

(2013) 03 AHC CK 0267
In the Allahabad High Court
Case No : C.M.W.P. No. 12188 of 2013

Kumari Jyoti Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Citation : (2013) 5 ADJ 355 : (2013) 3 AWC 2998 : (2013) 2 UPLBEC 1052

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : R.S. Umrao, for the Appellant;

Final Decision : Disposed Of

Judgement

Amreshwar Pratap Sahi, J.—Heard learned counsel for the petitioner and learned standing counsel for the respondents. The candidature of the petitioner has been rejected for B.T.C. 2012 in view of the Government Orders dated 12.9.2012 and 26.12.2012.

2. The candidature of the petitioner is not being accepted as her special reservation indicated in the counselling card was mentioned as a freedom-fighter dependent whereas the petitioner had applied under the Other Backward Category.

3. The petitioner approached the respondent No. 3 claiming benefit under the O.B.C. and also a representation to the Director for correcting this error in the counselling card.

4. The error is in the application Form where the petitioner apart from mentioning her status as O.B.C. candidate has also mentioned about special reservation under the D.F.F. category.

5. Learned counsel for the petitioner contends that this mentioning is an independent human error by the computer operator, who had uploaded the Form of the petitioner whereas the petitioner has never claimed nor filed any

Certificate as dependent of freedom fighter. It is further submitted that this dependency of special reservation is a horizontal reservation which cannot affect the merit of the petitioner even otherwise inasmuch as she has obtained higher marks than the last cut of merit under the Other Backward Category. Learned counsel submits that the petitioner cannot be refused admission on account of mentioning any such special reservation keeping in view her merit even otherwise under the backward category.

6. The issue relating to filling up of an incorrect application Form arising out of human error had come up before this Court in several writ petitions. One of similar writ petitions, being Writ Petition No. 8723 of 2013, was dismissed by this Court relying on Clauses 3 and 5 of the instructions of the concerned Government Order vide judgment dated 21.2.2013.

7. Apparently, this view was also taken by another learned single Judge in Pushpraj Singh v. State of U.P. and others, Writ Petition No. 345 of 2013, decided on 7.1.2013. The said judgment has been reversed in Special Appeal No. 75 of 2013 on 18.1.2013.

8. It is, therefore, evident that the view taken by this Court is contrary to the view already expounded by a Division Bench and having not noticed the same, the judgment dated 31.2.2013 would not be binding as the Division Bench judgment would prevail.

9. Apart from this, it has further been pointed out by the learned counsel for the petitioner that a similar provision in relation to special B.T.C. 2008 had also come up before a Division Bench of this Court where also the learned single Judge had taken the same view and had rejected the writ petition. The same was reversed in a special appeal in the case of Archana Rastogi (Km.) Vs. State of U.P. and Others, , a copy of the judgment has been placed before the court. The acceptance of a human error was entertained and the Division Bench opined that the authorities were bound to consider the actual certificates that were presented at the time of counselling for the purpose of verifying the correctness or otherwise of a claim of the candidate in accordance with his/her merits. Accordingly, the special appeal was allowed with a direction to consider the said candidature. A learned single Judge in the case of Sanjay Raj Vs. State of U.P. and Others, , has discussed this issue in detail. In view of the ratio of the two Division Bench Judgment referred to herein above and the specific view taken by the learned single Judge this writ petition is disposed of with a direction to the respondent No. 3 to consider the claim of the petitioner and pass appropriate orders in the light of the observations made herein above within 3 weeks from the date of production of a certified copy of this order before him.