

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated Wednesday 3rd day of June Two Thousand And Twenty

PRESENT:

THE HON'BLE MR. P. MADHAVAN, MEMBER(J)

THE HON'BLE MR. T. JACOB, MEMBER(A)

O.A.310/1573/2013

Subida V.V.,
W/o. Vijesh Phalgunan, Hindu,
Aged 36 years,
Residing at "Viju Nivas", Valvil,
Mahe.

.....Applicant

(By Advocate: M/s. V. Ajaya Kumar)
Vs

1. Union of India Rep. By
The Government of Puducherry
through the Secretary to Government for (Health),
Chief Secretariat,
Puducherry;
2. Director,
Health and Family Welfare Services,
Puducherry;
3. Anirudh.B, Working as Staff Nurse,
General Hospital,
Mahe;
4. Shyama P,
Working as Staff Nurse,
General Hospital, Mahe.

.....Respondents.

(By Advocate: Mr. R. Syed Mustafa (R1-2)
M/s. S. SivaShanmugam R3-4)

ORDER

(Pronounced by Hon'ble Mr. P. Madhavan, Member(J))

This is an OA filed seeking the following relief:-

"To call for the records of the respondents 1 and 2 with No.A-12020/1/2012/E4/DHFWS dated 20.07.2012 and to quash the same in respect of the selection and appointment of the respondents 3rd and 4th to the post of Staff Nurse and to quash the same and consequently to direct the respondents 1 and 2 to appoint the applicant to the post of Staff Nurse with effect from the date on which the 3rd and 4th respondents were appointed with all other consequential benefits including arrears of wages, seniority etc and to pass such other or further orders in the interest of justice and thus render justice."

2. The respondents in this case had issued a notification for selection of 51 posts of Staff-nurses on 4-5-2012. The applicant who is residing at Mahe applied for the post as she is qualified for the post. The applicant got 67.5 marks for her qualification, seniority in exchange etc as per calculations provided by the respondents. But the respondents did not select her. The select list shows that persons having lesser

marks were given appointment under MBC (Most Backward Class) category. The 3rd and 4th respondents had come up in the waiting list with 65.58 and 64.77 marks were selected eventhough the applicant got 67.50 which is higher than Respondent No.3 and Respondent No.4's marks. Eventhough, the applicant had given representations against the selection and wait-list, no reply was given. Hence, she filed this OA to quash the select list and appointment of Respondent No.3 and Respondent No.4 and give appointment to her.

3. The respondents appeared and filed reply admitting the notification, selecton of Respondents 3 and 4, calculation of marks etc.;. They also produced the vaccancy position to various categories in various regions of the U.T of Puducherry. As per the instructions in the notification, only residents in the U.T of Puducherry for last 5 years immediately prior to the date of notification i.e.- 01-01-2012 or having a valid PIC can apply to the post.

4. As per the certificate of residence produced by applicant, she became a resident only on 14-11-10 against the required 5

years residence. About 45 similar applicants were not considered for the post due to the same reason. The benefit of reservation was extended only to the categories of SC/ST/OBC/ and MBC of origin and it is not applicable to migrants. The applicant is a MBC migrant and she can be considered only under the unreserved category. The applicant got 67.52 marks, but the cut off marks for Mahe in unreserved category was 70.82.

5. The 3rd and 4th respondents had produced 5 year residence certificate and belongs to MBC category. They had secured 65.58 and 64.77 marks and were selected by the selection committee. There is no merit in the application.

6. We had heard the counsels appearing for both sides.

7. The counsel for the applicant has invited our attention to the case of **S. Pushpa and others V Sivachanmughavelu and others** reported in (2005)3SCC page 1) where in, the people from others states were also accomodated under the reserved categories.

8. We had carefully gone through the Hon'ble Apex Court decision in "*S.Pushpas*" case. In that case, even the migrant SC candidates from neighbouring states were made eligible for applying to the post of selection grade teachers. In Pushpa's case Supreme Court held that UT of Puducherry will not come under the definition of *State* and the Lt. Governor acting on behalf of President can take a decision as to SC candidates from other States can also be considered for selection. We are of the opinion that "*Pushpas*" case has no application in this case.

9. In **Bir singh V Delhi Jal Board and others((2018)10 SCC p 312)**, the Constitution Bench has held that no *distinction can be made between State and Union Territories* and only the Parliament has authority to add or subtract to the list of SC/ST categories. The Larger Bench had reiterated the position taken in **Marri chandra shekhar Rao V Seth G.S Medical college**(1990) 3 SCC p 130.

10. If we go through the facts of this case, it can be seen that the U.T of Puducherry has not permitted SC/ST or OBC or MBC

of other states to participate in the selection as in the case of "*Pushpas*" case. So, we find no merit in the argument of the counsel for the applicant. We find merit in the argument of the counsel for the respondent that the applicant being an MBC(migrant) cannot get the benefit of MBC origin.

11. So, we have no hesitation to find that the applicant is not eligible to apply for the post as she had not the required residence period of 5 years as on date of notification. She has also not qualified for the selection under General Category as her marks were low. So, we find that there is no merit in the OA filed by the applicant and it is liable to be dismissed. Accordingly, we dismiss the OA. No costs.

(T. JACOB)
MEMBER(A)

(P. MADHAVAN)
MEMBER(J)

03.06.2020