

*** HIGH COURT OF DELHI: NEW DELHI**
Judgment reserved on: September 02, 2009
Judgment delivered on: September 08, 2009

+ W.P. (C) No. 8938/2005

Suresh Kumar ... Petitioner
Through: Mr. A. Asthana, Advocate.

Versus

Director of Education & Ors. ... Respondents
Through: Ms. Aakanksha Munjhal for
Ms. Geeta Luthra, Advocate for
Department of Education
Mr. A.K. Mishra and Mr. Rajneesh
Chaudhary, Advocates for
Respondent No. 5.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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

SUNIL GAUR, J.

1. On 22nd November, 2003, Petitioner had joined the Respondent – School on the post of Waterman, which was unreserved. The Appointment Letter (Annexure-A) clearly states that the post of Waterman, on which the Petitioner was appointed, was unreserved one.

2. On 31st March, 2004, Petitioner was relieved of his duty as Waterman by the Respondent - School vide letter (Annexure-F), which is impugned in this petition. The reason given in the letter (Annexure-F) is that Petitioner has not been granted age relaxation by the Director of Education.

3. Before issuing the impugned letter (Annexure-F), Respondent - School had issued letter (Annexure-D) to the Petitioner on 7th January, 2004 stating that his appointment is subject to the approval by the Director of Education. In the letter (Annexure-D), it has been stated that at the time of selection to the post of Waterman, Petitioner was aged 28 years and 3 months and the age limit for the post in question which is unreserved, is 18 to 25 years.

4. Petitioner relies upon an extract from '*Swamy's Compilation*', dealing with reservation and concessions in appointment for the Schedule Caste/Schedule Tribe, (Annexure-E) to press for age relaxation. Petitioner has also placed on record an extract from '*Dixit's School Manual*' to highlight the Recruitment Rules for the post of

Class IV employees, which gives the age limit as 28 years and it is said to be relaxable in case of SC/ST.

5. In June, 2004, Petitioner had made Representations (Annexure-H, Annexure-I and Annexure-J) for claiming age relaxation and had relied upon Caste Certificate (Annexure-K). Reliance has been also placed by the Petitioner upon an unreported decision of another Bench of this Court in W.P. (C) No. 5805/2003, titled '*Tazeem Ahmed Usmani vs. Director of Education & Ors.*', decided on May 28th, 2004, wherein the relief of reinstatement was granted while holding that the no approval from Director of Education is required. The relief sought herein is also of reinstatement in service.

6. The Director of Education, Respondent No. 1 and 2, in their counter affidavit have stated that the post of Waterman in the Respondent - School was a single unreserved post and no reservation to appointment on a single unreserved post can be claimed. Therefore, age relaxation could not have been granted. Respondent No. 3 and 4 in their counter affidavit have stated that consequent upon disapproval of the appointment of the Petitioner by the Director of Education, they had no choice

except to relieve the Petitioner from service. Respondent No. 5 is the candidate of general category, who has been selected to the unreserved single post of Waterman in the Respondent – School and he in his counter affidavit has supported the impugned order and the stand taken by Respondent No. 1 and 2. In the rejoinder filed by the Petitioner, the averments made in the writ petition have been reiterated.

7. After having heard counsel for the parties and upon perusal of the material on record, it emerges that the post of Waterman in question is an unreserved post. In view thereof, Petitioner's claim for age relaxation of five years based upon reservations/concessions in appointments cannot be acceded to. Although, in the impugned communication (Annexure-D), it has been stated that the age limit for the unreserved post is 18 – 25 years but as per extract of Recruitment Rules for the post of Class IV employees (Annexure-A) filed with the rejoinder, the upper age limit for direct recruits is 28 years. Even if it is taken that the upper age limit for the post in question is 28 years, still the Petitioner is over age by three months, as per communication (Annexure-D). This is not disputed by the Petitioner. In fact, age relaxation is claimed as the

Petitioner claims to be a schedule caste. As already noted above, the post in question is unreserved one. Though Petitioner relies upon an unreported decision of this Court in W.P. (C) No. 5805/2003, rendered on May 28, 2004, but upon perusal of the same, I find that it is of no assistance to the case of the Petitioner as it pertained to a Minority Institution and appointments made in the said Minority School did not need the approval of the Director of Education. Here in this case, the approval of the Director of Education is required and the Petitioner's appointment to the post of Waterman has been disapproved by Director of Education vide impugned communication. It is not the case of the Petitioner that on an unreserved post, there is any age relaxation for the general candidates.

8. In view of the aforesaid, this petition lacks substance. No case for reinstating the Petitioner on the post of Waterman in question is made out.

9. This petition is accordingly dismissed.

10. No costs.

SUNIL GAUR, J.

September 08, 2009
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