

**SUPREME COURT OF INDIA**

Union of India

Vs.

Dalbir Singh

C.A.No.3409 of 2009

(Tarun Chatterjee and H.L. Dattu JJ.)

08.05.2009

**JUDGEMENT**

**H.L. Dattu, J.**

Leave granted.

1. This appeal, which has come before us on special leave, is directed against a judgment and order of a Division Bench of Punjab and Haryana High Court, in Civil Writ Petition No. 6481 - CAT of 2005 dated April 25, 2005, affirming the order passed by the Central Administrative Tribunal, Chandigarh Bench in O.A. No. 86-HR of 2003 dated May 22, 2004.
2. The short question is, whether the Administrative Tribunal is justified in directing the appellants to appoint Respondent No. 1 as a selected candidate in the general category even though he had not applied under that category.
3. The appellants advertised in the News Paper for selection to 20 vacant posts of Mazdoor both in general and reserved category.

“Respondent No. 1 applied for selection in the reserved (OBC) category and had annexed his OBC certificate dated 4.5.1997. A separate Board Proceedings was prepared for the candidates who had claimed concession on the basis of OBC certificate and name of the respondent No. 1 was also in the said proceedings. Since the permanent address furnished in the application was different and the OBC certificate furnished was from the different State; the authenticity of the said document was sought from the issuing authority. It was intimated by SDO(C), Ambala, vide their letter dated 11.7.2000 that the said certificate was not issued by their office. The same was informed to respondent No.1, and thereafter, he produced another certificate dated 14.8.2000 issued by SDO(C), Ambala in which a new address was given and the respondent No.1 was shown to be in OBC category on account of his being of the `Saini' caste and later on it was found that `Saini' caste was not in the OBC category in Punjab State. In view of this discrepancy in the caste

certificate produced, the candidature of respondent No.1 came to be rejected by the appellants and, accordingly, no letter of appointment was issued to respondent No. 1.”

4. Aggrieved by the action of the appellants, contesting respondent filed O.A. No. 86 of 2003 before the Central Administrative Tribunal, Chandigarh Bench, seeking a direction that he be provided employment for the post of Mazdoor with all consequential benefits either by including his name in the list of candidates prepared for general category and, in the alternative, to direct the respondents therein to accept the OBC certificate issued by SDO(C), Ambala dated 14.8.2000.

5. The appellants in their written objections while traversing all the assertions and allegations made by the applicant, had stated that separate Board Proceedings had been prepared for candidates who had claimed concessions on the basis of OBC category and the applicant having opted to be considered under the OBC category, he was expected to produce the genuine certificate issued by the competent authority. They had also stated that, to fill up the vacancies of Mazdoors, an advertisement had been issued separately for general and OBC categories and pursuant to such advertisement, the applicant had applied against OBC category and not under general category and, therefore, his name was not considered under general category.

6. The Administrative Tribunal while accepting the assertion made by the appellants regarding the non-suitability of the certificates furnished by the respondent herein, still directed the appellants to issue letter of appointment to the respondent by considering his candidature in the general category as he had scored more marks than one of the candidate in the general category.

7. Against this decision, the appellants had carried the matter by way of writ petition before the High Court of Punjab and Haryana. The High Court vide its order dated 28.4.2005 had dismissed the writ petition.

8. The substantial point that requires consideration in the appeal is, whether the Tribunal was correct in directing the appellants to give appointment to respondent No.1 under general category on the basis of marks obtained by him, even if it requires replacing of a last candidate in the selected general category.

9. For proper determination of the question, it would be convenient, first of all to refer to the advertisement/Employment Notice issued by the appellants inviting applications to fill up vacant posts of Mazdoors in Suranasi, Jalandhar. In the employment notice there is a mention of number of posts available in general category and other backward classes (OBC category).

10. Pursuant to the aforesaid employment notice, respondent No.1, filed his application to consider his case under OBC category. In support of his claim, he had produced caste certificate. It so happens that the certificate produced was found to be defective.

“This has resulted in not enlisting his name in the select list.

Respondent at no point of time had claimed before the authorities that if for any reason, his case cannot be considered under OBC category, at least the appellants should consider his case under the general merit list. From the pleadings, it appears to us, that the appellants had prepared two sets of lists. The first one being the list of those candidates who had staked their claim in the general merit and the second list contains those candidates who had opted for consideration of their case under OBC category. The respondent at no point of time had taken exception to the procedure adopted by the appellants in preparing the select list. In our opinion, having opted to consider his case only under OBC category, he cannot thereafter claim that his case requires to be considered in the general merit, only because, he has scored better percentage of marks than the last selected candidate in the general merit. In our considered view, the Administrative Tribunal having found that the appellants were justified in not considering the respondent's case for appointment under OBC category, ought not to have directed the appellants to consider his claim under general category.”

11. For the foregoing reasons, we allow this appeal and set aside the impugned orders. In the facts and circumstances of the case, we direct the parties to bear their own costs.