

Before Rajiv Narain Raina, J.

RAJ KUMAR—Petitioner

versus

UNION OF INDIA AND ANOTHER—Respondents

CWP No. 14808 of 2013

July 15, 2013

Constitution of India, 1950 - Art. 226 -Writ Jurisdiction - Service Law - Non-compliance by the candidate-Petitioner claiming benefit of OBC category with categorical instructions contained in advertisement - Recruitment to the post of constables in ITBP Force - Cut-off date for producing OBC certificate - Petitioner not producing the same by the relevant date - Petitioner considered in General Category - No illegality or infirmity in the act of the respondents - Petition dismissed.

Cut-off date - What is - Means date stipulated in relevant Service Rules - In absence thereof such date as may be appointed for that purpose in advertisement calling for applications - In default of either, then last date fixed for receipt of application forms - Ratio of Supreme Court judgments applied - Writ petition dismissed.

Held, that the issue as regards the cut-off date as regards acquiring/possessing the eligibility requirement by a candidate seeking public employment is no longer resintegra. It has been held by the Supreme Court that the cut-off date by reference to which the eligibility requirement must be satisfied by a candidate seeking public employment is the date stipulated by the relevant service rules and if there be no cut-off date stipulated in the rules, then it would be such date as may be appointed for such purpose in the advertisement calling for the applications. It is only if no such date stands stipulated either in the service rules or in the advertisement, then the last date fixed for receipt of application forms would be taken as the appointed date.

(Para 9)

R.A.Sheoran, Advocate, *for the petitioner.*

RAJIV NARAIN RAINA, J.

(1) The Staff Selection Commission, Chandigarh issued advertisement inviting applications for recruitment to the post of Constables (GD) for ITBP Force in 2011. The petitioner, who belongs to the OBC category (Ahir) submitted his application for the post of Constable (GD) and participated in the process of selection. On the basis of application and documents along with certificate of OBC category dated 06.06.2007 submitted by the petitioner, he was allowed to participate in the OBC category. After the physical efficiency test, the petitioner also passed the written examination and was called for Detailed Medical Examination (DME).

(2) The case of the petitioner is that the candidates who secured minimum qualifying marks 33 for medical examination under OBC have been recommended for appointment to the post of Constable (GD). The petitioner secured 42 marks but his case has not been recommended for appointment in OBC category. But his case has been considered in general category on the ground that he has failed to produce the OBC certificate at the time of medical examination.

(3) Learned counsel for the petitioner has argued that the petitioner has submitted OBC certificate dated 6.6.2007 with the application form and also produced it at the time of medical examination. Even though the authorities have rejected the same he has been considered in General Category. He has been considered in OBC category while appearing in physical efficiency test and written test but has not been considered while appearing for medical examination. The petitioner again approached the authorities for consideration of his case in OBC category and he has also produced a fresh OBC certificate dated 22.11.2011, but no reply has been given.

(4) While dictating the judgment, this Court felt that the petitioner has not placed on record the advertisement/notice inviting applications and the same is required for proper appreciation of facts. So a complete copy of the notice issued by the Staff Selection Commission published in the Employment News/Rozgar Samachar dated 5.2.2011 for the perusal of this Court was made available through internet.

(5) The stipulation as regards the consideration of OBC status contained in Instruction 4(C) of the advertisement was in the following terms:-

“Candidates claiming OBC status may note that certificate on creamy layer status should have been obtained within three years before the closing date i.e. 04.03.2011.

NOTE 1: The closing date i.e. 04.03.2011 for receipt of application will be treated as the date of reckoning for OBC and creamy layer status of the candidate.”

(6) In the letter dated 6.6.2011 (P-3) calling the petitioner for Detailed Medical Examination, it was stipulated as under:-

“ix) OBC Category candidates must submit their OBC certificate in the prescribed proforma for Central Govt. offices as per Annexure VII of the Notice of Examination, issued by the Competent Authority on or before.”

(7) It is found that at the end of Annexure VII appended with the Notice of Examination, Note II has been mentioned, which reads as under:

“Note-II: The closing date for receipt of application will be treated as the date of reckoning for OBC status of the candidate and also, for assuming that the candidate does not fall in the creamy layer.”

(8) A perusal of the relevant clauses re-produced above would make it clear that the cut off date fixed for receipt of applications is to be treated as the date for reckoning Other Backward Class and creamy layer status of the candidate in this category. It was required that OBC certificate must be issued within 3 years next prior to the closing date i.e. 4.3.2001.

(9) As per the pleaded case of the petitioner himself, he submitted the OBC category certificate dated 6.6.2007 along with other documents while appearing for medical examination on 28.6.2011. The issue as regards the cut-off date as regards acquiring/possessing the eligibility requirement by a candidate seeking public employment is no longer resintegra. It has

been held by the Supreme Court that the cut-off date by reference to which the eligibility requirement must be satisfied by a candidate seeking public employment is the date stipulated by the relevant service rules and if there be no cut-off date stipulated in the rules, then it would be such date as may be appointed for such purpose in the advertisement calling for the applications. It is only if no such date stands stipulated either in the service rules or in the advertisement, then the last date fixed for receipt of application forms would be taken as the appointed date. Reference in this regard may be made to *Mrs. Rekha Chaturvedi* versus *University of Rajasthan & Ors.*, (1) *Dr. M. V. Nair* versus *Union of India & Ors.*, (2), *U.P. Public Service Commission, U.P., Allahabad & Anr.* versus *Alpana* (3), and *Bhupinderpal Singh & Ors.* versus *State of Punjab* (4).

(10) As regards the petitioner having been permitted to participate in the various stages of the selection process in OBC category, it would be useful to advert to instruction No.2 furnished in the public notice dated 5.02.2011 which was in the following terms:

"In view of the anticipated large number of applicants, scrutiny of the eligibility and other aspects will not be undertaken before the PST/PET and Written Examination and, therefore, the candidature will be accepted only provisionally. Candidates are advised to go through the requirements of educational qualification, age, physical standards, etc. and satisfy themselves that they are eligible for the posts, before applying. Copies of supporting documents will be sought only from those candidates who qualify for the medical Examination. When scrutiny is undertaken after the Written Examination, if any claim made in the application is not found substantiated, the candidature will be cancelled and the Commission's decision in this regard shall be final."

(11) A bare reading of such instructions would make it clear that no indefeasible right came to vest in the petitioner merely on account of having participated in the physical standards test, physical efficiency test as

- (1) JT 1993 (1) SC 220
- (2) 1993 (2) SCT 77 (SC)
- (3) JT 1994 (1) SC 94
- (4) 2000 (2) SCT 826

also the written examination under OBC category. The candidates had been informed at the very outset that on account of the anticipated large number of applications, the scrutiny as regards eligibility and other aspects would be undertaken at the very last and the copies of the supporting documents would be sought only from those candidates who qualified the medical examination. It is strictly in the light of such categorical instructions issued in the public notice that the petitioner's candidature had been accepted in OBC category only on a provisional basis. After the medical examination of the petitioner it has been found that the OBC category certificate dated 6.6.2007 produced by him was issued prior to 3 years to the closing date. So he was not found eligible under OBC category and has been considered in General category. No exception can be taken to such course of action resorted to by the respondent-Commission.

(12) As a last ditch effort, learned counsel would submit that the petitioner has even produced the OBC Category Certificate issued on 22.11.2011. Even such submission is wholly mis-conceived. In the public notice, instruction 4 (C) regulates that the candidates claiming OBC status may not be a candidate on creamy layer status should have been obtained within three years before the closing date i.e. 04.03.2011. Thus, there is no illegality or infirmity in considering the name of the petitioner in the general category.

(13) For the reasons recorded above, there is no merit in the petition and the same is, accordingly, dismissed in limine.

S. Gupta