

* **THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Writ Petition (Civil) No.8465/2007**
% Date of Decision : March 10, 2008
Anupriya Chauhan & Ors. Petitioners
Through : Ms. P.L. Gautam,
Advocate
Versus
Municipal Corporation of Delhi Respondent
Through : Nemo

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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

SUDERSHAN KUMAR MISRA, J : *(Oral)*

1. The petitioners are aggrieved by an advertisement issued by the respondent/ Municipal Corporation of Delhi (MCD) on 30.10.2007, inviting applications for appointment to the post of Teacher (Primary) on contract basis. The said advertisement under one of its heads subtitled as, "Note", makes it clear that; the candidates so engaged on contract basis shall not claim for regular appointment in the MCD, and the appointments being offered are a stop gap arrangement and that for these vacancies, requisition has already been sent to Delhi

Subordinate Services Selection Board (DSSSB). In terms of this advertisement, the essential qualifications, inter alia, required candidates to hold a diploma/ certificate in Nursery Teaching Training Education Programme of the duration of not less than two years. The age limit which is prescribed for the candidates is between 20 to 27 years. The petitioners being about 30 years of age are ineligible and, therefore, unable to apply. They have, therefore, challenged the prescription of age limit in the advertisement on the grounds that the same is irrational, arbitrary, discriminatory, mindless, unlawful and against the existing recruitment regulations and natural justice.

2. It would appear that the facts and circumstances narrated by the petitioner in this case are similar to those in WP(C) No.8461/2007 titled **Anju Goel Vs. MCD** which has been decided by me on 21st February, 2008 and WP(C) No.8576/2007 titled **Bhupinder Kaur & Ors. Vs. MCD** decided by me on 27th February, 2008. There also, since the petitioners were more than 30 years old; they were aggrieved of a similar advertisement inviting applications for appointment to the post of Nursery Teachers on contract issued by the MCD where age limit prescribed for candidates was between 20-27 years. They prayed that the respondents be directed to modify the age limit. Those matters came to be dismissed by me on the basis of a decision of the Division Bench of this Court dated 11th January, 2008 in the case of **Rajbala & Ors. Vs. MCD** (WP(C)

No.8417/2007) wherein this Court had noticed the difference between the offer of regular employment under the rules and the offer of contractual employment made by the advertisement dated 19th October, 2007, whereby it was proposed to engage Primary Teachers on a contractual basis as a stop gap arrangement till such time a regular employment based on the amended rules could be made. The Division Bench held that:

“since it is only a stop gap arrangement and the persons appointed are not going to get 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”.

Here also, as already noted, the advertisement clearly mentions that, “the candidates so engaged on contract basis shall not claim for regular appointment in the MCD.” and that, “this is stop gap arrangement.” Thus, this matter will be squarely covered by the aforesaid decisions.

3. It is pertinent to note that according to the petitioner by lowering the age limit, the impugned advertisement in question has the effect of depriving the petitioners of their vested rights of being considered for appointment. In **Bhupinder Kaur & Ors. Vs. MCD** (supra), this Court held that;

“..... in a purely contractual employment, the terms and conditions are governed by the offer, and if the offer fructifies into a contract, then by that contract. An applicant cannot demand terms which do not form part of the offer. In the absence of any statute compelling the same, he cannot approach the Courts to issue a mandamus to the employer to amend its

offer, so as to include the applicant also in what is purely stop gap contractual arrangement. It is a trite law that Courts cannot issue a writ of mandamus unless the claimants can demonstrate the existence of a subsisting legal right. Since the recruitments envisaged under the offer in question are not in the nature of statutory recruitments, the terms and conditions in such a stop gap contractual employment are governed by the conditions offered, and the rights, if any, of the applicant would arise only from terms of the offer itself. This is also the ratio of the decision in Raj Bala's case (supra)."

This observation also applies to the case at hand. I might add that the petitioners have not brought any precedent to the contrary to my notice.

4. Under the circumstances, this writ petition is dismissed.

CM No.15982/2007

5. In view of the fact that writ petition itself has been disposed of, the interim orders passed on 16th November, 2007 are vacated and the application is also disposed of.

Sudershan Kumar Misra, J

March 10, 2008
skw