
(2010) 05 AHC CK 0067
In the Allahabad High Court
Case No : C.M.W.P. No. 52994 of 2007

Kumari Rehana Begum Ansari	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 12-05-2010

Acts Referred:

Citation : (2010) 05 AHC CK 0067

Hon'ble Judges : Shabihul Hasnain, J

Bench : Single Bench

Advocate : R.S. Maurya, Santosh Kumar Rai and S.K. Chaubey, for the Appellant; K.S. Kushwaha, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Shabihul Hasnain, J.—Heard Sri S. K. Chaubey, learned Counsel for the Petitioner and learned standing counsel for the opposite parties.

2. The Petitioner is aggrieved by an order passed by opposite party No. 2 dated 26.7.2007. The Petitioner was selected for two year Urdu B.T.C. training course and she was undergoing training when the caste certificate declaring her to belong to Other Backward Community was sent for verification to the Tahsildar", Varanasi. It is alleged that the Tahsildar reported back that the said certificate submitted by the Petitioner was not issued from his office. The Petitioner was served with a show cause notice on 20.7.2007 to be replied by her within three days for giving a detailed explanation about veracity of the caste certificate. It has been stated in the impugned order that the Petitioner, instead of submitting a reply, submitted a new caste certificate vide its No. 30360 dated 20.7.2007 and submitted the same on 21.7.2007.

3. It is the case of opposite party No. 2 that the first certificate submitted by the Petitioner at the time of selection since was not valid hence the marks awarded for other backward category cannot be awarded to the Petitioner, thereby reducing her in the merit list and her selection on that basis cannot remain

intact. The order further says that this condition was clearly mentioned in the advertisement made in the newspaper "Amar Ujala" dated 27.3.2006. On the basis of this reason opposite party No. 2 has cancelled her two year Urdu B.T.C. training course, 2006.

4. The learned standing counsel has justified the action of opposite party No. 2. He has filed counter affidavit. He has drawn the attention of the Court towards the averments of the counter affidavit which are more or less in the order itself.

5. The learned Counsel for the Petitioner has vehemently argued that the earlier caste certificate was obtained by the Petitioner during her college days way back in the year 1995. At the time when a certificate is obtained and issued by the concerned office, the student is not in position to check and verify that particulars of the certificates are entered in the various registers of the office or not. The case of the Petitioner is that she had validly applied for caste certificate way back in the year 1995 and it was issued to her in a proper manner which she has kept with herself and produced at the time of selection as required by the advertisement. The fact that the Tahsildar, Varanasi of competent jurisdiction has issued another certificate within a day creates a strong presumption in favour of the Petitioner that the earlier caste certificate was a genuine document though that may not have been entered in the office record of the Tahsildar. The State filed counter affidavit but it has not annexed the exact report of the Tahsildar from where it could have been assessed as to on what basis the Tahsildar has given the report that the earlier certificate was not issued from his office. The Tahsildar has given this finding in the year 2007 while the certificate was issued way back in the year 1995. There is ample chance of a mistake in the office of the Tahsildar without any mala fide on the part of the Petitioner. It is not a case of the State that the Petitioner does not belong to Other Backward Community. It is not the case of State again that the document has been obtained by forgery or fraud. The case of the State boils down to the fact that the certificate submitted by the Petitioner in the first instance could not have been entertained, though she belongs to the category where deserves the benefit. This will be a hyper technical view and not a correct and humane approach. The Petitioner produced the genuine caste certificate within the time prescribed for explanation. What better explanation can be given by a person who is said to have given incorrect certificate than to give a fresh latest certificate within the time prescribed. The insistence of the State that the explanation should have been given in so many words appears to be absolutely arbitrary and without application of mind. When a show cause notice was issued to the Petitioner no particular format was required for the answer. It was an opportunity to Petitioner to prove or remove the doubt which had been created in the mind of the authority. When the Petitioner had supplied a fresh genuine caste certificate within the time prescribed by the authority, there is no basis for the authority to allege that the benefit of caste has been wrongly given to the Petitioner. The counsel for the Petitioner has further drawn the attention of the Court towards Annexure-5 of the writ petition which is the explanation submitted by the Petitioner. It is dated 21.7.2007. It is

difficult to understand what more was required by the authority to believe that the Petitioner belongs to a particular category.

6. Rejoinder affidavit has also been filed in this case wherein the Petitioner has submitted that no wrong can be attributed to her who had filed another certificate which was proved to be a correct declaration of the caste of the Petitioner. The mistake can be attributed to the office of the Tahsildar whose report has not been annexed. The document was a very old one and the Tahsildar has given a finding after 12 years. Later on, he issued another certificate on the basis of the material available on record.

7. In view of the above, the Court comes to the conclusion that the Petitioner genuinely belongs to Other Backward Caste category. She has a valid document on date, which was submitted within the time prescribed in the show cause notice. The action of the opposite party by issuing impugned order dated 26.7.2007 and expulsion of the Petitioner from two year Urdu B.T.C. Training Course is absolutely arbitrary and without application of mind. Such approach cannot stand the scrutiny of the Court. Accordingly, the impugned order dated 26.7.2007 is hereby quashed. The opposite parties are directed to immediately allow the Petitioner to join training and complete that without further harassment from their side if she has not already completed the same.

Writ petition is allowed.