

(2012) 10 DEL CK 0132

In the Delhi High Court

Case No : Writ Petition (C) No. 1050 of 2011 and CM. No. 2215 of 2011

Mahaswetta Saikia

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 01-10-2012

Acts Referred:

Constitution of India, 1950 — Article 123

Citation : (2012) 195 DLT 98

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Rajeev Saxena, Mr. Rohan Ahuja, Mr. Rajat Mittal and Mr. Harish Dev Shastri, for the Appellant; Varun Gupta for Ms. Maninder Acharya, Advocate for Respondent No. 1 and Mr. Pawan Kumar Agrawal, Advocate, for the Respondent

Judgement

Suresh Kait, J.—Vide the instant petition, petitioner is seeking direction to the respondents to give appointment to the petitioner to the post of Assistant Professor (Botany) in the Botany Department of respondent no. 2, which is under the control of respondent no. 1. The petitioner is also seeking seniority from 13.12.2010, the date petitioner was asked to collect her appointment letter to join duty.

2. Respondent no. 1 advertised for the post of Assistant Professor (Botany) as a regular post for which the petitioner applied under the reserved category of OBC as the petitioner belongs to the said category.

3. Petitioner called for interview by respondent no. 2 telephonically on 10.12.2010 to which she appeared before the Selection Committee. On 13.12.2010, petitioner was informed telephonically from the office of respondent no. 2 that the petitioner has been selected against the reserved post of OBC and she was asked to come on the same date to collect her appointment letter. When she visited the office of respondent no. 2 on the said date itself, respondent no. 2 denied the appointment letter and informed the petitioner that they wanted to verify the doubts about the caste of the petitioner, whether she comes under

OBC category. The petitioner was asked to wait till verification is made.

4. Petitioner approached respondent no. 1 to clarify the suspicion raised by respondent no. 2 vide letter dated 22.12.2010. Respondent no. 1 clarified that "On verification it is noticed that the said caste figured at Sl. No. 119 of Central List". Respondent no. 1 also suggested respondent no. 2 to appoint petitioner provisionally under Para 2 of Office Memorandum no. 36011/3/2005 Estt. (Res) dated 09.09.2005 on the basis of a valid OBC Certificate issued by the competent authority.

5. Moreover, respondent no. 1 also forwarded a copy of letter dated 11.04.2007, defining the procedure required to be followed by the College under respondent no. 1 while appointing the candidates for SC/ST/OBC categories.

6. Despite all, petitioner did not get the appointment letter. Thereafter, she approached the Vice-Chancellor of the University, Ministry of Human Resource Development, but find no solution and as filed the instant petition.

7. Respondent no. 1, University of Delhi has filed its response to the instant petition stating that the petitioner had represented to the College that she belongs to one of the caste / community i.e. "Koch" in Kamrup District of State of Assam and notified by the then Ministry of Welfare vide Gazette Notification dated 13.09.1993 and dated 20.10.1994 as per the Certificate issued by Assistant Deputy Commissioner, Kamrup (Assam) dated 19.02.2003 annexed as Annexure P-1.

8. However, as per the information available with the National Commission for Backward classes, the Caste "Rajbanshi Koch" (earlier appeared in the original list against serial no. 18 in State List and Entry No. 119 of Mandal List) has been omitted from the list of OBCs from the State consequent upon the inclusion of the caste in the list of Scheduled Caste as per the Gazette Notification no. 29 dated 27.01.1996 (issued by the Govt. of India, Ministry of Welfare).

9. Consequently, the caste certificate dated 19.02.2003 issued by the Assistant Deputy Commissioner of Kamrup District of Assam State become invalid and the petitioner cannot claim any benefit of reservation out of it.

10. The petitioner has clarified the confusion arose by filing rejoinder to the counter-affidavit of respondent no. 1 stating therein that the petitioner belongs to OBC category, being a member of "Koch" Community which comes under OBC in the Central List. This has also been confirmed vide latest Gazetted Notification no. 257 dated 08.12.2011 enclosed as Annexure P-4. The petitioner also placed a copy of updated Central List of OBC done by National Commission of Backward Classes (NCBC) enclosed as Annexure P-5.

11. The petitioner has clarified that on 27.01.1996, when Parliament was not in session, and the Government recommended, a Notification was issued by the President of India in exercise of Powers conferred upon him under Article 123 of the Constitution of India, issued an ordinance by virtue of which the "Koch"

community came to be declared as Scheduled Tribes and Hill Tribe people. But that Notification, as required under the Provision of Law, was not put up in the Assembly and made law hence the said Notification had expired after statutory period of six months and "Koch" community was automatically reverted back to OBC category.

12. To strengthen the above arguments and clarifications, petitioner has annexed a judgment delivered by High Court of Assam (Principal Seat at Guwahati) on 04.02.2012 in the case titled as Hem Chandra Borah v. State of Assam & Ors. W.P.(C) 2341/2010, wherein it is held as under:

Koch Rajbanshi community, belongs to OBC category. However, the whole controversy arose in view of the fact that the said Community was conferred ST (P) Status in the Ordinance dated 27.01.1996. When Ordinance lapsed naturally, OBC statues of the said community stood restored.

13. The Court finally opined while directing the UPSC to treat the petitioner as OBC candidate that "with the lapse of ordinance, original status of the petitioner i.e. OBC is restored".

14. Respondent no. 2 has also filed its response to the instant petition. They also have the same stand taken by respondent no. 1 University and submitted that on verification it transpired that petitioner's caste "Rajbanshi Koch" did not appear in the Central List of OBC and therefore respondent no. 2 College did not issue appointment letter to the petitioner and reported the matter to University of Delhi for 24.12.2010 for their advice.

15. Respondent no. 2 further sought clarification as to whether "Rajbanshi Koch" community comes under the category of Central List of OBC. In response it received a communication dated 14.02.2011 from Deputy Secretary, Ministry of Social Justice and Empowerment, Govt. of India, New Delhi informing that "Koch" community is not listed in the Central List of OBC for the State of Assam. Therefore, respondent no. 2 has not appointed the petitioner.

16. The Joint Secretary, Govt. of Assam vide its communication dated 22.06.2011 apprised the respondent no. 2 that Smt. Mahaswetta Saikia belongs to "Koch Rajbongshi" who were listed as OBCs in the State of Assam. Further the status of Koch Rajbongshi who were listed as OBCs by the Central Government prior to promulgation of ordinance declaring them as Scheduled Tribes, would continue as such OBCs on the lapse of the said ordinance.

17. The sub-divisional Officer of the concerned District has also verified that the petitioner belongs to "Koch Rajbongshi" Community which comes under the backward classes. It is also clarified that she does not belong to the persons Sections (Creamy layer) mentioned in column 3 of the Schedule of Govt. of India, Department of Personnel and Training O.M. No. 36012/93-Estt. (SCT) dated 08.09.1993. Moreover, Govt. of Assam also issued a Corrigendum to this effect.

18. I heard Id. Counsel for parties.

19. After hearing Id. Counsel for the parties, in the facts and circumstances of the case, respondents have not issued appointment letter due to the confusion / controversy as discussed above. With the instruction from the Ministry and the fact has been confirmed by the Gazette Notification dated 08.12.2011 issued by Union of India, wherein "Koch" Caste of the petitioner was duly being incorporated in the OBC list of the Central Government.

20. I note, the whole controversy revolved around the Ordinance issued by the President of India in exercise of powers conferred upon him under Article 123 of the Constitution of India by which the community of the petitioner came from OBC category to Schedule Tribes category. But the fact remains that the said Ordinance could not take the shape of law as it was not put up in the Assembly/ Parliament. Therefore, it expired automatically after the lapse of statutory period of six months and the category of the petitioner was automatically reverted back to the OBC category. At the time of the selection of the petitioner she was in the OBC category and she continued to be in the same category.

21. I have no hesitation to say that the respondents have not rightly issued the appointment letter to the petitioner despite her selection due to the aforesaid controversy, though there was no fault of the petitioner. Now, after completion of the pleadings everything has become very clear that the petitioner was in the OBC category before her appointment, at the time of appointment and till date.

22. This fact has been further verified by the communication dated 22.06.2011 of the Joint Secretary, Government of Assam that the petitioner belongs to "Koch Rajbongshi" who are listed as OBC in the State of Assam. It is further clarified that the aforementioned caste which was listed as OBC by the Central Government prior to promulgation of the Ordinance would continue as OBC on the lapse of statutory period of the said Ordinance.

23. Moreover, the petitioner's caste certificate issued on 08.09.1993 also certified that she does not belong to "creamy layer" as mentioned in column 3 of the Schedule of Government of India, Department of Personnel & Training.

24. The fact remains that respondent no. 1 vide its letter dated 22.12.2010 advised the respondent no. 2 to appoint the petitioner provisionally, but the respondent no. 2 did not issue any letter.

25. In view of the above discussion, the instant writ petition is allowed with the direction to the respondents No. 1 & 2 to issue her appointment letter for the post of Assistant Professor (Botany) in the Department of the respondent No. 2 by fixing her seniority from 13.12.2010, the date on which the petitioner was asked to collect her appointment letter to join duty, but with no back wages.

26. The instant writ petitions stands disposed of in the above terms. No orders as to costs.

CM. NO. 2215/2011 (Stay)

With the disposal of the petition itself, the instant application has become Infructuous. Therefore, the same is disposed of accordingly.