

(2009) 02 DEL CK 0152

In the Delhi High Court

Case No : C.M. No. 17504 of 2008 in Writ Petition (C) No. 9112 of 2008

Ms. Pushpa

APPELLANT

Vs

Government, NCT of Delhi and Others

RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Constitution of India, 1950 — Article 10, 14, 14(4), 15, 15(4)

Citation : (2009) 02 DEL CK 0152

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Manoj Ohri, for the Appellant; Anjum Javed and Tanveer A. Khan for R-1 and R-2, for the Respondent

Judgement

Kailash Gambhir, J.—By way of this writ petition filed under Article 226 of the Constitution of India the petitioner seeks directions to the respondents to consider her application form for appointing her on the post of staff nurse in the category of OBC and also for quashing the results dated 15/12/2008 declared by the respondent No. 3 DSSSB and restoring the result dated 29/7/2008. Counsel for the petitioner submits that the respondent No. 2 vide their advertisement No. 09/2007 published in the newspaper in the month of January, 2008 had notified 1225 vacancies for the post of staff nurse and as far as the OBC category is concerned, 331 vacancies were reserved against this category. Last date for submission of the application fixed in the advertisement was 21.1.2008. Counsel further submits that petitioner is a ?Jaat? by caste and vide notification No. F.28(93)/91- 92/SC/ST/P&S/4384 dated 20.1.1995 all the members of the ?Jaat ? community who are residents of Delhi at the time of issuance of said notification have been recognized in the category of OBC.

2. Counsel further submits that the petitioner had applied in the category of OBC for the said post in response to the said advertisement but wrongly the respondents did not accept the application of the petitioner against the OBC category as no proof was furnished by the petitioner to satisfy the authorities

that she belonged to the said category. Counsel for the petitioner further submits that there was no fault on the part of the petitioner as the petitioner had applied to the concerned office of SDM by moving an application much prior to the date of the advertisement for the said post but considerable time was taken by the office of the SDM in making available the OBC certificate i.e. on 13.5.2008. therefore, she sent the OBC certificate on 3/7/2008 before the declaration of result dated 25/7/2008. But she was declared ineligible vide result declared on 15/12/2008 on the ground that the OBC certificate was sent after the cut off date i.e. 21st January, 2008. Counsel thus contends that the petitioner cannot be made to suffer for the time taken by one agency of the State in not timely providing the OBC certificate.

3. Mr. Anjum Javed, counsel for the respondents submits that the application of the petitioner could not have been considered by the respondents in the OBC category as admittedly no certificate in proof thereof as per the laid down conditions in the advertisement was annexed by the petitioner. Counsel further submits that once the conditions in the advertisement are clearly spelled out, the petitioner was fully bound by the same and should have taken prompt action to obtain the OBC certificate.

4. I have heard counsel for the parties and perused the record.

5. The question for determination in this case is as to whether the candidature of the petitioner for the post of Primary Teachers in the category reserved for "OBC" be denied on the ground that the certificate of "OBC" issued by competent authority from Government of NCT of Delhi and submitted by the petitioners later after the expiry of last date of submission of application i.e. 21st January, 2008.

6. As per the advertisement published in the month of January, 2008 issued by the Delhi Subordinate Services Selection Board, vacancies were reserved for various categories including "OBC" category. Thus in order to be considered for the post reserved for "OBC" category, the requirement is that a person should belong to "OBC" category. If a person is ?OBC?, she is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that she belongs to "OBC" category and act thereon by giving the benefit to such candidate for her belonging to "OBC" category. It is not that petitioner did not belong to "OBC" category prior to 21st January, 2008 or that acquired the status of being "OBC" only on the date of issuance of the certificate. In view of this position, insisting upon a certificate dated prior to 21st January, 2008 would be clearly arbitrary and has no rationale objective to be achieved.

7. Caste is the only accepted criteria to identify under- represented groups. The underlying theory is that the under- representation of the identifiable groups is a

legacy of the Indian caste system. After India gained independence, the Constitution of India listed some erstwhile groups as Scheduled Castes (SC) and Scheduled Tribes (ST). The framers of the Constitution believed that, due to the caste system, SCs and the STs were historically oppressed and denied respect and equal opportunity in Indian society and were thus under-represented in nation-building activities. Later, reservations were introduced for other sections as well.

8. The principle of equality permeates the Constitution of India. All the citizens are entitled to be treated by the state equally, irrespective of their caste, race, religion, sex, descent, place of birth and residence. No citizen may be discriminated against by the state only on any of these grounds. The exceptions to this principle are made in favour of women and children, the backward classes, the Scheduled Castes and the Scheduled Tribes, and the weaker sections.

9. Referring to the reasons for reservation, the Hon^{ble} Apex Court in *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, observed as under:

251. Referring to the concept of equality of opportunity in public employment, as embodied in Article 10 of the draft Constitution, which finally emerged as Article 16 of the Constitution, and the conflicting claims of various communities for representation in public administration, Dr Ambedkar emphatically declared that reservation should be confined to 'a minority of seats', lest the very concept of equality should be destroyed. In view of its great importance, the full text of his speech delivered in the Constituent Assembly on the point is appended to this judgment. But I shall now read a few passages from it. Dr Ambedkar stated:

...firstly, that there shall be equality of opportunity, secondly, that there shall be reservations in favour of certain communities which have not so far had a proper look-in. so to say into the administration. Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity Therefore the seats to be reserved, if the reservation is to be consistent with Sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, ?. *Constituent Assembly Debates, Vol. 7, pp.701-702 (1948-49).*

(emphasis supplied)

These words embody the *raison d'être* of reservation and its limitations. Reservation is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational

and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, in so far as one group is preferred to the exclusion of another, must necessarily be narrowly tailored to the achievement of the fundamental constitutional goal.

10. Keeping this in mind and considering that the petitioner applied for the OBC certificate to the concerned office of SDM much before January 2008, when the advertisement was made by DSSSB and since the certificate was made available to the petitioner on 13/5/2008, the petitioner cannot be made to suffer for the lapse on the part of the SDM office. But at the same time it is made clear that in all such cases caste certificate should reach the Board prior to their making provisional selection as while making provisional selection, the Board verifies & satisfies itself with authenticity of documents and eligibility as per the recruitment rules. Herein, the petitioner had sent the documents vide letter dated 3/7/2008, prior to publication of the provisional results on 25/7/2008.

11. The issue is also no more *res integra* as in the case of *Tej Pal Singh and Others Vs. Government of NCT of Delhi and Another*, this Court has already taken a view that the candidates who belong to 'SC' and 'ST' categories but could not file certificate in proof of the same could not have been rejected simply on account of the late submission of the certificates and submission of such certificates cannot be made a pre-condition for accepting the application forms. The relevant para of the said judgment is reproduced as under:

17. The matter can be looked into from another angle also. As per the advertisement dated 11th June, 1999 issued by the Board, vacancies are reserved for various categories including "SC" category. Thus in order to be considered for the post reserved for "SC" category, the requirement is that a person should belong to "SC" category. If a person is SC his is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to "SC" category and act thereon by giving the benefit to such candidate for his belonging to "SC" category. It is not that petitioners did not belong to "SC" category prior to 30th June, 1998 or that acquired the status of being "SC" only on the date of issuance of the certificate. In view of this position, necessitating upon a certificate dated prior to 30th June, 1998 would be clearly arbitrary and it has no rationale objective sought to be achieved.

18. While taking a particular view in such matters one has to keep in mind the objectives behind the post of SC and ST categories as per constitutional mandate prescribed in Articles 15(4) and 16(4) which are enabling provisions authorising

the Government to make special provisions for the persons of SC and ST categories. Articles 14(4) and 16(4), Therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a right enshrined for protection of society. The right in social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular Articles 14, 15, 16, 21, 38, 39 and 46 are to make the quality of the life of the poor, disadvantaged and disabled citizens of the society meaningful.

19. One can usefully draw sustenance from the following words of wisdom spoken by the Apex Court in *Mrs. Valsamma Paul Vs. Cochin University and others*,

The Constitution through its Preamble, Fundamental Rights and Directive Principles created a Secular State based on the principle of equality and non-discrimination, striking a balance between the rights of the individuals and the duty and commitment of the State to establish an egalitarian social order. The emphasis, Therefore, is on a citizen to improve excellence and equal status and dignity of person with the advancement of human rights and constitutional philosophy of social and economic democracy in a democratic polity to all the citizens on equal footing....

12. Mr. Anjum Javed counsel for the respondents urged that the relief in the said judgment is meant only for the 'SC' & 'ST' category and not for 'OBC' category and therefore, the respondents have rightly not considered the application of the petitioner against the 'OBC' category. I do not find any merit in the submission of the counsel for the respondent. The petitioner cannot be denied the right to be considered for appointment to the said post under the 'OBC' category once there is no dispute that she belongs to OBC Category. Admittedly, there was no lapse on the part of the petitioner who had applied to obtain the said certificate in the OBC Category much prior to the date of the advertisement and she cannot be made to suffer simply on account of the fact that the authorities have taken considerable time in making available the OBC certificate.

13. In view of the above discussion and considering the ratio of *Tejpal Singh's* judgment (*supra*), I extend the benefit of OBC category to the petitioner. The respondents are directed accordingly to consider the application of the petitioner against the OBC category within a period of one month and accordingly announce the result taking in view the relaxation available to the OBC candidates. With these directions the petition is disposed of.