

(2018) 07 RAJ CK 0063
In the Rajasthan High Court
Case No : Civil Writ No. 10020 of 2018

Lalita @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 16-07-2018

Acts Referred:

Citation : (2018) 07 RAJ CK 0063

Hon'ble Judges : SANDEEP MEHTA, J

Bench : Single Bench

Advocate : Manjeet Godara, N.S. Rajpurohit

Final Decision : Disposed Off

Judgement

Issue notice. Shri Rajpurohit, AGC accepts notice on behalf of the respondents.

Heard.

The petitioner has approached this Court through this writ petition praying for a direction to the respondents to issue Caste Certificate (O.B.C. Non-

Creamy layer Certificate) to the petitioner as per her lawful entitlement. In support of this prayer, learned counsel representing the petitioner has

placed reliance on the judgment rendered by the learned Single Judge of this Court in bunch of writ petitions led by S.B. Civil Writ Petition

No.3968/2017 (Manju Yadav vs. State of Rajasthan & Ors.) decided on 29.11.2017 wherein, this Court held as below:

“The controversy involved in the present writ petitions is about non-issuance of Other Backward Class Certificate (OBC certificate) in favour of

the petitioner by the State of Rajasthan.

It is urged that such certificates were earlier issued in favour of the petitioners with their father's name but, now, it has been denied. In view of

the above, a direction is sought against the respondents for issuance of OBC certificate.

The petitioners belong to the State of Haryana. They migrated to State of Rajasthan after marriage. The issue as to whether they are entitled to seek benefit of reservation in State of Rajasthan on migration is pending consideration before the Apex Court and outcome thereof would decide the issue aforesaid.

The controversy in the present matter is slightly different. It is in regard to non-issuance of OBC certificate by State of Rajasthan. It is admitted by the parties that reservation in the quota of OBC is given only when certificate shows candidate not falling in the creamy layer in reference to father's income and not of the husband. In view of the above, status of the petitioners is determined vis-a-vis her father as to whether he is falling in the creamy layer or not. Since the petitioners have migrated from the State of Haryana thus OBC certificate in the name of the father were earlier issued by the said State.

It is, however, a fact that certain writ petitions came before the High court wherein direction was given to the Tehsildar concerned of the Tehsil in the State of Rajasthan to seek verification of the status petitioner's father from State of Haryana. It is stated by the learned AAG Shri JM Saxena that without proper verification, caste certificates have been issued.

In the subsequent litigation, this court held that without proper verification of the income of the petitioner's father, caste certificate cannot be issued and it should be from the State concerned. It was also found that, officers of the State of Haryana have not been made party so as to give direction for issuance of caste certificates to the petitioners. The Judgments in second set of litigation, are pending consideration before the Division Bench.

Learned counsel for petitioners have brought to the notice of this court a circular dated 8.4.1994, issued by the Government of India in regard to the same issue. The circular aforesaid is reproduced hereasunder

Ministry of Welfare Letter No. 12011/11/94-BCC(C), dated the 8th April, 1994, to the Chief Secretaries of all States/UTs

Subject: Issuing of Other Backward Class Certificates to migrants from other States/UTs.

In continuation of the DOPT's letter No. 36012/22/93Estt.(SCT) dated 15th November, 1993, I am directed to say that it has been represented to this

Department that persons belonging to OBCs who have migrated from one State to another for the purpose of employment, education, etc. experience

great difficulty in obtaining caste certificates from the State from which they have migrated. In order to remove this difficulty, it has been decided that

the prescribed authority of a State/U.T. Administration in terms of the DOPT letter No. 36012/22/93-Estt.(SCT) dated 15th November, 1993 may

issue the OBC Certificate to a person who has migrated from another State on the production of a genuine certificate issued to his father by the

prescribed authority of the State of his father's origin except where the prescribed authority feels that a detailed enquiry is necessary through the State

of origin before the issue of the Certificate.

2. The Certificate will be issued irrespective of whether the OBC candidate in question is included in the list of OBC pertaining to the State/U.T. to

which the person has migrated. The facility does not alter the OBC status of the person in relation to the one or the other State/U.T. The OBC person

on migration from the State/U.T. of his origin to another State/U.T. where his caste is not in the OBC list is entitled to the concessions/benefits

admissible to the OBC's from the State of his origin and Union Government but not from the State where he has migrated.

3. It is requested that all competent authorities may be advised to issue the OBC Certificate after satisfying themselves of the correctness of the

Certificate. The Lists of the Competent Authorities empowered as per DOPT's circular of 15th November, 1993 may be followed strictly. No other

authorities may be allowed to issue the OBC Certificates.

As per the circular quoted above, verification need to be made by the prescribed authority of the State of her father's origin. It is other than in the

cases where prescribed authority feels that a detailed enquiry is necessary through the State of origin before issuance of such certificate. The prayer

of learned counsel for petitioners is to apply the said circular. The writ petition earlier decided by this court has reference of the circular issued by the

Government of India but was not applied in absence of its adoption by the State of Rajasthan, however, looking to the number of writ petitions coming

to the court, notice were issued to the State of Rajasthan and Mr JM Saxena, Additional Advocate General was asked to take instructions in the

matter so that controversy may be resolved.

It was informed by Mr JM Saxena, Additional Advocate General that the Division Bench has given instructions to find out possibility of online

verification from the State from where a candidate has migrated.

It is informed that verification in such cases remains as an empty formality. Certain documents have been produced to show that in what manner

verification has been made by the State from where candidate has migrated. The prayer of learned counsel appearing for the State of Rajasthan is to

issue appropriate directions so that while the grievance of the petitioners is resolved, proper mechanism is adopted for issuance of OBC certificate.

It is also stated that even if the circular issued by the Government of India is adopted, it should be with specific direction to the prescribed authority of

the State from where a candidate has migrated to certify the income of the father and also the caste as to whether it is falling in the OBC or not and if

anything is found wrong, to be held responsible.

It is unfortunate that despite service of notice, authorities of the State of Haryana, in majority of cases, has not put in appearance otherwise their view

would have been incorporated while issuing directions, as prayed by learned Additional Advocate General Mr JM Saxena.

In any case, present writ petitions are disposed of with following directions, as agreed -

1.The circular dated 8.4.1994,issued by Central Government is made applicable in the present cases also, however, OBC certificate would be issued

by the State authorities only after getting verification of father's income and caste from the State from where a candidate has migrated. The

required verification would be sought by the SDO to whom application is submitted by the candidate. In case, verification is sought, the prescribed

authority of the State of Haryana would send it not only indicating the category in which the candidate falls i.e. whether OBC or any other category in

their State and the income of the candidate's father as to whether he is falling in creamy layer or not. The assessment of the creamy layer would

be in reference to what is prevalent in the State of Haryana. It would be after proper verification and giving details. Accordingly, all the authorities in

the State of Haryana, impleaded as party respondents in majority of writ petitions, would comply the direction aforesaid in consonance to the circular

dated 8.4.1994.

2. On receipt of verification from the prescribed authority of the State of Haryana, competent authority in the State of Rajasthan would appropriately issue OBC certificate indicating whether the candidate is falling in the creamy layer or not. The said certificate would be issued only if the petitioner was an OBC candidate in the State of Haryana and is falling in the same category in the State of Rajasthan and not otherwise. The direction aforesaid would resolve the grievance in regard to issuance of OBC certificate.

The compliance of this order would be made by the parties in the State of Rajasthan as well as State of Haryana in consonance to the circular issued by the Government of India dated 8.4.1994.

3. The competent authority in the State of Rajasthan would take steps for issuance of caste certificate at the earliest.

4. The issuance of caste certificate/certificate for taking benefit of reservation would remain subject to final outcome of the judgment of the Apex Court. If it goes against then petitioner/s, would not be entitled to get benefits of reservation.â??

Learned counsel Shri Godara urges that the respondent SDO, Rawatsar, District Hanumangarh may be directed to issue the requisite caste certificate to the petitioner in light of the above judgment as the petitionerâ??s case stands a parity with the said writ petitioner Ms. Manju Yadav.

Shri N.S. Rajpurohit, learned AGC do not object to the said prayer.

In this view of the matter, the SDO, Rawatsar, District Hanumangarh is directed to consider the petitionerâ??s prayer for issuance of OBC (Non-creamy layer) certificate in light of the ratio of Manju Yadavâ??s Judgment. The SDO, Rawatsar, District Hanumangarh shall objectively consider the petitionerâ??s documents/certificate and pass appropriate order regarding issuance of the requisite OBC certificate to her within a period of 7 days from the date of submission of certified copy of this order.

With these observations and directions, the instant misc. petition is disposed of. Stay application is also disposed of.

In case, any adverse order is passed, the petitioner shall be at liberty to file a fresh writ petition.