

(2017) 03 DEL CK 0208

In the Delhi High Court

Case No : 2347 of 2017

SUCHETA

APPELLANT

Vs

UNION OF INDIA AND ANR

RESPONDENT

Date of Decision : 15-03-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 03 DEL CK 0208

Hon'ble Judges : Valmiki J.Mehta

Bench : SINGLE BENCH

Advocate : D.S. Chaudhary, Ajay Chaudhar, Anil Dabas

Judgement

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the relief of quashing of the impugned order dated 3.3.2017 issued by the respondent no. 2/employer cancelling the appointment of the petitioner. The appointment of the petitioner was cancelled on the ground that petitioner got employment with the respondent no. 2 in the reserved Other Backward Classes (OBC) category under the "Jat" caste, but the Jat caste is no longer an OBC in the Central List of OBCs in view of the judgment in the case of Ram Singh and Others Vs. Union of India, (2015) 4 SCC 697. The impugned order dated 3.3.2017 reads as under:-

"INDIAN PHARMACOPOEIA COMMISSION

MIN. OF HEALTH & FAMILY WELFARE

GOVERNMENT OF INDIA

SECTOR-23, RAJ NAGAR, GHAZIABAD - 201002

File No. IPC/1056/2015-16 Date: 3rd March, 2017.

To,

Dr. Sucheta

Sr. Scientific Officer

Indian Pharmacopoeia Commission

Sector - 23, Raj Nagar,

Ghaziabad - 201002.

Sub: Cancellation of the appointment in the Post of Sr. Scientific Officer in OBC Category - Reg.

In response to the open advertisement published in July, 2014, for filling of four vacant posts of Senior Scientific Officer (2-UR, 1-OBC and 1-SC) by direct recruitment, Dr. Sucheta had applied against the post reserved for Other Backward Classes (OBC) as a candidate from Jat community of non-creamy layer.

2. She was given the benefit of reservation under OBC category, based on her documented claim, and as per the reservation criteria effective as on the last date for receipt of applications in August, 2014 relying upon the Notification (No.20012/129/2009-BC-II, dated the 4th March, 2014 issued by Ministry of Social Justice and Empowerment), which included that JAT community-non creamy layer - in the Central list of Other Backward Classes (OBC). After going through the required procedures, she had joined the duties on the post of Senior Scientific Officer on 3rd August, 2016.

3. Meanwhile, the aforesaid Notification was challenged in Hon''ble Supreme Court of India and the Hon''ble Apex Court had disagreed with notification vide the order dated 17th March, 2015. The subsequent Review Petition filed on 4th April, 2015 was also dismissed by the Hon''ble Apex Court on 21st July, 2015.

4. In view of the above, the matter was reviewed in respect of JAT Community-non-creamy layer-being a part of reservation for OBC. While relying of the orders of the Hon''ble Apex Court dated 17th March, 2015, the Ministry of Health & FW has directed that Dr. Sucheta was not entitled to the benefit of reservation under OBC category and her appointment to the post of Senior Scientific Officer in IPC stands cancelled and she is relieved of her duties with immediate effect. {i.e. 3rd March, 2017 (AN)}.

Sd/-

(Dr. G.N. Singh)

Secretary-cum-Scientific Director"

2. Admittedly, the petitioner got appointment with the respondent no. 2 in the reserved category of OBC as a Jat caste. The appointment of the petitioner with the respondent no. 2 is in terms of the formal letter of appointment to the petitioner dated 29.8.2016.

3. The judgment of the Supreme Court in the case of Ram Singh (supra) was delivered on 17.3.2015. After 17.3.2015, therefore, no appointment can take place in an organization of a candidate by the candidate claiming that the candidate is in the OBC category of Jat caste in the Central List. The Supreme Court in the case of Ram Singh (Supra) quashed the inclusion of Jat caste in the Central List of OBCs. After the main judgment was delivered in Ram Singh's case (supra) on 17.3.2015, in that case of Ram Singh (Supra) an application was moved for clarification as regards what should happen to the appointments which existed of OBCs under the Jat caste prior to passing of the judgment in the case of Ram Singh (Supra), and in this regard the Supreme Court has passed a clarification order on 12.4.2016 as under:- "1. Application(s) for impleadment are allowed.

2. The interlocutory applications before us can be conveniently divided into three categories. The first is where the applicants have been appointed as Probationary Officers before the date of the judgment i.e. 17.03.2015 in Writ Petition (C) No.274 of 2014, titled as Ram Singh & Ors vs. Union of India.

3. The second category of applicants are those who had commenced the diploma/training course in Banking prior to the date of judgment i.e. 17.03.2015. The advertisement issued and the offer to undergo the diploma/training course, which followed a due selection, clearly stipulated that on successful completion of the diploma/training course the concerned persons would be eligible to be appointed as Probationary Officers. Following the judgment of this Court in Ram Singh (supra) the course has been terminated mid way.

4. The third category of applicants had commenced the similar training/diploma course after the date of the judgment i.e. 17.03.2015 and the same has been discontinued pursuant thereto.

5. While undoubtedly the decision laid down in Ram Singh (supra) has not been made prospective, yet, in exercise of the power under Article 142 of the Constitution it will be open for this Court to protect the vested rights that might have accrued in an appropriate case.

6. Having considered the matter at length and after hearing the rival contentions advanced at the Bar, we are of the view that though the judgment in Ram Singh (supra) itself is not prospective and the declaration of law therein would have its retrospective effect, nonetheless, in exercise of the jurisdiction vested in us under Article 142 of the Constitution, we are of the view that the rights vested in the first category of applicants i.e. who had been appointed as Probationary Officers in the State Bank of India would be entitled to have the benefit of such appointments. It is Ordered accordingly.

7. The applicants in the second category would be entitled to complete their diploma/training course and on successful completion thereof would be entitled for consideration for their appointments.

8. However, the third category of applicants having commenced the diploma/ training course after the date of the judgment, we find it difficult to afford any protection to the said group of the applicants before us.

9. All interlocutory applications shall stand disposed of in the above terms."

4. A reading of the order dated 12.4.2016 shows that the two categories of persons who got appointment as OBC Jat caste were exempted from having their appointments cancelled. The first category was of the persons who got appointments prior to delivering of the judgment in the case of Ram Singh (Supra) on 17.3.2015. The second category of candidates who were not to lose their appointments were those persons who had completed their training period and were formally to be granted their letters of appointment. No other category of persons was protected as regards their appointments except the aforesaid two categories. Petitioner does not fall under the two exempted categories in terms of the clarification order of the Supreme Court dated 12.4.2016 as the appointment of the petitioner with respondent no. 2 was on 29.8.2016.

5. I may note that this Court may have entertained the present writ petition if the present was a case of the petitioner having permanent employment with the earlier employer namely Delhi Pharmaceutical Science and Research University, Government of NCT of Delhi (DPSRU), and which appointment petitioner had left for joining the respondent no. 2 in terms of the appointment letter dated 29.8.2016, however, it is noted that petitioner, who is present in person, states that the appointment of the petitioner with DPSRU was only a contractual appointment and not a permanent appointment, and hence the petitioner would have no lien on the post with DPSRU.

6. The petition is accordingly dismissed.