
(2020) 02 UK CK 0035

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 475 Of 2018

Ruby Khatoon

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 17-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 471

Citation : (2020) 02 UK CK 0035

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : P.C. Pethshali, B.S. Parihar, N.S. Pundir

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. P.C. Pethshali, learned counsel for the petitioner, Mr. B.S. Parihar, learned Standing Counsel for the State of Uttarakhand-respondents

1 to 5 and Mr. N.S. Pundir, learned Standing Counsel for the Uttarakhand Public Service Commission-sixth respondent.

2. The petitioner has invoked the jurisdiction of this Court seeking a writ of mandamus directing respondents 1 and 2 to issue a No Objection

Certificate to the petitioner enabling her to join service as a Forest Range Officer; a writ of mandamus directing the sixth respondent to issue a Caste

Certificate to her; a writ of mandamus directing the fourth respondent to clear the objections regarding the Caste Certificate and NOC, and thereafter

to proceed further in the matter to appoint her as a Forest Range Officer; and a writ of mandamus directing the respondents not to cancel her

selection for the post of Forest Range Officer during the pendency of the present Writ Petition.

3. Facts, to the limited extent necessary, are that the petitioner has been residing in the State of Uttarakhand ever since her birth on 02.05.1984. She claims that her parents have been residing in this State for the last several decades, her entire schooling was undertaken only in the schools/colleges in the State of Uttarakhand, and she belongs to 'Momin Ansaar' caste which falls under the category of Other Backward Classes in the State of Uttarakhand. While working as a Marketing Inspector in the Department of Food, Civil Supplies & Consumer Affairs with the Government of Uttarakhand, the petitioner was posted at Dehradun during the year 2015.

4. The Uttarakhand Public Service Commission (for short the 'Commission') issued an advertisement on 17.11.2015 inviting applications for the post of Forest Range Officer. The petitioner applied for the said post under the OBC category. In terms of the said advertisement, the last date for filling up the application form was 05.12.2015. The advertisement stipulated that the applicants must possess all the required certificates, including the certificate that they belonged to the reserved category, on the date of filling of the application form; and they should produce all the original documents, including the original Caste Certificate in support of the claim that they fall under the OBC category, at the time of interview. The petitioner appeared for interview on 05.07.2017, and since she did not submit her No Objection Certificate and the original Caste Certificate that she belonged to the OBC category, she was granted, at her request, one week's time (i.e. till 12.07.2017) to produce the original documents. The petitioner also furnished her written undertaking to produce these documents by 12.07.2017 failing which her candidature may be rejected in case she failed to produce the documents; and she would have no objection if her candidature was rejected on this score.

5. The petitioner failed to submit both her No Objection Certificate and her original OBC certificate by 12.07.2017. She, thereafter, invoked the jurisdiction of this Court by way of the present Writ Petition on 04.10.2018 contending that the respondents were not justified in refusing to grant her a No Objection Certificate and an OBC caste certificate. The reasons for which the State Government refused to grant her a No Objection Certificate, are firstly that she had applied for the post of Forest Range Officer without obtaining prior approval from the Marketing Department where she was

posted; and secondly that Criminal Case No. 81 of 2017, under Sections 420, 467, 468, 471 and 120-B IPC, was pending against her. The

petitioner's contention, however, is that the said F.I.R. was registered against her only after she had submitted her application for being considered

for appointment to the post of Forest Range Officer; and, in any event, the said charge-sheet has been quashed by the order of this Court in C482 No.

632 of 2018 dated 14.11.2019. It is, however, not in dispute that the petitioner had applied for the post of Forest Range Officer without obtaining prior

approval of the Marketing Department in which she was working.

6. The petitioner filed Writ Petition (M/S) No. 2991 of 2016 and 1510 of 2017 and a learned Single Judge of this Court, by a common order dated

12.03.2018, directed that the inquiry, regarding manipulations in the earlier Caste Certificate of the petitioner, be completed within a period of six

months; and till then the provisional Caste Certificate shall remain in force, and its ultimate fate shall depend upon the final enquiry.

7. With regards her claim for grant of an OBC certificate, the petitioner had invoked the jurisdiction of this Court by filing Writ Petition (S/B) No. 261

of 2018 which was dismissed as withdrawn, by order dated 03.07.2018, with liberty to file a Writ Petition afresh.

8. On completion of the final inquiry, both the provisional as well as the original Caste Certificate of the petitioner were cancelled holding that she did

not belong to the State of Uttarakhand. The petitioner, thereafter, filed Writ Petition (M/S) No. 465 of 2019 and a learned Single Judge of this Court, in

his order dated 04.09.2019, observed that the finding of the Scrutiny Committee, that the petitioner was not a member of 'Momin Ansaar'

community, was contrary to the earlier findings of this Court; it was not the case of the respondent-authorities that the petitioner had taken a similar

certificate from the State of Uttar Pradesh for seeking benefits therein; and there was only one permanent resident certificate and only one OBC

certificate granted to the petitioner by the State of Uttarakhand. The Writ Petition was allowed, and the order dated 22.06.2018 was quashed. As a

consequence of the order of the learned Single Judge dated 04.09.2019, the earlier original OBC certificate, issued to the petitioner on 15.05.2010,

stood revived.

9. As the validity of a Caste Certificate in the State of Uttarakhand is only for a

period of three years, and as the certificate issued to the petitioner on 15.05.2010 could not be considered for appointment as a Forest Range Officer with respect to the advertisement issued by the Commission on 17.11.2015, the petitioner had applied for grant of another Caste Certificate. While a provisional OBC certificate was issued to the petitioner on 11.07.2017, it is not in dispute that no original OBC certificate has been granted to the petitioner herein till date.

10. In this context, it is necessary to note that the Commission was not a party to any of the earlier writ proceedings instituted before this Court; and it is for the first time, by way of the present Writ Petition, has their action, in not selecting the petitioner to the post of Forest Range Officer, been questioned. The subject advertisement was issued on 17.11.2015, and the last date of submission of the application form was 05.12.2015. Interviews were held on 05.07.2017, and a list of selected candidates was forwarded by the Commission, to the State Government, on 21.08.2017. While the petitioner was, no doubt, provisionally selected as a Forest Range Officer, her candidature was not recommended to the State Government, for appointment to the said post, on the ground that, while she had been selected under the OBC category, she had failed to produce the original OBC certificate.

11. Mr. P.C. Pethshali, learned counsel for the petitioner, would contend that failure on the part of the petitioner, to produce the original OBC certificate, was for no fault of hers as the authorities had failed to issue the OBC certificate; and she was denied being granted an NOC, only to deprive her from being considered for appointment to the post of Forest Range Officer. The fact, however, remains that the subject advertisement required candidates to possess the original OBC Certificate valid as on the last date of submission of the application i.e. 05.12.2015 and, admittedly, the petitioner did not possess the original OBC Certificate, showing that she belongs to the OBC category, as on that date. The subject advertisement also required the petitioner to submit her original OBC certificate at the time of interview on 05.07.2017, which she failed to do. The petitioner gave a written undertaking to furnish the said certificates within one week from the date of the interview i.e. by 12.07.2017, and stated that, if she failed to do so, she had no objection for her candidature to be rejected. The petitioner has,

admittedly, failed to submit the original OBC certificate even by then.

12. Even if the submission of Mr. P.C. Pethshali, learned counsel for the petitioner, that it is the respondent-officials who are to blame for not granting the original OBC certificate, is said not to be without merit, the Commission cannot be expected to await the submission of the original OBC certificate for eternity. Even as on date, the petitioner does not possess the original OBC certificate. It is for this reason that she seeks a direction from this Court to the authorities concerned to issue such a Caste Certificate in her favour and, since the vacant post to which the petitioner has been selected has not yet been filled up, the Commission be directed to consider her candidature for appointment to the post of Forest Range Officer on the basis of the provisional OBC certificate.

13. No such direction can be issued by this Court, as that would not only fall foul of the conditions stipulated in the advertisement issued by the Commission on 17.11.2015, but would also run contrary to the undertaking furnished by the petitioner herself. Mere selection does not confer any right of appointment on the petitioner and, having failed to comply with the conditions of the advertisement and having failed to produce the original OBC certificate at the time of interview, she cannot now, nearly 2½ years having been elapsed since then, seek a direction to the authorities to furnish her a Caste Certificate, and for the Commission, thereafter, to recommend her case for appointment as a Forest Range Officer on the basis of such a certificate.

14. The Commission was, in our view, justified in not recommending the petitioner's candidature, for appointment to the post of Forest Range Officer under the OBC category, as she had failed to produce the original OBC certificate by 12.07.2017. We see no reason, therefore, to grant the petitioner the relief sought for in this Writ Petition. The Writ Petition is dismissed to the extent the petitioner seeks a direction to the Commission to recommend her candidature for appointment to the post of Forest Range Officer.

15. With regards the petitioner's claim for grant of the OBC Certificate, suffice it to direct the respondent-authorities to consider her request in accordance with law with utmost expedition and, in any event, within three months from the date of production of a certified copy of this order.

16. Subject to the aforesaid observations and directions, the Writ Petition fails

and is, accordingly, dismissed. No costs.