

(2018) 08 RAJ CK 0135
In the Rajasthan High Court
Case No : Civil Writ No. 12130 of 2018

Meenakshi @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 23-08-2018

Acts Referred:

Citation : (2018) 08 RAJ CK 0135

Hon'ble Judges : DR. PUSHPENDRA SINGH BHATI, J

Bench : Single Bench

Advocate : Rakesh Matoria, Deepika Purohit

Final Decision : Disposed Off

Judgement

1. The application for correction in the address of the respondents no.4 and 5 is allowed and the address of the respondents no.4 and 5 are corrected

as Bhadra, District Hanumangarh instead of Rawatsar, District Hanumangarh.

Amended cause title already filed is taken on record.

2. Counsel for the respondents appears on behalf of all the respondents. Thus, service is complete.

3. Counsel for the parties agree that the controversy involved in this petition is covered by judgment of this Court (Jaipur Bench) in Smt. Sunita Yadav

& Anr. Vs. State of Rajasthan & Ors. (S.B. Civil Writ Petition No.20815/2017, decided on 06.12.2017); the judgment aforesaid is reproduced as

under :-

It is stated that the controversy involved in this writ petition has already been decided by this court in the bunch of writ petitions led by SB Civil

Writ Petition No.3968/2017, Manju Yadav versus State of Rajasthan & ors, decided on 29.11.2017. The prayer is made to dispose of this writ

petition in the light of the aforesaid judgment.

In the bunch of writ petitions aforesaid, following order was passed -

â??The bunch of writ petitions have been heard with consent of the parties. 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 fatherâ??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 Â 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

fatherâ??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 petitionerâ??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 petitionerâ??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 hereunder 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. 36012/22/93-Estt.(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??

As prayed, this writ petition is also disposed of in view of the judgment in the case of

4. At the outset, counsel for the petitioner made a limited prayer that reconsideration of petitionerâ??s candidature be made as per the aforequoted precedent law.

5. Counsel for the respondent assures the Court that reconsideration of petitionerâ??s candidature shall be made strictly in accordance with law within a period of thirty days from today.Â

6. In view of the statement aforesaid, the writ petition is disposed of with a direction to the respondents to reconsider candidature of the petitioner

strictly in accordance with law in light of the aforequoted precedent law within a period of thirty days from the date of receipt of certified copy of this

order.

7. Meanwhile, the petitioner shall be permitted to participate in the selection process including counselling and other procedure. The recruitment process in question hereinafter shall remain subject to the final outcome of the final consideration to be made by the respondents in pursuance of this order.