

*** HIGH COURT OF DELHI : NEW DELHI**

+ Writ Petition (Civil) No. 11331 of 2009

Judgment reserved on: September 01, 2009

% Judgment delivered on: September 07, 2009

The Commissioner
Municipal Corporation of Delhi
Town Hall
Delhi-110006.

...Petitioner

Through Mr.Gaurang Kanth with Ms.Biji
Rajesh, Advs.

Versus

1. Shashi
W/o Sh. Rakesh Kumar Saini
R/O 88, Saini Enclave
Delhi-110092.
2. The Chief Secretary
Govt. of NCT of Delhi, Delhi.
3. Sh. A.K. Guha, IAS
Director (P.E)
Deptt. of Education, HQ's
Kashmere Gate
Delhi-110006.
4. Mr. Mahesh Chand Sharma
President
Education Committee
(MCD), Deptt. of Education, HQ's
Kashmere Gate
Delhi-110006.
5. Mr. B.C. Pandey
Asstt. Commissioner of Education (MCD)
Deptt. of Education, HQ's
Kashmere Gate
Delhi-110006.

...Respondents

Through Mr.Devendra Singh, Adv. for Resp.1
Ms.Zubeda Begum, Adv. for Resp.2

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE A.K. PATHAK

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

MADAN B. LOKUR, J.

The issue raised in this case pertains to age discrimination.

In our opinion, the Petitioner has impermissibly discriminated against Respondent No.1 on the basis of her age and has thereby unreasonably denied employment to her.

2. The Petitioners had taken out an advertisement in 1996 for the appointment of primary teachers and nursery teachers. We are concerned with those applicants for the posts of primary teachers who belong to the OBC category.

3. In terms of the advertisement the age limit for recruitment as on 31st July, 1996 was 18 to 30 years generally with exceptions for lady candidates, SC/ST candidates, physically handicapped candidates, etc.

4. In response to the advertisement, the Petitioner appears to have received an extremely large number of applications from the

general public. With a view to reduce the number, the Petitioner introduced short-listing criteria which included, inter alia, short-listing on the basis of the age of the applicant. It is this criterion on the basis of which Respondent No.1 became disentitled to employment and it is only this criterion that we are concerned with.

5. In so far as the applicability of the age criterion is concerned, the Petitioner decided to weed out those OBC candidates whose date of birth was later than 5th June, 1968. The effect of this was that even though the advertisement made eligible all candidates between the age of 18 and 30 years, by introducing the age criterion, the Petitioner eliminated all applicants except those whose age was between 28 and 30 years. Consequently, all the applicants between the age of 18 to 27 years were eliminated from selection.

6. One significant aspect in this case is that there was no test or interview or selection process conceived by the Petitioner and the procedure was that there would be a verification of the credentials of the candidates and those who were found to be eligible would be given the appointment. As a result, those candidates who fell within the age group of 28 to 30 years automatically became entitled to appointment (subject to their fulfilling the other conditions) while those below the age of 28 years were straight away eliminated, even if they were extremely competent.

7. According to Respondent No.1 who was an eliminated candidate, there was no rational basis for this classification and, therefore, she challenged the action taken by the Petitioner by filing a writ petition in this Court. Due to a notification having been issued under the Administrative Tribunals Act, 1985 the writ petition automatically stood transferred to the Tribunal, which allowed the writ petition. Feeling aggrieved, the Commissioner, Municipal Corporation of Delhi has preferred this writ petition.

8. The question that has arisen is whether the Petitioner can discriminate against equally placed candidates merely on the basis of age. Our answer to this is in the negative.

9. Article 14 of the Constitution provides for equal treatment before the law and equal protection of the laws to all persons within the territory of India and Article 16 (1) of the Constitution provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Yet, discrimination between two equally placed persons is permissible if there is a reasonable classification and that reasonable classification is based on an intelligible differentia. Article 16 (2) of the Constitution provides that no citizen shall be discriminated against on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. There is no specific prohibition against discrimination on the basis of age. In other words, if there is age discrimination, the person

discriminated against is entitled to rely only on Article 14 of the Constitution and demand equal treatment, while the State would have to show that the classification is reasonable and is based on intelligible differentia.

10. As far as the present case is concerned, Respondent No.1 has clearly made out a case of age discrimination in as much as the admitted position is that even though the advertisement for recruitment related to all eligible persons between age group of 18 to 30 years, the Petitioner sought to limit the application of the advertisement to only those persons who were within the age group of 28 to 30 years.

11. The reason given by the Petitioner for the age discrimination is two-fold, namely, that the number of applications received was overwhelming and, therefore, some short-listing criteria had to be adopted and, secondly, persons who are senior in age would lose an opportunity of employment if they were not selected while those who were younger could avail of similar opportunities later in life. We are of the opinion that neither of these reasons put forth by the Petitioner falls within the acceptable limits of Article 14 of the Constitution.

12. Subject to constitutionally permissible reservations, every endeavour must be made by the State to employ or engage the most qualified or the most meritorious persons. In doing so, the State may fix short-listing criteria on the basis of educational qualifications or

experience or marks obtained in an examination or an interview or any other criterion which enables the most competent person to be selected. Unfortunately, age has nothing to do either with merit or competence. Wisdom may be an attribute of age, but not merit or competence.

13. There is not even an iota of material to suggest, nor indeed has anything been pointed out by learned counsel for the Petitioner, that merely because an applicant falls within the age group of 28 to 30 years he is better qualified as a teacher than a person falling in the age group of 18 to 27 years. It is not the case of the Petitioner that persons in the age group of 28 to 30 years are either better qualified educationally or have more experience or are in any manner more meritorious or competent than the applicants falling within the age group of 18 to 27 years solely because of their age. It seems to us that the Petitioner has literally picked the age group of 28 to 30 years out of the hat (as it were) without any reference to any logical or empirical basis.

14. Learned counsel for the Petitioner sought to justify the action of the Petitioner on the basis of four decisions. In our opinion, none of these decisions is applicable to the present case.

15. The first decision cited by learned counsel for the Petitioner is ***Ramangouda Hanumantha Patil v. High Court of Karnataka, ILR 1996 KAR 1730***. In this case, short-listing was resorted to for appointment of District Judges directly from the Bar. The Karnataka

High Court approved the concept of short-listing (in principle, even we do not say that short-listing is impermissible) but the High Court went on to add that there must be a clear, rational and reasonable nexus between the criteria prescribed and the object sought to be achieved, that is, selection of the best candidate. In that case, the short-listing criteria was to the effect that the candidates who were not paying income tax (excluding women and SC/ST candidates) and who have not practiced as lawyers for a period of 10 years should not be called for an interview for appointment as District Judges. The Court noted that prescription of the income criterion may result in a good candidate being ignored in some exceptional cases but it is not possible to provide for all contingencies. Mere failure to provide for all contingencies would not make the criterion adopted either unreasonable or irrational. The High Court suggested that the matter may be looked at from another angle – the question was not whether a better alternative criteria should be employed or not but whether the criteria employed are reasonable and rational. Answering this, the High Court held that the two criteria fixed for calling candidates for an interview if applied together would ensure that only persons with experience and knowledge in the field of law are called for an interview.

16. Insofar as the present case is concerned, selecting only those candidates who fall within the age group of 28 to 30 years would necessarily mean that persons with better educational qualifications, experience and knowledge might not be appointed only because of their

age and for no other reason.

17. Learned counsel for the Petitioner also referred to *The State of Haryana v. Subash Chander Marwaha and Others*, (1974) 3 SCC 220. In this case, the short-listing criterion fixed for appointments was a score of not less than 55% marks in the competitive examination. The Supreme Court found nothing wrong in the fixation of this criterion since it was open to the Government to fix a score which is much higher than the minimum score required for mere eligibility on the ground that a higher score would result in maintenance of higher standards of competence.

18. In *Madhya Pradesh Public Service Commission v. Navnit Kumar Potdar and Another*, (1994) 6 SCC 293 the Supreme Court held that a Selection Board can regulate its procedure for selecting the best candidates from amongst the applicants. Reference was made to *Subash Chander Marwaha* and it was then held that the short-listing criterion for calling candidates for interview for appointment as Presiding Officers to the Labour Courts did not amount to altering or changing the prescribed criterion in the statutory rules but it was only a part of the selection process. In that case, the short-listing criteria raised the bar from 5 year's practice to 7 ½ years practice and the Supreme Court did not find this to be either arbitrary or unreasonable.

19. Finally, learned counsel referred to *The State of West*

Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75 wherein the Constitution Bench laid down that classification must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be attained and cannot be made arbitrarily and without any substantial basis. It was observed that classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics and does not mean herding together of certain persons and classes arbitrarily. In this context, the Constitution Bench observed that the legislature may fix the age at which persons shall be deemed competent to contract between themselves.

20. Obviously, there can be no quarrel with the proposition of law laid down by the Supreme Court and in our daily life we find such classifications being made in several other instances such as the voting age or the age of juvenility or the age of superannuation etc. In these cases, there is some rational basis for the age criterion being laid down but in the present case, merely “herding together” applicants on the basis of their age group, that is, 28 to 30 years cannot stand judicial scrutiny inasmuch as the age group selected has no relevance to merit, competence, knowledge or experience vis-à-vis candidates falling outside that age group. Also, no overriding public interest has been shown to us for making the classification on the basis only of age.

21. For all these reasons we find that the age discrimination

carried out by the Petitioner cannot be sustained being arbitrary and contrary to the principles of Article 14 of the Constitution.

22. There is no merit in the writ petition. It is dismissed in limine.

MADAN B. LOKUR, J

September 07, 2009
kapil/vk

A.K. PATHAK, J