

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 12014 / 2016

Navika Kachhwaha D/o Shri Arun Singh Kachhwaha, aged about 23 years, R/o 39/F PWD Colony, opposite Taj Hari Mahal, Jodhpur, District Jodhpur, Rajasthan

----Petitioner

Versus

1. State of Rajasthan through Secretary Department of Medical and Health Services Jaipur, Rajasthan.

2. Director, Department of Medical and Health Services Jaipur, Rajasthan.

3. Additional Director (Administrative), Department of Medical and Health Services Jaipur, Rajasthan.

4. Chief Medical and Health Officer, Jodhpur Division, Jodhpur, Rajasthan.

----Respondents

For Petitioner(s) : Mr. SS Rathore

For Respondent(s) : Mr. Rishabh Tayal

HON'BLE MR. JUSTICE ARUN BHANSALI

Order

08/02/2018

This writ petition has been filed by the petitioner aggrieved against the action of the respondents in not permitting the petitioner to join on the post of Pharmacist pursuant to her selection on the post and consequential appointment dated 16.08.2016 (Annex.-7).

The petitioner appeared in the recruitment of the year 2013 for the post of Pharmacist in the category of Non Creamy Layer - OBC category. After the result was declared, the petitioner obtained 63.710 marks and was placed at S.No.236 in the merit

list, the cut off marks of Female General Category was 55.755 and OBC - Non Creamy Layer was 56.469. The petitioner appeared for documents verification pursuant to the selection and was accorded appointment by order dated 16.08.2016, whereby she was posted at the office of CMHO, Jodhpur.



However, pursuant to the said order of appointment dated 16.08.2016, when the petitioner sought to join, she was not permitted to join, inasmuch as, respondents objected the caste certificate produced by the petitioner indicating her as "OBC - Creamy Layer". The petitioner approached the Director for extension of time and by order dated 15.09.2016, she was granted extension of two months' time for the purpose of getting a proper OBC certificate. The petitioner obtained the said OBC certificate on 09.09.2016 and when again approached the respondents, she was still not permitted to join purportedly on account of the fact that earlier certificate indicating her as OBC - Creamy Layer, had not been canceled.

It is submitted by learned counsel for the petitioner that the respondent was not justified in denying the petitioner to join pursuant to her selection with reference to the result of selection list (Annex.-6).

It is submitted that as the petitioner had obtained more marks than cut off marks in the category of General candidates, though, she was indicated as candidate belonging to OBC - Non Creamy Layer category, she was selected against the 'unreserved female' category and therefore, irrespective of the fact that her

caste certificate was of creamy layer and/or non creamy layer has no relation, the respondents could not deny her joining. It is submitted that the certificate which was issued earlier to the petitioner was wrongly issued, inasmuch as, income of her father at no stage, had crossed the threshold, fixed for non creamy layer and as soon as the said aspect came to her notice, the proper certificate was got prepared and produced before the respondents and, therefore, the respondents were not justified in denying her the joining. It was submitted that the respondents may be directed to permit the petitioner to join on the post of Pharmacist pursuant to her selection / appointment with all consequential benefits.

Learned counsel appearing for the respondents - State submitted that it is not in dispute that the petitioner had applied as OBC - Non Creamy Layer category candidate and was in possession of two contradictory certificates, one indicating her as OBC - Creamy Layer and another indicating her as OBC - Non Creamy Layer and therefore, the respondents were justified in seeking the petitioner to first clarify the said aspect and as the petitioner failed to get her earlier certificate cancelled, the respondents were justified in denying her the joining.

It is further submitted that merely because the petitioner was selected against the unreserved female category, by itself cannot be a reason to ignore two contradictory certificates and, therefore, the action of the respondents in this regard cannot be faulted. Further submissions were made that during the pendency



of the present writ petition, the SDM, pursuant to the communication sent by the Chief Medical & Health Officer (CMHO) and the office of Additional Advocate General regarding the veracity of the certificates issued to the petitioner, has submitted a report to the office of Additional Advocate General *inter alia*

indicating that earlier certificate issued as OBC - Creamy Layer to the petitioner was on account of mistake on part of the applicant as well as the office of SDM, on inquiry, it has been established that the petitioner belongs to OBC - Non Creamy Layer category.

It is submitted that as now on the said aspect, status has been clarified, the respondents are prepared to accord joining to the petitioner.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

It is not in dispute that the petitioner applied as a OBC - Non Creamy Layer candidate, obtained marks higher than the cut off in General Female category and was accorded appointment, based on her selection. It is only when she wanted to join pursuant to the selection, the aspect of the certificate being contrary to the status claimed by her came to light and the respondent refused her joining. The petitioner sought extension of time for joining and got prepared a new / correct caste certificate and produced the same before the respondents. However, the respondents taking a hyper technical view that the earlier certificate was not cancelled, denied joining to the petitioner. The action of the respondents in denying the joining to the petitioner initially, apparently may be



justified on account of the difference between the claim and certificate, but once the regular certificate was produced, the respondents were bound to accept the said certificate.

The plea raised by learned counsel for the petitioner that the respondents irrespective of the contradiction in the claim made and the certificate, as the petitioner was higher in merit and was selected against the unreserved female candidate, the respondent ignoring the said certificate, should have granted the joining apparently, cannot be countenanced. In case the respondent came to the conclusion based on the contradiction in the claim and the certificate, that the same required clarification, merely because the petitioner would otherwise falls within the merit as general candidate cannot cast burden on the respondents to on their own grant appointment to the petitioner as a general candidate. However, now as the enquiry held at the level of the SDM pursuant to the submissions made by the learned AAG as well as the office of CMHO, this fact has been established that the petitioner belongs to the OBC Non Creamy Layer category, the respondents now does not have any objection in granting her the joining.

So far as the issue of grant of consequential benefits to the petitioner is concerned, on account of the claim made by the petitioner and the certificate produced by her, though the petitioner is not entitled for grant of monetary benefits, she is entitled for grant of notional benefits from the date she should have been granted joining i.e. the extended time given by the



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Additional Director (Administrative) vide order dated 15.09.2016
i.e. 15.10.2016.

Consequently, the writ petition filed by the petitioner is
allowed. The respondents are directed to accord joining to the
petitioner pursuant to the order of appointment dated 16.08.2016

(Annex-7) forthwith and it is further directed that the petitioner
would be entitled to notional benefits w.e.f. 15.10.2016.

(ARUN BHANSALI)J.



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