

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

+ **W.P.(C) No. 8416/2010 & CM No. 21598/2010**

% ***Date of Decision: 22.03.2011***

GOVERNMENT OF NCT OF DELHI & ORS *.... Petitioners*
Through Ms. Avnish Ahlawat, Advocate

Versus

SHRI ISHWAR SINGH & ORS. *.... Respondents*
Through Mr. M.K. Bhardwaj, 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? No
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, petitioners have challenged impugned order dated 22.07.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') in O.A. No. 3742/2009 wherein respondents had challenged the order of petitioners cancelling the offer of appointment issued to them.

2. Brief facts relevant for the disposal of present petition are as under:-

The respondents herein were working with District Rural Development Agency (hereinafter referred to as 'DRDA') under Delhi

Administration, Government of NCT of Delhi. They worked on various posts in the said organization till the closure of the Agency as a result of which the employees working therein were rendered jobless. Being aggrieved by the action of authorities in not considering them for absorption/appointment after they were rendered jobless, a number of aggrieved persons filed writ petition before the Supreme Court of India for absorption and regular appointment in the departments of Delhi Administration. The said writ petition was disposed of by the Supreme Court with the following directions:-

“16. In the circumstances, it is not possible to accede the request of the petitioners that the respondents be directed to regularize them. The most that can be done for them is to direct the respondents Delhi Administration to keep them on panel and if they are registered with the Employment exchange and are qualified to the appointed on the relevant posts, give them a preference in employment where-ever there occur a vacancy in the regular posts, which directions we give thereby.”

As the above directions were not complied with, a contempt petition No. 78/1994 was filed before the Supreme Court which was disposed of with the direction to the concerned authority to look into the matter and pass appropriate order within four weeks.

As per directions issued by the Supreme Court, a panel of candidates who were registered with the employment exchange was prepared and those who were eligible and fulfilled the condition of Recruitment Rules were given appointment and the rest could not be given any appointment. Few candidates had also filed OA No.

1431/1999 for implementation of order of Supreme Court, wherein the Tribunal only reiterated the order of the Supreme Court directing that the Department should ensure implementation of order of Hon'ble Supreme Court subject to their eligibility as and when class IV vacancies occur as per rules and instructions on the subject. Similar OA 2686/2000 and OA 749/2002 were also disposed of on the same terms.

From 2001-2005, the respondents had made various representations for their appointment against Group D vacancies. But they were not considered. Ultimately, the petitioner no. 2 i.e. department considered the names of respondents no. 1 and 2 for the post of Chowkidar, respondent no. 3 for the post of Peon-cum-Messenger, respondent no. 4 for the post of Lab Assistant and respondent no. 5 for the post of Peon-cum-Messenger and issued offer letter on 06.10.2008 to the respondents. They were also asked to submit their documents with respect to age, qualification, etc. Thereafter, when the respondents appeared with their certificates, it was found that they were all over age as such they were not given appointment. The respondents filed OA No. 2664/2009 which was disposed of by the Tribunal directing the petitioners to consider the representation given by them and decide the same by a speaking order. Thereafter, vide speaking order dated 24.11.2009 the representation of respondents was rejected. Against the said order the respondents filed OA No. 3742/2009 challenging the order dated 24.11.2009 on the

ground that the petitioner had given appointment in the year 2001 to some individuals who were over age and as such respondents should also get the benefit of age relaxation. The said petition was opposed by the respondents by contending that no discrimination has been done by the petitioners and no relaxation has been given as is alleged. Their further stand was that the respondents did not furnish the names of the individuals who were over age and were given appointment by the petitioner as is alleged.

4. The Tribunal disposed of the petition vide impugned order dated 22nd July, 2010 with directions to the petitioners to ascertain the fact of appointees of 2001 and if it is found that they were over age and were given appointment, the same treatment be given to the respondents by adopting an apt methodology by the petitioners.

5. Aggrieved with the same, the present petition is filed.

6. Learned counsel for the petitioner has contended that respondents were given offer of appointment but the same was subsequently cancelled as they were not fulfilling the age requirement. It is contended that in the past also no one had been given appointment by the petitioner who was over age at the relevant time as is alleged. No one who was over age had been appointed in 2001 also and if any such appointment is there the concerned authority had already issued show cause notice to them. It is further contended that respondents have not given the details of candidates who were alleged to have been given appointment despite the fact of their being over age as such no

directions were required to be passed by the Tribunal as has been done vide impugned order dated 22nd July, 2010.

7. On the other hand, learned counsel for the respondent has submitted that the details of persons who had been given appointment in 2001 despite being over age have been given in Para 5 of OA No 3742/2009 before the Tribunal. Learned counsel for respondents has further referred to the order dated 12.01.2001 at page 80 of the paper book showing the names of candidates at Serial Nos. 14, 15, 17, 21, 22 and 25 as the individuals who were alleged to be over age and were given the appointment by petitioners.

8. On confronted with the situation, learned counsel for the petitioner has submitted that as per instructions given to her, no individual who was over age had been given appointment in the past and if any such individual is given, show cause notice has already been issued to him.

9. The directions of the Tribunal vide impugned order dated 22nd July, 2010 are given in Para 7 of the OA which are reproduced below:-

“7. In the result, for the foregoing reasons, we now direct respondents to ascertain the fact of appointees of 2001 and if it is found that they are over-aged and their appointment not being disturbed, the same treatment has to be meted out to the applicants by adopting an apt methodology by the respondents which would be to withdraw the order and restore the applicants. This shall be done within two months from the date of receipt of a copy of this order. The OA stands disposed of. No costs.”

The Tribunal has directed the petitioner to ascertain the fact of appointees of 2001 and if it is found that they were over age the same treatment be given to the respondents. The stand of the petitioner is that the age relaxation was not permissible nor was granted to anyone. Their further stand is that in 2001 some department had wrongly given age relaxation wherein show cause notice had already been issued. Considering the stand of the petitioner, we do not find it appropriate to interfere with the direction of the Tribunal at this stage. However, if any action has been taken by the petitioner in cases of individuals where age relaxation has been given, in that event, petitioner will be free to take that factor into account while considering the cases of respondents. Petitioner will pass appropriate order in respect of respondents within two months from today. The respondents shall be at liberty to file appropriate proceedings in case they are aggrieved by the said order of petitioner.

10. No further orders are required in the matter. The writ petition stands disposed of accordingly.

VEENA BIRBAL, J.

ANIL KUMAR, J.

MARCH 22, 2010

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