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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 21.05.2024

+ W.P.(C) 5034/2024

MOHAMMAD INAMUL HAQ Petitioner

versus

THE UNIVERSITY OF DELHI & ORS.Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Vivek Kumar Mishra, Ms. Richa Bais and Ms. Dipti Mishra, Advocates

For the Respondents : Mr. Mohinder J.S. Rupal and Mr. Hardik Rupal, Advocates for R-1
Mr. G.K. Pathak, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL.20663/2024

1. Exemption allowed subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 5034/2024 & CM APPL. 20662/2024

3. This is a writ petition under Article 226 of the Constitution of



India, 1950, seeking *inter alia* the following reliefs:-

“I. Call the records,

II. Issue a writ, order or direction in the nature of Certiorari to quash the Impugned Order /Recruitment Notification Dated 06.03.2023 (Annexure P-1) passed by the Respondent No.02;

III. Issue a writ, order or direction in the nature of Mandamus commanding the Respondent No.1 & 2 to consider the claim of the Petitioner on the post of Assistant Professor for Philosophy in the Janki Devi Memorial College, Delhi in accordance with law.”

4. It is an admitted case of the petitioner that the petitioner was unsuccessful and could not make it in the final list of the selected candidates, however, the petitioner was shown at Sl. No.3 in the wait list of the candidates.

5. It is also not disputed that in the notice dated 06.03.2023, based on the interviews and the recommendations of the duly constituted Selection Committee for the recruitment to the post of Assistant Professor in Philosophy at Janki Devi Memorial College, New Delhi, the respondent no.3 was shown as a candidate successful at Sl. No.2 in the OBC category.

6. The grievance of the petitioner is that the respondent no.3 was not an OBC candidate in accordance with the Central List of the State of Bihar. The entire edifice of the petitioner’s case is that in case the respondent no.3 is not an OBC candidate, her candidature ought to be cancelled. Resultantly, in case the candidature of respondent no.3 is cancelled, the petitioner would automatically become entitled to the vacant post. The reason for this, according to the learned counsel, is



that so far as the waiting list is concerned, the first person on the waiting list belongs to PwBD category and hence, would not be entitled for OBC category. So far as the second person is concerned, who also belonged to OBC category, had unfortunately expired, leaving the petitioner the only eligible wait listed candidate who could be offered the job as an Assistant Professor (Philosophy).

7. The learned counsel had submitted that after a number of RTI applications were filed, the respondent College very reluctantly gave relevant information which is annexed with the documents that have been filed subsequently particularly at page 4 of the said documents. The document at page 4, according to learned counsel, Sl. No.7 of the said reply from the Janki Devi Memorial College clearly indicates that the respondent no.3 did not find any place in the Central List of OBC, however, her caste as mentioned in the Caste Certificate is stated to be mentioned at Sl. No.83 of Central List of Bihar and on that basis respondent no.3 was offered the said post.

8. Learned counsel invites attention of this Court to the Central List of OBCs of the State of Bihar annexed by him at page 47 of the present writ petition particularly to Sl. No.83 where only particular castes have been mentioned who are entitled to be falling within the Central List of OBCs for the State of Bihar. He submits that the Caste "Burnwal" is conspicuous by its absence at Sl. No.83 of the said list and hence, respondent No.3 was disentitled to continue on the said post. On the other hand, he also refers to Central List of OBC for the State of Uttar Pradesh wherefrom the petitioner hails to submit that the petitioner is mentioned at Sl. No.52 which is 'Halwai' and as such clearly the



petitioner could replace the respondent no.3 for the post of Assistant Professor Philosophy.

9. This Court has heard the arguments of the learned counsel for the petitioner, however, he is unable to agree with the contentions.

10. At the outset, it is noticed that along with the list of documents filed by the petitioner subsequently, at page 5 of the said list, is the certificate issued by the State of Bihar in respect of the Central List of OBC category persons for the State of Bihar according to which the respondent no.3 has been certified to fall within the categories specified therein. The said categories are the same which are reflected at Sl. No.83 of the list annexed by the petitioner in the writ petition. The caste certificate of respondent no.3 filed by the petitioner is annexed to the petition as Annexure P-16.

11. Having regard to the facts that a particular certificate has been issued by the State of Bihar pertaining to the Central List of OBC category persons within the State of Bihar, there is no way that the petitioner can challenge the entitlement of the respondent no.3 to the said post. This is for the reason that the said document which has been placed on record has been issued by the Competent Authority in the same manner as the Certificate which has been issued to the petitioner. In case the petitioner has any doubt whatsoever about the authenticity of this document, he would be at liberty to challenge the same, if at all, in accordance with the law. The mere challenge to the appointment of respondent no.3 without anything more, is unsustainable. Even otherwise, the petitioner was only signing in the wait list and had no



substantial right.

12. It is well settled that the wait listed candidate will not have any right whatsoever much less the right of consideration. To that effect, it would be apposite also to refer to the judgment of the Supreme Court in ***State of Karnataka and others vs. Bharthi S.***, reported in 2023 SCC OnLine SC 665. The relevant paragraphs are quoted hereunder:

"10. It is true that Proceedings dated 11.04.2003 is only an executive instruction and cannot override the application of Rules that govern services. The Rules that govern the services are the Karnataka Education Department Services (Department of Public Instructions) (Recruitment) Rules, 1967 as amended in 2001. On a close reading of the relevant rule applicable to the services i.e. Entry 66, it is clear that there is no obligation on the State to make appointments. Mere publication of the Additional List does not create any right to be appointed. There is no such mandate in the Rule. Entry 66 of the Rules merely provides that the Selection authority shall prepare and publish an Additional List of candidates not exceeding ten percent of the vacancies and the said list shall cease to operate from the date of publication of notification for subsequent recruitments.

11. The position of law is also clear. In Subha B. Nair v. State of Kerala which has also been relied upon by the State, it has been held that:

"8. A decision on the part of an employer whether to fill up the existing vacancies or not is within its domain. On this limited ground in the absence of discrimination or arbitrariness, a writ court ordinarily would not interfere in such matters.

9. Similar view has also been expressed by this Court in K. Thulaseedharan v. Kerala State Public Service Commission, (2007) 6 SCC 190.

19. The question as to whether there existed 7 vacancies or 16 vacancies in the aforementioned situation loses all significance. We would assume that as per the requisition, 9 more vacancies could be filled up but it is trite that if the employer takes a policy decision not to fill up any existing vacancy, only because a person's name is found in the select



list, the same by itself would be a ground to compel the Bank to fill them up.”

13. The position that emerges from the above decisions is that the duty to fill up vacancies from the Additional List (waiting list) can arise only on the basis of a mandatory rule. In the absence of such a mandate, the decision to fill all the vacancies from the Additional List, is left to the wisdom of the State. We will however add that State cannot act arbitrarily and its action will be subject to judicial review.”

13. Once the final select list candidates have already been offered an appointment to the said post and concluded by such incumbents accepting the said offer and occupying the said post, the petitioner cannot be permitted to challenge the same after a passage of more than a year.

14. It is clear from the documents placed on record that the respondent no.3 had been offered the appointment way back on 06.03.2023 and the petitioner has filed the present writ petition in the year 2024. Though learned counsel submits that there were two writ petitions filed by the petitioner previously, however, the same were withdrawn. The aforesaid filing of the writ petitions will not extend the time limit of the expiry of the wait list, if at all the same were continued. Moreover, once the final selected list of candidates has worked itself out, the question of a wait listed candidate having any right whatsoever, even for the purpose of consideration would not arise.

15. Learned counsel has also relied upon the judgment of learned Single Judge of the High Court of Judicature at Patna in Civil Writ Jurisdiction Case No. 4133/2016 captioned ***Deepti Barnwal vs. The State of Bihar & Others*** wherein the question as to whether the caste



Burnwal would fall within the OBC candidates of the Central List was considered. After having perused the relevant documents, learned Single Judge had concluded that the category of the caste Burnwal was not mentioned in the Central List of OBC of the State of Bihar and held that the said petitioner therein was not entitled to the said benefits.

16. However, in the present case, contrary to the aforesaid judgment, there is a document which has been placed on record by the petitioner himself at page 5 of the additional documents which categorically indicates that the Competent Authority had in fact issued the said certificate to the respondent no.3 categorizing her as an OBC candidate as mentioned at Sl. No.83 of the Central List of OBC candidates.

17. This situation appears to be crystal clear and there is no way that the petitioner could have challenged the eligibility of the respondent no.3 to the said post.

18. In that view of the matter, it appears that the petition is frivolous and motivated. It appears that the petitioner is seeking directions for a roving inquiry in the matter without any substance being therein. As such, this Court dismisses the writ petition subject to costs of Rs.15,000/- to be paid by the petitioner to the Delhi High Court Legal Services Authority within one week from today.

19. The writ petition is dismissed in the aforesaid terms.

TUSHAR RAO GEDELA, J

MAY 21, 2024

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