

Kaushlendra Kumar Vs. Dsssb and Another

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Court : Delhi

Decided On : Aug-31-2012

Judge : Suresh Kait

Appeal No. : W.P.(C) NO. 9548 OF 2009

Appellant : Kaushlendra Kumar

Respondent : Dsssb and Another

Judgement :

SURESH KAIT, J.

1. The petitioner in the instant petition is 100 % visually disabled and belongs to 'Other Backward Caste' (OBC), "Ahir". He applied for the post of Post Graduate Teacher- Hindi (male) under Post Code 134/07 with the Directorate of Education, Government of NCT of Delhi. He submitted all the specified documents with his application, including his educational certificates, handicap certificate and OBC certificate, issued as per the guidelines of the Central Government, which states that he belongs to the aforesaid category.

2. He appeared initially for written examination (Objective) for the aforesaid post held on 08.06.2008 conducted by the respondent No.1- Board. Thereafter, on the same day, he appeared for the second and final written competitive examination (Descriptive). The result of the first, objective type examination was declared and the petitioner was shortlisted along with twelve other candidates.

3. The respondents chose to select the petitioner in the category of OBC, as indicated in the extract of results annexed with Annexure P-1. The result of the second and final examination (Descriptive) was announced on 01.01.2009 by the respondent No. 1-Board vide Office Order No.02/09. The petitioner stood selected as per the aforesaid Office Order. However, the result of the petitioner kept pending for completion of documentation.

4. For this purpose, the petitioner was directed to contact the respondent No. 1-Board within seven days of declaration of the result so that his eligibility may be determined and result can be processed.

5. Though the petitioner had submitted all documents at the time of applying for the post, but once again he submitted the documents vide his covering letter dated 05.01.2009, which was personally handed over by him to R and I Branch of the respondent No.1- Board. The same was duly acknowledged. 6. Thereafter, the petitioner was expecting his appointment letter from the respondent No. 2. However, he did not receive any confirmation despite his selection and submission of all the documents.

7. The petitioner physically visited the office of the respondent No.2 and orally he was informed that his final selection had not been forwarded from respondent No. 1-Board to respondent No.2. Thereafter, the petitioner sent a letter to respondent No. 1-Board on 18.04.2009 seeking to know the status of the selection and appointment but there was no response to this letter.

8. In the meanwhile, an OBC certificate has also been issued to the petitioner by the Office of the Deputy Commissioner, Delhi, wherein also it has been established that he belongs to community "Ahir", which is recognized as a backward class under the Government of NCT of Delhi and the same was also sent, however, there was no response from the respondents.

9. Having no option, the petitioner sent legal notice dated 11.05.2009 through his counsel to both the respondents. There was no response thereto also, therefore, the petitioner was constrained to file the instant petition.

10. The respondent No.1-Board has filed its response, wherein it is stated that it was clearly mentioned in the advertisement that the OBC candidates seeking benefit of reservation should submit OBC certificate issued by the Competent Authority of the Government of NCT of Delhi and all other OBC candidates with certificates from outside Delhi will be considered for the unreserved category, if eligible otherwise.

11. Further stated that the educational qualification, age, experience and other conditions of eligibility, as stipulated above, shall be determined on the closing date of receipt of the application i.e. 29.10.2007.

12. Learned counsel for the respondents has submitted that as per his performance in Part-II (Descriptive Examination), he obtained 93 marks out of 200 marks, which were higher than the marks obtained by the last selected OBC candidate, but were less than the marks obtained by the last selected unreserved category candidate.

13. He further submitted that since the petitioner did not submit his OBC certificate issued by the competent authority from Delhi, with the application form, therefore, his case was not considered under the OBC category. In the absence of that, his case was considered in the general category.

14. Learned counsel for the petitioner has argued that there were total five vacancies for the post in question; three unreserved, one reserved for SC and one reserved for OBC. Though the petitioner is 100% visually handicap, he secured the highest marks in the category of the OBC, despite that he was not given the appointment.

15. Learned counsel for the petitioner has submitted that this Court has dealt with similar issue in catena of judgments has settled the law that in order to consider for the post reserved for OBC category, the requirement is that a person should belong to OBC category. If a person is OBC, she or he 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 the 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 or she belongs to OBC category and act thereon by giving the benefit to such candidate for belonging to OBC category.

16. Learned counsel for the petitioner has further submitted that it is not the case that the petitioner did not belong to OBC category prior to issuance of the advertisement and he acquired the status of being OBC only on the date of issuance of the certificate.

17. On the same issue, this Court has dealt with this situation in a case of '**Tejpal Singh and Ors. Vs. Government of NCT of Delhi and Anr.**', 2000 II AD (Delhi) 428, wherein it has been observed as under:-

"11. There is no dispute about the fact that all the petitioners belong to 'SC' category. It is also not in dispute that all these petitioners had submitted applications in prescribed form before 30th June, 1998 Along with all requisite documents including SC certificate. But this SC certificate was one issued by other State Government and not by NCTD. They could get SC certificate issued by NCTD after 30th June, 1998 and submitted the same as and when it was received by them. This certificate was submitted before they were called for verification of their documents by Board.

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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.

18. While taking a particular view in such matters one has to keep in mind the objectives behind the post of SC and ST categories as per constitutional mandate prescribed in Articles 15(4) and 16(4) which are enabling provisions authorising the Government to make special provisions for the persons of SC and ST categories. Articles 14(4) and 16(4), Therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a right enshrined for protection of society. The right in social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular Arts. 14, 15, 16, 21, 38, 39 and 46 are to make the quality of the life of the poor, disadvantaged and disabled citizens of the society meaningful.

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20. For this reason Government has itself come out with the aforesaid guidelines permitting the candidates to submit proof that they belong to SC category, by furnishing the certificate issued by competent authority within reasonable time even if it is not submitted at the time of making the application for the job.

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38. For the reasons stated above, I allow this petition. Rule is made absolute. Respondents are directed to consider the petitioners for the post of Assistant teachers and if found suitable to appoint them to the said post. This exercise be done within a period of eight weeks from the date of receipt of this judgment.”

18. While dealing with **Tejpal Singh's** case (supra), this Court has observed in the case of '**Rajinder Prasad Vs. The Chairman, DSSSB of NCT of Delhi and Ors.**', **117 (2005) DLT 351** as under:-

“4. Petitioner had applied by the due date giving his OBC status. OBC certificate issued by the competent authority is dated 14.10.98 has been furnished in December, 1998, prior to the finalisation of the results. The recognition of Koiree as an OBC caste to which the petitioner belongs in the NCT of Delhi, is by a notification issued on 20.1.95. Accordingly, Koiree caste was duly recognised as an OBC in NCT of Delhi. It is held that once the recognition as an OBC is of year 1995, and the petitioner has finally produced this certificate, no further question of doubt could arise with regard to the petitioner belonging to the OBC class. The judgment in the case of Tejpal Singh's (supra) has been upheld by a comprehensive judgment by Division Bench in LPA 304/2000. The SLP preferred against the judgment of the Division Bench has also been dismissed.

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8. I, Therefore, have no hesitation in following the decision of Tejpal Singh's case (supra). Following the above decision, this writ petition is bound to be allowed and is allowed. The petitioner, if otherwise found eligible by the respondents is to be appointed. The petitioner would be entitled to the seniority and benefit of continuity of service but no back wages from the date the person below him in the merit list has got appointed in the OBC category.”

19. Vide order dated 26.06.2009, it was observed by this Court that appointment, if any, for the post in the OBC/Visually Handicapped category shall be subject to further orders from this Court including final outcome of the petition.

20. After considering the submissions of the learned counsels for the parties, it is established that the petitioner belongs to OBC category. The petitioner attached his OBC Certificate issued from the State of UP, whereas, in the advertisement it is clearly mentioned that the candidates seeking benefit of OBC category should submit the certificate issued by the competent authority of the Govt. of NCT of Delhi. It was also specifically mentioned that other OBC candidates with certificate issued from outside Delhi will be considered for the un-reserved category.

21. Initially the respondent No. 1 declared the petitioner as successful candidate in OBC category, however, after scrutinising the documents found that the certificate

of OBC has been issued from outside Delhi. Therefore, as per the advertisement, the case of the petitioner falls in the un-reserved category. Being his marks found less than the last candidate selected from un-reserved category, the petitioner was not selected.

22. It is not in dispute that the petitioner subsequently got issued OBC certificate from the Govt. of NCT of Delhi also and submitted the same with the respondents but this step was too late.

23. In view of the above discussion and in the facts and circumstances of the case, I find no merit in the instant petition.

24. Accordingly, the same is dismissed with no order as to costs.

CM No.7538/2009 (for stay)

With the disposal of the petition itself, this application has become infructuous. The interim order granted on 26.06.2009 stands vacated and the instant application is disposed of as having become infructuous.

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