

Unreportable
IN THE HIGH COURT OF DELHI AT NEW DELHI

WP (C) No. 8417 of 2007

Pronounced on : January 11, 2008

Rajbala & Ors.

.....*Petitioners*

!

through :

*Mr. Tarun Sharma with
Mr. Ali Afsar, Advocates*

VERSUS

\$ *Municipal Corporation of Delhi & Anr.*

.....*Respondents*

!

through :

Mr. Amit K. Paul, Advocate

CORAM :-

*** THE HON'BLE MR.JUSTICE A.K.SIKRI**

THE HON'BLE MR. JUSTICE VIPIN SANGHI

1. *Whether Reporters of Local papers may be allowed to see the Judgment?*
2. *To be referred to the Reporter or not?*
3. *Whether the judgment should be reported in the Digest?*

A.K. SIKRI, J.

1. *This petition raises an interesting question of law. The respondent, Municipal Corporation of Delhi (MCD), has formulated recruitment rules for the post of nursery teachers for appointment in schools run by the MCD. As per the recruitment rules in vogue, maximum age limit for male teacher is prescribed as 32 years and it is 42 years for female teacher. The MCD is contemplating amendment in the rules by lowering the age criteria as 20-27 years. As per the MCD, this amendment is necessitated to bring the rules at par with the regulations made under the National Council for Teachers Education Act, 1993 (for short, 'NCTE Act'). Pending this amendment, which has not been notified so far, there is a move on the part of the MCD to engage the teachers on contract basis with specific stipulation that the candidate so engaged on contract basis shall not claim for regular appointment in MCD and it is a Stop-Gap arrangement. Advertisement dated 19.10.2007 is issued by the MCD in this behalf. Apart from other essential*

qualifications, age limit which is prescribed is 20-27 years. Five petitioners in this petition are above 27 years of age but below the age prescribed in the recruitment rules. However, in view of the aforesaid stipulation of age limit, they are not in a position to apply for engagement as nursery teacher in MCD on contract basis and, therefore, the prescription of age limit in the advertisement is challenged by them on the ground that the same is contrary to recruitment rules. The neat submission is that without amendment to the recruitment rules, such a condition cannot be imposed which is contrary to the existing rules.

2. Certain background facts which may be necessary for the purpose of deliberating on the issue may be noted at this stage.
3. The MCD, in due discharge of its statutory obligatory functions, runs primary schools all over Delhi catering to a student population of approximately 8/9 lacs. For the purpose of imparting quality education to the students, the MCD employs both Nursery Teachers as well as Primary Teachers. While Primary Teachers are responsible for teaching the Classes I to V, the nursery teachers are responsible for the pre-primary class. The posts of teachers in the MCD being Category 'C' posts as per Section 92-A of the Delhi Municipal Corporation Act (for short, the 'DMC Act'), the answering respondent is duty bound to send the requisition for the vacancies arising therein to the Delhi Subordinate Services Selection Board (DSSSB), which is the competent body nominated and authorized by the Govt. of NCT of Delhi for carrying out recruitments to the said posts.
4. The MCD has, thus, sent the requisition to DSSSB for filling up of the post of primary and nursery teachers in MCD schools. While this process is on, in the meantime, in order to meet the immediate requirement of having these teachers so that the studies of the students admitted to these schools do not suffer, the MCD has also issued advertisement on 30.10.2007 vide public notice dated 19.10.2007 in national dailies inviting applications for making engagements of approximately

3000 teachers on contract basis for the post of Teacher (Primary). As per the recruitment rules issued vide notification dated 13.7.2007, following essential minimum academic and professional qualifications in the said post are prescribed:-

- (i) Age 20-27 years (relaxable in case of ST/ST/O.B.C./PH/ Ex-Servicemen as per Government of India instructions issued from time to time.
- (ii) Senior Secondary (10+2) or Intermediate or its Equivalent with 50% marks from a Recognized Board; and
- (iii) Two Years Diploma or Certificate Course in Elementary Teachers' Education (E.T.E.)/J.B.T. or Bachelor of Elementary Education (B.El.Ed.) or equivalent from a Recognized Institution.
- (iv) Must have passed in Hindi as a subject at Secondary Level.
- (v) Desirable Computer Knowledge....."

5. It is in this backdrop that for engaging the nursery teachers on contract basis the age of 20-27 years is prescribed in the impugned advertisement.
6. As aforesaid, as per the petitioners, this is contrary to the recruitment rules in vogue as on the date of advertisement and, therefore, such a move on the part of MCD is not proper.
7. The MCD, on the other hand, has explained the position in its counter affidavit. It is explained that as per Section 98 of the DMC Act the Corporation has the power to make the recruitment rules for the aforementioned post and the same have effect after they are notified by the competent authority as per Section 480 of the DMC Act. The competent authority, in due exercise of the powers vested in it by law, has, after following the statutory procedure, notified the recruitment rules for the said post on 25.9.1976. On 3.9.2001, National Council for Teacher Education (Determination of minimum qualifications for recruitment of teachers in schools) Regulations, 2001 were notified under the NCTE Act. The said regulations essentially deal with the minimum academic and professional qualifications required for a nursery teacher and mandate that all existing recruitment rules should be modified within a period of three years to bring them in conformity with the qualifications prescribed in the said regulations. It is submitted that qualifications prescribed in the said regulations are at variance with the rules of the MCD

notified in the year 1976. Vide order dated 21.4.2006 passed in GGP No. 370/2003, while

monitoring the recruitment process of teachers, this Court clarified (in para 32) as under :-

"32....wherever there is a hiatus between the eligibility norms specified under NCTE Act and notified recruitment regulations, the former shall prevail over the latter. Needless to state that law being clear, DSSSB shall act as per NCTE Regulations so that till notified recruitment regulations are formerly amended, process of selection could continue without DSSSB insisting that till notified recruitment rules are amended it would not empanelled (sic) candidates as per proposed amended rule."

8. On 8.5.2006, the Govt. of NCT of Delhi amended its recruitment rules for appointment of Asst. Teachers (Primary) and reduced the eligibility age to 20-27 years as it found that the existing age prescribed for the said post was on the higher side and contrary to the Government of India's instructions/guidelines circulated vide Secretary (Services), GND OM No. F-2(49)/88 D-II dated 30.1.1988 stating that for Group 'C' posts the age limit should be between 20-27 years. The post of nursery teachers in MCD also being a Category 'C' post, in order to maintain parity and uniformity in the eligibility age prescribed in the recruitment rules for all Category 'C' posts and in order to comply with the Govt. of India's guidelines stipulating age limit of 20-27 years for the said post and to encourage young, motivated and committed professionals to enter the noble profession of teaching at the nursery level and further to select the best from amongst the available talent, the respondent also initiated the process of comprehensively amending its recruitment rules incorporating the age as well. The proposed amendments were approved by the MCD vide Resolution No. 344 dated 8.10.2007, which are pending notification under Section 480 of the DMG Act. Vide orders dated 25.1.2007 passed in GGP 370/2003, this Court directed the MCD to submit its requisition for the teachers (including nursery teachers) to the DSSSB latest by 15.2.2007. Accordingly, the MCD sent the requisition for nursery teachers to the DSSSB on 26.2.2007 mentioning that the process of amendment of the recruitment rules was underway, though they were yet to be notified.

9. *In furtherance of the directions being given by this Court from time to time in TGP 370/2003 for ensuring adequate number of teachers in the schools being run by the MCD, this Court vide order dated 5.9.2007 observed as follows :-*

"10..... In this view of the matter the MCD shall ensure that appropriate steps are taken so that pending finalization of the regular appointments, teachers are provided to the school going children and no posts are left vacant.."

Though the MCD has given timely requisition for the vacancies that have arisen in the said post to the DSSSB, however, the examination for the same has still not been conducted so far due to various reasons. Since the examination and the selection process of the regular nursery teachers is likely to be delayed, keeping in mind the exigencies of the situation and to ensure that the students do not suffer due to shortage of teachers, the MCD has decided to appoint some teachers on contract basis purely as a temporary measure, pursuant where to an advertisement was issued by the MCD on 30.10.2007 inviting applications, inter alia, for appointment of 150 nursery teachers, pending completion of the recruitment process, on contractual basis till 31.3.2008 or till the select list is made available by the DSSSB, whichever is earlier.

10. *We may state that the recruitment rules for primary teachers have already undergone a change and age limit of 20-27 years is prescribed as per the amendment carried out therein. The DSSSB has already issued advertisement for filling up all these posts on regular basis prescribing age limit of 20-27 years. Many writ petitions are filed by candidates challenging the aforesaid amendment lowering the age limit prescribed in the recruitment rules for the post of primary teachers, on the basis of which such advertisements are issued. The said issue will be decided in those writ petitions. In the present case, we are concerned with the advertisement dated 19.10.2007 as per which the nursery teachers are to be engaged on contract basis, which is only a Stop Gap arrangement. The advertisement also clearly provides that the candidates engaged on contract basis shall not claim for regular appointment in MCD. The reason for which such a step is taken is explained by the*

MCD, as noted above. Since it is only a Stop Gap arrangement and the persons appointed are not going to get any right over the post, more so when it is done keeping in view the provisions of the NCTE Act, we are of the view that no interference with such a move is called for.

11. *We, therefore, find no merit in this petition and dismiss the same.*

No costs.

(A.K. SIKRI)
JUDGE

(VIPIN SANGHI)
JUDGE

January 11, 2008
nsk