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

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Date of Decision: 7.10.2021

% **LPA 364/2021 and CM Nos. 35520-21/2021**

NORTHERN COALFIELDS LIMITED

..... Appellant

Through: Mr. Vikramjeet Banerjee, ASG with
Mr. Ashwani Dubey, Adv.

versus

CHAMAN GUPTA & ANR.

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL)

[Court hearing convened *via* video-conferencing on account of COVID-19]

1. This appeal is directed against the judgment, dated 10.08.2021, passed by the learned single judge in W.P.(C) No.4059/2021.
2. The only issue, which arose for consideration before the learned single judge, was, as to whether respondent no.1 [i.e., the original writ petitioner] ought to be given leeway for production of the Income and Asset Certificate, concerning the relevant financial year (in short "FY") i.e., 2019-2020.
3. It is not in dispute that, respondent no.1 had applied for the post of Technician (Pathological) (Trainee) T&S Grade-C, *vide* Employment Notification (Paramedical Staff) dated 25.01.2020 (in short "2020 notification").
 - 3.1 It is also not in dispute that, respondent no.1 qualified the written

examination, and was issued a provisional appointment letter, dated 24.02.2021, against the subject post reserved for Economically Weaker Section (EWS) category.

3.2 What is also not in dispute is that, when the verification of documents was carried out, respondent no.1 discovered, after it was pointed out to him, that he had produced the Income and Asset Certificate, concerning FY 2020-2021, whereas he was required, as indicated above, to produce the said certificate for FY 2019-2020.

3.3. Mr. Vikramjeet Banerjee, learned Additional Solicitor General (ASG), who appears on behalf of the appellant, says that, the learned single judge erred in directing the concerned authority, working under the sway of the Government of National Capital Territory of Delhi (in short "GNCTD), to examine the representation dated 10.03.2021 filed by respondent no.1 for issuance of Income and Asset Certificate concerning the relevant FY i.e., 2019-2020, *albeit*, in accordance with Rules, Regulations and instructions issued, in that behalf, within a timeframe of four weeks from the date of the impugned judgment.

4. It is Mr. Banerjee's submission that, the "crucial date" for determining the eligibility of a candidate, as provided in the 2020 notification, is, concededly, 10.03.2020, and therefore, the Income and Asset Certificate, which respondent no.1 was required to obtain was, for FY 2019-2020.

4.1 It is also Mr. Banerjee's contention that, the appellant is aggrieved by the direction issued by the learned single judge, whereby it has been provided that respondent no.1 will continue to work with the appellant till such time, respondent no.1's representation is considered by GNCTD.

4.2 Besides this, Mr. Banerjee [and we must say, as a last resort] has also made a very emphatic submission that, as per the 2020 notification, the jurisdiction lay with the Principal Bench of the High Court of Madhya Pradesh, at Jabalpur.

5. We have heard Mr. Banerjee at great length.

6. Before we proceed further, we may note that, due to some strange reason, GNCTD has not been arrayed as a party in the present appeal, although, it was a party before the learned single judge and was arrayed as respondent no.3.

7. Be that as it may, as noted above, the following facts are not disputed:

7.1. Respondent no.1 i.e., Chaman Gupta sat for the written examination.

7.2. Respondent no.1 passed the written examination, and was issued a provisional appointment letter on 24.02.2021 qua the subject post reserved for EWS category.

7.3. It is when verification of documents was carried out, that respondent no.1 discovered he had, in his possession, Income and Asset Certificate, concerning FY 2020-21.

7.4. The crucial date, provided in the 2020 notification for this purpose, was 10.03.2020, and if this crucial date is taken into account, respondent no.1 was required to produce the Income and Asset certificate, concerning FY 2019-20.

7.5. No sooner this anomaly was pointed out, that is, at the stage of verification of documents, respondent no. 1 preferred a representation, dated 10.03.2021, to the Sub-Divisional Magistrate (SDM), Kanjhawala, GNCTD.

7.6. Prior to this, respondent no.1 had written to the appellant on 04.03.2021, that he be accorded time to produce an Income and Asset

Certificate for the relevant period i.e., F.Y. 2019-20.

7.7. In response to the letter dated 04.03.2021, the appellant wrote back to respondent no.1, *vide* communication dated 12.03.2021, whereby, the appellant was granted a month's leeway to obtain Income and Asset certificate for the relevant FY i.e., FY 2019-20. It was made clear in the said communication that, if respondent no. 1 did not produce the Income and Asset certificate for FY 2019-20, his candidature would be cancelled.

7.8. As noticed above, even before the appellant issued the communication dated 12.03.2021; the appellant, having discovered the error, made a representation to the SDM, Kanjhawala, GNCTD for issuance of the Income and Asset certificate, concerning FY 2019-20. It would, therefore, be relevant to extract the contents of the communication, dated 12.3.2021: -

*“To,
Shri Chaman Gupta
S/O Sri Lal Ji
Roll No: 10630563
Post Applied: TECHNICIAN (PATHOLOGICAL) (TRAINEE)
T&S Gr. C*

Subject: Regarding desired EWS certificate valid as on the crucial date i.e. 10/03/2020

Dear Candidate,

This is to inform you that you have been provisionally selected for the post of TECHNICIAN (PATHOLOGICAL) (TRAINEE) T&S, Gr-C and your merit position is Gen EWS-1. The Provisional appointment is subject to the fulfillment of prescribed eligibility criteria as per the concerned Employment Notification bearing reference NCL/IIQ/PD/Manpower/DR/2019-20/109, Date 25/01/2020.

The crucial date for determining the eligibility in all respect (as prescribed for the post) has been notified as 10th March 2020. However the EWS certificate produced by you bearing reference: EWS/Central & Delhi Govt./SDM/K/58 dated

15/12/2020 is valid for the year 2020-21.

On account of above you are advised to produce EWS certificate valid on the crucial date i.e. 10/03/2020 for fulfilling the eligibility in terms of the above referred Employment Notification.

In case you are unable to produce the desired certificate within one month from the issuance of provisional offer of appointment to you, your provisional appointment will be cancelled without further notice to you for non fulfilment of eligibility for the post applied.

s/d

(Harshvardhan Mishra)
Deputy Manager (P/Recruitment)
NCL, HQ”

8. It is in this background that the learned single judge, having considered the matter, thought it fit to issue, for the reasons given in the impugned judgment, the following operative observations:

“6. There is no dispute that the petitioner had applied for the post of Technician (Pathological) (Trainee) in a Northern Coal Limited, a Government of India undertaking. Being eligible and successful, he was issued an appointment letter. When he went to the office of respondent No.2 he was not given permission for join the duties only for the reason that his EWS certificate was not of the Financial year 2019-20. Though, it is the case of respondent No.2 that the eligibility need to be seen as on March 10, 2020, the plea of the learned counsel for the petitioner that it is only when his name has been short-listed for the said post, did he realise that he should apply for the EWS certificate from the authority of GNCTD, which he did, and got the same on December 15, 2020. The plea of the learned counsel for the petitioner is that the father of the petitioner has also been issued EWS certificates in the years 2017,2019 and 2020. The stand of the respondent No.3 - GNCTD is that the petitioner having not applied in the Financial year 2019-20, he cannot get a certificate for that year. In other words, he having applied for the Financial year 2020-21, he was given the certificate of that year on December 15,2020.

7. The stand of respondent No.3 though appealing, but that cannot be a reason to deny a certificate to the petitioner if he is

otherwise eligible for grant of the same, more particularly when he is only 23 years of age and has secured an appointment in a Govt. of India Undertaking. I am of the view, that it is a fit case when this Court must exercise its extraordinary jurisdiction under Article 226 of the Constitution and direct the respondent No.3 to consider the application/representation filed by the petitioner on March 10,2021 for issuance of EWS certificate for the Financial year 2019-20 in accordance with the Rules, Regulations and instructions within a period of four weeks from today. It is ordered accordingly.

8. It is made clear that this order has been passed in the peculiar facts of the case and shall not be treated as precedent.

9. It goes without saying, if the petitioner is issued a certificate by the concerned authority under GNCTD, he shall submit the same to the respondent No.2 within three weeks thereafter, who shall consider and act accordingly. Till such time the respondent No.2 shall allow the petitioner to continue to perform his duties.”

9. It is Mr. Banerjee’s contention that, since respondent no.1 failed to fulfill the eligibility criteria, as on the crucial date i.e., 10.03.2020, his candidature for provisional appointment is liable to be cancelled.

9.1 To our minds this argument may have had weight, had not the appellant, on 12.03.2021, granted time to respondent no.1 to obtain the Income and Asset Certificate for the relevant period i.e., FY 2019-20.

9.2. As noticed above, respondent no.1 took all steps, within his power and capacity, to obtain the Income and Asset certificate/ EWS certificate.

9.2. It is evident, from the extract set forth above, that, the only reason that, the SDM, GNCTD declined to conduct the exercise of issuing of the Income and Asset Certificate qua respondent no.1 was that, the application, was not made in respect of the relevant financial year i.e., FY 2019-20.

9.3 This reason did not, obviously, find favour with the learned single judge, and therefore, he proceeded to issue the operative directions, to which, we have made reference above.

9.4. In our view, no interference is called for with the order of the learned single judge on this score.

9.5. In our opinion whether or not a person falls in the EWS category in a defined period is a fact that gets established by production of certificate from the designated authority. It is because generation of an Income and Asset Certificate/EWS certificate is only, a consequential act, which follows an enquiry made to ascertain the economic status of the applicant, that, often timelines for obtaining such certificates are extended.

9.6. In the instant case, concededly, the appellant to enable respondent no.1 to obtain the requisite certificate from the concerned SDM granted a month's leeway to respondent no.1. Although, respondent no.1 did everything in his power to make a course correction, the said Certificate could not be obtained by him within the extended time. The moot question which arises for consideration is: Can respondent no.1 be denied the fruits of his labour in such circumstances? We think not. This is not to say that, there should not be an end date for submission of such Certificate; in our view there should be one. However, that being said, timelines in such circumstances should be viewed from a prism of pragmatism and not dogmatic fervour. Well-earned appointments cannot be denied, even though, there is scope for repair. If delayed submission of the Income and Asset Certificate/EWS certificate does not harm or cause detriment to anyone's interest, some slack can be cut; as was done by the appellant in this case. Therefore, to pull the rug from underneath the feet of respondent no.1, when he is on the threshold of obtaining an appointment, would be both unjust and inequitable.

10. Before we conclude, we would like to deal with the submission made

by Mr. Banerjee that, the writ petition should not have been entertained as the jurisdiction lay with the Principal Bench of the High Court of Madhya Pradesh, at Jabalpur.

10.1 Obviously, this objection with regard to the territorial jurisdiction was not pressed before the learned single judge.

10.2. In support of his plea, Mr. Banerjee has drawn our attention to ground M of the appeal and the counter-affidavit filed by the appellant in the writ petition. A close perusal of ground M of the appeal would show that, it is not the assertion of the appellant that, even though, the said ground was pressed, the learned single judge failed to deal with the same.

10.3. Hence, in effect, what follows, as a logical sequitur is that, this objection was not pressed on behalf of the appellant.

10.4. Insofar as the objection with regard to the territorial jurisdiction is concerned, if the same is not pressed in the first instance, and it does not lead to failure to justice, then, on that score, the order assailed cannot be set aside.

10.5. We may also note that, in paragraph 23 of the writ petition, respondent no.1 has made assertions, as to why, jurisdiction lay with this Court. For the sake of convenience, assertions made therein are extracted hereafter:

“23. The Petitioner resides within the territorial jurisdiction of this Hon'ble Court. The Petitioner has applied for the post in the Respondent No. 2 from Delhi. The appointment letter has been issued to the Petitioner by the Respondent in Delhi. The Respondent Nos. 1 and 3 are situated in Delhi. The Petitioner has made representations to the Respondent No. 3 to issue an appropriate EWS certificate in Delhi. Therefore, this Hon'ble Court has territorial jurisdiction to adjudicate the Writ

Petition.”

10.6 A careful perusal of the aforesaid extract would show that, if not fully at least, a part of cause of action lies in Delhi. The inaction of GNCTD i.e., respondent no.3 in the writ petition [although, as noticed above, GNCTD has not been arrayed as a party in the instant appeal] in not processing respondent’s request to issue an Income and Asset Certificate/EWS certificate for the relevant FY i.e., 2019-2020—did furnish a cause of action in favour of the respondent. Therefore, it is not a case where courts in Delhi could not have exercised jurisdiction.

10.7. The failure on the part of the appellant to press the objection at the appropriate stage has denuded the appellant of the right to question the institution of the action [i.e. the writ petition] in this court. The objection with regard to territoriality, in law, is markedly different from objection concerning subject matter jurisdiction. The latter can be raised, at any stage.

11. We may also record that, we are informed that, the concerned SDM has issued an Income and Asset Certificate to respondent no.1 for the relevant FY i.e., FY 2019-20.

12. Therefore, for the aforesaid reasons, we are not inclined, as noted above, to interdict the judgment of the learned single judge.

13. The appeal is, accordingly, dismissed. Consequently, pending applications shall also stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

OCTOBER 7, 2021/pmc

Click here to check corrigendum, if any