

SUPREME COURT OF INDIA

Khilendra Singh

Vs.

Union of India Ministry of Agriculture Through Secretary

C.A.No.19862 of 2017

(S.A.Bobde and L.Nageswara Rao,JJ.,)

28.11.2017

JUDGMENT

L.Nageswara Rao,J.,

SLP(Civil) No.14201 of 2011

1. Leave granted.

2. The Appellant applied for appointment to the posts of Subject Matter Specialist (Crop Protection & Crop Psychology) in Vivekananda Parvatiya Krishi Anusandhan Sansthan, Almora. The Appellant belongs to “Jaat” caste which was falling within the category of Other Backward Classes (OBCs) in the State of Uttar Pradesh. The Tesildar, Thakurdwara, Moradabad (U.P.) issued a certificate in favour of the Appellant stating that he belongs to Other Backward Classes on 22nd June, 2007. The Appellant was appointed on 2nd January, 2008 in a post reserved for OBCs. A show-cause notice was issued to the Appellant asking him to explain as to why his appointment should not be cancelled as the community to which he belongs is not found in the Central List of OBCs. The Appellant submitted his explanation on 6th November, 2010. An inquiry was conducted and on the basis of the recommendation of the Inquiry Committee, the services of the Appellant were terminated on 20th November, 2010. He approached the High Court of Uttarakhand at Nainital by filing Writ Petition challenging the order of termination. The Writ Petition was dismissed vide judgment dated 24th February, 2011, the legality of which is assailed in the above Appeal.

3. The National Commission for Backward Classes was constituted by the National Commission for Backward Classes Act, 1993 (Act 27 of 1993). Section 9 of the Act empowers the Commission to examine requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advice to the Central Government as it deems appropriate. Section 2(c) defines “Lists” as follows:

(c) “lists” means lists prepared by the Government of India from time to time for purposes of making provision for the reservation of appointments or posts in favour of backward classes of citizens which, in the opinion of that Government, are not adequately represented in the services under the Government of India and any local or other authority within the territory of India or under the control of the Government of India

4. By a proceeding dated 10th September, 1993 the Government of India finalised the Central List of OBCs for each State. A common List for the State of Uttar Pradesh was annexed to the said proceedings in which the caste of “Jaat” was not included. The matter pertaining to the inclusion of “Jaat” in the Central List of OBCs for the States of Uttar Pradesh, Madhya Pradesh, Haryana and Rajasthan came up for consideration before the Commission in the year 1997. The National Commission for Backward Classes recommended inclusion of “Jaat” caste in the OBCs only for the State of Rajasthan and not the other three States. On the basis of the power of review that was conferred on the National Commission for Backward Classes, the matter was examined afresh. The National Commission for Backward Classes conducted hearings in Delhi to consider the request of “Jaat” caste in the Central List of OBCs for nine States including the State of Uttar Pradesh. The National Commission for Backward Classes advised the Central Government not to include the “Jaat” caste/ community in the Central List of OBCs. While rejecting the recommendation made by the National Commission for Backward Classes, the Central Government issued a notification including “Jaat” caste/ community in the Central List of OBCs for the States of Uttar Pradesh/ Uttarakhand and seven other States in 2014.

5. A perusal of the facts that are stated in the preceding paragraph on the basis of the counter affidavit filed by the National Commission for Backward Classes would show that “Jaat” caste/ community is in the Central List of OBCs for the State of Uttarakhand from 2014. The Central List of OBCs prepared for the States of Uttar Pradesh in 1993 did not include the “Jaat” caste/ community. The State of Uttarakhand was formed in 2000. By a Resolution passed in 2010, the National Commission for Backward Classes resolved that till the Central List for the State of Uttarakhand was finalized, the List that was in operation in the State of Uttar Pradesh will be followed for appointment to the Central posts reserved for OBCs. The advertisement and selection in this case was made in the year 2007 when the caste to which the Appellant belongs i.e. “Jaat” was not in the Central List for Uttar Pradesh.

6. We are not in agreement with the reasons given by the High Court while dismissing the Writ Petition. It was held in the impugned judgment that the List prepared by the State of Uttarakhand would be applicable for appointment to Central posts. We approve the final conclusion of the High Court that the Appellant was not entitled for appointment in the post reserved for OBCs, though for different reasons as stated supra.

7. The Appeal is dismissed accordingly. No costs.

JUDGMENT

L.Nageswara Rao,J.,

8. Leave granted.

9. The writ petitions filed by the Respondents seeking appointment to the post of Constable G.D. in Central Reserve Police Force (CRPF) in the category of Other Backward Classes (OBCs) were allowed by a learned Single Judge of the High Court of Uttarakhand at Nainital. The Appeals filed by the Union of India were dismissed by a Division Bench. The Appellants have approached this Court challenging the correctness of the said judgment of the High Court.

10. An advertisement was issued on 24th July, 2010 duly published in daily newspaper Uttar Ujala inviting applications for appointment to the post of Constable G.D. in the CRPF from Indian citizens residing in the States of Uttar Pradesh and Uttarakhand. 78 vacancies were notified out of which nine were reserved for OBCs. 13 backlog vacancies of OBCs were also included in the notification. The Respondents who belong to Saini, Momin (Ansar), Gujjar and Kahar communities applied for being considered for appointment to the posts reserved for OBCs. They qualified in the written examination and appeared before a medical board for medical examination. Their names were not included in the final list that was prepared for appointment. On enquiry, they found that their names were shifted to the general category from the OBC category on the ground that the castes to which they belong did not find place in the OBCs List for the Central Government services for Uttarakhand State as per “Swamy’s Compilation on Reservations and Concessions” book. They could not be appointed on the basis of the marks they obtained in the general category.

11. The Respondents filed Writ Petitions in the High Court of Uttarakhand seeking issuance of Mandamus for commanding the Appellants to appoint them to the post of Constable G.D. in CRPF against the post reserved for OBC candidates of Uttarakhand. The Appellants filed a counter affidavit in the High Court in which it was stated that the Respondents were not entitled to be considered for appointment in the posts reserved for OBCs as the castes to which they belong were not included in the List of OBCs for Central Government services, Uttarakhand State as per “Swamy’s Compilation on Reservations and Concessions” book. The learned Single Judge of the High Court of Uttarakhand at Nainital allowed the Writ Petitions vide judgment dated 11th October, 2011 by relying upon a judgment of the High Court in Deepak Kumar versus Gurukul Kangri University, Haridwar . It was also held that there is no dispute about the fact that the castes to which the Respondents belong are OBCs in the State of Uttarakhand. The Appellants could not succeed in convincing the Division Bench of the High Court that the judgment of the learned Single Judge warranted interference.

12. Pursuant to the judgment of this Court in *Indra Sawhney versus Union of India*¹, the Government of India decided to implement reservation of 27% in civil posts and services in favour of OBCs. On the recommendations made by an Expert Committee, a Central List of

OBCs was prepared for each State. The Central List of OBCs prepared for the State of Uttar Pradesh included the castes of the Respondents. The State of Uttarakhand was created in the year 2000. In the judgment of Deepak Kumar (supra) relied upon by the learned Single Judge in this case, a reference was made to a letter dated 28th July, 2011 issued by the National Commission for Backward Classes. It was stated in the said letter that the Central List for OBCs for the State of Uttarakhand was under process and that till it was finalized, the List for Uttar Pradesh will be applicable for appointment to Central posts in the State of Uttarakhand. The National Commission for Backward Classes has filed a counter affidavit in these Appeals supporting the Respondents. The Commission stated in the affidavit that the List of OBCs for the State of Uttar Pradesh will enure to the benefit of those residing in Uttarakhand for appointment to services under the Union of India till the Central List of OBCs for Uttarakhand is finalized. It was further stated that by a Resolution dated 8th December, 2011, the Central Government notified the Central List of OBCs for the State of Uttarakhand which consisted of 84 castes.

13. Ms. Indu Malhotra, learned senior counsel appearing for the Union of India relied upon a proceeding dated 12th March, 2007 which was filed along with the rejoinder to contend that there was only one caste included in the Central List for the State of Uttarakhand. She submitted that all the other OBCs were included in the Central List only in 2011 and as the selections in the present case were conducted in 2010, the Respondents whose castes were not in the list of OBCs cannot be considered in the posts reserved for OBCs. We are not in agreement with the said submission as a perusal of the proceeding dated 12th March, 2007 would show that it pertains to inclusion/ amendments in the Central List of OBCs in respect of various States. There is no doubt that one caste Rai-Sikh (Mahatam) was shown in the proposed Entry at serial No.1. It means that the caste was included by the proceeding as an OBC. It does not mean that there was only one caste falling within the category of OBCs in the State of Uttar Pradesh. The position as it existed pertaining to reservation to OBC posts in Uttarakhand is explained by the National Commission for Backward Classes. It is clear from the affidavit filed by the National Commission for Backward Classes that a decision was taken in 2010 to apply the Central List prepared for the State of Uttar Pradesh to the State of Uttarakhand till the List of OBCs for Uttarakhand was finalized. The List was finalized in 2011. There cannot be any doubt that the Respondents belong to the castes which were included in the Central List of OBCs for the State of Uttar Pradesh and were entitled to be considered for the posts reserved for OBCs in the advertisement that was issued on 24th July, 2010. There was some confusion about the applicability of the Lists of the OBCs prepared by the States of Uttar Pradesh and Uttarakhand for implementing reservation in the State's civil posts. Those Lists have no relevance for appointment to services under the Union of India.

14. Before concluding, it is necessary to mention that the Respondents were deprived of their consideration to the posts reserved for OBCs only on the ground that the castes to which they belong did not find a place in "Swamy's Compilation on Reservations and Concessions" book. This practice of relying upon private books for the purpose of defeating the rights of citizens is deprecated. The Union of India ought to have referred to the Resolutions of the National Commission for Backward Classes and the Central List that were prepared by the

Government of India from the official publications. For no fault of theirs, the Respondents were not considered for appointment as Constables G.D. in CRPF in the year 2010.

15. We uphold the judgment of the High Court and direct the Appellants to consider the Respondents for appointment as Constables G.D., CRPF in the posts reserved for OBCs in the advertisement dated 24th July, 2010. The Appellants are directed not to deny the appointment to the Respondents on the ground that they are now over-aged provided they fulfil the condition of fitness.

16. For the aforementioned reasons, the Appeals are dismissed.

Judgment Referred.

¹(2000) 1 SCC 0168