

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

Date of hearing & Order: January 27, 2015.

+ **W.P.(C) 4968/2014 & CM APPL. Nos.9937-9938/2014**

NEW DELHI MUNICIPAL COUNCIL Petitioner

Through: Mr. Arun Bhardwaj, Advocate

versus

SH. PURAN Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

KAILASH GAMBHIR, J. (ORAL)

CM APPL No. 9938/2014 (Exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 4968/2014 & CM No. 9937/2014 (Stay)

The challenge in the present Writ Petition is to the order dated 09.01.2014 passed by the learned Central Administrative Tribunal, Principle Bench, New Delhi (*hereinafter referred to as the 'CAT'*) whereby the petitioner was directed to regularise the services of the respondent on the post of Light Motor Vehicle Driver, by relaxing the educational qualification prescribed in the Recruitment Rules for the said

post. The learned CAT also directed the petitioner to grant all the consequential benefits to the respondent on such regularisation.

The main contention raised by the petitioner to assail the findings of the learned CAT is that the learned CAT exceeded its jurisdiction by giving a direction to the petitioner to relax the educational qualification as were prescribed in the Recruitment Rules, encroaching upon the domain of the executive. As per the petitioner, once the learned CAT found that the respondent did not meet the eligibility criteria laid down in the Recruitment Rules, it ought not to have passed a direction for regularisation of services of the respondent.

We have heard the learned counsel for the parties.

In the year 1992, the petitioner had framed Recruitment Rules for recruitment to the post of Light Motor Vehicle Driver. In the year 1994, the petitioner had invited applications from Muster Roll Drivers for appointment to the post of Light Motor Vehicle Drivers cum Fitter. The respondent, who was a Muster Roll Driver, had applied for the said post. He had passed the trade test and was also interviewed in January 1994, however, thereafter he was denied the appointment to the said post on the

ground that he did not possess the educational qualification prescribed in the Recruitment Rules.

Before the learned CAT, it was admitted by the petitioner that the educational qualification was relaxed in favour of one Sh. Suraj and his services were regularised, but the stand taken by the petitioner in the present petition is that relaxation in the case of Sh. Suraj was granted pursuant to the judgment dated 13.10.1997 passed by the Civil Court in Suit bearing No.161/1994.

Apropos the findings of the Civil Court in the case of Sh. Suraj, the contention raised by the petitioner is that the present respondent was not a party to the Civil Suit and therefore, the judgment of the learned Civil Judge would not be of any help in the case of the respondent.

We do not find ourselves in disagreement with the contentions raised by the learned counsel for the petitioner but we are not convinced with the answer given him apropos the decision taken by the Selection Sub-Committee, in the meeting held on 29.08.1990, wherein the necessary relaxations for regular appointment were granted to some of the candidates who had qualified in the trade test at the time of their

appointment on muster rolls and had completed 240 days in service on muster roll in one single year, although they were lacking in educational qualification and experience or were over age etc.

In the impugned order, there is reference to many such cases where the relaxation in the Recruitment Rules was allowed for appointment to the post of Light Motor Vehicle Drivers/ Fitter and based on material produced on record, the learned CAT took a view that since the petitioner had on several occasions and particularly in the year 1997 regularised the services of Muster Roll Drivers by relaxing the educational qualification prescribed in the Recruitment Rules, there is no reason why this respondent should be made an exception. The Recruitment Rules lost its efficacy and force when the department itself breached them. No Government or public body can be allowed to adopt a pick and choose policy as regards the implementation of the Recruitment rules.

So far as the facts of the present case is concerned the petitioners have themselves not strictly adhered to the Recruitment Rules and have been liberal in granting relaxation in a number of other cases and therefore, the Tribunal is correct in taking a view that different treatment should not be given to the respondent who was similarly placed with the

other candidates, to whom necessary relaxation in the Recruitment Rules with regard to the educational qualification was granted by the petitioner.

In view of the above discussion, we find no merit in the present writ petition and the same is accordingly dismissed. All the pending applications are also dismissed.

KAILASH GAMBHIR, J

I.S.MEHTA, J

JANUARY 27, 2015

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