

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

+ **W.P.(C) No. 8347/2010**

% ***Date of Decision: 10.02.2011***

MRS. PRERNA *.... Petitioner*

Through Mr. Ashok Agarwal, Advocate with
Mr. Raunak Jain, Advocate and
Ms. Kusum Sharma, Advocate

Versus

GOVT OF NCT OF DELHI & ORS. *.... Respondents*

Through Ms. Zubeda Begum, Advocate with
Ms. Sana Ansari, Advocate

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?
2. *To be referred to the reporter or not? yes*
3. Whether the judgment should be reported in the Digest? yes

VEENA BIRBAL, J.

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1. Rule D.B.
2. With the consent of parties, the matter is taken up for final disposal.
3. Respondent no. 3 had advertised 1204 vacancies (UR 563, OBC 307, SC 185 and ST 149) for the post of Assistant Teacher

(Primary) in MCD under Post Code 57/06 vide its Advertisement No. 03/2006. The petitioner had applied for the said post and appeared in the examination conducted by respondent no. 3 in the month of March, 2007 for appointment in the schools under the overall control of respondent no. 2. Petitioner appeared as a candidate of unreserved category (UR).

As per amended recruitment rules, the age limit prescribed for the aforesaid post was 20-27 years whereas as per unamended Recruitment Rules, the age limit prescribed was 32 years for male and 42 years for female candidates. There was no lower age limit prescribed in the unamended recruitment rules. The petitioner was under age at the time of making application for the post of Assistant Teacher i.e. she was below 20 years of age whereas requirement of minimum age as per amended Recruitment Rules for the said post was 20 years. A number of candidates were adversely affected with the amendment of recruitment rules as a result of which a number of writ petitions were filed in the High Court of Delhi challenging the Recruitment Rules as notified on 08.05.2006 by the Government of NCT of Delhi before a Division Bench of this court. The petitioner along with five other candidates also filed a writ petition bearing no.

13743/2006 titled Sandeep Rana & Ors. vs Government of NCT of Delhi and Ors. as she was also adversely affected by the amendment of the recruitment rules. The Hon'ble High Court directed the respondent to permit the petitioners of various writ petitions filed before it including the present petitioner to appear in the examination for selection to the post of Assistant Teacher. Subsequently, vide judgment dated 28.08.2008 this Court disposed of W.P.(C) No. 7297/2007 titled Sachin Gupta & Ors. vs UOI along with other petitions including that of the petitioner which were tagged with it wherein the validity of Recruitment Rules as notified on 08.05.2006 was upheld. However, with a view to ameliorate the hardship of already enrolled students in ETE courses, this court 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 post of 'Assistant Teacher' once, 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 and the same would apply to the candidates who had already taken the examination as permitted by this court.

After the decision of this court in Sachin Gupta & Ors. vs UOI (supra), the respondents declared the results kept in sealed covers. As per result declared, the name of petitioner appeared at Serial No. 12 and was shown 'not selected'. According to petitioner, her particulars were wrongly given i.e. she was shown to have passed ETE in the year 2005 instead of 2006. She was also shown 'overage'. The marks of last selected candidate were 180 whereas petitioner secured 185.75 marks but her candidature was rejected on the ground that she was overage. Relevant information was supplied to her under Right to Information Act vide letter dated 28.10.2009. The petitioner filed an O.A. challenging order/letter dated 28.10.2009. At the preliminary hearing, the same was dismissed as withdrawn with liberty to file fresh O.A. giving latest particulars. Petitioner had also sent a legal notice to the respondent as her particulars in the result declared were not correct. In response to same, respondent no.3 issued another letter dated 24.12.2009, wherein her candidature was rejected on the ground that she was 'underage'.

Petitioner challenged the action of the respondent rejecting her candidature by filing a petition before the Tribunal on the

ground that the respondents while rejecting her case had not complied with the judgment of this court in Sachin Gupta & Ors. vs UOI (supra) in true letter and spirit. It is contended that said judgment clearly provides that exemption from amended Recruitment Rules would apply to the candidates who had already taken their examination as permitted by the court. The respondents have committed illegality in not granting her exemption. The other contention raised before the Tribunal was that the action of the respondent in denying petitioner appointment on the ground of being 'underage' was in violation of law settled by this court in W.P.(C) No. 11331/2009 titled The Commissioner MCD, Delhi vs Shashi; wherein it has been held that age cannot be the basis for discrimination amongst equally placed candidates and negated the contention that underage candidates can avail similar opportunities later in life.

The contentions raised were rejected by the Tribunal by a detailed order dated 14.09.2010 which has been challenged by filing the present petition. Aggrieved with the same, the present petition is filed.

4. The learned counsel for petitioner has raised similar contentions before this court as were raised before the Tribunal.

It is also contended that the order of the Tribunal is illegal and is contrary to the judgments referred above.

5. The stand of the respondent is that a Division Bench of this court in Sachin Gupta & Ors. vs UOI (supra) has upheld the validity of amended Recruitment Rules which were notified on 08.05.2006 by which age for the Assistant Teacher (Primary) was reduced to 20-27 years and relief has been granted only to the 'overage' candidates and not to the 'underage' candidates, as such petitioner is not covered by the said judgment. It is also contended that the judgment of The Commissioner MCD, Delhi vs Shashi (supra) relied upon by petitioner is not applicable to the facts of the present case, as such petitioner cannot avail any benefit from the said judgment.

6. We have heard the counsel for parties. It is admitted position that the petitioner was less than 20 years of age at the time of applying for the aforesaid post. She was permitted to appear in the examination by the order of this court along with various other candidates who had also challenged the Recruitment Rules. This court vide judgment dated 28.08.2008 disposed of writ petition no. 7297/2007 titled Sachin Gupta & Ors. vs UOI along with a number of other writ petitions which

were tagged with it including that of petitioner. By the said judgment, the age criteria i.e. minimum and maximum eligibility age of 20-27 years respectively was upheld but with a view to ameliorate the hardship of already enrolled students of ETE courses, it was directed that the respondents would permit those candidates who had completed ETE course either in the year 2006 or 2007 or 2008 to appear in the examination conducted by the respondents for the post of 'Assistant Teacher' once provided they do not exceed the upper age limit of 32 years for males and 42 years for females and on the fulfillment of other eligibility conditions. The relevant portion of the judgment is as under:-

"Para 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 courses, 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 Teacher (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 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. Except to the above extent, legality and validity of the impugned RRs are upheld and accordingly the entire batch of writ petitions are disposed of in the above terms with no order as to costs.”

Learned counsel for respondents have pointed out that even the Special Leave Petition filed against the judgment of Sachin Gupta & Ors. vs UOI (supra) has been dismissed and in this regard learned counsel for respondent has placed on record copy of the order dated 06.08.2010 passed in review application moved in W.P.(C) No. 7297/2007 i.e. Sachin Gupta vs UOI (supra) which is reproduced as under:-

“CM No. 84/2010 (for review)”

This is an application for review of the order dated 28th August, 2008 passed in W.P.(C) 7634/2007, in a batch of writ petitions.

Be it noted, the order passed in the writ petitions was challenged by a Special Leave petition and their Lordships have dismissed the same.

In view of the aforesaid, we are not inclined to entertain the review application and the same is rejected.”

Learned counsel for respondent has not pointed out anything to the contrary.

Learned counsel for respondent has also pointed out that an application i.e. CM 14055/2008 was moved in W.P.(C) No. 7522/2007 i.e. Amit Kumar v. DSSSB which was one of the batch matters connected with Sachin Gupta & Ors. v. UOI and disposed of with the said matter seeking clarification of the judgment dated 28.08.2008 to the effect that the under age petitioners are also entitled to benefit of concession granted by this court in accordance with para 64 of the aforesaid judgment. However, the Division Bench of this court vide order dated 06.02.2009 disposed of the said review application by observing as under:-

“CM No. 14055/2008 in WP(C) No. 7522/2007

The present application has been filed seeking clarification of the judgment dated 28th August 2008 to the effect that under aged petitioners are also entitled to the benefit of concession granted by this Court in accordance with the paragraph 64 of the aforesaid judgment.

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However, it is pertinent to the mention that a case of under aged student has been specifically dealt with in paragraph 57 of the aforesaid judgment.

Paragraph 57 reads as follows:

57. As far as the under-aged candidates are concerned, we are of the view that it is open to the State government to stipulate a cut off age as it may like to recruit only candidates having sufficient maturity. In any event, the under-aged candidates suffer no prejudice as they would be eligible to apply for the post of Assistant Teacher (Primary) in the future.

In our opinion, both the paragraphs 64 as well as 57 have to be read harmoniously and the effect of reading both paragraphs harmoniously would be that the under aged students would have to wait until they turn 20 and they would be entitled to have three chances as prescribed under the relevant rules. With the aforesaid observations, the present application stands disposed of."

In view of above clarification given, it is clear that no benefit has been given to the candidates who were under age on the relevant date in the judgment of Sachin Gupta and Ors. v. UOI (supra) on the ground that underaged candidates suffer no prejudice and they would be eligible to apply for the post of Assistant Teacher (Primary) in future. In view of above discussion, the contention raised by the petitioner has no force and is rejected.

7. The other contention of the petitioner is that denying the petitioner appointment on the ground of being under age is in violation of law laid down by this Court in The Commissioner MCD, Delhi vs Shashi; W.P.(C) No. 11331/2009. We have gone

through the said judgment. In the said case as per advertisement, the age limit for recruitment for Assistant Teacher (Primary) as on 31.07.1996 was 18-30 years generally with exceptions for lady candidates, SC/ST candidates, physically handicapped candidates, etc. In response to the advertisement, the petitioner therein had received large number of applications from the general public and to reduce the number, petitioners introduced short-listing criteria which included, inter alia, short-listing on the basis of age as per which all the applicants between the age of 18 to 27 were eliminated and those who were between 28 to 30 years became entitled to appointment subject to fulfillment of other conditions.

The reasoning given by the petitioner therein for short-listing was not accepted by the court and it was held that age discrimination carried out was arbitrary and contrary to principles of Article 14 of the Constitution of India. The above case has no applicability to the facts and circumstances of the present case wherein the minimum and maximum age is fixed by the Recruitment Rules. The petitioner was underage when she applied for the post of Assistant Teacher (Primary) as per Recruitment Rules for the said post. The legality and validity of

these Recruitment Rules has been upheld by the Division Bench of this court in Sachin Gupta vs UOI (supra) with slight relaxation for the over age candidates as is stated in Para 64 of the judgment which is reproduced above. The SLP challenging the said judgment is also dismissed.

For the foregoing reasons, we do not find any illegality or irrationality in the impugned order dated 14.09.2010 of the Tribunal which requires interference of this court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

The writ petition is, therefore, dismissed.

Parties are, however, left to bear their own costs.

VEENA BIRBAL, J.

ANIL KUMAR, J.

FEBRUARY 10, 2010

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