

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

OA-3256/2014

Reserved on : 09.05.2018.

Pronounced on : 15.05.2018.

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Ms. Praveen Mahajan, Member (A)**

Ms. Nasreen Bano, 26 years
D/o Md. Mustaqim Ansari,
R/o 27, 28 Nai Basti Abul Fazal
Enclave-I, Jamia Nagar, Okhla,
New Delhi-25. Applicant

(through Sh. Ajesh Luthra, Advocate)
Versus

1. Govt. of N.C.T. of Delhi through
the Chief Secretary,
5th Floor, Delhi Sachivalaya,
New Delhi.
2. Delhi Subordinate Services Selection Board
Through its Chairman,
Govt. of NCT of Delhi, F-18, Karkardooma
Institutional Area, Delhi-92.
3. South Delhi Municipal Corporation through
Its Commissioner,
4th Floor, Civic Centre, Minto Road,
New Delhi-2. Respondents

(through Mrs. Harvinder Oberoi and Sh. R.K. Jain, Advocates)

O R D E R

Ms. Praveen Mahajan, Member (A)

The applicant has filed this O.A. aggrieved by the action of the respondents by which she has been denied the appointment for the

post of Teacher (Primary-Urdu) under Post Code-69/09 on the ground that her OBC certificate is not valid.

2. Brief facts of the case are that the applicant participated in the examination process conducted by Delhi Subordinate Services Selection Board (DSSSB) for Post Code-69/09. Results of the selection were declared by DSSSB vide order No. 322 dated 01.03.2014 and the applicant obtained 12th position in the OBC category with 83.5 marks. Subsequent to declaration of the result, the dossiers of the selected candidates, including that of the applicant, were forwarded by DSSSB to South Delhi Municipal Corporation (SDMC) for appointment, who is entrusted with the task of appointment in all the three wings of MCD. The SDMC vide its letter dated 10.06.2014 directed the applicant to report to them in the Education Department for verification of documents. During the course of verification of original documents on 17.07.2014, an objection was raised that though an OBC certificate by GNCT of Delhi has been issued to her but it is on the basis of an earlier OBC certificate issued by Bihar State, hence she was not entitled for relaxation under the OBC category. She was informed that her dossier will be returned to DSSSB for cancellation of her candidature.

3. The applicant avers that she belongs to Momin (Muslim) (Julaha/Ansari) caste, which is recognized as OBC, both in the State

of Bihar as well as in Union Territory of Delhi. Her father shifted to Delhi from Patna (Bihar) in the year 1990 consequent to his appointment at Jamia Millia University Delhi. The family members shifted to Delhi in the year 1992. Thereafter, the applicant pursued her studies at Delhi. The OBC certificate issued by Bihar State referred to in the applicant's certificate is the OBC certificate of applicant's uncle (real brother of applicant's father). (This fact has been wrongly mentioned since the OBC certificate has been issued on the basis of her brother's OBC certificate, from State of Bihar). The copy of the OBC certificate issued by Delhi Government dated 07.12.2009 is available at Annexure-A/3.

4. The respondents in their reply state that after declaration of the result, the dossiers were sent to the user department to verify the caste certificate and other documents pertaining to the applicants. At the time of verification of documents, it was found that the applicant did not have the OBC certificate as per the prescribed format issued by the Competent Authority of GNCT of Delhi. The OBC certificate submitted by the applicant has been issued on the basis of migration certificate issued to her brother by B.D.O. Phoolwari, Patna, Bihar on 24.08.2009. Hence, the applicant is not eligible as she does not possess the OBC certificate as per the prescribed format issued by GNCT of Delhi.

5. During the course of arguments, the learned counsel for the applicant Sh. Ajesh Luthra submitted that it is indeed surprising that an OBC certificate issued by one branch of MCD is not being recognized by another wing of the same department. He vehemently argued that it is not the case of the respondents that the certificate produced by the applicant is either incorrect or fraudulent. The applicant who was born in Bihar subsequently migrated to Delhi from where she completed her education etc. and obtained the OBC certificate. He emphasized that the category to which she belongs is recognized as OBC in Bihar as well as in Delhi. Sh. Luthra also relied upon the judgment of Hon'ble High Court of Delhi in the case of **Ms. Sunita Vs. Govt. of NCT of Delhi**, 2005(6)SLR 489, wherein the Hon'ble Single Judge observed that:-

“18. The next question to be considered is the entitlement of the petitioner who had initially furnished the OBC certificate from Haryana to be considered and recognised as an OBC candidate in the NCT of Delhi in the light of the Certificate from Competent Authority in Delhi. It is not in dispute that caste "Ahir" is recognised as an OBC within the NCT. Moreover, the petitioner has produced on record a certificate dated 8.10.1998, which is in the following form:-

“Serial No.56210/847

Date:8.10.98

OFFICE OF THE DEPUTY COMMISSIONER, DELHI

This is to certify that Miss Sunita, s/o, d/o Shri Mukesh Kumar, resident of 25/212, Trilok Puri, Delhi belongs to the community Ahir which is recognised as a backward class under the NCT of Delhi notified vide Notification No.F.28(93)/91-2/SCST/P&S/4384 dated 20.1.95 published in the Gazette of Delhi Extraordinary Part-IV dated 20.1.95 and/ or his family ordinarily reside(s) at (Address) as above Union Territory of Delhi.

This is also to certify that he/ she does not belong to the persons/ sections (Creamy layer) mentioned in column 3 of the Schedule to the Government of India, Department of Personnel and Training O.M. No.36012/22/93-Estt.(SCT) dated 8.9.1993."

19. The aforesaid certificate records that "Ahir" is recognized as a backward class in terms of notification bearing No.F.28(93)/91-92/SC/ST/P&S/4384 dated 20.1.95. There is further certification that the petitioner does not belong to the creamy layer. The above certificate has been issued in the prescribed Annexure 'AA' which is required for OBC candidates applying to posts under the Government of NCT of Delhi. The Certificate is in accordance with the prescribed requirements as noted by the Supreme Court in MCD V.Veena (Supra) to confer the benefit of reservation as backward class in NCT of Delhi. The petitioner having been granted this certificate, in my view, the said certificate is binding and conclusive on the respondents. The said certificate itself assumes that the authorities have satisfied themselves as to the eligibility of the petitioner to be treated as an OBC in the NCT of Delhi for posts falling under the Government of NCT. The authorities are to issue the said certificate after due verification and satisfaction and subject to the petitioner fulfilling the conditions of eligibility as an OBC candidate, including that of being ordinarily resident. It is not the case of the respondent that the aforesaid certificate had not been issued or was fraudulently issued or has been revoked. As long as the aforesaid certificate is subsisting, valid and in force, the respondents cannot deny the consideration to the petitioner as an OBC candidate, even though the initial certificate may have been from the State from which she has migrated, or raise an objection as to the origin of the petitioner. Accordingly, this case is on a different footing from Manju Rani V. DSSB & Ors. (Supra) in view of the OBC certificate having been issued by the prescribed and Competent Authority of NCT."

He cited the decision of Hon'ble High Court of Delhi in the case of

Tej Pal Singh & Anr. Vs. Government of NCT of Delhi & Anr.

12(2005)Delhi Law Times 117 to further strengthen his contention. In

the said judgment, it has been observed that:-

"27. It may further be noted that the competent authority i.e. SDM, Government of NCT of Delhi issues two kinds of caste certificates (i) a fresh certificate of SC/ST for persons originally resident in Delhi and (ii) certificate in case of SC/ST person who have been born in Delhi and whose father's caste certificate was issued by the Government of NCT of Delhi or its predecessor government/administration. The second kind of caste certificate is issued to a SC/ST person whose

family has migrated to Delhi from another State of whose father has been transferred to Delhi in the course of his employment or who has himself been transferred to Delhi during the course of his own employment or who has been marked to a person employed in Delhi or to a person whose family is an ordinary resident of Delhi. Such persons who are seeking the second kind of caste certificate have to make an application in the prescribed form and also have to fulfill the various requirements while submitting the application form. Once the duly completed application in the prescribed form along with all supporting documents are submitted in the office of the competent authority of Government of NCTD, it issues the said caste validity certificate after a period of 21 days from the date of submission and usually before the expiry of 40 days from the date of submission of the application.

28. This caste certificate issued by Government of NCT of Delhi is issued on the basis of the earlier caste certificate issued to the SC/ST persons by the competent authority in his/her state of birth and the entire details (i.e date, caste, designation of the competent authority of the State of birth of the candidate etc. of the original caste certificate (issued by the competent authority of the State of birth of the candidate) are clearly mentioned in this caste certificate issued by the Competent Authority Government of NCTD.

29. The said caste certificate issued by Government of NCTD further certifies that the SC/ST person to whom the certificate is being issued is a resident of Delhi for particular no of years (at least three years) or from the particular date (which must be more than three years prior to the date of application for the caste validity certificate) mentioned in the said certificate. Thus, the said certificate is in fact issued on the twin basis of the original caste certificate (issued by the competent authority of the State of birth of the candidate) and the condition of residence of the candidate in Delhi for atleast three years."

6. Rebutting the contentions advanced on behalf of the applicant, learned counsel for the respondents Ms. Harvinder Oberoi stated that the candidature of the applicant cannot be considered under the OBC category since she does not possess the OBC certificate as per the prescribed format. She emphasized that as per the Instructions No. 12011/11/94-BCC(C) dated 08.04.1994, it is laid down that:-

"In continuation of the DOPT's letter of 36012/22/93-Estt. (SCT) dated 15th November, 1993, I am directed to say that it has been represented to this Department that persons belonging to OBCs who have migrated from one State to another for the purpose of employment, education, etc. experience great difficulty in obtaining caste certificates from the State from which they have migrated. In order to remove this difficulty, it has been decided that the prescribed authority of a State/J.I. Administration in terms of the DOPT letter No. 36012/22/93-Estt.(SCI) dated 15th November, 1993 may issue the OBC certificate to a person who has migrated from another State on the production of a genuine certificate issued to his father by the prescribed authority of the State of his father's origin! except where the prescribed authority feels that a detailed enquiry is necessary through the State of origin before the issue of the certificate."

Ms. Oberoi further stated that in the instant case, the OBC certificate of the applicant is not based on her father's certificate and hence is in contravention of the prescribed instructions. She also argued that the citations quoted by the learned counsel for the applicant are not relevant to the facts of this case since none of these judgments has taken cognizance of the aforementioned instructions.

7. We have perused the record and gone through the facts of the case carefully. The main objection raised by the respondents is that the OBC certificate of the applicant is not in proper format as specified by the respondents as per the Instructions dated 08.04.1994 (supra) which stipulates that the OBC certificate can be issued to a person on production of a genuine certificate issued to his father by the prescribed authority of the State of his father's origin. Unfortunately, the respondents seem to have denied the benefit to

the applicant merely because of non-fulfillment of this technicality, since the OBC certificate issued to the applicant is on the basis of the OBC certificate of her brother rather than that of her father. No case has been made out by the respondents that the caste certificate issued by GNCT of Delhi is false. Apparently, it has been issued on the basis of the earlier caste certificate issued by the Competent Authority in the State of Bihar, after due verification. These facts are clearly mentioned in the OBC certificate produced by the applicant in her OBC certificate dated 07.12.2009.

8. Since the veracity of the OBC certificate is not in dispute and the applicant fulfills the conditions of an OBC candidate, hence the benefit available to her in the said category has been wrongly denied to her by the respondents. In view of these facts, we have no hesitation in allowing the claim of the applicant. We direct the respondents to offer appointment to the applicant to the post of Teacher (Primary-Urdu) under Post Code-69/09 in OBC category, with consequential benefits, as per law, if she is otherwise eligible. No costs.

(Praveen Mahajan)
Member (A)

(Raj Vir Sharma)
Member (J)

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