

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA No. 1719/2015

Order Pronounced on: 18.02.2016

Hon'ble Mr. A. K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

Ms. Parul Yadav,
D/o Jai Parkash Yadav,
R/o A-72, Ashok Nagar,
Gali No.11, Shahdara,
Delhi
Pin Code:110093.

- Applicants

(By Advocate: Sh. Ajesh Luthra)

Vs.

1. Govt. of NCT of Delhi,
Through the Chief Secretary,
5th Floor, Delhi Sachivalaya,
New Delhi.
2. Delhi Subordinate Services Selection Board,
Through its Secretary,
FC-18, Institutional Area,
Karkardooma,
Delhi-110092.
3. South Delhi Municipal Corporation,
Through its Commissioner,
4th Floor, Civic Centre,
Minto Road,
New Delhi-2.

- Respondents

(By Advocate: Ms. Anupama Bansal and
Ms. Sumedha Sharma)

ORDER**Hon'ble Shri V.N.Gaur, Member (A)**

The present OA has been filed by the applicant challenging the office order (Rejection Notice) no.368 dated 16.04.2015 issued by respondent no.2 in which the applicant has been declared ineligible for the post of Teacher (Primary) (Post Code 70/09) under respondent no.2 as the OBC certificate was submitted by her after cut off date.

2. The applicant had applied for the post of Teacher (Primary) (Post Code 70/09) in response to the advertisement issued by respondent no.2 in the year 2010. Subsequently, the department modified the Recruitment Rules and sent revised Recruitment Rules to respondent no.2. The number of vacancies was also revised from 4500 to 6500. Respondent no.2 issued an addendum extending the date of submission of application to 17.10.2011 but the cut off date remained the same, i.e., 15.01.2010. The selection examination was conducted on 02.02.2014 and the mark list was declared on 08.07.2014. The name of the applicant, who belongs to OBC category, was not included in the list of selected candidates despite her obtaining 70 marks in the examination when the last selected OBC candidate had secured 69.25 marks. In the Rejection Notice (impugned) issued on 16.04.2015 there was a remark against the

name of the applicant stating “not eligible”, followed by comments “OBC certificate after cut off date”.

3. Learned counsel for the applicant submitted that the applicant is an OBC candidate and indicated so in the application form. However, the OBC certificate could not be submitted before the last date of submission of application because the issuing authority, i.e., Deputy Commissioner (North East District), Govt. of NCT of Delhi, issued the same on 08.02.2010. There was no fault on the part of the applicant who had applied for OBC certificate much before the date of issue of the advertisement by respondent no.2, i.e., December 2009. According to the learned counsel, the Hon'ble High Court of Delhi considered this issue in the WP (C) no.13870/2009 and CM no.15749/2009, **Delhi Subordinate Services Selection Board & anr. Vs. Ms. Anu Devi & another.** In the order dated 17.02.2010 the Hon'ble High Court took a view that the applicant could not be held responsible for the delay in issuing of OBC certificate as applicant had applied to the authorities well in time and directed the respondents to declare the result of the applicants/petitioners in that case.

4. Learned counsel for respondent nos.1 & 2, on the other hand, submitted that the last date of submission of application is sacrosanct as far as the date of eligibility and documents are concerned. It has been held in several cases by the Hon'ble Courts

that the eligibility of the candidates has to be determined with reference to the last date of application. In this case applicant submitted her OBC certificate much after the cut off date of 15.01.2010. Therefore, the respondents had no option but to consider her as ineligible. Learned counsel for respondent no.3 expressed similar view.

5. We have heard the learned counsels and perused the record. The short question that needs to be answered in this case is whether the applicant who submitted OBC certificate after the last date of application can be considered eligible under OBC category or not.

6. The applicant has averred that she had “applied for issue of OBC certificate to competent authority of Govt. of NCT of Delhi on 08.09.2009, i.e., even prior to issue of advertisement/ employment notification which was issued in the month of December 2009” (para 4.6 of the OA). The competent authority issued the OBC certificate only on 08.02.2010. The applicant, therefore, could not submit the certificate on the closing date of 15.01.2010. It can be argued that educational qualification, experience etc., which is acquired by the candidate through a well defined process by studying for a course, passing the examination, working in an organisation to gain experience etc., has to be obtained or acquired by the candidate before the cut off date. However, in the case of

“caste” it is a classification that is acquired at birth and whether a caste is OBC or not is determined by the notification issued by the Government, in which case the date of issue of notification categorising a caste as OBC becomes the determining factor. The last date of application, however, cannot be said to be relevant in such a situation.

7. In **Anu Devi** (supra) the Hon’ble High Court took a view that the candidates not belonging to creamy layer whose caste is notified as backward class becomes entitled for reservation under OBC category and submission of caste certificate is only a ministerial act, which cannot be equated with educational qualification to become eligible for the post. The relevant para of the order is reproduced below:

“19. In any case the submission of OBC certificate for reservation under the OBC category cannot be equated with acquisition of the educational qualification. A candidate becomes eligible under the OBC category, the day the caste he belongs to is notified by the appropriate authority as a backward class. Though the learned counsel for the petitioners has emphasized that whether a candidate belongs to a creamy layer or not is to be determined only on issuance of a certificate, however, taking into consideration the entirety of the facts and circumstances, in our view the candidates not belonging to a creamy layer whose caste is notified as a backward class becomes entitled for reservation under the OBC category and submission of the requisite certificate is only a ministerial act which cannot be equated with acquisition of educational qualification to become eligible for a post. Consequently, the plea of the learned counsel for the petitioners that the respondents/candidates became eligible for selection in the OBC category on the dates the certificates were issued by the appropriate authorities, cannot be accepted. 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.”

8. In the light of the above decision of the Hon'ble High Court, we find that the applicant cannot be treated as ineligible on the ground that she submitted the OBC certificate after the cut off date notified by the respondent no.2.

9. For the reasons discussed above, the respondents are directed not to reject the candidature of the applicant for the reason of late submission of OBC certificate and process her case for appointment to the post of Teacher (Primary) (Post Code 70/09) in accordance with the rules. The process shall be completed within a period of 8 weeks from the date of receipt of the order. No costs.

(V.N. Gaur)
Member (A)

(A.K.Bhardwaj)
Member (J)

February , 2016

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