



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: March 15, 2024

+ W.P.(C) 1044/2024, CM APPL. 4399/2024

HARISH YADAV Petitioner
Through: Mr. L. C. Rajput, Adv.

versus

UNION OF INDIA THROUGH ITS SECRETARY MINISTRY OF
HOME AFFAIRS DTE GENERAL BORDER SECURITY FORCE
& ANR. Respondents

Through: Mr. Avnish Singh, SPC with
Mr. Kapil Dev Yadav, G.P.,
Mr. Vishal Kumar Yadav and
Ms. Kanchan Kumari, Advs. with
Mr. Hemendra Singh, DC, BSF for
UI

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T**V. KAMESWAR RAO, J**

1. The present petition has been filed by the petitioner with the following prayers:-

“It is therefore most humbly prayed that this Hon 'ble court may kindly be pleased to issue a writ/order / direction in the nature of writ of certiorari and quash the final result dated 19.12.2023 (Annexure P- 13) to the extent of selection of constable (barber-male) as shown in the category of state/ UT: Delhi male in the category of OBC, and issue a writ of mandamus commanding the respondents to consider the



*selection of the petitioner on the basis of his marks (48) obtained in the OBC category for barber male and offer him appointment to the post of constable (barber) in OBC category in BSF allotted to the Delhi state ;
and pass any other order/further order in favor of the petitioner and against the respondents which may be deemed just and proper in the facts and legal submissions made here and above.”*

2. The facts as noted from the record are that the Directorate General, Border Security Force (BSF), Ministry of Home Affairs published vacancies for recruitment of Constable (Tradesman) (Male and female) in BSF for the year 2023. The petitioner submitted his online application for Barber under Unreserved Category (UR) vide Application No. CT2021500077594 dated March 21, 2023.

3. The petitioner received the E-Admit Card for the first exam to be held on May 26, 2023. The petitioner appeared and qualified in the same. On July 19, 2023, the petitioner received online communication with regard to the revised vacancies for the post of Tradesman and Barber i.e., one vacancy was increased to 4(four) (UR-3, OBC-1). On August 22, 2023, the petitioner received a notice from the Board qua his interest for change of his category from UR to OBC. The petitioner opted for the change from UR to OBC.

4. On August 28, 2023, the petitioner received online information with E-Admit card for written examination. The online examination was conducted as per schedule and the petitioner qualified the same. The answer key was communicated to the candidates to check the marks obtained. The petitioner upon checking the answer key found he had obtained 48 Marks out of 100.



5. On December 04, 2023, the petitioner completed the documentation as per the notice dated August 12, 2023, wherein the petitioner was asked to give his option for change of category and upon his option for change, an undertaking was taken from the petitioner to the effect that he has changed his category from UR to OBC. The petitioner, after having submitted his documents and the undertaking, set for the medical examination. On December 9, 2023, the petitioner was found medically fit.

6. On December 19, 2023, when the final result of selection to various Trade was published, the petitioner's name was not mentioned in the OBC category for the post of Constable (Barber) in Delhi (Male). Instead, the name of one Mahesh Thakur had been mentioned. The final result included the state wise, trade wise and category wise result. It is the case of the petitioner that, for Delhi (Male), the cut-off marks for the post of Constable Barber in the OBC category was 45 marks, and the petitioner despite obtaining 48 Marks was ignored and not included in the list of successful candidates.

7. Mr. L.C. Rajput, the learned counsel for the petitioner submitted that the petitioner obtained 48 marks out of 100. He also submitted that, after 15-20 days of the examination, the candidates were provided the answer key to check his/her marks and verify any discrepancy in the marks scored. The petitioner checked that same and confirmed that the marks obtained by him are correct. Thereafter, the petitioner appeared for the 3rd phase of the examination and received the E-Admit card for Documentation, Trade Test & Medical Examination. During the 3rd phase of the examination, the qualified



candidates were given the cut-off marks. The petitioner was shown as qualified as Constable (Barber) for Delhi (Male), having obtained 48 marks against cut of marks of 45.

8. It is the submission of Mr. Rajput that, in the final result of selection, the petitioner's name was not in the list of selected candidates. He stated, the reason urged by the respondents for not selecting the petitioner was that the OBC certificate submitted by the petitioner, though issued by an Authority in Delhi, but was on the basis of a caste certificate issue by the State of Uttar Pradesh, which according to him is a misconceived ground, inasmuch as, the certificate recognises that the petitioner belongs to "Yadav" caste, which is an OBC Category in Delhi also. He submitted it is a stand which frustrates the very purpose of providing reservation to OBC candidates.

9. In support of his submission he has relied upon the following judgments:-

a. Government of NCT of Delhi & Ors. v. Ravindra Singh. Civil. Appeal. No. 6525 -6526 / 2022.

b. Hare Krishna Pathak v. Kendriya Vidyalaya Sangathan & Anr., W.P. (C) 3041 / 2022, decided on December 22, 2023.

c. Sh. Arun kumar v. Union of India & Anr., W.P.(C) 13915/2018, decided on December October 12, 2022.

10. He seeks the prayers as sought in the petition.

11. On the other hand, learned counsel for the respondents justify the action in not appointing the petitioner by drawing our attention to the advertisement and the Caste Certificate produced by the petitioner



to contend that the same has been issued by the Authority in Delhi but on the basis of Caste Certificate issued in U.P. and as such, a certificate cannot be construed as a declaration by the Authority in Delhi that the petitioner is an OBC in Delhi.

12. Having heard the learned counsel for the parties, the short issue which arises for consideration is, whether the petitioner was rightly denied the appointment as Constable (Barber) under the OBC category on the ground that the OBC certificate issued by the Authority in Delhi was on the basis of OBC certificate issued from the State of Uttar Pradesh. There is no dispute that the post of Constable (Barber) against which the petitioner had applied was for a vacancy in UT of Delhi. For establishing his candidature for the vacancy in Delhi, the petitioner submitted Domicile and OBC certificates issued by the Authority in the Government of NCT of Delhi, which reads as under:

“DOMICILE CERTIFICATE

*This is to certify that **HARISH YADAV S/o of JAGAT SINGH** is a domicile of Delhi having residence at **H-151 SAURABH VIHAR JAITPUR DELHI 110044 INDIA.***

This certificate is valid for one year from the Date of Issue.

OBC CERTIFICATE

*“This is to certify that **HARISH YADAV S/o JAGAT SINGH R/o H-151 SAURABH VIHAR JAITPUR DELHI 110044 INDIA** belongs to the **YADAV** community which is recognised as Other Backward Class under the Government of India, Ministry of Social Justice and Empowerment's Resolution No.- **BCC, 12011/88//-BCC(C) Dated 06/12/1999, 10/09/1993.***

HARISH YADAV** and his family ordinarily resides at **H-151



SAURABH VIHAR JAITPUR DELHI 110044 INDIA

*This certificate is issued on the basis of OBC certificate issued to **HARISH YADAV SELF** of **HARISH YADAV R/o PATTI GORA WALO IN SURANA MODI NAGAR GAZIABAD UTTAR PRADESH** belongs to **YADAV** community of **UTTAR PRADESH** State vide Certificate No. 90500000603022 dated **26/11/2019** issued by the **TEHSILDAR SARITA VIHAR**.*

This is also to certify that he does not belong to the person/sections (Creamy layer) mentioned in column 3 of the Schedule to the Govt. of India, Department of Personnel & Training O.M. No. 36012/22/93-Estt(SCT), 36033/3/2004-Estt(Res), 36033/1/2013-Estt(Res) dated 8/9/1993 9/03/2004 & 14/10/2008 and 27/5/2013 respectively.”

13. It may be stated here that the requirement in the advertisement for candidates seeking reservation, is the following:

*“(XXIV) Candidates seeking reservation benefits such as SC/ST/OBC/EWS (Annexure - II, III & VII) or any other relaxation as per the provision of the Notice of Examination must ensure that they are entitled to such reservation/relaxation. They should be issued caste certificates from prescribed/competent authority with authority of Govt. of India/Resolution correctly mentioned on it, which justifies the claim of candidate. **Caste mentioned in the caste certificate must be recognized by the Central Govt. & enlisted in centralized list notified by the Central Govt. for respective State.***

(XXV) The candidates belonging to the States will only be considered for recruitment against the vacancies of their domicile States on production of valid "Domicile Certificate" to prove their domiciliary status, issued by the Competent revenue authorities so authorized by the concerned State.”

14. It may also be stated here that there is a stipulation in the advertisement under the heading ‘**General Instructions**’, which reads as



under:

“15. GENERAL INSTRUCTIONS:-

XXX

XXX

XXX

(vi) Caste certificate issued other than domicile state of candidate will not be considered. Both the certificates (caste and domicile) should be issued by same State / UT. If Caste certificate is to be submitted by the candidate from other than domicile then such candidate will be treated as Un-reserved (UR) category.”

(emphasis supplied)

15. The plea of Mr. Rajput is that, since the OBC certificate has been issued by the District Magistrate, Sarita Vihar, New Delhi, the same is in conformity with the advertisement and as such, the petitioner being an OBC candidate needs to be appointed.

16. We are not in agreement with this submission of Mr. Rajput for the reason that the vacancies for which the selection was undertaken were for the respective States/ UT's and as the petitioner applied for appointment against the vacancy meant for Delhi. It was required of him to produce the certificate issued by the Authority in Delhi, declaring that the petitioner is an OBC in Delhi without referring to the certificate issued from U.P. This we say so, because the Authority issuing certificate in Delhi has to independently conclude/ decide on the basis of information supplied by the applicant/ petitioner herein, that he belong to a caste which is an OBC (as per the resolution of the Government of India dated September 10, 1993) in Delhi. No doubt, 'Yadav' caste is in the OBC category in Delhi, but the declaration in that regard in respect of Delhi, has to be separate/ independent without



being influenced by the certificate issued in U.P.

17. The advertisement contemplates that the caste certificate should be issued by the prescribed/ competent authority with authority of Government of India/ Resolution correctly mentioned on it, which justifies the claim of the candidate. But in the present case, as noted from the OBC certificate, though the resolution of Government of India is reflected/ depicted, but the declaration of “*District Magistrate, Sarita Vihar, New Delhi*” in the subsequent paragraph of the certificate contemplates that it is issued on the basis of the OBC Certificate issued to the petitioner from Modi Nagar, Ghaziabad, Uttar Pradesh. The same, thus, is only an affirmation that he belongs to ‘Yadav’ community of Uttar Pradesh. It is in this regard, Sub-Clause (VI) of the “*General Instructions*” of the advertisement, which we have reproduced above becomes relevant, as it is stated therein that the caste certificate issued other than the domicile state of candidate, will not be considered.

18. Reading the Sub-Clause (VI) of the “*General Instructions*” in perspective, the Domicile certificate issued to the petitioner by the District Magistrate, Sarita Vihar, New Delhi in the case of the petitioner is not valid as the OBC Certificate necessarily has to be issued by the Authority i.e. District Magistrate at Modi Nagar, Ghaziabad, Uttar Pradesh where the petitioner hails from and not ‘*on the basis*’ of any other caste certificate issued by another Authority.

19. In other words, the certificate must give a declaration by the Competent Authority upon satisfaction that the petitioner belongs to “*Yadav*” community, which is a notified caste in Delhi as OBC.



Contrary thereto, in the present case the issuing Authority has only made a reference to the certificate issued by the State of Uttar Pradesh. In the absence of a declaration/ certification by the Competent Authority, the respondents were right in treating the candidature of petitioner under the UR Category. It is not the case of the petitioner that he qualified under the UR Category.

20. In so far as the judgment relied upon by Mr. Rajput in the case of *Ravinder Singh (supra)* is concerned, the issue which fell for consideration in the said case was, whether the respondent therein being an OBC candidate, was actually entitled to the relaxation of three years. In the said case, it was clearly/ specifically provided in the advertisement that OBC candidate seeking benefit of reservation should submit an OBC certificate issued by the Competent Authority of Govt. of NCT of Delhi and all other OBC candidates with certificate issued from outside Delhi will be considered as UR category only, if eligible otherwise. The respondent being an OBC from outside NCT of Delhi and in the absence of any challenge to the advertisement, the Supreme Court held the respondent was not entitled to the benefit of three years of age relaxation and his case has to be considered in the unreserved category. As such, the said judgment shall not help the case of the petitioner and it rather supports the case of the respondents.

21. In so far as the judgment relied upon by Mr. Rajput in *Hari Krishna Pathak (supra)* is concerned, the said judgment is clearly distinguishable on facts, inasmuch as, the petitioner therein was seeking the benefit of EWS category as per the certificate issued by Govt. of NCT of Delhi. In this background, the Single Bench of this Court had



in paragraph 33 held that, if a School is owned and controlled by the Central Government, the appropriate Government to such School is the Central Government. The learned Single Judge rejected the plea of the respondents that the EWS certificate having been obtained from the State of Uttar Pradesh and not from Govt. of NCT of Delhi, and hence, not valid as untenable. The judgment is clearly distinguishable on facts.

22. In so far as the judgment in the case of *Arun Kumar (supra)* is concerned (wherein one of us (Saurabh Banerjee, J.) was also a party to the judgment), the Court referred to the judgment of the Supreme Court in the case of *MCD v. Veena and Ors., (2001) 6 SCC 571*, to hold in affirmative that a candidate of the other State other than Delhi would be treated as OBC in Delhi. Such an issue does not arise for consideration in this petition and hence the judgment is distinguishable.

23. In view of the above discussion, we see no merit in the petition. The same is dismissed. No cost.

CM APPL. 4399/2024

This application has been filed by the petitioner seeking interim relief for the stay of further process of the recruitment/appointment for the post or in alternative to keep vacant, one post of Constable (Barber).

In view of the decision in the writ petition, the application is dismissed as infructuous.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

MARCH 15, 2024/jg