Delhi. Inasmuch as the OBC certificate of the respondent was issued by the District Magistrate, Kapashera, Delhi, para 5(iv)(B) is not applicable.

12. Para 5(iv)(A) treats, as valid for the purposes of OBC reservation, OBC certificates issued by the Revenue Department of the GNCT of Delhi, *on the basis of an old certificate issued to any member of individual's family from GNCTD of Delhi*.

13. We may note, even at this point, that even at the stage of applying consequent to the advertisement dated 5 July 2018, the respondent was aware of this condition, as contained in para 5 of the advertisement. She never chose to challenge it. She, therefore, was bound by the said condition.



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14. Having not chosen at any point to challenge the said condition, she could not, having participated in the selection as an OBC candidate, seek to contend that the condition was illegal or unreasonable in any manner.⁶ To be fair, Mr. Aneja did not even seek to so contend. We, nonetheless, deem it necessary to clarify this point.

15. Clearly, para 5(iv)(A) does not *ipso facto* render *any* OBC certificate issued by the Revenue Department of the GNCTD as valid for the purposes of OBC reservation. The certificate has additionally to be issued *on the basis of an old certificate issued to any member of individual's family from GNCTD of Delhi*.

16. The OBC certificate of the respondent clearly states that it was issued on the basis of an OBC certificate issued to the respondent's father at Gurgaon, certifying that the Ahir community, to which he belonged, was an OBC in Haryana.

17. It is clear that certificate no. 050341501005161 dated 21 July 2015 issued to the respondent's father was issued by the authorities in Haryana, and not by the authorities in Delhi. This fact, we may note, was not disputed by Mr Aneja either.

18. The respondent's OBC certificate, therefore, having been issued on the basis of an earlier OBC certificate issued to her father by the revenue authorities in Haryana, was not a valid OBC Certificate for the purposes of reservation, as envisaged by Clause 5(iv)(A) of the

⁶ *Rekha Sharma v Rajasthan High Court*, 2024 SCC OnLine SC 2109



advertisement.

19. The Tribunal was, therefore, clearly in error in holding that the respondent was in possession of a valid OBC certificate.

20. Mr. Aneja, learned Counsel for the respondent, however, pitches his case on Office Memorandum⁷ dated 8 April 1994 issued by the Department of Personnel and Training⁸, which reads:

“In continuation of the DOPT'S letter of 36012/22/93-Estt. (SCT) dated 15th November, 1993, I am directed to say that it has been represented to this Department that persons belonging to OBCs who have migrated from one State to another for the purpose of employment, education, etc. experience great difficulty in obtaining caste certificates from the State from which they have migrated. In order to remove this difficulty, it has been decided that the prescribed authority of a State/U.T. Administration in terms of the DOPT letter No. 36012/22/93- Estt. (SCI) dated 15th November, 1993 may issue the OBC certificate to a person who has migrated from another State on the production of a genuine certificate issued to his father by the prescribed authority of the State of his father's origin except where the prescribed authority feels that a detailed enquiry is necessary through the State of origin before the issue of the certificate.”

21. Mr. Aneja's contention is that the Ahir community to which the respondent belongs, was an OBC in Haryana and that the respondent, after marriage had shifted and taken up residence in Delhi.

22. The aforesaid DOPT OM dated 8 April 1994, he submits, entitled the respondent to be treated as an OBC in Delhi.

23. The submission entirely begs the issue at hand. The DOPT OM

⁷ OM



dated 8 April 1994 only documented the decision of the DOPT that the revenue authorities in a State could issue an OBC certificate to a person who had migrated from another State on the production of a certificate issued to her/his father by the authority of the latter state.

24. Mr. Aneja submits that the respondent's OBC certificate having been issued in terms of the aforesaid DOPT OM dated 8 April 1994, the respondent could not be denied the benefit thereof.

25. Mr. Aneja's submission actually defeats his case. By so asserting, Mr. Aneja has acknowledged the fact that the OBC certificate of the respondent has been issued, not on the basis of an earlier OBC certificate issued to her father by the GNCTD, but on the basis of a certificate issued to him by the authorities in Haryana. The certificate, therefore, does not satisfy the second requirement envisaged in para 5(iv)(A) of the advertisement, which is that the OBC certificate of the candidate has to be issued on the basis of an OBC certificate issued to her, or his, family from the GNCTD.

26. We do not express any opinion on whether the aforesaid condition was reasonable or unreasonable. To reiterate, the condition is not under challenge. The respondent participated in the selection and secured appointment in full awareness of the said condition. She, therefore, took a calculated risk in tendering her OBC certificate. Her appointment was provisional, subject to verification of her entitlement to OBC reservation. The decision of the DSSSB, that the respondent

⁸ DOPT



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was not entitled to OBC reservation as her OBC certificate was not issued on the basis of an earlier certificate issued to her father from the GNCTD, is clearly in order.

27. Additionally, were we to accept Mr. Aneja's submission, we may be doing disservice and injustice to several other candidates who may have been in possession of OBC certificates such as that of the respondent, and who never participated in the selection as the certificate did not conform to para 5(iv)(A) of the advertisement.

28. It would be completely unjust, therefore, on our part, to allow the respondent to be regarded as an OBC candidate, even though her OBC certificate is not in terms of para 5(iv)(A) of the advertisement.

29. It is also well settled that court cannot tweak the terms of an advertisement or permit a candidate to escape the rigours thereof. It is not the case of the respondent that the provision for OBC reservation as contained in para 5 of the advertisement was in any way contrary to any Recruitment Rules, or other binding statutory or executive instructions.

30. For the aforesaid reasons, we are of the opinion that the DSSSB was correct in cancelling the candidature of the respondent.

31. We, therefore, are unable to sustain the impugned judgment of the Tribunal, which is accordingly quashed and set aside. OA 772/2021 is, therefore, dismissed.



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32. The writ petition is accordingly allowed, with no orders as to costs.

C. HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.
DECEMBER 13, 2024/ar/dsn

Click here to check corrigendum, if any