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

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Date of decision: 15th November, 2011

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W.P.(C) 1641/2011

**DELHI SUBORDINATE SERVICES
SELECTION BOARD & ANR**

..... Petitioners

Through: Ms. Zubeda Begum & Ms. Sana
Ansari, Adv.

Versus

PREETI RATHI & ORS

..... Respondents

Through: Mr. M. Rais Farooqui & Mr.
Sargaraz Khan, Adv.

CORAM:

HON'BLE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? yes
2. To be referred to the reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

ACTING CHIEF JUSTICE

1. The petition impugns the order dated 20th August, 2010 of the Central Administrative Tribunal, Principal Bench, New Delhi allowing the Original Application No.714/2009 filed by the respondents and

whereby the petitioners were directed to declare the result of the examination for the post of Primary Teachers taken by the respondents and to also grant age relaxation to the respondents, as accorded to certain others and to, if successful in the examination, offer appointment to the respondents as Primary Teachers within a period of three months from the date of receipt of the copy of the order.

2. The factual matrix leading to the aforesaid decision is as under. The respondents no.1 to 2, in the year 2001 were appointed as Primary Teachers in MCD on contract basis. They had passed the qualifying examination of Elementary Teachers Education (ETE) diploma course of two years of the State Council of Educational Research & Training. The age limit for doing the said course was 17-30 years. As per the then recruitment rules of MCD, the age limit prescribed for employment as Primary Teacher was 32 years for males and 42 years for females.

3. The respondents filed W.P.(C) No.5731-801/2006 *inter alia* for regularization of their services. Though the said relief was denied to the respondents vide judgment dated 4th May, 2006 but MCD was directed to continue the respondents in employment till regular employees are brought in their place; the respondents were also permitted to participate in regular recruitment process and MCD directed to consider granting age relaxation to the respondents.

4. However vide notification dated 13th July, 2007 the recruitment rules were amended and as per which the age limit was reduced to 27

years for both males and females. The aforesaid amendment was challenged before the High Court of Delhi in ***Sachin Gupta. v. DSSSB*** 152 (2008) DLT 378 (DB) and as per which judgment age relaxation was granted to those who qualified the ETE course in the years 2006 to 2008.

5. In pursuance to the aforesaid judgment dated 4th May, 2006, the respondents continued in service and were also allowed to provisionally appear in the examination held in or about the year 2008 for recruitment for the post of Primary Teachers. However, the result of the respondents of the examination so taken by them was withheld/not declared and upon the representations not meeting with any success the OA aforesaid was filed before the Tribunal seeking declaration of result and grant of age relaxation.

6. It is not in dispute that each of the respondents on the date of initially joining the employment of MCD in the year 2001 was within the age limits then prescribed or even as prescribed in the amended Rules.

7. The Tribunal vide order dated 20th August, 2010 impugned in this petition held that since age relaxation had been granted vide judgment in ***Sachin Gupta*** (supra) to those who had passed the ETE course in the year 2006-08, the respondents who had passed the said course earlier were being discriminated. Reliance was also placed on the decision of the Apex Court in ***Harinder Kaur v. Union of India*** 2009 (7) SCALE 204 and the decision of the Tribunal in OA No.498/2010 titled ***Suman Lata Sharma v. Govt. of NCT of Delhi*** decided on 8th July, 2010 and decision

of the High Court in W.P.(C) No. 228/2010 titled ***Sharmila v. DSSSB*** decided on 14th January, 2010. Mention was also made of O.A. No.2983/2009 titled ***Parul Dhingra v. Govt. of NCT of Delhi*** decided on 18th March, 2010.

8. We may notice that against the decision of the Tribunal in ***Parul Dhingra*** (supra) a writ petition is stated to be pending in this Court and in which interim relief is informed to have been granted. The same does not preclude us from proceeding to decide this petition.

9. In the aforesaid backdrop, the submission of the learned counsel for the petitioner is that the respondents are not entitled to age relaxation. According to her, as per the judgment of this Court in ***Sachin Gupta***, the amendment in rules has been upheld and age relaxation was given only in respect of those candidates who qualified the ETE course in the years 2006 to 2008. She points out that in so far as the respondents herein are concerned, they had completed ETE course in the year 2001 and therefore cannot be given age relaxation as provided by this Court in ***Sachin Gupta*** (supra) which limited the same to only those who qualified the ETE course in the years 2006 to 2008. It is further submitted that in such circumstances, the learned Tribunal was wrong in applying the provision of Article 14 of the Constitution of India in as much as the two groups, one considered on the basis of ***Sachin Gupta*** and the other namely the respondents herein fall in altogether two different categories. According to her they are not at par and therefore question of discriminating the respondents does not arise as the amendment in the rules has already been

upheld by this Court. It is also the submission of the learned counsel for the petitioners that as a recruiting agency the petitioner has to follow the norms stipulated in the rules and there is no provision for age relaxation.

10. The learned counsel for the respondents on the other hand submits that these respondents have been working as Primary Teachers in MCD since 2001 when they were admittedly within the age limit as per the rules which were in force at that time and even as per the amended rules. It is also pointed out that they are continuously working on contract basis and after having worked for all these years they cannot be denied their due consideration for appointment on regular basis as Primary Teachers.

11. After hearing the counsels for the parties, we are of the view that impugned judgment rendered by the learned Tribunal does not call for any interference though we have our own reasons for arriving at the same conclusion and each of which reasons is independent and sufficient to sustain the order.

12. In the first instance, we may point out that as per the amended Recruitment Rules as also the advertisement issued by the petitioner, the age limit of 27 years is relaxable up to 45 years of age in respect of departmental candidates. The provision in this behalf stipulates as under:-

“Age Limit: 20-27 years (Relaxable in case of SC/ST/OBC/PH/Ex-Serviceman as per Government of India instructions issued from time to time).
Relaxation in upper age limit available to:- SC/ST-05

years, OBC-03 years, PH & SC/ST-15 years and PH & OBC – 13 years, Departmental Candidates upto 45 years of age are eligible.”

13. In the rules, nowhere the expression “departmental candidates” has been defined. It has to be, in these circumstances, assigned natural connotation. A departmental candidate would be the candidate who is not an outsider but is already working in the concerned department namely MCD in the instant case. Admittedly the respondents are working in MCD as Primary Teachers on contract basis and one has to assign practical meaning to the aforesaid terminology and we are of the considered opinion that the respondents shall be treated as departmental candidates for the purpose of appointment to the post of Primary Teachers on regular basis when they are already working in the same post on *ad-hoc* basis for the last ten years. Reference may be made to **UPSC v. Dr. Jamuna Kurup** (2008) 11 SCC 10 where the expression “employees of MCD” in the advertisement granting age relaxation with respect to recruitment to the post of Ayurvedic Vaid was held to include both permanent or temporary, regular or short term contractual or *ad hoc* employees of the MCD. Accordingly those appointed on contract basis were held to be employees of MCD and entitled to age relaxation. The earlier judgment in **UPSC v Girish Jayanti Lal Vaghela** (2006) 2 SCC 482 relating to Government employees was held to be not applicable to the expression “employees of MCD”. We see no reason why the said dicta of the Supreme Court be not applied to the present situation also.

14. Even in those matters whether cases of *ad-hoc*/casual/contract employees come up for consideration for regular appointment, there has always been a practice of giving age relaxation. In many judgments rendered by the Apex Court as well as this Court such relaxation is provided and the relevant aspect which is to be kept in mind is that at the time of initial appointment on contract/casual basis the incumbent was within the age limit and was not overage. If that is so, to the extent of service rendered by such an employee, the benefit thereof has to be given. If the relaxation of almost 10 years is to be given to the respondents for having worked for this period, in that case also they would fall within the prescribed age limit.

15. There is yet another reason not to interfere with the impugned order. In the present case the respondents herein had filed an OA for declaration that they were entitled to be considered for the post of Primary Teachers. These teachers are to be appointed in MCD. MCD is the prospective employer which had sent its requisition to the petitioner herein namely Delhi Subordinate Services Selection Board (DSSSB). After the judgment rendered by the Tribunal, MCD has not challenged, rather accepted the same. If MCD has no objection for consideration of the case of these respondents on merits for appointment on regular basis, we see no reason why the petitioner which is but a recruitment agency, should have any such objection.

16. In view thereof, we dismiss this writ petition as devoid of any merits; at the same time we clarify that the only effect of the order of the learned Tribunal or this judgment would be that the respondents would be entitled to be considered for the post of Primary Teachers on regular basis, whether they are able to get selected or not on their merits is altogether different question which has not been gone into by us.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

NOVEMBER 15, 2011
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