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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved On: 26th August, 2010
Judgment Delivered On: 07th September, 2010

+ **W.P.(C) NO.3815/2010**

RAMESH KUMAR MEENA & ORS Petitioners
Through: Mr.Rajat Aneja, Advocate.

versus

GNCT OF DELHI AND ORS Respondents
Through: Mr.Rattan Lal, Advocate for GNCT
Of Delhi
Mr.Anshum Jain, Adv. for Ms.
Suparana Srivastava, Adv. for MCD.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

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?

PRADEEP NANDRAJOG, J.

For orders see WP(C) No.1343/2010.


(PRADEEP NANDRAJOG)
JUDGE


(MOOL CHAND GARG)
JUDGE

SEPTEMBER 07, 2010

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved On: 26th August, 2010
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+ **W.P.(C) NO.1343/2010**

SANTOSH KUMAR MEENA Petitioner
Through: Mr.Rajat Aneja, Advocate.

versus

GNCT OF DELHI AND ORS Respondents
Through: Mr.Anshum Jain, Adv. for Ms.
Suparana Srivastava, Adv. for MCD
Mr.Elgin Matt John, Adv. for Ms.
Anju Bhattacharya, Adv. for R-1&3.

W.P.(C) NO.3815/2010

RAMESH KUMAR MEENA & ORS Petitioners
Through: Mr.Rajat Aneja, Advocate.

versus

GNCT OF DELHI AND ORS Respondents
Through: Mr.Rattan Lal, Advocate for GNCT
Of Delhi
Mr.Anshum Jain, Adv. for Ms.
Suparana Srivastava, Adv. for MCD.

With

% Judgment Reserved On: 27th August, 2010

W.P.(C) NO.4456/2010

MAHESH CHAND MEENA & ORS Petitioners
Through: Mr.Rajat Aneja, Advocate.

versus

GNCT OF DELHI AND ORS Respondents
Through: Mr.Anjum Javed, Adv. for R-1&2.
Ms.Shobha Gupta, Adv. for R/MCD

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W.P.(C) NO.4453/2010

SUNITA MEENA

..... Petitioner

Through: Mr.Rajat Aneja, Advocate,

versus

GNCT OF DELHI AND ORS

.....Respondents

Through: Mr.Anjum Javed, Adv. for R-1&2.

Ms.Shobha Gupta, Adv. for R/MCD

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

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?

PRADEEP NANDRAJOG, J.

1. On 12.10.2007, the Delhi Subordinate Service Selection Board (DSSSB), acting on behalf of the Municipal Corporation of Delhi issued a public notice inviting applications from eligible candidates for the post of Teacher (Primary). As per the advertisement, the last date of for applying i.e. submitting the application was 29.10.2007. As per the advertisement, the applicable educational qualification to be eligible was:-

- (i) Senior Secondary (10+2) or intermediate or its equivalent with 50% marks from a recognized Board.
- (ii) Two Years Diploma/Certificate course in ETE/JBT or B.El.Ed from a recognized institution.
- (iii) Must have passed Hindi as a subject as secondary level.

2. Needless to state, vide serial No. (ii) of the three condition for eligibility was the candidate possessing either a

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two year Diploma or a Certificate course in either of the three i.e. ETE, JBT or B.Bi.Ed.

3. The petitioners of the four captioned petitions who are mostly residents of Rajasthan and all of whom had appeared for examinations conducted by Universities either in the State of Rajasthan or State of Haryana pertaining to ETE course i.e. Elementary Teacher Education applied for being appointed as Elementary Teachers by submitting their applications. But, unfortunately for them their respective University had not declared the result by the cut-off date i.e. 29.10.2007.

4. The selection process envisaged a written test followed by an interview. All the respondents successfully cleared the written test as also the interview and found their names fairly high up in the merit list, making them eligible to be offered appointment letters by the Municipal Corporation of Delhi. It be noted that by the time the selection process was over the result of the examination undertaken by the respondents with their respective universities had been announced and by the month of March 2008 all of them had obtained the respective degree. It may also be noted that unfortunately for a few the results which were expected to be declared by October 2007 got delayed on account of political turmoil in the State of Rajasthan and Western Haryana on account of agitation by the Gujjar Community in the State of Rajasthan as the members of the said Community demanded to be treated as members of a Scheduled Tribe. Qua few, the exams which were scheduled to be held in the month of September 2007 and results declared by October 2007 got delayed. The exams were held either in the month of October 2007 or thereafter but the results were declared by March 2008.

5. By the time DSSSB completed its selection process the month of September 2008 had arrived. The results were

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declared on 25.09.2008, by which date all the respondents had acquired the necessary educational qualifications.

6. DSSSB forwarded the select list of the empanelled candidates to the Municipal Corporation of Delhi where the empanelled candidates were summoned by the concerned officer with a direction to produce their original certificates and by November 2008, after verifying the authenticity of the certificates relied upon by the various empanelled candidates, and upon recording satisfaction that the certificates were genuine, letters offering appointments were issued to the writ petitioners of W.P.(C) No.1343/2010, being six candidates, but appointment was denied to the writ petitioners of the other three writ petitions on the ground that they were not eligible for appointment as they had not obtained the necessary degree by the prescribed cut-off date 29.10.2007. Notwithstanding the six writ petitioners of W.P.(C) No.1343/2010 being similarly situated, letters of offer giving them appointment as primary Teachers were issued, which they gladly accepted and joined service under the Corporation, but later on which letters of offer were withdrawn stating that the same were issued by mistake ignoring that the six petitioners were ineligible for being appointed on account of not possessing the degree by the cut-off date i.e. 29.10.2007.

7. Thus, the petitioners filed Original Applications before the Central Administrative Tribunal. Whereas the petitioners of the three captioned writ petitions other than W.P.(C) No.1343/2010 urged before the Tribunal that due to agitation by members of the Gujjar Community the result of the ETE examination got postponed and was subsequently declared on 12.03.2008. Thus such a delay in declaration of result could not be on account of the part of the petitioners. Also the result was announced on 12.3.2008 which was a date much prior to

the date of completion of the selection process conducted by the Board. Hence, they claimed that said petitioners fulfilled the educational qualifications as required by the terms of the advertisement by the time the results were declared.

8. In addition to the aforementioned averments, the petitioners of writ petition No.1343/2010 urged that they had acted to their detriment inasmuch as petitioner Santosh Kumar Meena stated that he was an employee under Western Railways and had been issued a letter of appointment by the Kendriya Vidyalaya which he had not accepted as he had been offered appointment by the MCD. Petitioner Sushila Meena, Anuj Kumar Ran Singh and Ganga Sahai Meena stated that since they were issued letters of appointment by the MCD they did not take the examination conducted by the DSSSB for filling up vacant post of teachers in the year 2009. Petitioner Saroj Dagar claimed to have resigned as a contractual Teacher when letter of offer giving appointment was issued to him. In other words all the six writ petitioners of W.P.(C) 1343/2010 claimed special equities in their favour. They highlighted that they had made no misrepresentation to the respondents.

9. The Original Applications filed by the writ petitioners have been dismissed by the Central Administrative Tribunal. The Tribunal has held that it is settled law that eligibility has to be acquired before the prescribed cut-off date and since admittedly all the writ petitioners did not possess the requisite qualifications as on the cut-off date, none were entitled to be appointed as a Primary Teacher. It may be noted that the plea of special equity urged by the writ petitioners of W.P.(C) No.1343/2010 has not been discussed by the Tribunal in the impugned order dated 26.02.2010 dismissing OA No.1974/2009 filed by the said six petitioners. The two other Original Applications being OA No.2602/2009 and OA

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School Society, Vizianagaram Vs. M.Tripura Sundari
Devi."

11. 'Whatsoever may be the reason and howsoever it may not be in the control of the writ petitioners, the fact that due to a civil disobedience movement by members of the Gujjar Community in the State of Rajasthan and Western Haryana the results of the examination taken by the petitioners could not be declared on time is irrelevant and it must be held that the petitioners were not qualified by the cut-off date i.e. 29.10.2007 and thus we find no infirmity in the view taken by the Tribunal of the writ petitioners not being eligible for appointment. Thus, as regards the writ petitioners of W.P.(C) No.4456/2010, W.P.(C) No.4453/2010 and W.P.(C) No.3415/2010, we see no scope to interfere with the impugned order dated 16.03.2010.

12. However, we have to discuss something more qua the claim of the writ petitioners of W.P.(C)No.1343/2010 who have claimed special equities in their favour and in respect of which pleadings, we find that the Tribunal has just not bothered to discuss the law on the subject.

13. As noted in para 8 above, petitioner Santosh Kumar Meena stated that he was an employee under Western Railways and had been issued a letter of appointment by the Kendriya Vidyalaya which he had not accepted as he had been offered appointment by the MCD. Petitioners Sushila Meena, Anuj Kumar Ran Singh and Ganga Sahai Meena stated that since they were issued letters of appointment by the MCD they did not take the examination conducted by the DSSSB for filling up vacant post of teachers in the year 2009. Petitioner Saroj Dagar claimed to have resigned as a contractual Teacher when letter of offer giving appointment was issued to him.

The question arises whether said special facts pleaded by them entitle them to retain the benefit of appointment which was wrongly given to them.

14. It may be highlighted here that the writ petitioners of the other three writ petitions were never issued any appointment letters and thus they stand on a different footing than the six petitioners of W.P.(C) No.1343/2010 who claims special equities in their favour.

15. Every appointment is a matter of contract for the reason the employer issues a letter of offer to the employee offering him appointment on the terms contained in the letter of offer and on acceptance by the employee, the contract of employment stands concluded. Of course, where the employer is the Government or where the employment is governed by a Statute, the contract acquires a status. Thus, it can be said that principles of contract govern the instant case.

16. As per the MCD it committed a mistake as to a matter of fact by issuing the letter of offer offering appointment; the mistake being the MCD not realizing that the petitioners were not eligible for being appointed as Primary Teachers on account of not possessing the ETE Degree/certificate by the prescribed cut-off date i.e. 29.10.2007.

17. Section 20 of the Indian Contract Act 1872 reads: *Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.*

18. It is apparent that every mistake as to a matter of fact does not render an agreement void. Mistakes as to matters of fact essential to an agreement render the same void. Question arises whether possessing the requisite educational qualification by the prescribed cut-off date is a matter of fact essential to the agreement. The answer has to be in the

affirmative for the reason in matter pertaining to employment everything which relates to the essential qualifications for the appointment must of necessity relates to a matter of fact essential to the agreement which the parties may draw pertaining to the employment. Thus, on the principles of the law of contract, MCD would be entitled to claim that the offer and acceptance resulting in the contract has resulted in a void contract.

19. Promissory estoppel would also not apply in the instant case, for the reason, in the case of promissory estoppel the promise which is sought to be later on withdrawn and in respect of which withdrawal an estoppel is claimed is a valid promise and not a promise based on a mistake of facts. This court knows of no decision, and indeed none was cited, where promissory estoppel was applied in respect of a promise which was found to be void. The closest we could find on facts is a decision of the Allahabad High Court dated 16.09.2004 deciding second Appeal No.2556/1987 UOI & Ors. Vs. Kumari Mukta Jain in which Kumari Mukta Jain was wrongly given appointment by the Kendriya Vidyalaya and later on it was found that she was not eligible for appointment. The appointment was withdrawn. Kumari Mukta Jain sought a declaration that the order withdrawing her appointment was illegal. With reference to the decision of the Supreme Court in M.Tripura Sunderi Devi's case (supra), it was held that an appointment of an ineligible person can be terminated and merely because she had worked for some time would create no equity in favour of Kumari Mukta Jain.

20. It may be that the petitioners altered their position but they knew completely well that they were not eligible to be appointed as Teachers, having not obtained the necessary qualifications by the prescribed date i.e. 29.10.2007 and thus

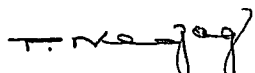
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they cannot claim to be innocent victims.

21. Service law or jurisprudence relating to service law pertaining to the right to be employees under the Corporation prohibits us from granting any relief to the writ petitioners of W.P.(C) No.1343/2010, who may have a possible civil action for damages, if at all, on account of suffering due to the negligence of somebody in issuing letters of offer offering employment to them. Needless to state they may chance their luck, if they so desire by seeking damages upon proof of the fact that employees of the Corporation acted negligently and as a result of the negligence the said writ petitioners have suffered damages. Public law remedy gives no right to the said writ petitioners.

22. All the writ petitions are dismissed.

23. However, we refrain from imposing any costs.


(PRADEEP NANDRAJOG)
JUDGE


(MOOL CHAND GARG)
JUDGE

SEPTEMBER 07, 2010
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