

Anil Kumar Vs. Staff Selection Commission (North Region) and anr

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SooperKanoon Citation : sooperkanoon.com/1101395

Court : Delhi

Decided On : Dec-11-2013

Judge : Gita Mittal

Appellant : Anil Kumar

Respondent : Staff Selection Commission (North Region) and anr

Advocate for Def. : Mr. Ravinder Aggarwal

Advocate for Pet/Ap. : Mr. Jasbir Singh Malik, Mr. Siddharth Mittal

Judgement :

\$~6 * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 1571/2013 & CM Nos.2950-51/2013 Date of decision:

11. h December, 2013 % ANIL KUMAR Through : Petitioner Mr. Jasbir Singh Malik and Mr. Siddharth Mittal, Advs. versus STAFF SELECTION COMMISSION (NORTH REGION) AND ANR Respondents Through : Mr. Ravinder Aggarwal, CGSC. CORAM: HON'BLE MS. JUSTICE GITA MITTAL HON'BLE MS. JUSTICE DEEPA SHARMA GITA MITTAL, J.

(Oral) 1. In the instant writ petition, the petitioner is aggrieved for rejection of his candidature in the selection process undertaken by the Staff Selection Commission - respondent no.1 herein pursuant to the advertisement dated 29th May, 2010 published in the employment newspaper/Rojgar Samachar whereby

the respondents advertised 1000 vacancies for the post of Assistant Sub-Inspector (Exe) in the CISF.

2. The petitioner had applied in the reserved category as an OBC from the State of Rajasthan and claims to possess the relevant certification in this regard. It is undisputed before us that the WP(C) No.1571/2013 page 1 of 7 petitioner was successful in the written examination and also qualified the physical endurance test as well as the medical examination test. As per the scheme of the selection process, verification of the documents submitted by the petitioner was undertaken by the respondents before the interview which was conducted on 12th February, 2011.

3. The respondents have submitted that the petitioner had relied before them on a certificate dated 23rd April, 2008 issued to him by the office of the Tehsildar, Behror, Alwar, Rajasthan certifying that the petitioner was covered under the Other Backward Class (OBC) category. However, this certification was not in the requisite format and also did not contain any reference to the relevant notification.

4. The petitioner was therefore, informed that the certification was not in terms of the notified procedure and he would be considered as an unreserved category candidate. In support of his willingness to be so considered, the petitioner gave an undertaking to the Staff Selection Commission on 8th February, 2011 which deserves to be considered in extenso and reads as follows:

STAFF SELECTION COMMISSION (NORTHERN REGION) UNDERTAKING
Subject : Asstt. Sub-Inspector (Exe) in CISF Examination 2010 - Undertaking regarding category status WP(C) No.1571/2013 page 2 of 7 With reference to my candidature for the above mentioned examination, I Anil Kumar Roll No.2402500362 undertake that although I applied and qualified written part of Examination in OBC category. But I could not furnish the OBC certificate in the prescribed Proforma for Central Govt. Officers issued by the Competent Authority between 28th June, 2007 to 28th June, 2010 as per annexure VII of the Notice of the said Examination. It is therefore, requested that my category may be treated as UR i.e, (General). I will not claim for OBC status in future. Decision taken by the Commission regarding my candidature will be acceptable to me.

(underlining by us) 5. A reading of the above would show that the petitioner was fully aware of the fact that the OBC certification had not only to be in the prescribed procedure issued by the competent authority but also of the fact that the same had to be issued between the period from 28th June, 2007 to 28th June, 2010.

6. Mr. Ravinder Aggarwal, learned Standing Counsel for the respondents has drawn our attention also to the clear information given in the advertisement inviting the application in this regard.

7. The respondents had also fairly given an additional opportunity before closure of the selection process to the candidates who had overlooked submission of the requisite certification. It appears that in view of the certain deficiencies WP(C) No.1571/2013 page 3 of 7 which included non provision of the requisite certification by reserved category candidates, result of 136 candidates including the petitioner, had been withheld. The respondents had issued notice in this regard dated 11th May, 2011. It is noteworthy that by this notice dated the respondents gave yet another opportunity to candidates to remove the deficiency. Para 8 of the notice dated 11 th may, 2011 may be usefully extracted in this regard and reads as follows:

8. For candidates belonging to reserved categories for whom certain percentage of vacancies are reserved as per Government Policy, the category status is indicated against their Roll Numbers. It is important to note that some of these candidates have been declared qualified only for the category mentioned against their Roll Numbers. If any candidate does not actually belong to the category mentioned against his/her name, he/she may not be eligible to be included in the list. It is, therefore, in the interest of the candidates concerned to immediately contact the respective Regional Office of the Commission in all such cases where they do not belong to the category shown against their Roll Numbers. Similarly, candidates whose result has been withheld are also advised to contact the concerned regional office of the Commission to prove their category status/remedy document deficiencies.

8. The petitioner took advantage of this opportunity thereafter and admittedly produced the certificate dated 2nd November, 2010. The respondents have urged that though this certificate was in the prescribed format but the same was beyond the period stipulation WP(C) No.1571/2013 page 4 of 7 by the respondents for which the certification had to be given. In this background, this certification which was beyond the cut off date of 28th June, 2010 and as such also did not meet the requisite stipulations. Given the undertaking by the petitioner and this deficiency in the certificate produced by him, the petitioner could only be considered as an unreserved category candidate. It is undisputed that he has been accorded such consideration and he failed to meet the merit position.

9. It has been contended by the respondents that stipulation with regard to certification of the persons being in the non creamy layer in the prescribed format had to be strictly complied with. In this regard learned counsel for the respondents places reliance on the pronouncement of this court dated 14th September, 2012 in WP(C)No.5580/2012 Vishesh Kumar v. Staff Selection Commission wherein in para 5, the court had observed as follow:

5. Suffice would it be to state that as against members belonging to Scheduled Castes or Scheduled Tribes, where even a billionaire would be entitled to reservation, the legal position with respect to Backward Classes is different. Creamy layers have to be excluded and thus there being a requirement of OBC certificates being issued within three years prior to the date of receipt of applications. A person may have less wealth on a particular date and may become wealthy a few years later and thereby coming within the Creamy Layer.

WP(C) No.1571/2013 page 5 of 7 10. In the pronouncement of this court dated 17th April, 2012, in WP(C)No.2211/2013 Parminder Bhadana v. Staff Selection Commission, the court had occasion to consider an issue identical as one raised before us so far as the date of the certificate is concerned. The petitioner had produced a certificate similar to that produced by the petitioner before us which was beyond the cut off date prescribed. In para 16, the court had held thus:

16. The learned counsel for the petitioner has not been able to dispute that the OBC certificate, a copy of which is also annexed with the writ petition as Annexure

P-2 was issued on the basis of the application number 6866 on 9.

7. 2007. The said certificate, in the facts and circumstances, is not according to stipulation 4C as detailed hereinabove and such an OBC certificate which is more than three years old from 4.

3. 2011 could not be accepted as a valid certificate about the creamy layer status of the petitioner. The learned counsel for the petitioner, in the facts and circumstances, is unable to explain as to how the petitioner can be treated as an OBC candidate by the respondents.

11. The petitioner has also placed on record a caste certificate dated 21st October, 2009 and claimed reliance thereon in support of his eligibility for selection as an OBC candidate. The respondents have completely denied receipt of this certificate from the petitioner. In case this certificate was actually available with the petitioner and its copy had been filed by him with the respondents, there was never any occasion for him to tender the undertaking to the respondents to the effect that he may be treated as unreserved WP(C) No.1571/2013 page 6 of 7 category at the stage of the interview. In such eventuality, there was also no occasion to the petitioner to obtain a fresh certificate and submit the same after the respondents given opportunity pursuant to the notice dated 11th May, 2011. Learned Standing Counsel for the respondents urges that in any case that this certificate is not in the prescribed format.

12. In view of the above discussion, the challenge by the petitioner is misconceived. We find no merit in this petition which is hereby dismissed. CM Nos.2950-51/2013 In view of the order passed in the writ petition, these applications do not survive for adjudication and are hereby dismissed. (GITA MITTAL) JUDGE (DEEPA SHARMA) JUDGE DECEMBER11 2013 mk WP(C) No.1571/2013 page 7 of 7