

SUPREME COURT OF INDIA RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).13676/2012

(From the judgement and order dated 07/02/2012 in WP No.34000/2011 Of The HIGH COURT OF KARNATAKA AT BANGALORE)

SOWMYA NAGESH NAYAK Petitioner(s)

VERSUS

STATE OF KARNATAKA & ANR. Respondent(s)

(With prayer for interim relief)

Date: 12/08/2013 This Petition was called on
for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE V.GOPALA GOWDA

For Petitioner(s) Mr. P.Vishwanatha Shetty, Sr.Adv.

Mr. Vijay Kumar Paradesi, Adv.

Mr. Shailesh Madiyal,AOR.

For Respondent (s)Mr. S.N. Bhat, Adv.

UPON hearing counsel the Court made the following
ORDER

Having failed to convince the Karnataka Administrative Tribunal (for short, 'the Tribunal') and the Division Bench of the Karnataka High Court to entertain her prayer for issue a direction to the Karnataka Public Service Commission (for short, 'the Commission') to accept her candidature as a reserved category candidate, the petitioner has filed this petition.

Shri P.Vishwanatha Shetty, learned senior counsel relied upon the judgments of this Court in Charles K.Skaria & Ors. Vs. Dr.C.Mathew & Ors. [1980(2)SCC 725] and Dolly Chhanda vs. Chairman, Jee & Ors. [2005 (9) SCC 779] and argued that the decision of the Commission not to consider the petitioner's candidature against the reserved post was totally arbitrary and the tribunal and the High Court committed serious error by refusing relief to her. Learned senior counsel submitted that the petitioner had annexed caste certificate dated 27.08.2007 along with the application form and at the time of interview she produced another certificate dated 10.12.2007 and simultaneously made a request for grant of two day's time to produce the original of certificate dated 27.08.2007, but her request was rejected by the Commission without any reason and, in this manner, her claim for selection against the reserved category post was frustrated. Learned counsel emphasised that conditions incorporated in the advertisement and the letter of interview requiring the candidates to produce the original certificate at the time of interview are not mandatory and a small deviation from the rigor of such conditions should

be treated as permissible. Learned senior counsel submitted that the petitioner's was an extremely hard case and the Commission should have relaxed the requirement of production of original certificate on the date of interview and considered her candidature against the post reserved for Category 2A.

Shri S.N. Bhat learned counsel for the Commission invited our attention to clause 10 of the advertisement and contents of interview letter dated 05.08.2010 to show that all the candidates including the petitioner were informed in advance about the requirement of production of original certificate at the time of interview and argued that the Commission did not commit any illegality by refusing to entertain the petitioner's request for extension of time for production of the original certificate. Shri Bhat also invited our attention to clause 8 of the interview letter to substantiate his arguments that the Commission had informed the candidates well-in-advance that the time fixed for production of original certificate shall not be extended under any circumstance. He also relied upon judgment of this Court in *Bedanga Talukdar Vs. Saifudaulah Khan & Ors.*[2011 (12) SCC 85] and argued that the conditions incorporated in the advertisement and the interview letter requiring the candidates to produce the original certificate cannot be relaxed.

We have considered the respective arguments/ submissions and carefully scanned the record. In our view, the Tribunal and the High Court did not commit any error by upholding the decision of the Commission not to consider the petitioner's candidature against the reserved category post because she failed to produce the original caste certificate dated 27.8.2007 along with the application form or at least at the time of interview. In clause 10 of the advertisement, it was specifically mentioned that the candidates shall produce the original certificate for verification before the Commission. This was reiterated in the interview letter dated in the following words:

"SPECIAL NOTICE TO CANDIDATES

All original certificates enclosed along with application"

By incorporating condition No.8 in interview letter dated 05.08.2010, the Commission had made it clear to the candidates that no time will be granted for production of original certificates after the personality test and those who fail to produce the required certificate will lose their candidature.

It is not in dispute that vide letter dated 05.08.2010, the petitioner was informed that the date of interview is 23.09.2010. Thus, she had more than one month's time to arrange for production of the original of certificate dated 27.08.2007. However, for the reasons best known to her, the petitioner failed to produce the original of certificate dated 27.08.2007 and produced an altogether different certificate, which was rightly discarded by the Commission because copy thereof had not been annexed with the application form.

The judgment of this Court in *Dolly Chhanda'* case is clearly distinguishable. The facts of that case were that the appellant before the Court, who was a ward of ex-serviceman had sought the Court's intervention because original of the certificate produced by her in the second round of counselling was not entertained by the concerned authority. The High Court dismissed the writ petition on the ground that the certificate furnished by the appellant did not bear any testimony that she belonged to reserved category. While setting aside the High Court's order, this Court observed:

"7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks

secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29-6-2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counselling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal."

In the case before us, there is no provision for second round of interview at which the petitioner could produce the original of certificate dated 27.08.2007. Therefore, the petitioner cannot rely upon the aforesaid judgment for seeking a mandamus to the Commission to entertain her candidature against the reserved category post. This view of ours is in accord with the judgment in Bedanga Talukdar's case. While dealing with a somewhat similar question, this Court observed:

"We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.

30. A perusal of the advertisement in this case will clearly show that there was no power of relaxation. In our opinion, the High Court committed an error in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be relaxed in the case of Respondent 1. Such a course would not be permissible as it would violate the mandate of Articles 14 and 16 of the Constitution of India."

In view of the above discussion, we hold that the Tribunal and the High Court rightly refused to issue a mandamus to the Commission to consider the petitioner's candidature against the reserved category post and the special leave petition is liable to be dismissed. Ordered accordingly.

(Sheetal Dhingra)
AR-cum-PS

(Phoolan Wati Arora)
Court Master

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