

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1772/2015

Reserved on : 19.02.2016.

Pronounced on : 01.03.2016.

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Ms. Rohini Bharti,
D/o Sh. Sahender Singh,
R/o C-73 A, Gali No.3,
Ganga Vihar, Near Gokalpuri,
Delhi-94. **Applicant**

(through Sh. Ajesh Luthra, Advocate)

Versus

1. GNCT of Delhi through
Chief Secretary
5th Level,
Delhi Secretariat,
New Delhi.
2. Delhi Subordinate Service Selection Board
through its Secretary,
F-18, Karkardooma Institutional Area,
New Delhi-110092.
3. South Delhi Municipal Corporation
Through its Commissioner,
4th Floor, Civic Centre,
Minto Road, New Delhi-110002. **Respondents**

(through Sh. Amit Anand and Smt. Anupama Bansal, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant appeared for an examination conducted by Delhi Subordinate Selection Board (DSSSB) for the post of Teacher (Primary) in MCD as a SC candidate. When the results were declared on 05.12.2014, the candidature of the applicant was shown as pending for want of SC certificate.

Further, vide communication dated 16.04.2015, her candidature was rejected on the ground that the caste certificate submitted by her was after the cut off date. The applicant has claimed that she had obtained more marks than the last selected SC candidate. However, the respondents did not process her candidature on the above mentioned ground. She submitted a representation to the respondents on 09.12.2014 but no reply has been received. Now, when the respondents were in the process of issuing appointment letters to others to the exclusion of the applicant, she has filed this O.A. before us seeking the following relief:-

- "(a) quash and set aside the impugned order placed at Annexure A/1 to the extent the applicant's candidature has been rejected and
- (b) direct the respondents to further consider and appointment the applicant to the post of Teacher (Primary) in MCD (Post Code 70/09) with all consequential benefits
- (c) award costs of the proceedings;
- (d) pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case."

2. In their reply, the respondents have submitted that DSSSB advertised 4500 vacancies of Teachers (Primary) Post Code-70/09. The last date for applying was 15.01.2010. However, due to upgrading of post from Group-C to Group-B by 6th CPC the department modified the Recruitment Rules and sent revised Recruitment Rules. The vacancy position was also revised from 4500 to 6500. The Board issued addendums in this regard and allowed the candidates to apply upto 17.10.2011 keeping the cut off date same as 15.01.2010. The examination of the relevant post code was conducted on 02.02.2014 and the mark list was declared on 08.07.2014. The result of 2676 candidates was declared on 05.12.2014 and finally 502 candidates were declared successful on 16.04.2015. Further, the respondents have stated that as per the terms and conditions of the

advertisement all certificates/caste certificates were to be submitted before the cut off date of 15.01.2010. The applicant submitted caste certificate issued after the said cut off date. Hence, her candidature was rejected.

3. We have heard both sides and have perused the material on record. The undisputed facts of the case are that in the original advertisement issued by the respondents at pages-13-14 of the paper-book it was mentioned that the cut off date for submission of applications was 15.01.2010. It was also mentioned that the relevant caste certificates issued on proper proforma by the competent authority be submitted along with the applications forms failing which the application would be treated as invalid application. This is evident from page-31 Clause-8(m) of the paper-book. It is also not disputed that the caste certificate submitted by the applicant was issued to her by the competent authority i.e. Office of the Deputy Commissioner (North East District), Delhi is dated 05.02.2010 i.e. after the cut off date of 15.01.2010. Learned counsel for the applicant argued before us that the ground given by the respondents for rejecting the candidature of the applicant was that it was issued after the cut off date and not that it was not submitted along with the application as was prescribed in the conditions mentioned in the advertisement. We, however, do not find any merit in this submission. This is because the caste certificate issued on 05.02.2010 i.e. after the cut off date of 15.01.2010 could not have been submitted by the applicant along with application form before the closing date. Hence, in our opinion, learned counsel for the applicant is taking a hypotechnical view and his argument is not convincing.

3.1 Next, learned counsel for the applicant argued that DoP&T vide O.M. No. 36011/5/88-Estt.(SCT) dated April, 1988 have laid down as follows:-

"Where a candidate belonging to an SC or ST is unable to produce a certificate from any of the prescribed authorities, he may be appointed provisionally on the basis of whatever *prima facie* proof he is able to produce in support of his claim, subject to his furnishing the prescribed certificate within a reasonable time. If there is genuine difficulty in his obtaining a certificate, the appointing authority should itself verify his claim through the District Magistrate concerned. Appointment of an SC or ST candidate should not be withheld/delayed pending verification of caste status."

He argued that on the basis of this Instruction the applicant's candidature could not have been rejected.

3.2 Learned counsel also argued that the applicant had applied to the competent authority for issuance of caste certificate well before the cut off date. However, the same was issued to her only on 05.02.2010. He argued that for delay on the part of competent authority to issue the certificate the applicant cannot be penalized. He has also relied on several judgments to support his case. First, he relied on the judgment of Hon'ble High Court of Delhi in the case of **DSSSB & Anr. Vs. Ms. Anu Devi & Anr.** [WP(C) No. 13870/2009 & CM No. 15749/2009] with connected cases, in para-19 of which the following is laid down:-

"....This plea in the present facts and circumstances should also be not accepted because in all the cases except in the case of Rekhawati (*Supra*) the candidates had applied for OBC certificate before the closing date for submission of forms which was 29th October, 2007. In the circumstances for the delay on the part of the authorities in preparing and giving the OBC certificate, it cannot be inferred or held that the candidates were not eligible for selection under the OBC category."

Secondly, he has relied on the judgment of Hon'ble Supreme Court in the case of **Ram Kumar Gijroya Vs. DSSSB & Anr.**, (Civil Appeal No. 1691/2016) dated 24.02.2016 by which in almost identical circumstances Apex Court has quashed the order of Division Bench of Hon'ble High Court of Delhi and restored the order of Single Bench by which authorities were directed to consider the candidature of the applicant despite late submission of the caste certificate.

Thirdly, he relied on the judgment of Hon'ble High Court of Delhi in the case of **Ajay Kumar Vs. SSC** [WP(C) 608/2015] dated 21.01.2015 in which reliance has been placed in the case of **Ms. Anu Devi** (supra) cited above and following has been laid down:-

"12. The OBC certificate is just an evidence of a fact that had always existed, as was noticed in the case of Hari Singh v. Staff Selection Commission, 170 (2010) DLT 262 and Ms. Anu Devi (supra). In the present case, the petitioner belonged to the "Saini" community which is recognised as a backward class under the Central Government as well as the Government of NCT of Delhi."

Fourthly, he relied on the judgment of Hon'ble High Court of Delhi in the case of **Ravindra Devi Vs. GNCTD & Ors.** ([WP(C) 3049/2012) with connected cases dated 27.11.2013. However, in our opinion, in this case the issue of migrants from other States was involved, which is not relevant in the present case.

Fifthly, he relied on the judgment of Hon'ble High Court Delhi in the case of **Tej Pal Singh & Anr. Vs. GNCTD & Anr.**, 120(2005)DLT 117, in para-17 of which the following is laid down:-

"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."

Sixthly, learned counsel also relied on the decision of this Tribunal in the case of **Ms. Parul Yadav Vs. GNCTD & Ors.**, (OA-1719/2015) dated 18.02.2016 in

which under identical circumstances this Tribunal had allowed the O.A. and directed the respondents not to reject the candidature of the applicant for the reason of late submission of OBC certificate.

3.3 From the above citations it follows that through these pronouncements the law laid down by the Apex Court as well as High Court of Delhi is that a person acquires the caste by birth which gives him a Constitutional right to compete for vacancies reserved for that category and certificate is mere evidence of the aforesaid fact. Hence, late issuance of such a certificate should not deprive the person from his Constitutional right to compete against posts reserved for that category.

3.4 To counter these arguments, learned counsel for the respondents has relied on the judgment of this Tribunal in the case of **Gaurav Kumar Yadav Vs. UOI** dated 17.05.2012. On going through the same, we find that in Para-17 of this aforesaid judgment, this Tribunal has distinguished this case from other similar cases, such as, **Ms. Anu Devi** (supra) and **Tej Pal Singh** (supra) relied upon by the applicant on the ground that this case was of a candidate belonging to OBC category and the ratio laid down in these judgments qua the status of SC/ST would not apply in this case. Since the case at hand is of a SC candidate, this judgment cannot be of much help to the respondents. Next the respondents relied on the judgment of this Tribunal in the case of **Ms. Jyoti Vs. GNCTD** (OA-1875/2011) dated 25.09.2013. On going through this judgment, we find that this Tribunal themselves have taken note of several judgments in para-6 (page-3) of this Tribunal as well as Hon'ble High Court of Delhi relied upon by the applicant and have observed that they cannot be brushed aside. However, later on, in the judgment in para-4 on page-4, it has been observed that the respondents in that case had maintained that the applicant had annexed an OBC certificate

in her application for Post Code-163/2007 and wanted the same to be considered for the purpose of selection for Post Code-17/07. This was not found to be acceptable by this Tribunal. Clearly, the facts of the case in hand are distinguishable from this case and hence this judgment also cannot be of much help to the respondents.

4. Thus judicial pronouncements are overwhelming in favour of the applicant. Instructions of DoP&T also favour him. Therefore, we are convinced that there is merit in the contention of the applicant. We, accordingly, allow this O.A. and quash the order dated 16.04.2015 qua the applicant. We direct the respondents not to reject her candidature only on the ground that her caste certificate has been submitted late after the cut off date and to process her candidature further. In case, she is found suitable for appointment, she will be so appointed along with consequential benefits of pay fixation and seniority. The above benefits shall be extended to the applicant within a period of eight weeks from the date of receipt of a copy of this order. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

/Vinita/