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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 11.01.2024*

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W.P.(C) 16098/2023

DSSSB

..... Petitioner

Through: Mr. Gaurav Dhingra, Adv.

versus

TANISHA ANSARI AND ANR

..... Respondent

Through: Mr. Anuj Aggarwal, Mr. Siddharth
Nair, Adv.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SACHIN DATTA****REKHA PALLI, J (ORAL)****CM APPL. 64768/2023 -Ex.**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 16098/2023 & CM APPL. 64769/2023 -Stay.

3. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 25.08.2023 passed by the learned Central Administrative Tribunal in OA 2112/2022. Vide the impugned order, the learned Tribunal has, while allowing the OA preferred by the respondent, directed the petitioners to treat the respondent's candidature for appointment to the post of Special Educator (Primary) as an OBC candidate and accordingly appoint her to the said post with notional seniority.



4. Upon the petitioner inviting applications for the post of Special Educator (Primary) in the Municipal Corporation of Delhi, the respondent submitted her application under the OBC category and thereafter appeared in the computer based exam held on 17.10.2021. The result of the said examination was declared on 05.01.2022, according to which the respondent had obtained 101.78 marks in the examination as against the cut off marks of 70 prescribed for candidates under the OBC category. As directed, the respondent uploaded her e-dossier, but she was, vide notice dated 27.04.2022, informed that her dossier was defective and was therefore granted an opportunity to upload the deficient documents between 04.05.2022 to 13.05.2022.
5. The respondent who belongs to “Ansari” caste, which has been recognised as an Other Backward Class (OBC) by the Central Government, had in terms of the conditions of the advertisement, applied to the Revenue Authority, Government of NCT of Delhi for issuance of a caste certificate. Consequentially, the respondent was on 31.03.2021, issued a certificate clearly specifying that she belonged to the Ansari community, which was recognised as an OBC under the resolution of the Government of India dated 12.08.2011. It is this certificate that the respondent had initially submitted to the petitioners in support of her plea that she belonged to the OBC category. It however transpires that upon the petitioner raising an objection that this certificate did not specify that the community to which she belonged was also recognised as an OBC by the Govt. Of NCT of Delhi, she again approached the revenue authority and was now



issued a certificate dated 02.05.2022 clearly stating that the community to which she belong was recognised as an OBC under the Govt. Of NCT. This certificate was issued to her on the basis of an earlier OBC certificate issued in favour of her brother namely Varish Ali Ansari. Upon receiving this certificate, the respondent uploaded the same within the time granted to her by the petitioner for reloading of her e-dossier till 13.05.2022.

6. Despite this fresh certificate having been furnished by the respondent, her candidature was rejected by the petitioner on the ground that this certificate was submitted after the cut off date of 14.04.2021 as prescribed in the advertisement dated 04.03.2021. Being aggrieved, the respondent approached the learned Tribunal by way of O.A. 2112/2022, which has been allowed vide the impugned order.
7. In support of the petition, learned counsel for the petitioner, while not denying that the second certificate dated 02.05.2022 submitted by the respondent was in conformity with the conditions mentioned in para 5 (iv), contends that the said certificate having been submitted after the cut off date, the petitioner was justified in rejecting the respondent's candidature under the OBC category. In support of his plea, he seeks to place reliance on the decisions of the Apex Court in *Divya vs. Union of India, 2023 Scc Online 1305* and *Union Public Service Commission vs. Gaurav Singh and Ors. SLP (C) No. 426 of 2021*.
8. On the other hand, Mr. Anuj Aggarwal, learned counsel for the respondent, who appears on advance notice, submits that in view of the orders issued by the Hon'ble Lieutenant Governor on 27.07.2007 specifically directing that that communities recognised as OBC under



the Union Government would be also treated as OBC for employment in civil post under the Govt. of NCT of Delhi, the caste certificate dated 31.03.2021 was in order. He submits that the said certificate was required to be read alongwith order dated 27.07.2007 issued by the Hon'ble Lieutenant Governor and therefore the petitioners are wrong in urging that the said certificate did not meet the conditions laid down in the advertisement. Without prejudice to his aforesaid plea, he submits that in any event, the respondent had submitted a fresh certificate dated 02.05.2022 which even the petitioner admits is fully compliant with the conditions of the advertisement and was uploaded well within the extended time granted to her on 27.04.2022. He, therefore, contends that the learned Tribunal was justified in allowing the O.A. preferred by the respondent who was merely 21 years of age at the time of taking part in the selection process.

9. Before dealing with the rival submissions of the learned counsel for the parties, we may first note the two factual aspects on which the parties are *ad idem*. The first and foremost being that the respondent was granted time till 13.05.2022 to upload her certificates. The second being that the certificate dated 02.05.2022 submitted by the respondent was strictly in conformity with the conditions prescribed in para 5 (iv) of the advertisement.
10. We may at the outset note para 5(iv) of the advertisement laying down the types of certificates which were to be considered valid for grant of benefit under the OBC category. The same reads as under:

“(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 a 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."

11. As noted hereinabove, the sole submission of the learned counsel for the petitioner before us is that the certificate dated 31.03.2021 filed by the respondent no.1 alongwith her application, though issued by the revenue department, Govt. of NCT of Delhi, was not in the prescribed format. Learned counsel for the respondent has vehemently urged that the said certificate had to be necessarily read alongwith the directions issued by the Hon'ble Lieutenant Governor on 27.07.2007 which specifically directed that the communities recognised as OBC under the Central Government would be recognised as OBC even for civil posts under the Govt. of NCT of Delhi. Having perused the communication dated 27.07.2007, we are inclined to agree with the respondent that the certificate dated 31.03.2021 had to be read in conjunction with the orders issued by the Hon'ble Lieutenant Governor way back on 27.07.2007 and therefore it was evident from this certificate itself that the respondent no.2 was eligible to apply for a civil post as an OBC candidate under the Govt. of NCT of Delhi. The respondent who was barely 21 years of age and had approached



the revenue authority, Govt. of NCT of Delhi cannot be made to suffer if the revenue authority chose to issue a certificate without clearly specifying that the community to which she belonged was an OBC category for employment under the Govt. of NCT of Delhi also.

12.The matter however does not end here. We find that it is the admitted case of the petitioner that the respondent was granted further opportunity to remove the deficiencies in her documents and upload her amended e-dossier till 13.05.2022. The petitioner also does not deny that the certificate dated 02.05.2022, which the respondent uploaded before this date of 13.05.2022, was strictly in conformity with the conditions prescribed in para 5(iv) of the advertisement as noted hereinabove. In these circumstances, when the petitioner had itself granted time to the respondent till 13.05.2022 to remove deficiencies in her documents, the petitioner cannot be now permitted to turn around and say that these fresh certificates will not be taken into consideration. We are of the considered view that it would be grave injustice to the respondent if she is told that despite belonging to the community recognised as OBC for a civil post under the Govt. of NCT of Delhi and having duly submitted not one but two caste certificates as provided to her by the revenue department, Govt. of NCT of Delhi, her candidature cannot be considered under the OBC category.

13.Before we conclude, we may also deal with the decisions in *Divya (supra)* and *Gaurav Singh (supra)* relied upon by the petitioner. In these decisions, the Court was dealing with a situation where the applicants therein had failed to submit the certificates for the



relevant financial year and therefore the Apex Court held that a certificate pertaining to a different financial year has to be out rightly rejected. In *Divya (supra)*, the Apex Court was dealing with a situation where the candidates had not submitted the requisite EWS certificate before the cut-off date. However, in the present case, it is an admitted position that if the certificate dated 31.03.2021 initially submitted by the respondent were to be read with the orders dated 27.07.2007 issued by the Hon'ble Lieutenant Governor, it was evident that she was required to be treated as an OBC candidate for civil post under the Govt. of NCT of Delhi on the strength of this certificate itself. Furthermore, the petitioner had itself granted an opportunity to the respondent on 27.04.2022 to upload fresh certificates by 13.05.2022 and therefore, it cannot now be permitted to urge that the certificate dated 02.05.2022, which even as per the petitioner was fully compliant, cannot be taken into consideration. We are, therefore, of the considered opinion that the decisions in *Divya (supra)* and *Gaurav Singh (supra)* are not applicable to the facts of the present case.

14. For the aforesaid reasons, we find absolutely no infirmity with the impugned order. The writ petition being meritless is dismissed.

REKHA PALLI, J

SACHIN DATTA, J

JANUARY 11, 2024

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