

Niraj Kumar Vs. Cwc and Another

Niraj Kumar Vs. Cwc and Another

SooperKanoon Citation : sooperkanoon.com/956721

Court : Delhi

Decided On : Nov-23-2012

Judge : Suresh Kait

Appellant : Niraj Kumar

Respondent : Cwc and Another

Judgement :

\$~3 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment delivered on:

23. 11.2012 + W.P.(C) No.1469/2012 NIRAJ KUMAR Petitioner Through: Mr.Shankar Raju, Advocate. Versus CWC & ANOTHER Respondents Through: Mr.K.K.Tyagi and Mr.Iftekhar Ahmed, Advocates for Respondent No.1. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J.

(Oral) 1. Vide the instant petition, the petitioner has assailed the impugned order dated 23.09.2011, whereby the services of the petitioner have been terminated. The petitioner further seeks direction to re-instate him in service with all consequential benefits including back wages and continuity of service.

2. Case of the petitioner is that he belongs to OBC category being Kurmi by caste, which right from the inception of Mandal List falls under the OBC category. The petitioner till date falls under the non-creamy layer as certified by the Sub-Divisional Officer, Patna Sadar.

3. The petitioner was appointed as Senior Assistant Manager (General) w.e.f. 23.04.2010. Since he completed his probation satisfactorily, he was confirmed and assumed the status of a permanent employee w.e.f. 01.04.2011. The respondent No.1 sent the OBC certificate dated 19.05.2008 of the petitioner for verification. As per the report of SDO, Patna Sadar, it was communicated that the certificate was not issued from their office.

4. Learned counsel for the petitioner submits that the certificate produced by the petitioner, at the time of his appointment, was an OBC certificate issued by the competent authority. The competent authority might not have registered the said certificate in their register, therefore, neither the petitioner has produced any false, fabricated or forged certificate nor the case of the respondent is that the petitioner does not belong to the OBC category.

5. The respondent No. 1 vide its communication dated 12.07.2011, issued a show cause notice to the petitioner stating therein that since on verification of the status of OBC claimed by him from the Anumandal Padadhikari, Patna Sadar vide letter No.2050 dzted 20.06.2011, it was informed that caste certificate was not issued by their office, as to why his services should not be terminated as per the terms of appointment and under the Central Warehousing Corporation (Staff) Regulations 1986 Rule 40(iv).

6. The petitioner filed his reply to the aforesaid show-cause notice and stated that he was in private job in Delhi, therefore, he requested his father to apply for his OBC certificate as they come under OBC non-creamy layer. Thereafter, his father duly submitted an application in the office of the SubDivisional Officer, Patna Sadar, Patna and got issued the certificate in question.

7. After issuance of the show-cause notice, the petitioner again applied for the OBC certificate, which he obtained on 15.07.2011 and got it verified from the records maintained by the SDO, Patna Sadar at Patna. In reply, it is certified by the SDO, Patna Sadar, that his caste certificate has been issued from their office vide letter No. 2388 dated 15.07.2011. Thus, in view of the aforesaid OBC certificate dated 24/30.06.2009, which was further certified by the SDO vide its letter dated 15.07.2011, whereby the doubts which created by the earlier

information that his caste certificate was not issued from the office of Sub-Divisional Officer have been cleared.

8. Learned counsel for the petitioner further submits that in view of reply from the office of the Sub-Divisional Officer, Patna Sadar, Patna, it is proved that entry might have not been made inadvertently in their office record while issuing the caste certificate in the year 2008. Now, it has been certified by the Competent Authorities including the Circle Officer, SubDivisional Officer and the Collector that he belongs to OBC caste under non-creamy layer category.

9. Learned counsel for the petitioner has relied upon a case of Arvind Kumar Vs. Govt. of NCT of Delhi, 2010 (117) DRJ 439. decided by this Court on 23.04.2010, wherein it is observed as under:- 13. Learned counsel for the petitioner has referred the judgment delivered by this court in W.P. (C) 8508/2007 in the case of Smt. Poonam Vs. Government, NCT of Delhi & Anr. which has dealt with the similar point involved in the present case. The relevant part of the judgment is reproduced hereinbelow: If a person is OBC, she 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 she belongs to 'OBC' category and act thereon by giving the benefit to such candidate for her belonging to 'OBC' category. It is not that petitioner did not belong to 'OBC' category prior to 29th October, 2007 or that acquired the status of being 'OBC' only on the date of issuance of the certificate. In view of this position, insisting upon a certificate dated prior to 29th October, 2007 would be clearly arbitrary and has no rationale objective to be achieved.

10. He has also relied upon a Departments O.M. No.11012/7/91-Estt.(A) dated 19.05.1993, which provides as follows:Wherever it is found that a Government servant, who was not qualified or eligible in terms of the Recruitment Rules, etc., for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service. If, he is a probationer or a temporary Government servant, he should be

discharged or his services should be terminated. If he has become a permanent Government servant, an inquiry as prescribed in Rule 14 of CCS (CCA) Rules, 1965 may be held and if the charges are proved, the Government servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed.

11. To sum up his arguments, learned counsel for the petitioner submits that the petitioner belongs to OBC caste and does not come under the creamy layer. Since he has neither committed any forgery nor given any false information to the respondents, therefore, his termination is bad in law.

12. Moreover, since the petitioner was a permanent employee of the respondent No.1, as per the Governments instructions, the respondent No.1 was duty bound to conduct a departmental inquiry and only thereafter any action should have been taken against the petitioner.

13. On the other hand, Mr. K.K.Tyagi, learned counsel appearing on behalf of respondent No.1/Central Warehousing Corporation has submitted that the petitioners certificate which he produced at the time of his initial appointment, on being verified, was found not issued from the office of SDO, Patna Sadar, Patna. It was clearly stated in the terms of the appointment that if any of the information is found to be false, his services may be terminated at any stage.

14. The respondent No. 1 received the information from the competent authority Patna, who verified that the OBC certificate was not issued to the petitioner from their office. Therefore, on the said information they issued the show-cause notice to him. He was given an opportunity to reply the same, which he availed. However, the reply received from the petitioner was not found to be satisfactory by the respondent No. 1, therefore, his services were terminated vide the aforesaid impugned order dated 23.09.2011.

15. I have heard learned counsels for the parties.

16. The petitioners caste certificate, which is at page 41, was issued vide Certificate No. 5292 dated 30.06.2009 by the District Magistrate, Patna, whereby it

was certified that the petitioner, as per DOPT OM No. 36012/22/93 Estt. dated 8.9.1993 does not come under the creamy layer.

17. It was further certified that the said certificate had been issued on the basis of certificate No.1845 dated 24.6.2009 issued by the Sub-Divisional Officer, Patna Sadar.

18. Earlier also the similar issue came up before this Court in the case of Smt. Poonam (supra), the same has been relied upon in case of Arvind Kumar (supra), wherein it is clearly observed that if a person is OBC, he or she 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 or she belongs to 'OBC' category and act thereon by giving the benefit to such candidate for his or her belonging to 'OBC' category.

19. Even the subsequent certificate issued, as mentioned above, in favour of the petitioner establishes that the petitioner belongs to OBC category and does not come under the creamy layer.

20. In the instant case, enquiry has not been conducted to prove that petitioner does not belong to OBC category and the certificate produced by him was a forged one, which is required in case of a permanent employee.

21. In view of the above discussion, the impugned termination order dated 23.09.2011 is set aside. Consequently, the petitioner is re-instated in service w.e.f. the date of his termination with all consequential benefits. As far as the back wages are concerned, since the petitioner has not worked for that period and the dispute arisen because of the verification report of the SDO Patna, therefore, the petitioner is not entitled for the same.

22. The instant petition is allowed in the above terms and stands disposed of.
SURESH KAIT, J.

NOVEMBER 23 2012 sb

