

**IN THE HIGH COURT AT CALCUTTA
In the Circuit Bench At Jalpaiguri
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

W.P.A. 1063 of 2023

Smt. Aparna Ghosh

VERSUS

The State of West Bengal & Ors.

For the petitioner:

Ms. Suman Shanabis, Adv.

Mr. Salok Sah, Adv.

For the State:

Ms. Anwesho Chakraborty, Adv.

Mr. Momenur Rahman, Adv.

Mr. Pretom Das, Adv.

Last Heard on: March 24, 2026

Judgment on: June 11, 2026

Biswaroop Chowdhury,J:

This Writ Petition is directed against the order dated 14-03-2023 being Memo No. 134/1(9)/Cab-I/ICDS passed by the Child Development Project Officer, Cooch Behar cancelling the appointment of the petitioner on the ground that her caste certificate has been issued by the Government of Assam instead of the Government of West Bengal.

The Writ Petitioner being aggrieved by the Order dated 14-03-2023 passed by the child Development Project Officer Cooch Behar-I ICDS Project Ghughumari the respondent no-4 herein has come up with the instant Writ application.

The case of the Writ Petitioner may be summed up thus:-

1. The Petitioner being born in the State of Assam on completion of Schooling under Board of Secondary Education at Guwahati obtained OBC certificate from Sub-Divisional Officer OBC Development Board, Dhubri in the State of Assam in the year 1990.
2. The petitioner being married in the year 1997 started residing at her matrimonial house in the village Dawaguri District-Cooch Behar in the state of West Bengal.
3. By Notification No. 159/ICDS/COB-I dated 20-11-2009 the recruitment process was initiated for the post of Anganwari Sahayika' under Cooch Behar-I ICDS Project at Ghughumari Cooch Behar, and the petitioner applied for the same. The petitioner being found eligible after due verification of all documents was called for the interview on 24-08-2012.
4. Due to pendency of litigations the recruitment process was settled and on settlement of disputes the recruitment process resumed.
5. On 14-03-2022 the concerned authority vide Memo No-146/Cooch Behar-I/ICDS/2022, issued appointment letter to the petitioner.

6. By Letter dated 27-05-2022 the Child Development Project Officer Cooch Behar-I ICDS Project Ghughumari Cooch-Bihar respondent no-4 herein directed the petitioner to appear before the Office of Child Development Project Officer the respondent no-4 on 08-06-2022 for verification of the documents and the petitioner in compliance of the said notice appeared before the said respondent and submitted all the relevant document.
7. By Memo dated 14-03-2023 being no. 134/1(9)/Cob-I/ICDS, the Child Development Project Officer respondent no-4 herein cancelled the appointment of the Petitioner.

The Petitioner being aggrieved by the Order of cancellation of appointment passed by respondent no-4 has come up with the instant writ application.

It is the contention of the petitioner that in clause-7 of the appointment letter it is clarified that in the event the candidate has suppressed any material facts or submitted any forged document the concerned authority reserves the right to cancel the appointment and no fact is suppressed by the petitioner neither any forged document is submitted. It is further contended that OBC certificate being issued by the Government of Assam the Status of the Petitioner as OBC shall not change by merely shifting from one state to another state. It is also contended that category wise OBC list of Government of West

Bengal 'Gope' Community falls within OBC Category, thus the status of the petitioner remained the same.

Pursuant to filing of the Writ petition the matter was heard and by Order dated 06.09.2023 the State Respondents were directed to submit a report in the form of affidavit and petitioner was granted liberty to take exception to the report. The respondent no-4 without disputing the fact that OBC Certificate was issued by Government of Assam and without any allegation against the petitioner contended as follows:

- I. During verification of documents it was revealed that the Other Backward Class (OBC) certificate submitted by the petitioner was issued from the Govt. of Assam and not from the Competent Authority of the Govt. of West Bengal. On 08/06/2022 in order to ascertain the fact the petitioner was again given an opportunity to submit appropriate Other Backward Class (OBC) certificate vide Memo. No. 487/ICDS/COB-I dated 27-05-2022. But the petitioner produced the same certificate which was issued by the competent authority of Government of Assam.
- II. Memorandum No. 1204-BCW/MR-88/2014 dated 27-07-2015 of Backward Class Welfare Department Para 11(a) provides as follows:

'When a person migrates from one State to another after the dates of notification introducing reservation for Other Backward Classes

(15/03/1993), he can claim to belong to other Backward Classes only in relation to the State he originally belonged and not in respect of the State to which he has migrated. A person of OBC community migrated to West Bengal from other states after 1993, is not entitled to the benefits provided by the State Government to the persons belonging to OBC though the class he or she belongs to is listed as OBC in West Bengal.

C. The petitioner had migrated to West Bengal from Assam due to marriage in the year 1997 after the year 1993. Hence her candidature shall not be treated as OBC and is liable to be cancelled.

D. On 14-03-2023 the candidature of the petitioner for the post of Anganwadi helper was cancelled.

The petitioner has taken out an exception to the report filed by the respondent no-4. The contention of the petitioner in the said exception may be summed up thus:

A. With regard to the statement made in sub-paragraph (i) of Paragraph 4 of the report the petitioner submits that during the course of recruitment process for the post concerned there was no suppression of material facts nor any forged document was submitted by the petitioner. The concerned authority after thorough scrutiny of the documents submitted by the writ petitioner on being satisfied favoured the petitioner with an appointment letter.

B. With regard to the statements made in sub-paragraph No. J and (K) of paragraph no-4 of the report petitioner denies the contention made therein save and except what are matters of record. The petitioner relies upon the notification issued by the Government of India, Ministry of Social Justice and Empowerment dated 22-02-2018 vide No.12017/2/2018-SCD (RL CELL) whereby the Joint Secretary to the Government of India requested to all Chief Secretaries of the State Government/Union Secretary Administration that they may issue the SC/ST Certificate to a person who has migrated from another State, on production of the genuine certificate to his/her father by the prescribed Authority of the State of the father's origin except where the prescribed Authority feels that a detailed inquiry is necessary through the State in origin before issuance of the certificate. The certificate will be issued irrespective where the caste/tribe in question is scheduled or not in relation to the State/Union Territory to which the person has migrated.

It is contended that in view of the said Government Order dated 22-02-2018 the respondent authorities before terminating the petitioner ought to have given an opportunity to her to obtain the caste certificate from the prescribed Authority of the Government of West Bengal on production of her genuine caste certificate. Furthermore the order issued by the Government of India Ministry of Social Justice and Empowerment vide Memo dated 22-02-2018 has the overriding power upon the government order dated 27-07-2015 issued by the Government of West Bengal which is relied on by the respondent no-4 in the instant report.

C. With regard to the Statements made in sub-paragraph No. (e) of paragraph no-4 of the report the petitioner denies the allegation contained therein. The petitioner contends that she belongs to 'Gope' Community which is considered under OBC Category in the State of Assam and also in the State of Bengal. Therefore there is no reason to discard the candidature of the Writ Petitioner only on the ground that the writ petitioner produced a caste certificate which was issued from the State of Assam but not from the State of West Bengal.

Heard Learned Advocate for the Petitioner and Learned Advocate for the State Respondents. Perused the materials on record.

Learned Advocate for the petitioner submits that the petitioner did not suppress any material fact while making the application. Learned Advocate further submits that the petitioner belongs to Gope Community which is recognised as 'OBC' both in West Bengal and in Assam. Learned Advocate also submits that in terms of the circular of the Central Government dated 22-02-2018, the petitioner's certificate cannot be discarded.

Learned Advocate relies upon the following Judicial decision.

**Smt. Apeksha Jain VS Madhya Pradesh Paschim Kshetra Vidyut
Vitran Co. Ltd and Ors.**

Writ Petition No-9424 of 2020.

In the High Court of Madhya Pradesh at Indore.

Before proceeding to decide on the issue it is to be remembered that for the purpose of social justice and to remove economic inequalities and to protect the weaker Sections of the Society, an enabling provision is included in Article 15 and 16 of the Constitution to empower the State in making Special provision for the advancement of any socially and educationally backward classes as for the scheduled castes and the scheduled Tribes.

In the instant case the 'OBC' certificate of the petitioner issued by the Government of Assam being not disputed and the petitioner being permitted to join was terminated from her assignment by order dated 14/03/2022. Thereafter by order dated 14/03/2023 the respondent no-4 cancelled the appointment order of the petitioner by observing as follows:

WHEREAS as per the clarification vide Memo No: 773 WCD-14015/506/2022-Section (WCDSW) dated 09/02/2023 received from the Deputy Secretary Department of WCD and SW Government of West Bengal the candidates holding SC/ST/OBC Certificates from the Government of Assam shall not be treated as SC/ST/OBC category candidates in connection with the Recruitment notice vide Memo No. 159/ICDS/COB-I dated 20/11/2009.'

Learned Advocate for the State Respondents rely on the circular dated 27/07/2015 being No-1204-SB CW/MR-67/10.

The said circular contains 16 number of Guidelines and it was in supersession of the previous guidelines for issuance of OBC Certificates being Memo No. 1464-BCW/MR-59/10 date 30-04-2010.

Clause 8 of the Guideline Provides as follows:

8. Requirements for obtaining a caste certificate In order to obtain a Caste Certificate for OBC an applicant has to fulfil the following criteria:-

- a) The applicant must be a citizen of India.
- b) He has to be a permanent resident of West Bengal since 15/03/1993.
- c) He is an ordinary resident at the address currently residing.
- d) He belongs to the said category he/she claims to belong to.
- e) His identity.
- f) That the applicant does not fall under 'Creamy Layer'.

Clause 11. of the Guidelines deals with Caste Certificate to migrants:

- a) When a person migrates from one State to another after the dates of notification introducing reservation for other Backward Classes (15/03/1993) he can claim to belong to other Backward Classes only in relation to the state he originally belonged and not in respect of the State to which he has migrated. A person of OBC community migrated to West Bengal from other States after 1993, is not entitled to the benefits provided by the State Government to the persons belonging to OBC though the class he or she belongs to is listed as OBC in West Bengal. In case of such persons who are born after the date of notification of the relevant Order, the place of residence for obtaining

OBC Status is the permanent abode of their parents at the time of the notification. In case of issuance of OBC certificate to migrated persons the caste to which he or she belongs should be categorically mentioned both as far as their caste in control List of the State of origin as well as the State List is concerned.

- b) Issuance of caste certificate to the migrants is not covered under the on-line system Caste certificate to such person can be issued in a different format also appended to these guidelines. In these cases on application the certificate issuing authority may issue caste certificate on production of genuine certificate issued to the father by the prescribed authority of the concerned State of father's origin. The certificate issuing authority may also cause detailed enquiry in the applicant's State of origin. The certificate will be issued irrespective of whether the caste/tribe in question are scheduled in West Bengal. However this certificate holder is not entitled to benefits of reservation by the Government of West Bengal.'

Thus upon plain reading of the memorandum dated 27-07-2015 issued by State of West Bengal Respondent no-1 herein it will appear that a person of OBC community who have migrated to West Bengal from other states after 1993 is not entitled to the benefits provided by the State Government to the persons belonging to OBC though the class he or she belongs to is listed as OBC in West Bengal.

In the instant case the petitioner migrated in the year 1997 to West Bengal from the State of Assam thus as per clause 15 of the guidelines the petitioner is not entitled to protection.

Although the petitioner has relied upon the Administrative Instruction issued by Government of India, Ministry of Social Justice and empowerment but the said circular also does not come in the aid of the petitioner. In the said circular although there is provision for issuance of Schedule Caste and Schedule Tribe Certificate to persons who have migrated from another state but it is clarified that the said persons will not be entitled to benefits to the State which he has migrated. The relevant clause of the circular dated 22-02-2018 is quoted hereinbelow.

‘3. It is therefore reiterated that the competent authorities who have been empowered to issue social status certificate in a State Government/UT. Administration may issue the Scheduled Caste certificate to a person who has migrated from another State/UT. On the production of the genuine certificate issued to his/her father by the prescribed authority of the State/UT of the father’s origin except where the prescribed authority of the State/UT feels that detailed enquiry is necessary through the State/UT of origin before issue of the certificate. The certificate will be issued irrespective of whether the caste in question is scheduled or not in relation to the State/UT to which the person has migrated. It is also clarified that inter-State/UT Scheduled Caste migrant will be deemed to be a scheduled Caste of the State/UT of his/her origin and

will be entitled to derive benefits from the State/UT of Origin and not from the State/UT to which he/she has migrated. However a member of a scheduled Caste would be entitled for all benefits/concessions of Central Government irrespective of his/her State/UT of origin.

Thus from the circular of the Central Government it is clear that the persons migrating from another State will not loose his/her Status as Schedule Caste/Schedule Tribes but he/she will be entitled to the concessions/benefits admissible to the schedule caste/schedule Tribes from the State of his/her origin and not from the State where he/she has migrated. However a member of a scheduled caste would be entitled for all benefits/concessions of Central Government irrespective of his/her State/UT of origin. As the circular of the Central Government does contain any provision with regard to OBC, the Circular of States of West Bengal respondent no-1 is applicable as it contains provisions regarding persons under OBC category who have migrated from another state.

Now the point for consideration is whether the appointment of the petitioner can be cancelled on the basis of Memorandum-No. 1204-SBCW/MR-6710 dated 27-07-2015. The answer is in the negative.

The recruitment process was started in the year 20-11-2009 when the circular dated 27-11-2015 issued by State of West Bengal was not in force. Thus the writ petitioner cannot come under the restriction of the circular dated 27-07-2015. The petitioner pursuant to the Notification being No-

159/ICDS/COB-I dated 20-11-2009 participated in the interview and was selected. Thus the circular dated 27-07-2015 cannot upset the recruitment process once it has commenced. It is well settled by different judicial pronouncements that recruitment rules cannot be changed once recruitment process has commenced. At no point of time the recruiting authority has intimated the petitioner prior to appointment with regard to her eligibility. Thus at this stage the appointment cannot be cancelled on the basis of circular which did not exist when the recruitment process commenced.

In the case of Smt. Apeksha Jain VS Madhya Pradesh Paschim Kshetra Vidyut Vitrans Co. Ltd and Ors in Writ Petition No. 9424 of 2020 the Hon'ble Madhya Pradesh High Court observed as follows:-

'16]. The respondents passed the punishment order on 06.01.2018 imposing the major penalty of dismissal of the petitioner from service, and the Appeal preferred by the petitioner was also rejected by the respondent No.1 Appellate Authority on 04.02.2020.

17]. In the considered opinion of this court, the impugned order cannot be countenanced in the eyes of law inasmuch as it has travelled beyond the conditions of the advertisement which clearly prescribes that the reservation of posts meant for SC/ST & OBC shall be applicable only for the candidates of Madhya Pradesh domicile in M.P. State, apparently, there was no such condition stipulated in the advertisement that the candidates must possess the caste certificates issued by the competent officer of the State of M.P. only. So far as the

domicile certificate of the petitioner is concerned, the same has been issued by the competent officer and cannot be doubted. It is also found that so far as the advertisement is concerned, for the sake of convenience, the note appended below the company wise vacancy position is being again reproduced as under:-

“1. The number of posts is subject to change as per requirement.

2. The reservation of posts meant for SC/ST & OBC shall be applicable only for the candidates of Madhya Pradesh Domicile. Such candidates should submit proof of Domicile in M.P. State.”

18]. So far as the General Conditions are concerned, Clause No. 2 again reads as under:-

“2. The reservation of posts meant for SC/ST & OBC shall be applicable only for the candidates of Madhya Pradesh domicile. Such candidates should submit a proof of Domicile in MP State.”

19] Whereas the respondents have relied upon the call letter for personal interview in which the following conditions have been mentioned:-

“You have a valid caste certificate (for SC/ST/OBCcategories) issued by Competent authority and M.P. domicile certificate (if you belong to Madhya Pradesh in case of SC/ST/OBC)

Or

If it is found that you are not possessing/having requisite degree, percentage of marks in degree course, age limit, caste & domicile certificate (in case of reserved categories), your candidature shall be cancelled and no claim on this account shall be entertained.”

20] A perusal of the aforesaid conditions of the advertisement and the call letter leave no manner of doubt that it was not the condition precedent that the candidates must have the caste certificate issued by the Competent Officer of State of M.P. only, and in fact what was mandate was that the domicile certificate must be issued by the competent officer of the State of M.P. This fact also becomes more clear if we see the subsequent advertisement dated 13.07.2018 (Annexure P/27) for recruitment of Account Officer (D) Batch 2018 on Regular basis issued by the respondents in which regarding reservation, the following conditions are mentioned:-

“3.5 All these reservations will be applicable only to the candidates having M.P. Domicile.”

And, under clause “How to Apply”, sub-clause (v) reads as under:-

“(v) Caste certificate (Permanent), (in case of reserve category candidates) issued by Sub Divisional Officer (SDO) of M.P.”

21] Meaning thereby that the respondents, after coming to know that such discrepancy has arisen in the earlier advertisement where they could not mention that the caste certificate is also required to be issued by the Sub

Divisional Officer (SDO) of M.P., have added the condition, which clearly demonstrate that in the earlier advertisement, the aforesaid condition was not mentioned. In such circumstances, this Court has no hesitation to hold that the respondents have relied upon a condition, which was not present in the advertisement dated 19.01.2008, which did not prescribe that the caste certificate has to be issued by the Sub-Divisional Officer of M.P. and it is trite law that the conditions of an advertisement cannot be changed after it has been issued and acted upon. Whereas the domicile certificate issued to the petitioner is not under cloud that she is a domicile of State of M.P. only.

22] This Court is also of the considered opinion that even assuming if the respondents were of the view that the caste certificate submitted by the petitioner ought to have been issued by the SDO of the State of M.P. only (which otherwise they could not have, regard being had to the advertisement's terms and conditions), in that case also, they were required to apprise the petitioner of the aforesaid fact then and there only, at the time when she presented all her documents before the interview, and also when her documents were verified by the respondents before her appointment.'

Thus considering the judicial decision relied upon there cannot be any iota of doubt that recruitment process carried out under particular guidelines cannot be varied on the introduction of new guideline or rules when the said guidelines/rules was not in force when recruitment process commenced and not clarified in recruitment notice.

Hence this Writ Application being WPA No-1063 of 203 is allowed Impugned, order marked P/6 to the Writ Application being Memo No. 134/1(9)/Cob-I/ICDS dated 14/03/2023 issued by the respondent no-4 be set aside. Petitioner be re-instated along with back wages. The re-instatement of the petitioner shall be carried out by the respondent no-4 within one month from the date of communication of this Order and the back wages shall be paid within 3 months.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)