
(2014) 10 CAL CK 0033
In the Calcutta High Court
Case No : W.P. 26282 (W) of 2014

Ajit Kumar Modak

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:

Citation : (2014) 10 CAL CK 0033

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Arpa Chakraborty and Pratik Bhowmick, Advocate for the Appellant;
Shyamali Banerjee, Advocate for the Respondent

Judgement

Harish Tandon, J.—The petitioner's candidature is rejected as the petitioner did not submit the "caste certificate" in the prescribed format. Admittedly the petitioner is allowed to participate in the recruitment process and has emerged successful in all tiers. It is only at the time of verification of the documents, more particularly the "caste certificate" issued by the competent authority, as the petitioner offered his candidature as Other Backward Classes (OBC) candidate, the authorities have denied the appointment on the above ground.

2. The identical and similar plea was taken in case of Mohd. Mohiuddin vs. Union of India & Another, (WPCT 508 of 2013), and the Division Bench held that the authority should not have rejected the candidature of the candidate, even after declaring him as qualified candidate in the written examination and physical test solely on the ground that the OBC certificate was not in a proper format. It would be apt to quote the excerpts from the judgment of the Division Bench of this Court rendered in the above noted case, which runs thus:

"The petitioner herein became the member of the O.B.C. community by birth and the certificate issued by the competent authority in this regard only confirmed his status as a member of the O.B.C. community.

The petitioner under no circumstances can be said to be a member of the O.B.C.

community from the date of issuance of the O.B.C. certificate since the said petitioner became a member of the O.B.C. community on the date of his birth in a family of the said O.B.C. community.

The Division of this Court on the earlier occasion decided the aforesaid issue in the case of Registrar General Vs. Shrinivas Prasad Shah, upon considering the various judgments of the Hon"ble Supreme Court.

The Hon"ble Supreme Court in the case of Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, specifically considered the issues relating to the claim of a candidate belonging to Scheduled Caste or Scheduled Tribe community and the principles decided in the aforesaid decision are very much applicable in the facts of the present case.

The authority herein could not refuse the candidature of the petitioner only on the ground that the O.B.C. certificate submitted by the said petitioner was not as per format.

The respondent authorities following the decision of Kumar Madhuri Patil & Anr. (supra) should have provisionally appointed the petitioner in the post in question and an opportunity should have been granted to the said petitioner to submit an appropriate certificate in prescribed format within a specified time limit. Without doing so, the authority concerned rejected the candidature of the petitioner which cannot be sustained in the eye of law.

Therefore, we quash the impugned decision of the respondent authorities as communicated by the Chairman, Railway Recruitment Board by the written communication dated 1st April, 2009 and direct the authorities concerned to treat the candidature of the petitioner as valid and include the name of the petitioner in the panel of the successful candidates in view of the performance of the said petitioner and also issue formal letter of appointment so that the said petitioner can be appointed to the post without any delay."

3. However, the respondents say that they are bound to follow the procedure of selection and any deviation is not permissible. In support of the aforesaid contention the reliance is placed upon a judgment of the Supreme Court in case of Bedanga Talukdar Vs. Saifudaullah Khan and Others, . In the said judgment the controversy centres around to the adherence of the procedure adopted for recruitment of the personnel as specifically indicated in the advertisement. There was a specific clause that a certificate relating to the disability must be enclosed along with the application or should be produced before the preliminary examination. The appellant therein did not annex the certificate along with the application and his candidature was cancelled. There was further stipulation in the advertisement that if the applications are not in order, the same would be rejected. Since the candidature was rejected by the authority, the appellant therein approached the High Court and such condition was relaxed. The Apex Court ultimately held that if the power to relax does not exist in the advertisement, the High Court should not exercise its power of judicial review in

relaxing the condition. In such perspective it is held that the authorities are bound to adhere to the recruitment process and no departure could be made therefrom.

4. The present case is not the case of such nature. The caste certificate, which is one of the requisite conditions, was produced before the authority, but according to the authority the same is not in prescribed format.

5. I had an occasion to peruse the prescribed format as well as the certificate issued by the competent authority and do not find any substantial departure therefrom. The requisite ingredients are in existence and, therefore, it cannot be said that there was no compliance of the requisite conditions.

6. Furthermore the Division Bench in the similar circumstances had directed the authority to accept the caste certificate issued by a competent authority to be in conformity with the requirement of the prescribed format and, therefore, this Court does not intend to take a different view.

7. This Court, hereby, quash and set aside the decision of the authority in rejecting the candidature of the petitioner on the ground that the "caste certificate" is not in a prescribed format.

8. The concerned authority is directed to treat the caste certificate to be in form and in conformity with the prescribed format and shall permit the petitioner to participate in the recruitment process and if the petitioner is ultimately found eligible for the appointment, shall take steps in this regard.

9. With these observations, the writ petition is disposed of.

10. There will be no order as to costs.