



2026:DHC:3220-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 2314/2023, CM APPL. 8766/2023

ALL INDIA INSTITUTE OF MEDICAL SCIENCES
& ANR.Petitioners

Through: Mr. Atul Kumar, Panel Counsel
with Ms. Sweety Singh, Mr. Rahul Pandey
and Ms. Meenakshi, Advocates.

versus

VINOD KUMAR VISHWAKARMARespondent
Through: Mr. A.K. Trivedi, Advocate.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGEMENT (ORAL)

% **10.04.2026**

C. HARI SHANKAR, J.

1. The All India Institute of Medical Sciences¹ issued an advertisement in 2020 inviting applications for recruitment to various posts. The respondent applied for recruitment to the post of Operation Theatre Assistant as a candidate belonging to the Other Backward Classes². In respect of the certificate, certifying a candidate to belong to the OBC, the Advertisement provided as under:

¹ "AIIMS" hereinafter

² "OBC" hereinafter



“9. Candidates applying under any of the reserved category viz. SC/ST/OBC will be considered subject to submission of valid Caste certificate on a prescribed format issued by the competent authority. *The vacancies are being advertised in financial year 2019-2020, therefore, valid NCL-OBC³ certificate issued during the period from 1.4.2019 to 31.3.2020 will be considered valid. Candidature who have NCL-OBC certificate issued before or after this period (i.e 1.4.2019 to 31.3.2020), will not be considered valid for this advertisement.* Candidates applying under OBC category must produce the valid caste certificate in the format provided by the DoP&T vide O.M. No. 36036/2/2013-Estt. (Res.) dated 30.05.2014 and further clarification issued by DoP&T OM No. 36036/2/2013-Estt(Res-1) dated 31.03.2016. Certificate must be valid for employment in Central Government Institutions. OBC candidate's eligibility will be based on Castes borne in the Central List of Govt. of India. Their Sub-caste should also match with the entries in Central List of OBC, failing which their candidature as OBC candidate will not be considered. They will however be treated as UR candidate. The OBC certificate should clearly show that the applicant does not belong to the Creamy Layer.”

(Emphasis supplied)

2. The respondent is in possession of two OBC certificates, one of which has been issued before 1 April 2019 and the other after 31 Mrch 2020. Neither certificate, therefore, has been issued between 1 April 2019 and 31 March 2020, as required by the Advertisement. Despite his succeeding in the various rounds of selection, therefore, no appointment order was issued to the respondent.

3. Aggrieved thereby, the respondent moved the Central Administrative Tribunal⁴ by way of OA 1712/2022. By judgment dated 14 September 2022, the Tribunal has allowed the OA, reasoning as under:

“5. We have heard the learned counsels for the parties and also

³ Non-Creamy Layer-OBC

⁴ "the Tribunal" hereinafter



perused the pleadings on record. It is not in dispute that the Applicant was successful in the selection process for the post of Operation Theatre Assistant. Further it is also not in dispute that the Applicant belongs to the OBC category *and thus is eligible to hold a post reserved for such category*. It is also not in dispute that the Applicant processes and has submitted an OBC certificate *which for all intents and purposes is a valid OBC certificate*. The limited issue is whether the Respondents were obliged to accept the said certificate since the advertisement notice required the certificate to be issued during the period of 01004.2019 to 31.03.2020 and admittedly the Applicants certificates, the 2 of them did not belong to this period.

6. In our considered view, *denying an offer of appointment on this limited ground may be adhering to the word of law but is definitely against the spirit of justice. It is a hyper technical ground to deny appointment to a candidate who has been successful in the competitive examination on his own merit. The only ground on which the Applicant can be denied the offer of appointment is if he belongs to the creamy layer*. Nothing prevents the Respondents from holding such an enquiry, if required....”

(Emphasis supplied)

4. Following these observations, the Tribunal has disposed of the OA with a direction to the AIIMS to accept the OBC certificate submitted by the respondent as a valid certificate for the purpose of appointment, subject to verification as to whether he belongs to the creamy layer. In the event that he did not, the Tribunal has directed that an offer of appointment be issued to the respondent.

5. Aggrieved thereby, the AIIMS has preferred the present writ petition.

6. We have heard Mr. Atul Kumar for the AIIMS and Mr. A.K. Trivedi for the respondent.



7. While Mr. Trivedi submits that the reasoning of the Tribunal is unexceptionable, Mr. Atul Kumar would contend, *per contra*, that the Tribunal could not have passed an order contrary to the Advertisement whereagainst the respondent had applied.

8. It is obvious, to us, that the impugned judgment of the Tribunal cannot sustain. Indeed, if the view adopted by the Tribunal were to be accepted, it would render, completely redundant, the stipulation in para 9 of the Advertisement, italicised in the extract in para 1 *supra* which we, for the sake of clarity, deem it appropriate to reproduce:

“The vacancies are being advertised in financial year 2019-2020, therefore, valid NCL-OBC⁵ certificate issued during the period from 1.4.2019 to 31.3.2020 will be considered valid. Candidature who have NCL-OBC certificate issued before or after this period (i.e 1.4.2019 to 31.3.2020), will not be considered valid for this advertisement.”

9. The Tribunal could, clearly, not have rendered a judgment which would entirely wipe out the above stipulation in the Advertisement. No court can rewrite the terms of the advertisement, whereunder the candidate applies.

10. The error committed by the Tribunal is essentially more of perception than of law. This is clear from the opening sentence in para 6 of the impugned judgment, in which the Tribunal has observed that denying an offer of appointment to the respondent on the ground that the OBC-NCL certificate produced by the respondent had not been

⁵ Non-Creamy Layer-OBC



issued within the period 1 April 2019 to 31 March 2020 stipulated in the advertisement “may be adhering to the word of law but it is definitely against the spirit of justice”. With respect, this observation is jurisprudentially flawed. It is true that it is justice which is our preambular goal, and it is also true that law, which does not aspire to justice, is meaningless. At the same time, administration of justice cannot be innocent of the law. Nor can any court administer justice contrary to the law. The court cannot administer justice by steering clear of the law. The Supreme Court has, very recently in *Commissioner, Delhi Police v. Uttam Kumar*⁶, tellingly observed thus:

“The boundaries for exercise of discretion are well carved out beyond which the adjudicatory fora ought not to trench. *Grace, charity or compassion ought to stay at a distance in matters of public employment, if a fair level playing field is to be secured.*”

(Emphasis supplied)

11. While observing that it would be “against the spirit of justice” to deny appointment to the respondent, it appears that the Tribunal has failed to notice that the guarantee of justice does not apply only to the respondent, but to every candidate who was aspiring for appointment. Selectively allowing the respondent to be appointed despite his not having been in possession of a valid OBC-NCL certificate would be doing injustice to a host of other candidates who may not have had such a certificate and, therefore, may not have applied. Equally, if all such candidates were to be permitted to apply, it would do injustice to persons who had valid OBC-NCL certificates and would be forced to

⁶ 2026 SCC OnLine SC 523



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compete with other candidates who did not possess such valid certificates. While examining whether justice was being done, therefore, the Tribunal ought to have approached the matter holistically, rather than viewing it merely from the perspective of the respondent.

12. There are other observations, in the above extracted paras 5 and 6 of the impugned judgement with which, too, we have difficulty in agreeing.

13. The Tribunal has held that, as the respondent belonged to the OBC category, it was not in dispute that he was “eligible to hold the post reserved for such category”. Holding of a post is a second step, after a person is selected and appointed to the post. For this, the person has to be eligible and entitled to compete for the post. A person who does not possess a valid OBC-NCL certificate and who is not, therefore, eligible even to compete for the post cannot be said to be “eligible to hold the post”.

14. The Tribunal has further observed that the OBC certificates held by the respondent were “for all intents and purpose valid OBC certificates”. This, again, is a legally untenable observation. Quite clearly, the OBC certificate held by the respondent, not having been issued during the period stipulated in the advertisement, could not be treated as a “valid OBC certificate for all intents and purposes”. It may have been a valid OBC certificate for any other intent or purpose; it was certainly not a valid OBC certificate for the purposes of the Advertisement against which the respondent had applied.



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15. Resultantly, we are also unable to subscribe to the observation of the Tribunal that “the only ground on which the respondent can be denied the offer of appointment is if he belongs to the creamy layer”. The OBC certificates held by the respondent being invalid as per the terms of the Advertisement, was the primary ground on which the candidature of the respondent could not be accepted. The Tribunal cannot, therefore, be said to be correct in its observation that the only ground on which the respondent could be denied appointment was if he did not belong to the creamy layer.

16. Additionally, we may also observe that, having participated in the selection in full knowledge of the requirement in the Advertisement regarding the OBC certificate which he had to produce, the respondent could not, having failed to produce an OBC certificate fulfilling the requirement, raise a grievance after the selection process was complete.

17. Peripherally, we may also note that there was no challenge, by the respondent, to the requirement, in the Advertisement, of the OBC certificate having to be issued between 1 April 2019 and 31 March 2020.

18. In view of the fact that admittedly the certificate produced by the respondent OBC-NCL certificate does not conform to the requirement contained in Clause 9 of the advertisement, we cannot sustain the order of the Tribunal granting appointment to the



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respondent.

19. Resultantly, the impugned order is quashed and set aside. The OA filed by the respondent before the Tribunal, accordingly, stands dismissed.

20. The writ petition is allowed, with no order as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

APRIL 10, 2026/pa