



2025:DHC:1510-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4035/2019 & CM APPL. 18228/2019**

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.....Petitioner

Through: Mr. Anuj Aggarwal, Ms. Kritika, Mr. Pradeep Kumar, Mr. Pradeep Kumar and Mr. Mahim Pratap, Advs.

versus

DELHI SUBORDINATE SERVICES

SELECTION BOARD (DSSSB) AND ANR.Respondents

Through: Mrs. Avnish Ahlawat, SC with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam, Mr. Mohnish Sehrawat, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

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06.03.2025

C. HARI SHANKAR, J.

1. The advertisement No.02/17 was published by the Delhi Subordinate Services Selection Board¹ on 7 August 2017, inviting applications for various posts in the Delhi Administration. Among these was the post of Primary Teacher in the Municipal Corporation of Delhi², bearing post code 16/17.

2. In response to the said advertisement, the petitioner applied,

¹ "DSSSB", hereinafter

² "MCD", hereinafter



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indicating that she belongs to the “Other Backward Classes³”. She participated in the examination which was held on 29 October 2017. However, thereafter, apparently owing to mass cheating, the examination was cancelled.

3. On 26 June 2018, the DSSSB issued advertisement No.01/18, re-advertising the aforesaid posts, which were earlier advertised by advertisement No.02/17. At the foot of the advertisement was appended the following note:

“Candidates who have already applied for the post code 16/17 w.e.f. 25/8/2017 to 15/9/2017 need not apply again, they would be given One time age relaxation upto the new cut off date.”

4. Thus, the petitioner was not required to apply afresh for participating in advertisement No.01/18. At the same time, it is clear that there was no embargo against such application, as is manifest from the use of the words “need not”. The choice was, therefore, with the candidate as to whether to apply or not to apply.

5. The petitioner chose to apply afresh against in response to the advertisement No.01/18. This time, she declared herself to be an unreserved candidate.

6. The written test, pursuant to the aforesaid second advertisement No.01/18 was held on 14 October 2018. The results of the written tests were declared on 1 February 2019.

³ “OBC”, hereinafter



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7. In view of the declaration made by the petitioner in her application submitted by way of a response to the second advertisement No.01/18, the respondents treated her as an unreserved category candidate. The respondents uploaded the list of candidates, who have been shortlisted pursuant to the aforesaid written examination and the results of the candidates on their website on 1 February 2019.

8. Thereafter, the petitioner moved the Central Administrative Tribunal⁴ by way of OA 746/2019, seeking a direction to the respondents to treat her as an OBC candidate.

9. It was sought to be contended that the petitioner had, by mistake, declared herself to be an unreserved category candidate. It was also sought to be contended that, as candidates were not required to apply a second time in response to the advertisement No.01/18, the respondents ought to have ignored the application submitted by the petitioner by way of response to the said advertisement and ought to have taken into consideration the first declaration submitted by her in her response to the earlier advertisement No.02/17, as an OBC candidate.

10. The Tribunal has not agreed with the said submission. The reasoning of the Tribunal is to be found in paras 5 to 7 of the impugned judgment which read thus:

⁴ “the Tribunal”, hereinafter



“5. The applicant was entitled to take advantage of this note, and to participate in the examination without submitting a fresh application. However, she has chosen to file an application in response to this advertisement also. Had it been a case of repeating the contents of her earlier application and mere furnishing of the name of her husband, there would not have been any problem. However, she has chosen to indicate her social status as 'Un Reserved'. Since this happens to be an application in response to the latest advertisement, the respondents were under obligation to take that into account.

6. It is not uncommon that the social status of an individual may undergo change or the candidate, holding a particular social status, may choose to give up claim for reservation. Nobody can question the exercise of such rights by a citizen. Having indicated that she is an Unreserved candidate, the applicant cannot turn around and plead that she deserves to be treated as OBC candidate. If at all, anyone, it is the applicant, who is to be squarely blamed for present state of affairs.

7. In the judgment relied upon by the applicant, a distinction was made between the mistake that would not affect the third party rights and the one which affects the third party rights. In the context of issuance of a Caste Certificate to an individual, there may not be any possibility of third party rights being affected. However, where the social status is under consideration, in the context of competitive selection, it does affect the third party rights.”

11. Aggrieved by the aforesaid decision, the applicant before the Tribunal has approached this Court by means of the present writ petition.

12. We have heard Mr. Anuj Aggarwal, learned Counsel for the petitioner and Mr. Nitesh Kumar Singh, learned Counsel for the respondents.

13. Mr. Aggarwal submits that the petitioner ought not to be prejudiced by merely because of an inadvertent mistake committed by her in reflecting her social status as an unreserved category candidate



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in the application submitted by her by way of response to the advertisement No.01/18. He submits that, in view of the fact that there is no dispute that the petitioner is an OBC candidate, she cannot be denied the benefit of her OBC status. He has placed reliance on the judgment of a Division Bench of this Court in *Govt. of NCT of Delhi v Mukesh Kumar Yadav*⁵ as well as the judgment of a Division Bench of the High Court of Rajasthan in *Kavita Choudhary v The Registrar (Examination), Rajasthan High Court*⁶.

14. Mr. Singh, per contra, relies on the judgment of another Division Bench of this Court in *Amardeep v Govt. of NCT of Delhi*⁷.

15. We have heard learned Counsel for both sides and perused the record.

16. We are in agreement with the Tribunal that, having herself applied as an unreserved category candidate in response to the advertisement No.01/18, the petitioner could not seek to contend that the respondents ought to have treated her as an OBC category candidate merely because she had declared her social status as OBC in the application filled by her by way of response to the earlier advertisement No.02/17. The examination which was conducted pursuant to that advertisement admittedly stood cancelled owing to mass copying. The advertisement No.01/18 was, therefore, an entirely fresh advertisement and a fresh recruitment process for the same

⁵ 2019 SCC OnLine Del 7526

⁶ 2017 SCC OnLine Raj 3612

⁷ 2019 SCC OnLine Del 11725



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vacancies.

17. It is important to note that there was no embargo on an applicant who had applied pursuant to advertisement No.02/17 re-applying in pursuant to advertisement No.01/18. The note in the advertisement merely stated that an applicant, who had applied pursuant to the first advertisement need not apply pursuant to the second. If an applicant chose to apply, it would be completely unfair to hold that the respondents should have ignored that application and only taken into consideration the earlier application filled by the applicant pursuant to advertisement No.02/17. Where a candidate chose, voluntarily, to re-apply pursuant to advertisement No.01/18, the candidate had to sink or swim with the declarations contained in the said advertisement. The petitioner declared herself to be an unreserved category candidate in the application filled by her in response to advertisement No.01/18. There cannot, therefore, be said to be any illegality in the respondents treating her as an unreserved category candidate or in the Tribunal holding that no case for treating the respondents' action as illegal was made out.

18. The judgments on which Mr. Aggarwal places reliance do not aid his case in any manner. In fact, in *Mukesh Kumar Yadav*, the attention of the Division Bench of this Court was drawn to the fact that, in earlier judgments passed in *Neeti Nayyar v GNCTD*⁸, *Pooja Sehrawat v GNCTD*⁹ and *Union Public Service Commission v*

⁸ WP(C) 12332/2018 decided on 19 November 2018

⁹ WP(C) 12563/2018 decided on 26 November 2018



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GNCTD¹⁰, Coordinate Benches of this Court had already held that the candidate should not back-track or resile from the declaration made in the application filled pursuant to the advertisement issued by the respondents.

19. This Court distinguished those decisions, in para 9 of its judgment, on the ground that the petitioner Mukesh Kumar Yadav, candidate before it, had, at the earliest opportunity, written to the GNCTD, pointing out that he had committed a mistake and seeking a correction in the records.

20. As against that, in the present case, the application pursuant to advertisement 01/18 was submitted by the petitioner in June 2018. It was only in February 2019 that the petitioner wrote to the respondents stating that she should be treated as an OBC candidate.

21. In that view of the matter, the judgment in *Mukesh Kumar Yadav* cannot come to the aid of the petitioner whose case would, rather, had to be tested on the angle of the earlier decisions of this Court in *Neeti Nayyar*, *Pooja Sehrawat* and *Union Public Service Commission*.

22. In *Amardeep*, which has been cited by Mr. Singh, another Coordinate Division Bench of this Court has clearly held that the candidate was bound by the declaration made in the application submitted by way of response to the advertisement.

¹⁰ 2010 SCC Online Del 293



23. We also tend to subscribe to the same point of view. It would create a situation of complete administrative chaos if a candidate is permitted to apply once declaring her candidature as OBC, a second time declaring her candidature as unreserved and thereafter to say that the respondents should have considered the former application and not the latter.

24. If such an argument were to be permitted, the selection processes would never come to an end, as the selecting authority would have to consider whether to accept or ignore the applications filled by each candidate.

25. Once the petitioner had consciously applied in response to advertisement No.01/18, stating herself to be an unreserved category candidate, we are afraid she cannot resile at the later stage from that application.

26. Besides, we are conscious of the fact that we are exercising *certiorari* jurisdiction under Article 226 of the Constitution of India.

27. We are not sitting an appeal over the judgment of the Tribunal. We cannot, therefore, set aside the judgment even if it were to be assumed that other alternate point of view is possible.

28. For all the aforesaid reasons, we are of the opinion that no case



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to interfere with the judgment of the Tribunal is made out.

29. The writ petition is, accordingly, dismissed.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MARCH 6, 2025/aky

Click here to check corrigendum, if any