

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

+ **W.P.(C) No.7416/2010**

% ***Date of Decision: 28.02.2011***

Delhi Subordinate Services Selection Board*Petitioner*
Through Ms. Zubeda Begum with Ms.Sana Ansari,
Advocates

Versus

Mrs.Suman Lata Sharma & Anr *Respondents*
Through Mr. Sumit Kumar, Adv. for R-1.
Ms. Suparna Srivastava, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether reporters of Local papers may be allowed to see the judgment? Yes
2. *To be referred to the reporter or not?* No
3. Whether the judgment should be reported in the Digest? No

VEENA BIRBAL, J.

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1. By way of this petition, petitioner i.e. Delhi Subordinate Services Selection Board (in short `DSSSB') has prayed for quashing of impugned order dated 8<sup>th</sup> July, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as `the Tribunal') passed in O.A. No. 498/2010 whereby petitioner as well as MCD/respondent no.2 has been directed to offer appointment to respondent no.1 within a period of three months from the date of receipt of copy of the impugned order.

2. The relevant facts necessary for disposal of present petition are as under:-

Respondent no.1 had qualified the Diploma in Elementary Teacher Training Course (in short referred to as ETE course) in the

year 2007. Petitioner gave an advertisement in 2007 for the post of Assistant Teacher (Primary) with post code 164/2007 wherein respondent no.1 appeared in the examination but did not qualify. Respondent no.1 could not have appeared in the next examination because of change of eligibility condition regarding age. However, this court vide its judgment dated 28th August, 2008 passed in WP(C) 7297/2007 and other batch of writ petitions titled as **Sachin Gupta & Others V. Delhi Subordinate Services Selection Board (DSSSB) through its Chairman & Ors.** (2008 IX AD (Delhi) 96), gave one chance to all those who had qualified the ETE course in the year 2006 or 2007 or 2008.

During the pendency of the aforesaid writ petition, the office of petitioner, as per requisition of respondent no.2/MCD issued an advertisement under the post code of 016/2008 for the post of Teacher (Primary). Respondent no.1 applied for the said post. The office of petitioner issued roll number to her. Respondent no.1 appeared in the examination and qualified the first test and thereafter qualified the test which was conducted on 16.11.2008 and thereupon her performance was assessed of the descriptive examination which was conducted on the same day. Respondent no.1 in all secured 117 marks in the examination. The last candidate in the unreserved category who was selected and offered the post secured 114 marks whereas respondent no.1 who also belongs to unreserved category had secured more marks but was not given appointment. Thereafter respondent no.1 applied under the Right to Information Act, 2005 for knowing reasons for her non-appointment. Through communication dated 28th October, 2009, respondent no.1 was informed that she had

already availed one chance in 2007 and for present examination, she was over age and as such, her candidature had not been considered. Respondent no.1 approached the Tribunal for getting the benefit of judgment dated 28th August, 2008 passed in WP(C) 7297/2007 by filing O.A. No. 498/2010. The said O.A. was allowed along with other connected O.As i.e. O.A. No. 751/2010 and 1489/2010 vide impugned order dated 08.07.2010. The challenge before this Court is in respect of relief granted to respondent no.1.

The stand of the petitioner before the Tribunal was that as respondent no.1 had already appeared for the Teacher (Primary) MCD/Assistant Teacher (Primary), Dte of Edn under post code 164-165/07 and could not qualify the same, therefore, respondent no.1 is not entitled for another chance as per judgment of this court passed in Sachin Gupta's case (supra). The stand of the petitioner before the Tribunal was that the respondent no.1 was not entitled for second chance in the examination as such she was not entitled for any relief.

The stand of respondent no.1 before the Tribunal was that after the judgment of Sachin Gupta & Others V. Delhi Subordinate Services Selection Board (DSSSB) through its Chairman & Ors. (supra), she was entitled to get one chance. Her further stand was that in the year 2007 she appeared within her own rights as she was not overage by then.

Vide impugned order dated 8th July, 2010, the Tribunal allowed the O.A. of the respondent no.1 and directed petitioner as well as respondent no. 2 to offer appointment to respondent no.1 with all consequences within a period of three months from the date of receipt of order.

Aggrieved with the same, present writ petition is filed challenging the relief granted to respondent no.1.

3. Learned counsel for the petitioner has contended that the Tribunal has failed to appreciate that the respondent no.1 had already appeared in the examination for the post of Primary Teacher (MCD)/Assistant Teacher under the post code 164-165/07 but failed to qualify the same, as such respondent no.1 is not entitled for any benefit given by this court in Sachin Gupta's case (supra). It is further contended that age relaxation could be given to respondent no.1 only once and same was already availed by respondent no.1 in the year 2007.

4. On the other hand, the stand of respondent no.1 is that when she had appeared in the examination for the post of Assistant Teacher in the year 2007, she was not overage as she was below 27 years at that time as such she did not avail the relaxation of age given by this court vide judgment in Sachin Gupta's case (supra). It is contended that respondent no.1 had done ETE course in the year 2007 and when she appeared in the examination for the post of Assistant Teacher conducted by the petitioner in the year 2008, she was over age on account of amendment in rules but in view of the judgment in Sachin Gupta's case (supra) she was entitled for one chance as such she is entitled for appointment as she had cleared the examination.

5. We have heard counsel for the parties.

For appointment to the post of Assistant Teacher (Primary) in the Government of NCT of Delhi, the Government of NCT of Delhi had notified its Recruitment Rules by virtue of power conferred by proviso

to Article 309 of the Constitution. The Department of Urban Development vide notification dated 13th July, 2007 had also notified Recruitment Rules for appointment to the post of Assistant Teacher (Primary) in MCD. Both the RRs of Government of NCT of Delhi and MCD are identical. Both the RRs mandatorily prescribe as essential eligibility criteria minimum and maximum eligible age as 20 and 27 years respectively.

Prior to aforesaid RRs, the age limit for participating in the Assistant Teacher (Primary) examination conducted by the petitioner was 32 years for male candidates and 42 years for female candidates. The candidates being aggrieved by the RRs notified by the Government of NCT of Delhi vide notification dated 8th May, 2006 and by the Department of Urban Development vide notification dated 13th July, 2007, filed various writ petitions before this court challenging the constitutional validity of the same. The entire batch of writ petitions were disposed of by this court vide judgment dated 28th August, 2008 titled Sachin Gupta and others v. Delhi Subordinate Services Selection Board through its Chairman & Ors reported in 2008 IX AD Delhi 96 wherein language and marks criteria has been upheld in its entirety. Even the age criteria i.e. the minimum and maximum age limits of 20 years and 27 years respectively has been upheld, but with a view to ameliorate the hardship of already enrolled students in ETE course, it was directed that petitioner would permit all those candidates who have completed the ETE course either in the year 2006 or 2007 or 2008 to appear in the examination conducted by the petitioner for the post of Assistant Teachers (Primary) once provided they do not exceed age limit of 32 years for males and 42

years for females and also fulfil all other eligibility conditions. It was further held that relaxation granted by this court would cease to operate for the ETE courses after 2008 i.e commencing from 2009 as from 30th September, 2007 the maximum age limit for ETE course has been reduced from 30 years to 24 years.

6. It is admitted position that respondent no.1 had passed ETE course in July, 2007. The judgment in Sachin Gupta's case (supra) was delivered on 28th August, 2008 wherein directions have been given to petitioner to permit all those candidates who have completed the ETE course either in the year 2006 or 2007 or 2008 to appear in the examination conducted by the petitioner for the posts of Assistant Teachers (Primary) once each of MCD and Govt. of NCT of Delhi. The relevant portion of the judgment is reproduced which is as under:-

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59. However, considering that the maximum age prescribed for the post of Assistant Teachers (Primary) for the MCD and NCT has been reduced from 32 years for males and 42 years for females to 27 years, we are of the view that this would cause hardship to candidates already enrolled in the ETE course, who might suddenly find themselves overage and ineligible. With a view to ameliorate this hardship and as a one time measure, following the ratio in the case of **Anuj Johri vs. Union of India & Ors** reported in 2005 III AD (DELHI) 614, it is directed that the respondents would permit all those candidates who have completed the ETE course either in the year 2006 or 2007 or 2008 to appear in the examination conducted by the respondents for the posts of Assistant Teachers (Primary) once each of the respondents i.e MCD and Govt. of NCT of Delhi provided they do not exceed the upper age limit of 32 years for males and 42 years for females and also fulfill all other eligibility conditions. This would also apply to candidates, who have already taken the examination as permitted by this Court. This relaxation will be independent of the relaxation applicable to reserved categories. However, the relaxation granted by this court shall cease to operate for the ETE course after 2008 i.e commencing from 2009 as from 30th September, 2007 the maximum age limit for ETE course has been reduced

from 30 years to 24 years.

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64. To conclude, the language and marks criteria (namely passing of Hindi subject at primary level and minimum 50% marks in senior secondary examination) are upheld in their entirety. Even the age criteria (namely minimum and maximum eligibility age as 20-27 years respectively) is upheld but with a view to ameliorate the hardship of already enrolled students in ETE course, it is directed that the respondents would permit all those candidates who have completed the ETE course either in the year 2006 or 2007 or 2008 to appear in the examination conducted by the respondents for the posts of Assistant Teachers (Primary) once each of the respondents i.e MCD and Govt. of NCT of Delhi provided they do not exceed the upper age limit of 32 years for males and 42 years for females and also fulfill all other eligibility conditions. This would also apply to candidates, who have already taken the examination as permitted by this Court. This relaxation will be independent of the relaxation applicable to reserved categories. However, the relaxation granted by this court shall cease to operate for the ETE course after 2008 i.e commencing from 2009 as from 30th September, 2007 the maximum age limit for ETE course has been reduced from 30 years to 24 years.”

The Department of Urban Development had notified its Recruitment Rules on 13th July, 2007, the validity of which has been upheld in Sachin Gupta’s case (supra) vide judgment dated 28th August, 2008. Respondent no.1 had appeared in the examination conducted by the petitioner for the post of Assistant Teacher (Primary) on 20th April, 2008. Prior to this she had appeared in the examination in the year 2007. She was not over age at that time. Further by then, judgment in Sachin Gupta’s case (supra) was also not delivered. The said judgment gives benefit to those who after amendment of RRs suddenly found themselves overage as the maximum age prescribed for the post of Assistant Teacher (Primary) for MCD/GNCT had been reduced from 32 years for males and 42

years for females to 27 years. When respondent no.1 appeared in exam in the year 2008, she had completed 27 years of age i.e. she was few months above 27 years of age.

The ratio of law laid down in Sachin Gupta's case (supra) is that as a one time measure, to ameliorate the hardship of already enrolled students in ETE course, petitioner was directed to permit all those candidates who had completed the ETE course either in the year 2006 or 2007 or 2008 to appear in the examination conducted by the petitioner for the posts of Assistant Teachers (Primary) once each of MCD and Govt. of NCT of Delhi provided they do not exceed the upper age limit of 32 years for males and 42 years for females and also fulfill all other eligibility conditions.

Respondent no.1 had not availed the benefit of aforesaid judgment as the same judgment was delivered only on 28th August, 2008. By appearing in examination in the year 2008, she is availing the benefit of Sachin Gupta's case (supra) for the first time.

Learned counsel for the petitioner has referred to the judgment of this Court in Parul Dhingra v. DSSSB (WP(C) No.4677/2010) dated 02.11.2010. The said judgment has no applicability to the facts of the present case as in the said case respondent therein had done ETE course in the year 2002.

In view of above discussion, the contentions raised by learned counsel for petitioner have no force and the same are rejected.

For the foregoing reasons, the writ petition is dismissed.

The learned counsel for the respondent no.2 MCD has submitted that there is a vacancy available for the post of Assistant Teacher. The petitioner shall recommend the case of the respondent

no.1 to respondent no.2 within two weeks who will give the appropriate appointment letter to the respondent no.1 within two weeks thereafter in accordance with law. It is clarified that the respondent no.1 shall not be entitled for arrears of wages. However, considering the facts and circumstances, the parties are left to bear their own costs.

VEENA BIRBAL, J.

ANIL KUMAR, J.

FEBRUARY 28, 2011
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