

(2020) 11 DEL CK 0105

In the Delhi High Court

Case No : Civil Writ Petition No. 8938 Of 2020, Civil Miscellaneous Application
No. 28832 Of 2020

Gaurav Singh And Others

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 12-11-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 11 DEL CK 0105

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : Shreyas Gacche, Mrinalini Sen, Kritika Gupta, Naresh Kaushik

Judgement

Asha Menon, J

C.M. Appl. No. 28832/2020 (for Exemption from filing official translation of Annexure P-12, 13, and 14) in WP (C) No. 8938/2020

1. Allowed, subject to just exceptions and as per extant rules.

2. The application is disposed of.

WP (C) No. 8938/2020

3. The petitioners have filed this petition under Article 226 of the Constitution of India seeking the following prayers:

"(a) Issue a writ of mandamus thereby directing the Respondents to permit the Petitioners to appear for their interview and consider their candidature in Economically Weaker Section Category;

(b) Direct the Respondent authorities to allow the Petitioners to submit their corrected EWS certificates within a span of 6 weeks from the date of their interview

(c) Issue or pass any writ, direction or order, which this Hon'ble Court may deem

fit and proper under the facts and circumstances of the case."

4. The facts as are relevant for the disposal of the present petition are that the petitioners who are residents of different districts of Uttar Pradesh and Bihar, responded to an advertisement issued by the respondent No.2/UPSC dated 24th April, 2019 (Annexure P-2) inviting applications for the Central Armed Police Forces (Assistant Commandants) Examination, 2019. They claim to belong to the Economically Weaker Sections (EWS) and seek the benefit of the reservation provided to the EWS category. Their grievance is that despite the fact that they had submitted the Income and Asset Certificates (Certificate, for short) and had qualified in the written examination and the Physical Standard Test/Physical Efficiency Test (PST/PET) and the Medical Standard Test (MST) they were not called for the interview as candidates belonging to the EWS category but as General category candidates.

5. According to the petitioners the Income and Asset Certificates submitted by them have been wrongly rejected by the respondent No. 2/UPSC which has compelled them to come before this Court.

6. At the outset, we may record the submission of Sh. Shreyas Gacche learned counsel for the petitioners that the grievance of the petitioner No.1/ Shri Gaurav Singh has been resolved, inasmuch as the respondent No.2/UPSC itself has permitted him to produce the Certificate at his interview. The Id. Counsel for the respondents confirms this, explaining that as the objection to the Certificate produced by the said petitioner was found wanting only in respect of the stamp/seal of the certifying officer, the opportunity had been granted to him to bring the corrected one.

7. Admittedly, the other three petitioners have not been given this opportunity. Thus, learned counsel for the petitioners submits that there has been a pick and choose policy adopted by the respondent No.2/UPSC, and that this was in complete violation of Article 14 of the Constitution of India. Learned counsel has also emailed to us the communication sent by the respondent No.2/UPSC to two other candidates, namely Shri Sumit Gupta and Shri Ritesh Kumar. The email sent to Ritesh Kumar is dated 27th July 2020 requiring him to produce the Certificate issued before 01-08-2019 for the financial year 2018-19 at the time of his PT Board as it was "not found" in his DAF. A signed letter dated 3rd November 2020 has been sent to Sumit Gupta recalling the earlier communication sent to him that he was to be treated as a General category candidate and informing him that he has been re-considered as EWS candidate and requiring him to bring the original Certificate for verification at the time of P.T.Board.

8. The learned counsel for the petitioners also pointed out that respondent No. 2/UPSC had rejected the Certificates submitted by the petitioners 2-4 on very minor clerical errors in the Certificates. According to the respondent No.2/UPSC the Certificate of petitioner No.2 referred to the wrong financial year whereas that of petitioner No.4 mentioned no details of the financial year in respect of

which it was issued. With regard to the petitioner No.3, learned counsel has submitted that the respondent No.2/UPSC has wrongly rejected the Certificate issued by the "Anchal Adhikari" as not being the proper authority. Relying on an order of the Chief Information Commissioner dated 15th February, 2016 bearing Decision No. CIC/RM/A/2014/004729/SB, Id. Counsel contends that the nomenclature of 'Tehsildar' is not in common use across the country, and in Bihar the equivalent officer was the Anchal Adhikari and therefore the respondent No.2/UPSC had incorrectly rejected the Certificate issued by him to treat the petitioner No.4 as a General category candidate.

9. Per contra, Mr. Naresh Kaushik, Advocate appearing on behalf of respondent No.2/UPSC has submitted that the Office Memorandum (O.M.) of the Ministry of Personnel, Public Grievance & Pensions, Department of Personnel and Training dated 31st January, 2019 (Annexure P-1) prescribes the criteria for eligibility for reservation in employment under the EWS category and the petitioners have not fulfilled the criteria. Relying on the decision of the Coordinate Bench of this Court in W.P. (C) No. 1158/2020 titled Union Public Service Commission vs. Saumya Pandey & Ors. decided on 11th September, 2020 the learned counsel argued that the Certificates had to have been issued by 1st August 2019 and relate to the financial year 2018-2019 and when even in the case of candidates appearing for the Civil Services Exam (CSE) 2019, this court had rejected the plea for extension of time to submit the Certificate and had also observed that it would be unfair to the other candidates who have not approached the court the petition deserved to be dismissed.

10. We have heard both the counsels and perused the record including the email sent to us by learned counsel for the petitioners forwarding the copies of the information sent to other candidates for submission of the Certificates and the orders of the CIC as also the judgments of the CAT and the Coordinate Bench of this court on behalf of the respondents.

11. The Government of India decided to reserve posts in direct recruitment in civil posts and services for EWS who were not covered by the scheme of reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes. and in furtherance of this policy decision issued an O. M. on 31st January, 2019 detailing how this reservation was to be worked out. Thus, vide this O.M. the quantum of reservation was limited to 10% in direct recruitment in civil posts and services in the Government of India, but was inapplicable to "Scientific and Technical posts", as duly classified. The family's gross annual income from all sources i.e. salary, agriculture, business, profession, etc. was to be below Rs.8 lakhs, "for the financial year prior to the year of application". It also provided that all persons whose family owned or possessed any of the following assets, were to be excluded from being identified as EWS, irrespective of family income i.e. a family which owned either of the following:

(i) 5 acres of agricultural land and above;

- (ii) Residential flat of 1000 sq.ft. and above;
- (iii) Residential plot of 100 sq. yards and above in notified municipalities;
- (iv) Residential plot of 200 sq. yards and above in areas other than the notified municipalities."

12. In para 5, the O.M. appoints the Income and Asset Certificate issuing authority and provides for the verification of the certificate. The authorities named were to issue the certificate in the prescribed format as given in Annexure 1 of this O.M. and this certificate was to be sufficient proof of the candidate's claim as belonging to EWS category. One of these authorities is "Revenue Officer not below the rank of Tehsildar".

13. There are other provisions which may also be noticed in this O.M. Vide para 5.2 it requires the officer to issue the certificate after "carefully verifying all relevant documents following due process as prescribed by the respective State/UT". Under para 5.3 the crucial date of submitting income and asset certificate by a candidate was to be the "closing date of receipt of application for the post" except where the "crucial date is fixed otherwise".

14. From the O.M. of 31st January, 2019, it is clear therefore, that no Authority other than those named, can issue the Certificate which had to be issued after due verification of all the relevant documents regarding the ownership of any immovable property and the gross annual income being below Rs.8 lakhs. This Certificate had to be "for the financial year prior to the year of application".

15. Coming to the case at hand, we may fruitfully refer to the advertisement/notification which is placed at Annexure P-2 dated 24th April, 2019. At internal page 3 of the Notification at page 56 of the paper book, it is recorded "The candidates will be eligible to get the benefit of the Economically Weaker Section reservation only in case the candidate meets the criteria issued by the Central Government and in possession of such eligibility certification." In other words, the criteria in the OM dated 31st January, 2019 has been incorporated in the selection process. In other words, the Certificate will have to be issued as per the prescribed procedure, by the prescribed authority, in the format given under the O.M.

16. It is further provided that "Provided further those EWS Candidates can submit their Income and Asset Certificate (certificate of eligibility) at the time of submission of online Detailed Application Form (DAF). The Income and Asset Certificate must be dated earlier than 1st August, 2019. Since reservation for EWS category candidates has been notified recently, therefore this extension for submission of certificate for EWS category candidates is a one time relaxation applicable for Central Armed Police Forces (Assistant Commandants) Examination, 2019 only".

17. This is the very same proviso that was considered by the Central Administrative Tribunal in OA No. 3332/2019 titled as Satabdi Mazumder vs.

Union of India decided on 13th January, 2020 and the Division Bench of this court in W.P. (C) No. 1158/2020 titled Union Public Service Commission vs. Saumya Pandey & Ors. Decided on 11th September, 2020 and in spite of which, the order of the CAT extending the date of issuance of the Income and Asset Certificates from 1st August, 2019 to 16th August, 2019 was upheld by this court. However, the issue before this court is not the extension of time for issuance of the Certificates. In the present case, all Certificates were issued much before the crucial date of 1st August 2019. The respondent No.2/UPSC has rejected the Certificates duly issued to the petitioners by prescribed authority on account of certain so-called discrepancies. Therefore, the judgments relied upon by the learned counsel for the respondents will not come to their aid.

18. Rather, those judgments also highlights the fact that the respondent No.2/UPSC by its own, had permitted other candidates who had submitted such Certificates but which were found defective, to submit the proper certificates at a subsequent date. There is no logical explanation as to why a different treatment is being given to the petitioners herein. Even here, one of the petitioners has been granted the opportunity to submit a correct certificate. As seen in the communication to Ritesh Kumar, he seems to have been given a chance to produce a Certificate, though he did not enclose one with his DAF. The present petitioners have , on the contrary submitted Certificates issued at the proper time and by the revenue authorities. Another candidate though , like the present petitioners was informed that he would be assessed as a General candidate was recently On 3rd November 2020 informed that he had been "reconsidered " as an EWS candidate. Then why not these petitioners? This is clearly discriminatory and by no means can be justified. It is not the grant of relief by the court to candidates who approach it that would result any discrimination as sought to be argued by the Id. Counsel for the respondents, but rather the whimsical approach of the UPSC that has ensured this discrimination between candidates similarly placed..

19. Though we are not really called upon to comment on the Certificates themselves, nevertheless we must notice them because of the apparently whimsical actions of the respondent No2/UPSC.

20. It is incumbent upon the respondent No. 1/ UOI to issue a list of who are equivalent to the authorities named in para 5.1 of the O.M. dated 31st January 2019, so that the people in the interiors of this country know whom to approach for the issuance of the relevant Certificate and also the ignorance of the recruiting authority will not seal the fate of a deserving candidate as has almost happened in the case of the petitioner No 3, whose Certificate has been issued by the Aanchal Adhikari, Nalanda Bihar, and who according to the CIC , New Delhi, is equal to a Tehsildar, and yet has been rejected. Such information needs to be uploaded in the website of the Ministries of respondent No.1/UOI, including of the respondent No.2/UPSC so that candidates appearing for any exam for recruitment to any civil post or service of the Government of India are not left

floundering.

21. Similarly, the objection to the Certificate issued to petitioner No.1 was found wanting because the seal did not bear the name of the person issuing the Certificate. However, the respondent No. 2/ UPSC seems to have corrected itself by treating the petitioner No.1 as an EWS candidate. Now, if the respondents will recognize only certain kinds of stamping or official seals then it has to be brought to the notice of the general public as also of the issuing authorities so that strict adherence to the official requirements can be insisted upon. Else such objections appear meaningless particularly when all selections are subject to final verification and any false declarations discovered even after appointment are visited by severe consequences.

22. With regard to the other two Certificates relating to petitioner No.2 and 4 objections raised relate to the financial year whether improperly mentioned or not mentioned at all. This is a rectifiable error particularly when the Certificates were issued on 27th June 2019 and 12th April 2019 respectively. Once again, in our opinion, while the OM dated 31st January, 2019 requires the Certificate to relate to the "financial year prior to the year of application" it would be useful to spell out the relevant financial year in the advertisement/notification itself to avoid any inadvertent lapses including by the certifying authority. The economic status of people could change from year to year, unlike a caste certificate. The necessity of certification and verification of a current status being essential, stating in clear terms the relevant financial year would indeed be helpful to all concerned and remove all confusion.

23. It is no doubt true that all these issues have cropped up only because this is a new reservation that has been introduced and probably even the issuing authorities are not very clear about the filling up of the certificates. Therefore, the need for a consistent approach throughout the country is essential as every citizen of this country has a right to seek employment by participating in a fair and transparent recruitment process.

24. The petition is accordingly allowed and the respondents are directed to permit the petitioners to appear in their interviews considering them candidates in the category of EWS, to be held, we are told, on the 16th and 18th of this month and to grant opportunity to them to produce corrected Certificates where the respondent No.2/UPSC feels that such corrections are essential, within a reasonable time thereafter for verification, in case they are not able to produce them at the time of the interview.