

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) 1708 of 2022

Smt. Poonam Petitioner

versus

State of Uttarakhand and others Respondents

Present:

Mr. Sanjay Bhatt, learned counsel for the petitioner.

Mr. Narayan Dutt, Brief Holder for the State/ respondent nos. 1 & 3.

Mr. Ramji Srivastav, learned counsel for the respondent no.2.

Hon'ble Manoj Kumar Tiwari, J. (Oral)

By means of this writ petition, petitioner has challenged the Office Memo dated 25.08.2022 passed by Secretary, Uttarakhand Medical Service Selection Board, whereby petitioner's claim for appointment on the post of Dental Hygienist was rejected.

2. The facts, on which there is no dispute, are as under:

Petitioner is educationally qualified for appointment as Dental Hygienist. Respondent no. 2 invited applications by issuing an advertisement dated 06.10.2021, inviting applications for 40 post of Dental Hygienist. Petitioner applied for a post reserved for Other Backward Classes and, in support of her claim, she submitted her O.B.C. certificate. Petitioner stood 14th in order of merit against 40 vacancies, however, only 13 candidates were recommended for appointment. Petitioner was not recommended for appointment on the ground that validity period of her

O.B.C. certificate had expired three days before publication of advertisement.

3. Petitioner filed Writ Petition No. 329 of 2022 (S/S). This Court, by relying upon the judgment rendered by Hon'ble Supreme Court in the case of Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and another, reported in (2016) 4 SCC 754, allowed the writ petition vide judgment dated 26.07.2022 by holding that petitioner is member of Other Backward Classes, and has been issued fresh O.B.C. certificate on 12.01.2022, therefore, the Competent Authority shall re-consider petitioner's claim in the light of fresh O.B.C. certificate issued to her. Relevant extract of the judgment dated 26.07.2022 in petitioner's writ petition is reproduced below:

“Admittedly, in the present case, caste status of petitioner is not in dispute. Petitioner has been denied appointment against a post reserved for Other Backward Classes solely on the ground that validity period of her caste certificate had expired on the last date of submission of application. Since subsequently another caste certificate was issued to the petitioner on 12.01.2022, therefore, the Competent Authority is required to re-consider petitioner's claim for appointment against a post reserved for Other Backward Classes, in the light of caste certificate issued to petitioner on 12.01.2022.

Accordingly, the writ petition is allowed. Petitioner shall file an affidavit before respondent no. 2, within two weeks from today, indicating therein her monthly income between 03.10.2021 till 12.01.2022 and she will also make a statement as to whether she came within the creamy layer during the said period. Based on her affidavit and the O.B.C. Certificate issued to petitioner on 12.01.2022, respondent no. 2 shall re-consider petitioner's claim for appointment to the post of Dental Hygienist within a period of four weeks' from the date of presentation of such affidavit and copy of new O.B.C. Certificate, alongwith certified copy of this order.”

4. Petitioner served the aforesaid judgment upon respondent no. 2 and filed an affidavit, as per direction contained in the judgment. Her claim for appointment has again been rejected by respondent no. 2 vide order dated 25.08.2022. Thus, feeling aggrieved, petitioner has approached this Court.

5. The rejection order, impugned in this writ petition, is on record as Annexure No. 14. The reason for non-suiting the petitioner for appointment is spelled out in paragraph no. 3. It is stated that two issues require consideration for determining petitioner's eligibility, namely, (i) whether she belongs to Other Backward Classes; (ii) whether she belongs to creamy layer or not. It is observed that this Court has returned finding that petitioner belongs to O.B.C., therefore, that question cannot be re-opened. However, the question whether she comes within creamy layer has been decided against her on the ground that petitioner's marriage was solemnized on 20.11.2022 at Dehradun, however, she obtained O.B.C. certificate by mentioning address and income of her father and not of her husband. Reliance has been placed upon Government Order dated 02.04.2013 for recording adverse finding against petitioner that she suppressed information regarding marriage in her application made to the Competent Authority for issuance of O.B.C. certificate.

6. English translation of paragraph no. 4 (v) of Government Order dated 02.04.2013, as supplied by learned counsel for the petitioner, on which heavy reliance is placed by respondent no. 2, is given below:

“4 (v) Permanent resident includes a wife who, after marriage with a permanent resident of

Uttarakhand, is residing with her husband in State of Uttarakhand.”

7. Reliance upon Government Order dated 02.04.2013, for rejecting petitioner’s claim, appears to be misplaced. The caste status of petitioner’s parents is not in dispute and it is also not in dispute that petitioner is permanent resident of State of Uttarakhand. Caste status is acquired by birth and not by marriage. Thus, a girl, who does not belong to Other Backward Classes, will not get benefit of reservation available to Other Backward Classes merely by her marriage to a person belonging to O.B.C.

8. The Competent Authority has issued a certificate stating that petitioner belongs to Other Backward Classes. In the said certificate, it is further certified that petitioner does not belong to creamy layer. The O.B.C. certificate issued by Tehsildar in favour of petitioner on 12.01.2022 is neither cancelled nor rescinded, therefore, it is not open to the Selecting Body to sit in judgment over the certificate issued by the Competent Authority. Petitioner is entitled to all benefits available to member of O.B.C. so long as her O.B.C. certificate survives. There is nothing on record to show that petitioner’s husband belongs to creamy layer and the discussion made in paragraph no. 4 of the impugned order, is without any material. There is no discussion regarding income of petitioner’s husband in the impugned order, yet her claim for appointment is rejected.

9. Even otherwise also, there is no Statute or Government Order, providing that a girl belonging to O.B.C. category has to obtain O.B.C. certificate on the

basis of income of her husband immediately after her marriage. Respondent no. 2 has rejected petitioner's claim for appointment based on value judgment and not based on any provision of law. O.B.C. certificate issued in favour of petitioner by Competent Authority cannot be set at naught, merely because petitioner's action does not confirm to second respondent's notions of socially accepted norms. In the absence of express provision in law providing that, after marriage, a girl has to obtain O.B.C. certificate, based on income of her husband and not her father, petitioner's conduct cannot be said to be illegal so as to render her caste certificate null and void.

10. The reasoning given by Secretary of the Selecting Body for rejecting petitioner's claim for appointment is unsustainable in the eyes of law, therefore, the impugned order deserves to be set aside.

11. Learned counsel for the petitioner submits that, against 40 vacancies, only 13 names were recommended and majority of posts are lying vacant.

12. For the aforesaid facts and reasons, the writ petition is allowed and the impugned order dated 25.08.2022 is quashed. Respondent no. 2 is directed to recommend petitioner's name for appointment to the Competent Authority, within two weeks, who shall pass appropriate order, as per law, within next two weeks.

(Manoj Kumar Tiwari, J.)
07.01.2023