



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

O.A. No.967/2021

Reserved on: 13.09.2024
Pronounced on: 24.09.2024

Hon'ble Mr. Manish Garg, Member (J)
Hon'ble Dr. Anand S. Khati, Member (A)

Sunanda,
Aged about 30 years,
D/o Sh. Ajit Kumar,
R/o 42-B, DDA Flats, Mansarovar Park, Shahdara,
Delhi-110032.
Post: Teacher (Primary) MCD,
Post Code: Old Post Code 16/17; New Post Code 1/18
Group B.

...Applicant

(By Advocate: Mr. Anuj Aggarwal with Mr. Shakib Malik &
Mr. Nikhil Pawar)

Versus

1. Delhi Subordinate Services Selection Board DSSSB,
Through its Chairman,
Govt. of NCT of Delhi,
FC-18, Institutional Area,
Karkardooma, Delhi-110092.
2. North Delhi Municipal Corporation NDMC,
Through its Commissioner,
Dr. SPM Civil Centre,
JL Nehru Marg, New Delhi-110002.



3. South Delhi Municipal Corporation SDMC,
Through its Commissioner,
23rd Floor, Civic Centre,
Minto Road, New Delhi-110002.
4. East Delhi Municipal Corporation EDMC,
Through its Commissioner,
419, Udyog Sadan,
Patparganj Industrial Area,
New Delhi-110096.

...Respondents

(By Advocates: Mr. Ritank Kumar for Mr. Siddharth Panda
& Ms. Anupama Bansal)

**ORDER****Hon'ble Mr. Manish Garg, Member (J)**

Highlighting the facts of the present case, the learned counsel for the applicant submitted that the applicant is an aspirant to the post of Teacher (primary) MCD, (Post Code 16/17) and she belongs to the OBC category and has a valid OBC Certificate dated 16.04.2007, issued from the Office of Deputy Commissioner (North East) District, Govt. of NCT of Delhi. She also possesses an OBC Non-Creamy Layer Certificate dated 11.09.2017 issued by the GNCT of Delhi. Learned counsel further submitted that the applicant belongs to the "Jat" Community which was recognized as OBC under Govt. of India. He further added that the applicant also possesses an OBC Certificate issued by the Govt. of NCT of Delhi which declares that she is an "OBC", who can seek appointment to the posts reserved under the Govt. of India and the said certificate was issued on 27.08.2014.

1.2. As per the terms and condition of the advertisement No. 02/17 dated 07.08.2017 issued by the Delhi



Subordinate Services Selection Board (DSSSB) for the post in question, the applicant was supposed to submit the OBC certificate of Delhi which she possessed prior to the cut-off date.

1.3. Learned counsel for the applicant submitted that though the applicant was supposed to submit the OBC certificate of Delhi, which she possessed prior to the cut-off date, however, inadvertently, she submitted the OBC certificate dated 22.08.2014 which was for appointment to the reserved posts under the Government of India.

1.4. Thereafter, through various Result Notices, several candidates were shortlisted/nominated by the DSSSB for appointment to the post in question, however, the applicant was not shortlisted/nominated and vide Supplementary Result Notice No. 1110 dated 17.07.2020 and Supplementary Result Notice No. 1241 dated 13.01.2021, the DSSSB declared that the candidature of the applicant is kept in pending list with the following remarks:

“The candidate is required to upload OBC (Delhi) certificate as on cut-off date.”



1.5. Learned counsel submitted that the DSSSB gave 05 days time to the applicant w.e.f. 19.01.201 to 23.01.2021 to upload the valid OBC Certificate. However, inadvertently, the applicant submitted the OBC certificate dated 22.08.2014 which was for appointment to the reserved posts under the Government of India.

1.6. Thereafter, the applicant made a representation dated 27.01.2021 requesting the DSSSB to grant one more opportunity to the applicant to upload her valid OBC (Delhi) Certificate and the applicant also enclosed, the valid OBC certificate and creamy layer certificate as issued by the Govt. of NCT of Delhi. However, no reply to the said representations has been received by the applicant.

1.7. Learned counsel for the applicant contends that on 05.03.2021, the DSSSB vide notice dated 05.03.2021 gave another opportunity to the other similarly situated candidates seeking appointment on the post in question to submit/upload the OBC (Delhi) certificate. However, such an opportunity as given to the other candidates was not afforded to the applicant.



1.8. Learned counsel argued that being aggrieved by the action of the respondents, the applicant preferred representation dated 05.02.2021 annexing the OBC certificate. However, the said representation has not been dealt with by the respondents in the combined supplementary notice as the rejection of the applicant has been made in light of Para 7 of the Supplementary Notice dated 06.04.2021, which reads as under:-

“7. 01 candidate having Roll No.2800089540 has failed to upload her OBC (Delhi) Certificate in e-dossier module within the stipulated time period, despite giving ample opportunity i.e. 10 days e-dossier calling from 05.02.2019 to 14.02.2019, 10 days 1st recall from 23.07.2020 to 01.08.2020 and further 05 days 2nd recall/final opportunity from 19.01.2021 to 23.01.2021. Hence, her candidature cannot be considered under OBC Category.”

1.9. Being aggrieved of rejection of her candidature, the applicant has preferred this OA against the impugned supplementary Result Notice No. 1266 dated 06.04.2021 issued by the DSSSB.

1.10. Learned counsel for the applicant further submitted that the certificate issued by the Govt. of India should have been treated valid for all intents and purposes and the



respondents should not have rejected the claim of the applicant.

1.11 It is the contention of the learned counsel for the applicant that the OBC non-creamy layer certificate is in prescribed format issued by the Delhi Government and the same was uploaded before the cut-off date. In support of his arguments, he relied upon the decision of the Hon'ble Supreme Court passed in the matter of **Food Corporation of India vs. Rimjhim**, (2019) 5 Supreme Court Cases 793.

The relevant portion of the same reads as under:-

13. Now so far as the submission on behalf of the FCI that the original writ petitioner did not produce the certificate of one year's experience even at the time of verification of documents and what was produced was the relieving cum experience letter dated 27.08.2014 along with the application and on the basis of which it cannot be said that the original writ petitioner was having one year's experience is concerned, it is required to be noted that at the time of verification of the documents, the original writ petitioner was not informed/told that the letter dated 27.08.2014 is not sufficient to establish the essential requirement of one year's experience. The original writ petitioner was also not told/informed at the time of verification of documents on 18.01.2016 that certificate of one year's experience is lacking.

13.1 Clause 33 of the advertisement, which is also considered by the Division Bench of the High Court, provides that the management reserves the right to call for any additional documentary evidence in support of educational qualification & experience of the applicant. As found from the record and even as observed by the Division Bench, the management at the time



of verification of the documents, did not thought it fit to call upon the applicant to produce any additional documentary evidence in support of her experience. The management could have called for any additional documentary evidence in support of experience of the applicant. If the management would have called for the additional documentary evidence in support of experience of the applicant, in that case, the original writ petitioner would have produced the certificates, which are subsequently produced before the High Court. At the cost of the repetition, it is to be noted that the FCI has not doubted the certificates dated 14.01.2015 and 18.07.2016 issued by the erstwhile employer of the original writ petitioner. Therefore, the Division Bench of the High Court has rightly observed and held considering the aforesaid two certificates that the original writ petitioner was having one year's experience of translation from English to Hindi and vice-versa and therefore fulfilled all the requisite essential requirements/qualifications and therefore she was required to be considered for appointment on merits.

2. Opposing the grant of relief, the learned counsel for the respondents relied upon the averments made in the counter affidavit. He draws attention to the following clauses of the Advertisement No.02/17 issued by DSSSB:-

“5. RESERVATION BENEFITS:

XXXXXXXXXX

(iii) Only OBC (Delhi) candidates will be given the benefit of reservation/age relaxation under OBC category. OBC (Outside) candidates will be treated as Unreserved candidate and they must apply under UR category. The OBC candidates must be in possession of non-Creamy layer certificate, along with his/her caste certificate.

(iv) Only following two types of certificates will be accepted as valid certificates for grant of benefit of reservation to OBCs:-



(A) OBC certificate (Delhi) issued by the Revenue Department of GNCT of Delhi, on the basis of a old certificate issued to any member of individual's family from GNCT of Delhi.

(B) OBC certificate issued by a competent authority outside Delhi to a person belonging to a community duly notified as OBC by GNCT of Delhi. This certificate should have mandatorily been issued on the basis of OBC certificate issued by Govt. of NCT of Delhi to a family member of the concerned person who had been residing in Delhi before 08/09/1993."

2.1 Learned counsel for the respondents submitted that since the applicant did not submit the required OBC certificate issued by Revenue Department, her candidature was considered under General Category and the last selected candidate in the General Category secured 122.71 marks whereas the applicant secured 110.21 marks in the examination under reference. In support of his arguments, he relied upon the decision of the Hon'ble High Court of Delhi passed in the matter of **Pushpender Singh Parnami vs. Govt. of NCT of Delhi & Ors.**, rendered in W.P.(C) No.2892/2019.

3. Heard learned counsel for the respective parties and perused the records.



4. ANALYSIS :

4.1. In W.P.(C) No. 15514/2023 & CM APPL. No. 62139/2023 titled **Ravi Kumar Vs All India Institute Of Medical Sciences** decided on 02.02.2024, the Hon'ble High Court of Delhi held as under :-

“89. Thus, from the discussion above, it is clear that the petitioner’s OBC- NCL certificate dated 23.11.2023 ought to have been considered by the respondent and the requirement contained in the prospectus, specifying the time-frame for the OBC-NCL certificate to be between 06.11.2022 to 05.11.2023, is arbitrary.

90. The conclusions reached by the court are thus summarised below:

a. The insistence of the respondent upon the OBC-NCL certificate to have been issued between 06.11.2022 to 05.11.2023 is arbitrary and does not have any rational nexus with the object sought to be achieved through the reservation of seats.

b. The requirement of an OBC-NCL certificate is fundamentally different from a technical/academic qualification. While the former is mere evidence of what already exists, the latter refers to the acquisition of a qualification.

c. In terms of Pushpa (supra), read with Ram Kumar Gijroya (SC), Ram Kumar Gijroya (DB), Mukesh Kumar Yadav (supra), Karn Singh Yadav (supra), the insistence by the respondent on the submission of the OBC-NCL certificate issued during the given cut-off date, is arbitrary and has no rational nexus with the object of reservation. Also, the candidature may not be cancelled solely on account of submission of the OBC-NCL certificate issued beyond the cut- off date, but within the extended time provided by the respondent.

d. As per Anil Kumar (supra), the cut-off date is to be construed in a manner favourable to the candidate, and not to nullify a fundamental right merely because the



OBC-NCL certificate is being submitted post the cut-off date.

90. On facts, the petitioner's OBC-NCL certificate dated 23.11.2023 ought to have been accepted by the respondent and it is directed accordingly.

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91. Considering the foregoing discussion, the conclusions reached above, and also the fact that the seat would go vacant if withdrawn from the petitioner, who otherwise possesses the required merit, this court confirms the admission of the petitioner granted vide interim order dated 01.12.2023.

92. In view of the aforesaid terms, the communications dated 27.11.2023 and 29.11.2023 are, hereby, set aside. The petition stands disposed of alongwith the pending application."

4.2 The factual matrix of the present case is not in dispute.

The applicant though fulfilling all eligible conditions cannot be non-suited only on the ground that she failed to submit the OBC certificate in time even though she was having the said certificate which was available prior in time. In fact, the applicant had three different OBC certificate from various authorities. Despite submission of a representation, the same was not adjudicated by the Competent Authority by a reasoned order till date, which would also be in violation of the principles of natural justice.



4.3 The selection advertisement is of the year 2017 and already eight years have elapsed. It is also a fact that the applicant belongs to OBC caste by birth.

5. CONCLUSION :

5.1 In view of the aforesaid, we allow this OA. The rejection of the candidature of the applicant for the post in question is quashed and set aside. Accordingly, the respondents are directed to treat the candidature of the applicant under "OBC" category and, thereafter, offer her appointment letter to join, if she is otherwise found eligible. However, the applicant shall be placed below the last selected candidate in her category. This exercise shall be completed within a period of two month from the date of receipt of a certified copy of this order. Needless to say, that the actual benefits shall accrue to the applicant from the date of her joining.

5.2 All pending MAs, if any, shall also stand disposed of. No costs.

(Dr. Anand S. Khati)
Member (A)

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(Manish Garg)
Member (J)