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**(2024) 11 CAT CK 0027**

**Central Administrative Tribunal Principal Bench, New Delhi**

**Case No:** Original Application No. 2398 Of 2017

Monika

APPELLANT

Vs

GNCT Of Delhi & Ors

RESPONDENT

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**Date of Decision:** Nov. 27, 2024

**Acts Referred:**

- Administrative Tribunals Act, 1985 - Section 19

**Hon'ble Judges:** Harvinder Kaur Oberoi, Member (J); Dr. Sumeet Jerath, Member (A)

**Bench:** Division Bench

**Advocate:** Jatin Parashar, Sangita Rai

**Final Decision:** Allowed

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### **Judgement**

Dr. Sumeet Jerath, Member (A)

1. The present OA has been filed by the applicant Ms. Monika under section 19 of the AT Act, 1985 seeking the following reliefs :

â€œ a. Hold and declare that the respondents have wrongly withheld the grant of OBC status and reservations benefits and concessions in

pursuance thereto, to the applicant.

b. Direct the respondents to further consider and appoint the applicant to the post of TGT (Hindi) (Female) (Post Code 7/13), as an OBC candidate

C. Accord all consequential benefits

d. Award costs of the proceedings; and

e. Pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and proper in the interests of justice in favour of the applicant.â€

2. At the outset, learned counsel for the applicant states that the applicant was born in the State of Uttar Pradesh and belongs to the caste

“Gosain/Goswami Community”, a caste recognized as OBC, both in the State of Uttar Pradesh and Delhi. By way of her marriage which took

place on 06.05.2001, she got married to one Mr. Sanjay Goswami, and due to marriage, she shifted to the State of Delhi and started living with her

husband and her in-laws. It is pertinent to note that the husband and his family belong to the same case i.e. “Goswami” which is also recognized

as OBC in Delhi.

The applicant was an aspirant for the post of Primary Teacher and had applied in response to the notification issued by DSSSB. The recruitment

process was conducted by DSSSB and she was declared successful in the OBC category. The cut off declared for OBC category was 82.75, the

applicant secured 98 and as such, she was qualified and declared successful. By the result notices dated 18.07.2016, 11.05.2017 and 30.06.2017 her

candidature was not considered and the offer of appointment has eluded her. She has been considered to be an OBC (Migrant)/OBC(Outsider) and

therefore denied benefit of reservation. The applicant therefore has approached the Tribunal seeking appointment.

3. Learned counsel for the applicant submits that the present case cannot be considered as the case of a migrant person as the applicant had shifted to

Delhi only after her marriage and it was due to her marriage that she started residing in Delhi. He relied upon the caste certificate dated 10.08.2007,

issued to the applicant by the competent authority at Delhi. In this certificate, the applicant’s caste has been recognized as “Goswami” and

the certificate is issued by the State of Delhi. He therefore submits that the respondents have wrongly denied her appointment.

4. He relies upon a recent decision of this very Bench in OA No. 303/2020 dated 02.08.2024 which according to the counsel touches this OA in all

four corners, wherein a recent decision of the Coordinate Bench of this Tribunal in OA No 3823/2017 dated 17.01.2023 is quoted. The said OA

having similar circumstances has been allowed with direction to the respondents to treat the applicant therein as selected. The relevant portion is being

quoted hereunder :

6. After perusal of the pleadings and the documents on record, the following points emerge:

First, that the applicant has secured 73.5 marks, that are well above the marks secured by the last selected candidate in her category.

Second, she belongs to a caste that is declared as an OBC both in the State of Haryana and Delhi. Third, the husband of the applicant also

belongs to a caste (DAHIYA) that finds mention in the list of OBC of Delhi thereby implying that the applicant belongs to the OBC category

not only by birth but also by her marital status. Fourth, the candidature of the applicant has been rejected stating MIGRANT OBC.

7. In our opinion, the applicant cannot be treated as a MIGRANT OBC as she has come to Delhi in view of change in her marital status and

by virtue of the same she has become a resident of Delhi for all times to come. The said view is supported by the judgment mentioned

hereinabove referred to by the applicant. As far as the contention of the learned counsel for the respondent is concerned, the certificate so

provided by the applicant is not based on the status of the husband of the applicant, they (respondents) are bound by the guidelines on the

subject and the applicant does not have control over the authorities that issue such certificates and, therefore, she cannot be held

responsible for the same. Though we should have directed the applicant to provide the certificate afresh but in view of the fact that the

selection is of the year 2014 and already 9 years have elapsed.

8. In the peculiar facts that the applicant belongs to OBC caste by birth and marriage, we allow this OA. The rejection order dated

21.09.2017 is hereby quashed and set aside. The respondents are directed to treat the applicant as selected and offer her appointment letter

to join as ANM with respondent No. 2 along with all consequential benefits within a period of one month from the date of receipt of certified

copy of this order.

9. No order as to costs.

5. On the other hand, Ms. Sangeeta Rai, learned counsel appeared for the respondents. She vehemently argued and stated that the OBC certificate

dated 17.02.2016, relied upon by the applicant, is not admissible as the same had been issued on the basis of OBC certificate of the applicant, issued to her by the State of Uttar Pradesh. She submitted that since the applicant was not a resident of Delhi in the year 1993 and started residing in Delhi only after her marriage, she ought to be treated as a migrant OBC and not as an OBC of Delhi. However, she does not refute that both the husband and wife belongs to the "Goswami" community. She pressed upon certain paras of the reply wherein it has been stated that upon verification of the documents related to the educational qualifications and other documents related to the applicant's eligibility for the post in question, it was found that the applicant acquired her school education from U.P. Board and completed her B.A and B.Ed degree also from CCS University, Meerut, U.P., and according to the policy of Government of NCT of Delhi, the benefit of OBC (Delhi) shall be extended to only those candidates whose family has been residing in Delhi since or before 08.09.1993. It is further stated that since the OBC certificates are issued on the basis of the applicant's parental status, she could not be extended the benefit of reservation for civil posts of Govt. of NCT of Delhi.

Learned counsel further contended that the OBC certificates along with other certificates pertaining to the educational qualifications of the applicant were sent to the Revenue Department, GNCT Delhi for examining the same as to whether she could be extended the benefit of OBC status.

However, the Executive Magistrate vide order dated 25.09.2017 cancelled the OBC Certificate of the applicant dated 18.09.2017. Since the OBC

Certificate issued to the applicant has been cancelled by the Executive Magistrate, Patel Nagar, she is not eligible for selection under OBC (Delhi) category.

6. We have considered the rival submissions and also perused the documents on record.

7. The Co-ordinate bench of this Tribunal in OA No 3823/2017 had passed a detailed order after noting down not only the submissions of the parties

but also the various decisions of the Courts, including that of the Hon'ble High Court of Delhi in case of one M s. Sunita vs. GNCTD & Or.s,

wherein the Hon'ble High Court of Delhi has held as under :

4. Respondents in opposition to the writ petition and justification for treating petitioner's case as that of a general candidate averred in the

counter affidavit that petitioner had failed to furnish the caste certificate, issued by the Competent Authority of Govt. of NCT of Delhi, by

30.6.1998, the last date for submitting the application form with required documents. Petitioner having failed to comply with the said

requirement was not entitled to invoke the writ jurisdiction or to be considered as an OBC candidate. Additionally, an objection was taken

that petitioner being an OBC candidate from Haryana was, in any case, not entitled to get the benefit of reservation in the post under the

Govt. of NCT of Delhi or local autonomous body subordinate to the said Government.

8. Learned counsel for the petitioner further submitted that Annexure P-1 shows that applications had been invited from Indian Nationals.

There was no restrictive covenant, confining the applicants to be residents of Delhi. Accordingly, as far as the denial of non-consideration

of the petitioner's status as an applicant in OBC category on the ground that the caste certificate from a Competent Authority of Govt. of

NCT had not been furnished before 30th June, 1998, the same is held to be not sustainable.

9. Let us consider the objection that petitioner though being certified as 'Ahir' and backward class in Haryana was not entitled to benefit of

the same in NCT of Delhi. Learned counsel for the respondent submitted that as per the certificate appearing at page 15 of the paper book,

petitioner was resident of Haryana. It had been so certified. In the second certificate appearing at page 16 of the paper book, issued by

SDM of Govt of NCT of Delhi dated 8th October, 1998, she had been certified as resident of Delhi, belonging to "Ahir" Caste. The

certificate, issued from Delhi also carries the notation of not belonging to Creamy Layer. Learned counsel for the respondent Mr. George

Paracken submitted that the Tejpal Singh's case will not advance the petitioner's case as the objection is not only that the certificate had

been tendered by the candidate after the cut off date. The problem does not get over with the direction that the certificate furnished after the

cut off date may be accepted. It is not the case, where the cut off date is the only issue. Here the very entitlement of the petitioner to

backward class entitlement in the State, to which she has migrated i.e., NCT of Delhi, is sought to be questioned. It is further urged that

Kunwar Pal Singh's case, namely, WP(C).No.5061/2001 would also not advance the petitioner's case, since there the provision is made for

the benefit of reservation being available to those, who had been born and brought up in Delhi even though they may have migrated with

their parents.

19. The aforesaid certificate records that "'Ahir'" is recognized as a backward class in terms of notification bearing No.F.28(93)/91-

92/SC/ST/P&S/4384 dated 20.01.95. There is further certification that the petitioner does not belong to the creamy layer. The above

certificate has been issued in the prescribed Annexure 'AA' which is required for OBC candidates applying to posts under the Government

of NCT of Delhi. The Certificate is in accordance with the prescribed requirements as noted by the Supreme Court in MCD V.Veena (Supra)

to confer the benefit of reservation as backward class in NCT of Delhi. The petitioner having been granted this certificate, in my view, the

said certificate is binding and conclusive on the respondents. The said certificate itself assumes that the authorities have satisfied themselves

as to the eligibility of the petitioner to be treated as an OBC in the NCT of Delhi for posts falling under the Government of NCT. The

authorities are to issue the said certificate after due verification and satisfaction and subject to the petitioner fulfilling the conditions of

eligibility as an OBC candidate, including that of being ordinarily resident. It is not the case of the respondent that the aforesaid certificate

had not been issued or was fraudulently issued or has been revoked. As long as the aforesaid certificate is subsisting, valid and in force,

the respondents cannot deny the consideration to the petitioner as an OBC candidate, even though the initial certificate may have been from

the State from which she has migrated, or raise an objection as to the origin of the petitioner. Accordingly, this case is on a different footing

from Manju Rani V. DSSB & Ors. (Supra) in view of the OBC certificate having been issued by the prescribed and Competent Authority of NCT.

8. Further, in DSSSB vs. Vikas Kumar, the Hon'ble High Court of Delhi has held as under :

19. Noting conflicting decisions by different Benches, some following the law declared by the Supreme Court in S.Pushpa's case and some

following the law declared in Marri's and Action Committee's case, the matter was referred to a Full Bench of this Court and we have the

decision of the Full Bench reported as 2012 (132) DRJ 169 Deepak Kumar & Ors. Vs. District & Sessions Judge Delhi.

22. We may additionally note that much before the decision of the Supreme Court in S.Pushpa's case which was pronounced in the year

2005, on August 27, 2003 the Government of NCT of Delhi issued an Office Memorandum on the subject of reservation for Scheduled

Tribes for recruitment to civil posts under the Government of NCT of Delhi, which reads as under:-

Ministry of Home Affairs, Govt. of India vide letter cited above have clarified that the instructions contained in the MHA, O.M.

No.7/2/55/SCT dated 14.10.55, in accordance with which the percentages of reservation prescribed for recruitment on an All India basis

are required to be followed in Delhi continue to be in force and applicable in respect of civil post under the Govt. of NCT of Delhi.

Accordingly, the Civil posts under the Govt. of NCT of Delhi reserved for Scheduled Tribes are required to be filled up from amongst

Scheduled Tribes candidates irrespective of nativity.

Accordingly, it has been decided that Govt. of NCT of Delhi may continue to reserve the prescribed percentage of Civil posts under the

Govt. for appointment of Scheduled Tribes candidates as has been the practice in the past. Therefore, in terms of the aforesaid clarification

7.5% of Civil posts under the Govt. may be kept reserved for appointment of Scheduled Tribes candidates irrespective of their nativity and

appropriate action for recruitment may be taken.

(Emphasis Supplied)

23. The position would be that in Delhi it would be a case of a conscious decision taken, as was taken by the appropriate Government in the Union Territory of Pondicherry, to extend benefit of reservation to, if we may use the expression migrant Scheduled Castes and Scheduled Tribes, provided the holder of the certificate is otherwise an ordinary resident of Delhi.

26. Ravindra Devi, the writ petitioner of WP(C) No.3049/2012 has been unsuccessful before the Tribunal. She claims benefit of reservation on the strength of a certificate issued by the competent authority in the State of Haryana certifying she belonging to the Scheduled Caste "Chamar".

27. The reason given by the Tribunal to deny her relief is wrong, being that the certificate produced by her has been issued by an authority in Haryana. But she would not be entitled to any relief because admittedly she resides in Haryana and it had not her case that she is ordinarily a resident of Delhi. The law declared in S.Pushpa's case (supra) is that a person who is a member of a Scheduled Caste in a particular State would be entitled to reservation in a Union Territory provided he is ordinarily a resident of the Union Territory.

28. WP(C) No.3049/2012 is accordingly dismissed.

29. Challenge in WP(C) 6485/2011 is to the order dated March 23, 2011 allowing TA No.73/2010 filed by Vikas Kumar, the respondent in the writ petition.

30. It is not in dispute that Vikas Kumar is ordinarily a resident of Delhi. In fact, his parents migrated to Delhi. He was born in Delhi and has studied in Delhi all throughout. The Senior Secondary School Examination has been cleared by him as a student of a Government Senior Secondary School. He has obtained a Graduate degree at a college at Delhi. He is a member of a caste which is a Scheduled Caste not only in Delhi but even his parent State where his ancestors resided before his father migrated to Delhi i.e. the State of Uttar Pradesh.

The Tribunal has correctly opined in his favour of being entitled to the benefit of reservation in Delhi.



9. After considering the settled law as quoted above, the Co-ordinate Bench allowed the OA and granted relief. We would like to note that even in that case also, it was the case of marriage. Applicant therein shifted to the State of Delhi from Uttar Pradesh. Therein also, both husband and wife belonged to OBC category.

10. Counsel for the respondents stated that the order of the Co-ordinate Bench is under challenge since a Writ Petition No. 8695/2023 has been preferred. The same is pending adjudication before the Honâ€™ble High Court and is fixed for hearing on 07.10.2024.

11. Since the issue has been dealt with in detail by a Co-ordinate bench of this Tribunal, we do not wish to differ from the same. As such, the present OA is allowed in terms of the order passed in OA No 3823/2017, however, subject to the outcome of the pending Writ Petition No. 8695/2023.

12. With the following directions, the OA is allowed. There shall be no orders as to costs.