

Ram Kumar Gijroya vs Delhi Sub. Services Selection Bd. & Anr on 24 February, 2016

Equivalent citations: AIR 2016 SUPREME COURT 1098, 2016 (4) SCC 754, 2016 LAB. I. C. 2766, 2016 (3) ADR 29, (2016) 3 SERVLR 202, (2016) 2 SCALE 547, (2016) 1 CLR 677 (SC), (2016) 2 SERVLJ 77, (2016) 121 CUT LT 697, (2016) 2 SCT 146, (2016) 3 ESC 387, (2016) 2 JCR 230 (SC), 2016 (9) ADJ 25 NOC

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Bench: V. Gopala Gowda, T.S. Thakur

| NON-REPORTABLE |

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1691 OF 2016
(Arising Out of SLP (C) No.27550 of 2012)

RAM KUMAR GIJROYA

.....APPELLANT

Vs

DELHI SUBORDINATE SERVICES
SELECTION BOARD & ANR.

.....RESPONDENTS

WITH
CIVIL APPEAL NO.1692 OF 2016
(Arising Out of SLP (C) No.27551 of 2012)

WITH
CIVIL APPEAL NO.1693 OF 2016
(Arising Out of SLP (C) No.309 of 2013)

AND
CIVIL APPEAL NO.1694 OF 2016
(Arising Out of SLP (C) No.21445 of 2013)

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted.

The present appeals arise out of the impugned common judgment and order dated 24.01.2012 passed by the High Court of Delhi in Letters Patent Appeal No.562 of 2011 and Writ Petition (C) No. 8087 of 2011 whereby the High Court set aside the judgment and order dated 24.11.2010 passed in Writ Petition (C) No. 382 of 2009, wherein the learned single Judge had allowed the Writ Petition and directed the respondents to accept the O.B.C. certificate of the appellants herein.

The important question of law to be decided in these appeals is whether a candidate who appears in an examination under the O.B.C. category and submits the certificate after the last date mentioned in the advertisement is eligible for selection to the post under the O.B.C. category or not.

As the question of law arising in all these appeals is similar, for the sake of convenience and brevity, we refer to the facts of Civil Appeal arising out of SLP(C) No.27550 of 2012, which has been filed against the impugned judgment and order dated 24.01.2012, The necessary relevant facts required to appreciate the rival legal contentions advanced on behalf of the parties are stated in brief hereunder :-

The respondent-Delhi Subordinate Services Selection Board (hereinafter referred to as “the DSSSB”) invited applications for selection to the post of Staff Nurse in the Department of Health and Family Welfare, Govt. of NCT of Delhi by way of publishing an Advertisement No. 09/2007 in the Newspaper. The last date of submission of the application form in the advertisement for the said post was 21.01.2008. The appellant submitted his application form before the due date and was subsequently issued the admit card to appear in the examination. Having appeared in the examination, he was shortlisted for selection. However, his name did not appear in the final list of selected candidates. On enquiry, he was informed by the concerned official that he was not selected to the post for the reason that he had failed to submit the OBC certificate issued by the appropriate authority along with application form before the last date of submission of application form.

Aggrieved of the action of respondent-DSSSB, the appellant, along with the other aggrieved candidates, filed Writ Petition(C) No.382 of 2009 before the learned single Judge of the High Court of Delhi, seeking the issuance of a writ of mandamus commanding the respondent-DSSSB to accept the OBC certificates submitted by them after the cut off date for selection to the post of Staff Nurse in the Department of Health and Family Welfare, Government of NCT of Delhi as provided in the advertisement. The appellant relied on the judgment dated 11.02.2009 passed in Writ Petition (C) No. 9112 of 2008 by the High Court of Delhi in the case of Pushpa v. Government of NCT of Delhi and Ors., whereby the High Court had granted O.B.C. benefit to the petitioners therein.

The learned single Judge disposed of the writ petition vide judgment and order dated 24.11.2010, placing reliance on the judgment in the case of Pushpa (supra), wherein the controversy centred around the same advertisement/Notification issued by the same respondent. The learned single Judge observed that the only ground for

declining the applications filed by the appellants was that the O.B.C. certificates had been issued and submitted after the cut off date and therefore they were not eligible for appointment to the post. The learned single Judge further held that the respondent did not cite any other authority to distinguish the decision in Pushpa's case (supra) from the facts of the present case. Consequently, the learned single Judge disposed of the writ petition and directed the respondent to reconsider the application of the appellant and the other aggrieved candidates against the O.B.C. category within a period of one month.

Aggrieved, the respondent-DSSSB filed Letters Patent Appeal No. 562 of 2011 before the Division Bench of Delhi High Court. The High Court vide its judgment and order dated 24.01.2012 held that the appellant had applied for the O.B.C. certificate ten days before the cut off date, which was not the same as in Pushpa's case (supra). In the case of Pushpa, the application for the O.B.C. certificate had been filed much before the date of advertisement. It was observed that the advertisement in the present case was published on 30.08.2007 and the last date of submission of the application form was 21.01.2008 and the appellant herein applied for O.B.C. certificate only ten days prior to the cut off date and hence, no case for grant of relief in favour of the appellant was made out. The High Court, thus, set aside the order of the learned single Judge and allowed the Letters Patent Appeal filed by the respondent-DSSSB. Hence, the present appeal.

Mr. R.C. Kaushik, the learned counsel appearing on behalf of the appellant contends that the Division Bench of the High Court erred in not giving the opportunity to the appellant to submit the O.B.C. certificate after the cut- off date of the application. The requirement of submitting the O.B.C. certificate before the cut-off date of the application was introduced by the respondent-DSSSB only while declaring the result on 15.12.2008, holding that the appellant was not eligible for selection of the post of Staff Nurse as the O.B.C. certificate was received after cut-off date. The learned counsel contends that the stand of respondent-DSSSB is arbitrary, illegal and unreasonable and is also contrary to the settled proposition of law and guidelines issued on reservation and concession for candidates belonging to the reserved categories. The learned counsel places reliance upon the judgment of the Delhi High Court in the case of Tej Pal Singh & Ors. v. Govt. Of NCT of Delhi[1], wherein it was categorically held by the High Court that the petitioners therein were entitled to submit such certificates even after the cut-off date fixed by the advertisement.

The learned counsel further contends that this Court in the cases of Secretary, State of Karnataka & Ors. v. Uma Devi (3) & Ors.[2] and Delhi Transport Corporation v. D.T.C. Mazdoor Congress & Ors.[3] has held that the State is meant to be a model employer and must give due importance to the fundamental rights of equality and opportunity in the matter of public appointment guaranteed under Articles 14 and 16 of the Constitution of India.

On the other hand, Mr. Ranjit Kumar, the learned Solicitor General appearing on behalf of the respondent-DSSSB sought to justify the impugned judgment and order contending that the impugned judgment and order does not suffer from any illegality and need not be interfered with by this Court.

The learned Solicitor General further contends that the Division Bench of the High Court was justified in not allowing the appellant to submit the O.B.C. certificate after the cut-off date fixed in the advertisement as the appellant had failed to submit the required certificate for availing the benefit of reservation within the stipulated time and thus, he had waived of his right for being considered under the reserved category.

It is further contended by the learned Solicitor General that no substantial question of law arises in the present appeal to invoke the jurisdiction of this Court under Article 136 of the Constitution.

After hearing both the parties at length and perusing the impugned judgment and order passed by the Division Bench of the High Court, we are of the view that the Division Bench erred in setting aside the judgment and order passed by the learned single Judge. We record our reasons hereunder.

The Division Bench of the High Court erred in not considering the decision rendered in the case of Pushpa (supra). In that case, the learned single Judge of the High Court had rightly held that the petitioners therein were entitled to submit the O.B.C. certificate before the provisional selection list was published to claim the benefit of the reservation of O.B.C. category. The learned single judge correctly examined the entire situation not in a pedantic manner but in the backdrop of the object of reservations made to the reserved categories, and keeping in view the law laid down by a Constitution Bench of this Court in the case of Indra Sawhney v. Union of India[4] as well as Valsamma Paul v. Cochin University & Ors.[5] The learned single Judge in the case of Pushpa (supra) also considered another judgment of Delhi High Court, in the case of Tej Pal Singh (supra), wherein the Delhi High Court had already taken the view that the candidature of those candidates who belonged to the S.C. and S.T. categories could not be rejected simply on account of the late submission of caste certificate.

The relevant paragraph from the judgment of this Court in the case of Indra Sawhney (supra) has been extracted in the case of Pushpa (supra) along with the speech delivered by Dr. Ambedkar in the constituent assembly and reads thus :-

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251. Referring to the concept of equality of opportunity in public employment, as embodied in Article 10 of the draft Constitution, which finally emerged as Article 16 of the Constitution, and the conflicting claims of various communities for representation in public administration, Dr Ambedkar emphatically declared that reservation should be confined to 'a minority of seats', lest the very concept of equality should be destroyed.

In view of its great importance, the full text of his speech delivered in the Constituent Assembly on the point is appended to this judgment. But I shall now read a few passages from it. Dr Ambedkar stated:

"... firstly, that there shall be equality of opportunity, secondly, that there shall be reservations in favour of certain communities which have not so far had a 'proper look-in' so to say into the administration Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation ... we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, ...". Constituent Assembly Debates, Vol. 7, pp. 701-702 (1948-49).

These words embody the *raison d'être* of reservation and its limitations. Reservation is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, in so far as one group is preferred to the exclusion of another, must necessarily be narrowly tailored to the achievement of the fundamental constitutional goal." In the case of Pushpa (*supra*), relevant paragraphs from the case of Tej Pal Singh (*supra*) have also been extracted, which read thus :-

"11..... xxx xxx xxx

17. The matter can be looked into from another angle also. As per the advertisement dated 11th June, 1999 issued by the Board, vacancies are reserved for various categories including 'SC' category. Thus in order to be considered for the post

reserved for 'SC' category, the requirement is that a person should belong to 'SC' category. If a person is SC his is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence.

The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to 'SC' category and act thereon by giving the benefit to such candidate for his belonging to 'SC' category. It is not that petitioners did not belong to 'SC' category prior to 30th June, 1998 or that acquired the status of being 'SC' only on the date of issuance of the certificate. In view of this position, necessitating upon a certificate dated prior to 30th June, 1998 would be clearly arbitrary and it has no rationale objective sought to be achieved.

18. While taking a particular view in such matters one has to keep in mind the objectives behind the post of SC and ST categories as per constitutional mandate prescribed in Articles 15(4) and 16(4) which are enabling provisions authorising the Government to make special provisions for the persons of SC and ST categories. Articles 14(4) and 16(4), therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a right enshrined for protection of society. The right in social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular Arts. 14, 15, 16, 21, 38, 39 and 46 are to make the quality of the life of the poor, disadvantaged and disabled citizens of the society meaningful.” Further, in the case of Pushpa (supra), relevant portion from the judgment of Valsamma Paul’s case (supra) has also been extracted, which reads as under:-

“21. The Constitution through its Preamble, Fundamental Rights and Directive Principles created a secular State based on the principle of equality and non-discrimination, striking a balance between the rights of the individuals and the duty and commitment of the State to establish an egalitarian social order.” In our considered view, the decision rendered in the case of Pushpa (supra) is in conformity with the position of law laid down by this Court, which have been referred to supra. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in the cases of Indra Sawhney and Valsamma Paul (supra) wherein this Court after interpretation of Articles 14,15,16 and 39A of the Directive Principles of State Policy held that the object of providing reservation to the SC/ST and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39A of the Directive Principles of State Policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus, erred in reversing the judgment and order passed

by the learned single Judge. Hence, the impugned judgment and order passed by the Division Bench in the Letters Patent Appeal No. 562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in the cases of Indra Sawhney and Valsamma Paul (supra). Therefore, the impugned judgment and order passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside. The judgment and order dated 24.11.2010 passed by the learned single Judge in W.P. (C) No. 382 of 2009 is hereby restored.

The appeals are allowed. No costs.

.....CJI.

[T.S. THAKUR]J. [V. GOPALA GOWDA] New Delhi, February 24, 2016 ITEM NO.1A-For Judgment COURT NO.9 SECTION XIV SUPREME COURT OF INDIA RECORD OF PROCEEDINGS Civil Appeal No(s).1691/2016 @ SLP(C) No(s). 27550/2012 RAM KUMAR GIJROYA Appellant(s) VERSUS DELHI SUB. SERVICES SELECTION BD. & ANR. Respondent(s) WITH Civil Appeal No(s).1692/2016 @ SLP(C) No(s). 27551/2012 Civil Appeal No(s).1693/2016 @ SLP(C) No(s). 309/2013 Civil Appeal No(s).1694/2016 @ SLP(C) No(s). 21445/2013 Date : 24/02/2016 These appeals were called on for pronouncement of JUDGMENT today.

For Appellant(s) Mr. R. C. Kaushik,Adv.

Mr. Piyush Sharma,Adv.

Mr. Rameshwar Prasad Goyal,Adv.

For Respondent(s) Mr. D. S. Mahra,Adv.

Hon'ble Mr. Justice V.Gopala Gowda pronounced the judgment of the Bench comprising Hon'ble the Chief Justice and His Lordship.

Leave granted.

The appeals are allowed in terms of the signed Non-

Reportable Judgment.

Pending application(s), if any, stand(s) disposed of.

| (VINOD KUMAR)
| COURT MASTER

| | (MALA KUMARI SHARMA)
| | COURT MASTER

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(Signed Non-Reportable Judgment is placed on the file)

[1] [2] ILR 2001 Delhi 298 [3] [4] (2006) 4 SCC 1 [5] [6] 1991 Supp(1) SCC 600 [7]
[8] 1992 (Supp) 3 SCC 217 [9] [10] (1996) 3 SCC 545