

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.1273 of 2023
Date of Decision: 01.01.2026

Banita Choudhary

.....Petitioner

Versus

State of Himachal Pradesh & Anr.

.....Respondents

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? Yes.

For the Petitioners: Mr. Ajay Kumar Dhiman, Advocate.

For the respondents: Mr. Rajan Kahol, Mr. Vishal Panwar, Additional Advocates General with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General, for the respondents-State.

Sandeep Sharma, J. *(Oral)*

Precisely, the question, which needs to be determined in the case at hand, is that “whether a selected candidate belonging to OBC Category can be rendered ineligible on the ground of non-submission of OBC Certificate within cut-off date mentioned in the advertisement?”

2. Quintessential, the facts, as emerge from the pleadings, adduced on record by the respective parties are that vide Advertisement No.9/2022 dated 19.09.2022 (Annexure P-1), Atal Medical & Research University, Himachal Pradesh, advertised 723 posts of Community Health Officer, out of which 110 posts were

reserved for OBC category. Petitioner herein, being fully eligible, applied for the post of Community Health Officer under OBC category and successfully qualified the written examination conducted on 09.10.2022, as is evident from office order dated 17.01.2023 (Annexure P-5), wherein name of the petitioner figures at serial No.64. After her having qualified the written examination, petitioner herself appeared for document verification on 21.01.2023, but despite her being fully eligible for the post reserved for OBC category, she was not offered appointment on the ground that she failed to submit valid OBC Certificate at the time of her making application for appointment against the post of Community Health Officer in terms of advertisement dated 19.09.2022 (Annexure P-1). In the afore background, petitioner has approached this Court in the instant proceedings, praying therein for the following main reliefs:-

“a. A writ in the nature of mandamus may be issued and thereby directing the respondent to consider the certificate of the petitioner dated 17.01.2023 annexure P-7 and given appointment to the petition as Community Health Officer in Health and Family Welfare department of State of H.P. under OBC Category as the petitioner was successful candidate in the written examination.”

3. Pursuant to notices issued in the instant proceedings, respondents No.1 & 2 have filed reply under the signatures of Mission Director, National Health Mission, Himachal Pradesh, Shimla, perusal whereof clearly reveals that facts, as have been noticed hereinabove,

have not been disputed, rather stand admitted. An attempt has been made to refute the claim of the petitioner on the ground that certificate adduced on record by the petitioner at the time of her making application was valid upto 29.06.2022 i.e. one year from the date of issue on 30.06.2021, as such, same could not have been taken into consideration, while considering the candidature of the petitioner against the post of Community Health Officer reserved for OBC category.

4. It has been averred in the reply that at the time of applying online for the post in response to the advertisement (Annexure P-1), petitioner was not in actual possession of a valid OBC Certificate, as such, could not claim any benefit of reservation under the said category. Though factum, if any, with regard to production of valid OBC Certificate at the time of documentation has not been denied by the respondents, but it has been claimed at their behest that relevant date for ascertaining the validity of OBC Certificate is/was the cut off date prescribed in advertisement i.e. 22.10.2022 by which time admittedly the OBC Certificate adduced on record by the petitioner along with application had lost its efficacy. In support of afore contentions, reliance has also been placed upon judgments passed by this Court in CWP No.4020 of 2019, titled as **Satnam Singh Vs. State of Himachal Pradesh & Ors.** and in CWP No.2988

of 2019, titled as ***Kalpna Kumari Vs. State of Himachal Pradesh & Ors.***, wherein it came to be ruled that instructions issued by the respondents for applying for the post in question vis-a-vis uploading all relevant certificates inclusive of belonging to reserve categories, as on the date of applying within cut off date, were mandatory. No lenient view in cases of violation of mandatory instructions can be taken as it can be treated as precedent by various other candidates, who might have also been disqualified for the same reason. The instructions are mandatory and have to be strictly complied with.”

5. I have heard learned counsel for the parties and gone through the record carefully.

6. Admittedly, in the case at hand, no valid OBC Certificate was uploaded by the petitioner at the time of her making application for the post in question, but the question that requires consideration at this stage is “whether on afore ground, petitioner herein, who admittedly had qualified written examination and thereafter was called for document verification, could have been denied appointment against the post in question despite her having made available valid OBC Certificate during verification of documents?” Though judgments pressed into service by the respondents-State, as have been taken note hereinabove, suggest that instructions issued by the respondents for applying for the post in question vis-a-vis uploading all relevant

certificates including OBC Certificate, as on the date of applying within cut-off date, were mandatory, but issue otherwise required to be decided in the instant proceedings is somewhat different. No doubt, in terms of instructions issued by the respondents for applying for the post in question, petitioner as well as other similarly situate persons were under obligation to upload all the relevant documents at the time of their making application for the post in question. Had petitioner not uploaded her OBC Certificate at the time of her making application, probably her candidature would not have been considered under the category of OBC, rather in that situation, she would have been treated as a candidate of the General (unreserved) category. Admittedly, in the instant case, despite there being uploading of invalid OBC Certificate by the petitioner, she was considered a candidate of OBC category, as such, she was called for written examination under the OBC category. It is also not in dispute that after her having cleared written examination, petitioner was called for document verification under OBC category (serial No.64), vide office order dated 17.01.2023 (Annexure P-5), meaning thereby, though the petitioner was considered a candidate belonging to the OBC category, but her appointment against the post in question was to be offered to her after her having produced valid OBC Certificate at the time of documentation, which admittedly was produced by her.

7. Leaving everything aside, issue, which needs determination in the case at hand, is no more *res integra*, rather stands adjudicated by Hon'ble Apex Court in ***Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board & Anr***, 2016 (4) SCC 754. In afore case, respondent-Board 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 for the submission of application form in the advertisement for the said post was 21.01.2008. The appellant, therein submitted his application form before the due date and was subsequently issued an admit card to appear in the examination. After his having cleared written examination, he was shortlisted for selection. However, his name did not appear in the final list of the selected candidates. On enquiry, he was informed 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. Being aggrieved and dissatisfied with the rejection of his candidature, appellant approached High Court of Delhi, where learned the learned Single Judge allowed the writ petition and directed the respondent to reconsider the applications of the appellant and the other aggrieved candidates in the O.B.C. category.

Being aggrieved and dissatisfied with the judgment rendered by the learned Single Judge, respondent/board preferred LPA before the Division Bench of Delhi High Court, which was allowed. Aggrieved with the judgment judgment passed by Division Bench of Delhi High Court, petitioner Ram Kumar Gijroya approached Hon'ble Apex Court in the case titled hereinabove. Hon'ble Apex Court, while allowing the SLP preferred at the behest of petitioner named hereinabove, held that the learned Single Judge of Delhi 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. Relevant paras of the afore judgment are extracted herein below:-

“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:-

“9.....

xxx xxx xxx

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’etre 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.

8. In the aforesaid judgment rendered by Hon'ble Apex Court, which is based upon its earlier judgments rendered in ***Indra Sawhney v. Union of India, 1992 (3) SCC(SUPP) 217; Valsamma Paul v. Cochin University & Ors., 1996 (3) SCC 545*** and in ***C.M. No. 17504/2008 in W.P.(C) No.9112/2008***, titled as ***Pushpa v. Government of NCT of Delhi and Ors.***, while holding that constitutional concept of reservation envisaged in the Preamble of the Constitution as well as [Articles 14, 15, 16](#) and 39 of the Directive Principles of State Policy is to achieve the concept of giving equal opportunity to all sections of the society, categorically held that purpose of Caste certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to caste for which certificate has been issued and act thereon by giving the benefit to such candidates for his belonging to caste for which particular seat has been reserved. Since it is not in dispute that at the time of her making an application, petitioner belonged to the OBC category, which fact otherwise subsequently came to be substantiated at the time of documentation, there was no occasion, if any, for the respondents to reject her candidature on the ground that at the time of her making

application, she failed to upload the valid OBC Certificate. Needless to say, validity of such certificate is for a limited period i.e. one year, meaning thereby, otherwise also, candidate, who at the time of making application, had submitted OBC Certificate may have to produce valid certificate at the time of documentation because by which time, there is a possibility of expiring the certificate, which actually he/she had submitted at the time of her/his making online application.

9. In view of aforesaid, this Court is of the view that injustice has been caused to the petitioner, who admittedly on account of having cleared written examination, was to be given appointment against the post of Community Health Officer reserved for OBC category, but next question, which needs determination is that “whether on account of appointment, if any, given to the petitioner in terms of instant order, last selected candidate would be ousted or not?”

10. This court is of the view that since there was no fault, if any, of last selected candidate, who pursuant to his/her having applied for the post in question and on the basis of documents adduced on record was able to find place in the merit list, he/she cannot be thrown out of job at this juncture, especially when he/she has been working against the post in question for two years, however at the same time, rightful claim of the petitioner also cannot be

permitted to be defeated for the fault of the respondents, who while evaluating the documents were not careful enough, as a result thereof, an irregularity has occurred.

11. At this juncture, it would be apt to take note of judgment rendered by the Hon'ble Apex Court in case titled **Vikas Pratap Singh and others Versus State of Chhattisgarh and others**, (2013) 14 SCC 494, wherein taking note of the fact that the appellants (therein) had successfully undergone training and were serving the State for more than three years, were allowed to continue in service even though their selection was interfered with. Para 28 of the judgment, being relevant, is extracted hereinafter:-

“28. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list.”

12. Similar situation arose in **Anmol Kumar Tiwari and others Versus State of Jharkhand and others**, (2021) 5 SCC 424, wherein the Hon'ble Apex Court confirmed the decision of the High

Court that had directed reinstatement of the writ petitioners after taking into account the fact that they were though beneficiaries of the select list that was prepared in an irregular manner, but were not responsible for the irregularities committed by the authorities in preparation of the said select list. Relevant para from the judgment reads as under:-

“11. Two issues arise for our consideration. The first relates to the correctness of the direction given by the High Court to reinstate the Writ Petitioners. The High Court directed reinstatement of the Writ Petitioners after taking into account the fact that they were beneficiaries of the select list that was prepared in an irregular manner. However, the High Court found that the Writ Petitioners were not responsible for the irregularities committed by the authorities in preparation of the select list. Moreover, the Writ Petitioners were appointed after completion of training and worked for some time. The High Court was of the opinion that the Writ Petitioners ought to be considered for reinstatement without affecting the rights of other candidates who were already selected. A similar situation arose in Vikas Pratap Singh case, where this Court considered that the Appellants therein were appointed due to an error committed by the Respondents in the matter of valuation of answer scripts. As there was no allegation of fraud or misrepresentation committed by the Appellants therein, the termination of their services was set aside as it would adversely affect their careers. That the Appellants therein had successfully undergone training and were serving the State for more than 3 years was another reason that was given by this Court for setting aside the orders passed by the High Court. As the Writ Petitioners are similarly situated to the appellants in Vikas Pratap Singh case, we are in agreement with the High Court that the Writ Petitioners are entitled to the relief granted. Moreover, though on

pain of Contempt, the Writ Petitioners have been reinstated and are working at present."

13. In the case at hand, though petitioner has not arrayed the last selected candidate as a party, but on that count, petitioner cannot be non-suited, especially when this Court is convinced that for no fault of her injustice has been done to the petitioner. Since the last selected candidate in the category of OBC was offered appointment by the respondents and there was no misrepresentation on the part of that candidate, it would be too harsh if he/she is ordered to be removed from service. At the same time, petitioner also cannot be denied her rightful claim being fully eligible to be appointed against the post in question.

14. Consequently, in view of detailed discussion made herein above as well as law taken into consideration, this Court finds merit in the present petition and accordingly, same is allowed. Respondents are directed to offer appointment to the petitioner against the post of Community Health Officer considering her to be appointee of 2023, when other candidates, who had applied for the post in question, in terms of advertisement dated 19.09.2022 (Annexure P-1), were given appointment, but while doing so, appointment of last selected candidate against the OBC shall not be withdrawn. Needless to say, in the event of non-availability of post, respondents shall be under

obligation to create supernumerary against which petitioner shall be given appointment in terms of directions contained in the instant judgment. However, petitioner shall not be entitled to actual monetary benefits for the period between deemed date of appointment and actual joining but such period shall count for the purpose of seniority and other service benefits. Pending applications, if any, also stand disposed of.

January 01, 2026
(sunil)

**(Sandeep Sharma),
Judge**