

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

MAT 211 of 2023

Food Corporation of India & Ors.

Vs.

Sourav Roy & Anr.

For the appellants : Mr. Mr. Devojoyoti Barman,
Mr. Gopal Roy

For the respondents : Mr. Bikramaditya Ghosh,
Mr. Debasish Mukhopadhyay,
Mr. Saumyajit Laskar

Judgement on : July 23, 2025

MADHURESH PRASAD, J.:

1. The writ petition filed by the petitioner has been allowed by the writ Court and a direction has been issued to appoint the petitioner on the post of Assistant Grade-III (Technical) in North Zone subject to fulfilment of other formalities within a period of 4 weeks from the date of the order passed in the writ proceedings. The judgment of the writ Court is dated 14.06.2023.

2. The judgment of the writ Court has been put to challenge in the present appeal. The appellant was the respondent in the writ proceedings.
3. The appellant Food Corporation of India (hereinafter referred to as “FCI” for short) published an advertisement bearing Advertisement No. 1/2019 inviting applications from candidates desirous of appointment in different categories, including the post of Assistant Grade-III (Technical). The advertisement is dated 23.02.2019. The petitioner made his application in response to the advertisement claiming his candidature in a Reserved Category namely the Economically Weaker Sections (EWS).
4. The examination was in two phases. In the Phase 1 examination, the petitioner by virtue of his performance (merit) secured 75.25 marks and qualified.
5. He, thereafter participated in the Phase 2 examination. In the Phase 2 examination he secured 99 out of total 240 marks and was thus placed in the list of selected candidates at serial No. 147 against the reserved category claimed by him (EWS). The authorities prepared two lists namely “Selected List” and “Waiting List”. The petitioner was placed in the Select List under the Reserved Category (EWS). The petitioner thereafter was called for document verification on 25.02.2020, when it was found that he

had not submitted a valid EWS certificate for the relevant year (2018-2019) or for (2019-2020). He submitted an undertaking for submission of the same.

6. In view of one letter dated 24.12.2020 issued by the Headmaster, the petitioner was given an opportunity, and by an e-mail dated 04.01.2021 was called for submission of valid EWS certificate. The petitioner was required to produce a certificate valid for the year 2018-2019, issued on basis of income for the financial year 2017-2018. Another certificate in respect of the year 2019-2020 was also to be submitted, issued on the basis of income for the financial year 2018-2019. In spite of opportunity being given, the petitioner failed to submit the EWS certificate.
7. The respondent authorities in the above circumstances gave a last opportunity to the petitioner vide e-mail notice dated 04.02.2021 to submit a valid EWS certificate by 12.02.2021. The e-mail clearly specified that in case of non-submission of valid EWS certificate the petitioner's candidature will be cancelled without any further communication/ opportunity.
8. Two days prior to the last date for submission of valid EWS certificate the petitioner submitted an affidavit dated 09.02.2021. As per the affidavit, the petitioner claimed that he did not avail any relaxation in the Phase 1 examination. In the circumstance

his candidature cannot be cancelled and he should be considered in the Waiting List of Unreserved Category candidates on the basis of his merit/ performance in the Phase 2 examination. As per the affidavit of the petitioner, though he had participated in the recruitment process claiming benefit of reservation as an EWS candidate, he now did not want to avail the benefit of reservation.

9. The respondent authorities published a notification dated 11.03.2021 cancelling the petitioner's candidature due to non-submission of EWS certificate, to which the Petitioner lodged a grievance before the respondent authorities by a communication dated 18.05.2021. The same was rejected by the authorities on 04.06.2021.

10. The petitioner thus filed the writ petition for the following relief:

"a) A writ of and/or in the nature of Mandamus do issue directing the respondent authorities and its men, agents, assigns and officers to take necessary action to consider your petitioner under the unreserved category of the selected list for the vacancy of the respondent no. 2;

b) A writ of and/or in the nature of Mandamus do issue directing the respondent authorities and its officers, assigns, men and agents to call your petitioner for the document verification of your petitioner under the unreserved category of the selected list of the respondent no. 2;

c) A writ of and/or in the nature of respondent authorities form taking any action and/or further action to fill up the vacancy of the respondent no. 2;

d) A writ of and/or in the nature of Certiorari directing the respondent authorities to transmit all relevant documents pertaining to the instant case before this Hon'ble High Court at Calcutta for the Court to administer justice;

e) Rule NISI in terms of prayers above;

f) An interim order be passed restraining the respondent authorities from taking any action and/or further action to fill up the vacancy of the respondent no. 2;

g) Ad-interim orders in terms of prayer (f);

h) Any other appropriate writ or writ, order or orders and direction or directions be given;

i) Such further or other order or orders and/or direction or directions be passed as to this Hon'ble Court may deem fit and proper.”

11. The writ petitioner contended before the writ Court that candidates having lesser marks than him were placed in the Waiting List prepared for Unreserved Category. He thus claimed that he was entitled to be considered in the Waiting List of Unreserved Category candidate. The petitioner has made such a claim despite the fact that based on his performance he was placed in the selected list under his claimed EWS (Reserved) category.

12. Relying upon decision of the Apex Court in the case of ***Indra Sawhney and Others vs. Union of India and Others*** reported in ***(1992) Supp 3 SCC 217*** the learned Counsel for the petitioner submits that candidates who applied under a reserved category, like the present petitioner can very well be selected in the open competition field on the basis of their own merit. If their merit performance places them in the zone of consideration of Unreserved Category candidates, then they will not be counted against the reserved category candidates and will be treated as candidate under the open/ Unreserved Category. He has placed specific reliance on paragraph 811 of the judgment in the case of ***Indra Sawhney*** (supra), which reads:

“811. In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.”

13. The respondent appellants appeared in the writ proceedings and filed affidavit-in-opposition denying the claim of the writ petitioner. The stand taken by the respondents before the writ Court was that based on his performance in the second phase examination the petitioner could not secure a place in the select

list amongst unreserved candidates. He was thus placed in the select list, in his claimed EWS reserved category. On failure to submit a valid EWS certificate in support of the petitioner's claimed reserved category his candidature was cancelled. He, therefore, lost his place in the selected list and his candidature was cancelled by virtue of a lapse committed by him. In the circumstance there was no scope for the respondent authorities to consider the petitioner's candidature under any category. It is a specific case of the respondent that the selected list and wait list were simultaneously created. The candidates irrespective of the category under which they applied, i.e. reserved and unreserved were firstly placed against the Unreserved Category seats on the basis of their merit performance. Thereafter the candidates of reserved category were allotted their place in their respective reserved category as per their merit/ performance.

14. After undertaking such an exercise for creation of the Selected List and Waiting List of the various categories, now there was no scope for shuffling any candidate between the lists. Insofar as the writ petitioner is concerned, he claimed the benefit of reservation as an EWS category candidate, but failed to establish the *bona fide* and truthfulness of such claim. Despite repeated opportunities to submit a valid EWS certificate and his own

undertaking to produce the same he did not do so. Petitioner's candidature was thus cancelled.

15. The Hon'ble Single Judge on a consideration of the rival submissions found that altogether 67 candidates were appointed from the Waiting List. The last three candidates therein had been awarded only 95 marks, whereas the petitioner had been awarded 99 marks. Since the petitioner had been awarded more marks than the last 3 candidates appointed from the waiting list a direction was issued to appoint the petitioner subject to fulfilment of other formalities. The Hon'ble Single Judge was of the opinion that the authorities have failed to consider the office memorandum dated 31.01.2019 issued by the DoPT Government of India wherein it is specifically mentioned in Clause 7 as follows:

"7. ADJUSTMENT AGAINST UNRESERVED VACANCIES:

A person belonging to EWS cannot be denied the right to compete for appointment against an unreserved vacancy. Persons belonging to EWS who are selected on the basis of merit and not on account of reservation are not to be counted towards the quota meant for reservation."

16. It is submitted by the learned Counsel for the appellant that the Hon'ble Single Judge has erred in passing a positive direction for appointment of the writ petitioner, even though there was no such prayer in the writ petition. The limited prayer in the

writ petition was for issuance of a direction to consider the petitioner under the Unreserved Category of the selected list. The writ Court, however, has issued a positive direction to appoint the petitioner, that also treating him as an unreserved candidate in the waiting list.

17. It is further submitted that the terms of the advertisement are clear as to the fate of a candidate like the petitioner who has participated in the selection process by resorting to falsehood. He has referred to several provisions in the advertisement including the note regarding EWS on the top of page 5 of the advertisement to contend that the advertisement contemplated even cancellation of an appointment, if obtained on the basis of a fake or false EWS certificate. In the present case the petitioner could not fulfil the eligibility norms and substantiate his claimed reservation category (EWS). He failed to produce a valid EWS certificate. He, therefore, by no stretch of imagination can claim any further consideration in view of the specific provision contained in the clause 11 of the advertisement. Clause 11 relied upon by the learned Counsel for the appellant read as follows:

“11. At the application stage, the scrutiny of the eligibility, category and other aspects will not be undertaken before issuing call letters for Online Test. However, the fact that the call letter(s) has been issued to the candidate does not imply that his/her candidature has been finally cleared by FCI. FCI would be free to

*reject any application, at any stage of the process, cancel the candidature of the candidate in case it is detected at any stage that a candidate does not fulfil the eligibility norms and/or that he/she **has furnished any incorrect/false information/ (emphasis ours)** certificate/documents or has suppressed any material fact(s). If any of these shortcomings is/are detected after appointment in FCI, his/her services are liable to be summarily terminated.”*

18. The learned Counsel for the appellant has also drawn attention of the Court towards the note at the end of the advertisement regarding **“ACTION AGAINST CANDIDATES FOUND GUILTY OF MISCONDUCT/UNFAIR MEANS”** which reads as follows:

“ACTION AGAINST CANDIDATES FOUND GUILTY OF MISCONDUCT/USE OF UNFAIR MEANS

Candidates are advised in their own interest that they should not furnish any particulars that are false, tampered with or fabricated and should not suppress any material information while submitting online application. At the time of examination, interview or in a subsequent selection procedure, if a candidate is (or has been) found guilty of -

(i) using unfair means or

(ii) impersonating or procuring impersonation by any person or

(iii) misbehaving in the examination/ interview hall or disclosing, publishing, reproducing, transmitting, storing or facilitating transmission and storage of contents of the test(s) or any information therein in whole or part thereof in any form or by any means, verbal or written, electronically or mechanically for any purpose or

(iv) resorting to any irregular or improper means in connection with his/ her candidature or

*(v) obtaining support for his/her candidature by unfair means, or
(vi) carrying mobile phones or similar electronic devices of communication in the examination/ interview hall, such a candidate may, in addition to rendering himself/ herself liable to criminal prosecution, be liable:*

(a) to be disqualified from the examination for which he/she is a candidate

(b) to be debarred either permanently or for a specified period from any examination conducted by Corporation

(c) for termination of service, if he/she has already joined the Corporation.”

19. Upon consideration of the rival submissions; we find that the petitioner participated in the recruitment process claiming to be a reserved category candidate (EWS). He did not produce the EWS certificate when the first opportunity was granted for the same by e-mail notice dated 04.01.2021. In fact, on that day he submitted an undertaking that he will be supplying the same. When the second and last opportunity was granted to submit the certificate by e-mail dated 04.02.2021 then also the petitioner did not submit the certificate. Just 2 days prior to the last date/s fixed by notice dated 04.02.2021 i.e. on 09.02.2021 the petitioner submitted an affidavit claiming a place in the wait list for unreserved category candidates. The affidavit has been submitted only after the petitioner was informed by the second notice dated 04.02.2021, that in case of non-submission of valid EWS certificate his candidature would be cancelled. It is obvious that

petitioner did not possess a valid EWS certificate and thus did not fulfil the eligibility norms for EWS category, and to avoid the consequence of cancellation of his candidature, the petitioner has made an unacceptable request of being considered as an unreserved category.

20. The moment the petitioner failed to substantiate his claimed candidature as an EWS (reserved category candidate), it becomes obvious that his claim for being an EWS candidate stands falsified and such claim made in the application was based on false and incorrect information/ particulars. In such circumstance, he was liable to the consequence of cancellation of his candidature in terms of Clause 11 of the advertisement read with the note extracted above. The appellants, therefore, rightly cancelled the candidature of the writ petitioner.

21. Insofar as the petitioner's claim for being allowed to migrate or switch over to the Unreserved Category, this Court would observe that such claim cannot be considered in the petitioner's case since his candidature has already been cancelled because he applied as an EWS category candidate claiming a benefit of reservation but his claim was falsified by the fact that he did not fulfil the norms for the claimed category since he did not produce a valid EWS certificate in spite of repeated opportunities.

22. It is by now well settled that if reserved category candidate, based on his merit/ performance secures marks which make him eligible to be placed above the cut off marks in unreserved category, then he is to be treated as Unreserved Category candidate since merit is to prevail. However, application of this proposition or settled legal position can only be extended to a *bona fide* reserved category candidates and not in favour of a candidate like the petitioner whose candidature has already been cancelled since he had claimed benefit of a reservation based on falsehood. In the present case the petitioner applied as a reserved category candidate (EWS) but could never substantiate that he was an EWS candidate. In spite of two reminders given to him for supplying the valid EWS certificate and in spite of one undertaking given by him in response to the first notice, he has not produced a valid EWS certificate for the relevant financial years. The petitioner therefore, cannot be considered as a candidate of reserved category EWS. It is only if the petitioner could fulfil the norms for being an EWS category candidate, that he could claim consideration against an unreserved category based on his merit.

23. Unlike other reserved category candidates namely SC, ST and OBC; the EWS reservation is based on a variable

qualification, being the economic/ financial status in a particular/ requisite financial year. A candidate may be an EWS category candidate in one year, but may not be EWS in another year. Thus if a candidate claims EWS status the only way to establish that the claim was *bona fide*, is to produce an EWS certificate issued by a competent authority. In case of failure to produce such certificate, the candidate cannot be considered a reserved category candidate so as to claim any right or privilege available to a reserved category candidate.

24. Non-submission of the EWS certificate by the petitioner in spite of repeated opportunity and an undertaking given by him, falsifies his claim made at the time of the application for being considered as an EWS candidate. The consequence of a candidate making false and incorrect information, as per Clause 11 of the advertisement read with the note extracted above is cancellation of candidature of such a candidate.

25. The facts and circumstances in the present case leaves no room for doubt that the petitioner's claim for benefit of reservation as EWS candidate in the application submitted by him was a false claim. The falsity is also manifest from the oscillating stand taken by the writ petitioner throughout his consideration in the recruitment process. He first claimed to be an EWS candidate in

the application, he did not submit the certificate in support of his claim, he then gave an undertaking that he would be submitting the valid certificate in support of his claim and he was allowed another opportunity for submitting the certificate, which he did not avail. When he received a final ultimatum for producing the valid EWS certificate in support of his claim then all of a sudden he gave an affidavit dated 09.02.2021 claiming to be considered as an unreserved category candidate. The obvious reason for submitting such affidavit is that the petitioner came to learn that candidates, having lesser marks than him were placed in the wait list prepared under the unreserved categories. Thus even though the petitioner was better placed, his name figuring in the list of selected candidates in his claimed reservation category (EWS), once he came to know that without claiming the benefit of reservation as an EWS, which he at any rate failed to substantiate, he could still have a chance in the recruitment process by virtue of his name being placed in the waiting list, he has made an attempt to abandon his claim for reservation.

26. Under such circumstances we find no infirmity in the stand of the respondent authority. Once it was found that the petitioner has furnished false particulars in his application claiming for benefit of reservation as an EWS candidate, the petitioner was

liable to suffer the consequence of cancellation of his candidature which the respondents have rightly done.

27. In the circumstances it does not lie in the mouth of the petitioner to claim that he was a candidate under the reserved (EWS) category. Since by virtue of cancellation of his candidature he ceased to be a candidate under any reserved category, he cannot claim that based on his merit/ performance, he should be considered as an unreserved category and placed in the waiting lists prepared in the unreserved category candidates. Benefit of the judgment in the case of **Indra Sawhney** (supra) relied upon by the petitioner cannot be extended to the petitioner whose candidature is based on an unsubstantiated and false claim to reservation. The benefit of migrating from reserved to an unreserved category is legally permissible and in fact preferred so as to ensure that merit prevails in the recruitment process, but for *bona fide* reserved category candidates.

28. It would have been a different matter if the petitioner had substantiated his claim as an EWS category candidate by submission of a valid EWS certificate. Then in such circumstance if based on the petitioner's merit performance he had secured marks within the zone of consideration, or waiting list of general category candidates, then surely he was required to be considered

on the basis of his merit/ performance against the Unreserved Category post. But that is not the situation here.

29. It would be relevant to take note of the fact here that the reserved category claimed by the petitioner is EWS which is dependent upon submission of a certificate by the competent authority regarding the financial status of the applicant claiming such reservation in the relevant financial year/s. In absence of such certificate being submitted by the petitioner he became disentitled to claim himself as a reserved category candidate. The authorities were thus right in concluding that petitioner was required to be dealt with as a candidate who had submitted a false application claiming to be a candidate under the EWS category, making the petitioner liable to the consequence of cancellation of his candidature in terms of Clause 11 of the advertisement and the note at the end of the advertisement extracted above.

30. In our above conclusion we are guided and fortified by decision of the Apex Court in the case of ***Divya vs. Union of India and Others*** reported in ***(2024) 1 SCC 448***. The issue arising therein was whether the UPSC was justified in rejecting candidature under the EWS category as per the rules governing the recruitment process. Relying upon earlier decisions the Apex

Court held that a candidate not in possession of the Income and Asset Certificate (I & AC) in support of EWS category cannot claim the benefit of EWS category and upheld rejection of candidature of those candidates claiming benefit under EWS category if they had submitted their certificate beyond the stipulated deadline. In **Divya** (Supra) the Apex Court has held that one cannot decide for oneself that he is an EWS Candidate. Only on fulfilment of criteria, being issuance of requisite certificate, in that case I & AC, a candidate can be considered eligible as an EWS candidate. Having held so, the requirement of submission of such certificate within the stipulated time framed has also been emphasized by the apex Court in the said judgment in the following terms:

“48. The meaning of the word “eligible” as defined in P. Ramanatha Aiyar’s Advanced Law Lexicon is set out hereunder: “Applied to the selection of persons, the word has two meanings i.e. “legally qualified”, or “fit to be chosen”.” Applied to our context, a person can be found eligible as an economically weaker section candidate and he can be considered as a fit person to be chosen under that category only if the requirement of the OM of 31-1-2019 and Rule 27(3) read with Rule 28 are fulfilled.

49. In Gaurav Singh case [UPSC v. Gaurav Singh, (2024) 2 SCC 605 : 2022 SCC OnLine SC 2116] , it has been categorically held that assets for the particular financial year, prior to the year of submission, go to the root of eligibility of the candidate in the EWS category. It has been further held therein that the candidates whose I&ACs are not in order did not have any legal right to be considered. It has also been held that no candidate can claim any

legal right for reconsideration of the candidature by submitting a fresh certificate and/or a rectified certificate.

50. That is the fundamental distinction between Charles K. Skaria [Charles K. Skaria v. C. Mathew, (1980) 2 SCC 752 : 1980 SCC (L&S) 305] line of cases and the cases at hand. As pointed out earlier, the eligibility for being categorised as EWS candidate crystallises only when the I&AC is issued and, in this case, as required under the Rules, it was to be issued and possessed by the candidate before 22-2-2022.

51. It is also very well settled that if there are relevant rules which prescribe the date on which the eligibility should be possessed, those rules will prevail. In the absence of rules or any other date prescribed in the prospectus/advertisement for determining the eligibility, there is a judicial chorus holding that it would be the last date for submission of the application. (See Rekha Chaturvedi v. University of Rajasthan [Rekha Chaturvedi v. University of Rajasthan, 1993 Supp (3) SCC 168 : 1993 SCC (L&S) 951] ; Bhupinderpal Singh v. State of Punjab [Bhupinderpal Singh v. State of Punjab, (2000) 5 SCC 262 : 2000 SCC (L&S) 639] ; Ashok Kumar Sonkar v. Union of India [Ashok Kumar Sonkar v. Union of India, (2007) 4 SCC 54 : (2007) 2 SCC (L&S) 19].)”

31. In the circumstances we are of the view that the directions issued by the learned Single Judge in the writ proceedings are unwarranted and unsustainable. The petitioner is not entitled to claim any benefit as an EWS category candidate and any relief under the equitable and discretionary writ jurisdiction.

32. The present appeal is allowed and the writ petition is dismissed.

33. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(MADHURESH PRASAD, J.)

I agree.

(SUPRATIM BHATTACHARYA, J.)

A.D.