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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P. (C) NO. 9095 of 2015, CM APPL. No. 20591/2015**
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Date of Judgment : 22nd September, 2015

URMILA GOSWAMIPetitioner
Through : Mr. S.S Tiwari, Advocate.

Versus

COMMISSIONER, EDMC & ORSRespondents
Through : Mr. Kumar Rajesh Singh, Standing
Counsel for the EDMC/R-1.
Ms. Reema Khanna, Advocate for
SDMC/R-3.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL
G.S.SISTANI, J.

1. The present writ petition challenges the correctness of the order dated 23.07.15 passed by the Central Administrative Tribunal in O.A. No. 3674/2012, whereby the learned Tribunal has dismissed the said O.A. filed by the petitioner.
2. The detailed facts of the case as noticed by the Tribunal are as under:
 - i) *The Education Department of the then unified MCD, since trifurcated, had published a Newspaper Advertisement dated 16.07.1996 for recruitment of about 3000 Primary Teachers, 65 posts of Primary Teachers (Urdu) and 26 Nursery Teachers in the then pay scale of Rs.1200-2040 with the last date of submission of the application being 31.07.1996.*

- ii) *As per the break up prescribed in respect of OBC candidates, the respondents have accepted that OBC candidates like the petitioners were entitled for 775 posts, comprising of 744 for General Teachers out of 3,000, 24 from among the Handicapped category, and 07 Ex-Servicemen.*
- iii) *The then unified MCD received a total of 48,220 applications, and since the total number of posts available and advertised were 3,091, the respondents had to evolve a system for short listing the applicants, and decided to create separate slabs for different category candidates, on the basis of the marks secured by the applicants, for the purpose of screening them.*
- iv) *On the basis of such slabs, the respondents then allotted different grades/points to all the applicants, and decided to appoint those who had acquired more points or a higher grade through such screening, and a provisional list of 2,592 candidates was declared on 04.12.1996 & 06.12.1996 on the basis of the decided criteria, which included 492 candidates belonging to OBC category candidates, whose grading was 63 and above out of 85 marks.*
- v) *In order to fill up the balance posts, a second provisional list dated 25.04.1997 was issued for 353 candidates, and OBC candidates having grading 59 and above were considered. But even after declaration of these provisional lists, only 619 candidates joined in the OBC category, and 135 vacancies were found to be left, leaving aside 10 candidates, who had grading 73 and above, and had been adjusted in Unreserved Category. At that stage, the respondents decided to prepare a panel of 500 more selectees, out of which 128 vacancies were to be earmarked for OBC candidates. Thus, the OBC category vacancies available to be filled up were $135+128=263$*
- vi) *In order to issue appointment letters to further candidates, the respondent-MCD first lowered the grading for OBC candidates from 59 to 58, and when 99*

vacancies were still remaining to be filled up, the grading was again lowered down from 58 to 55, in order to fill up all the vacancies. Since the number at grading 55 now became more than required, the respondents also decided to adopt the criteria for giving appointments to those at grading 55 who were about to reach the prescribed age limit bar earlier, rather than those who were younger, and could await appointment in the next round. As a result, the last selected candidate having the grading 55 who was so appointed had the date of birth on or before 05.06.1968, and the petitioner, having her date of birth as 08.01.1970, missed this cut off date by one and half years. This criteria as decided by the respondents in order to short-list the candidates was published in the Newspaper, and a Public Notice in this regard was issued on 24.01.1998, and all the candidates who had applied for the posts of Primary Teachers in response to the advertisement issued in the month of July 1996 were asked to file their objections, if any.

- vii) *The petitioner has not made any averment in the O.A. that at that time she had filed any such objections to the proposed criteria. She has only submitted that the OBC candidates similarly situated to hers had approached this Tribunal in TA No.163/2009 and connected cases Shashi & Ors. (supra), and on 05.06.2009 the Tribunal had, in Paragraph-12 of its order, upheld the selection of persons who were seniors in age and might be losing opportunity to partake in further selections, while the younger generation may still have more opportunities in the course of their life. Because in a few of those TA cases, discretion had been exercised to upset the policy decision as notified, the Bench had deprecated the arbitrariness, which had so crept in. It had held that persons with superior merit had to be considered necessarily, especially taking note of the experience gained by them, and a person who is aged could not have been given priority if he was inferior in merit*

(para-15 of the Tribunals order dated 05.06.2009). But, thereafter, applying the principle of equality before law and equal protection of law under Article-14 of the Constitution of India, the Bench had that day come to the conclusion that the policy as adopted by the respondents, and the resultant rejection of the claims of the applicants before it, did not come within any of the permitted exceptions, as provided under Article 16(3), 16(4)(a) and 16(4)(b) (para-16 of the Tribunals order dated 05.06.2009).

- viii) Since the applicants before it in that case had all secured marks well above the last cut-off mark of 55 prescribed, the Bench had that day directed issuance of appointment orders to them, and fixation of their seniority position at least notionally with respect to the persons who had got appointments earlier, upon a representation being made in this regard, for which their right was protected (para-18 & 19 of the Tribunals order dated 05.06.2009).*
- ix) The Commissioner MCD had then filed the above mentioned Writ Petition (Civil) No.11331/2009 before this Court and was observed that under the criteria as adopted by the respondents, all applicants whose age was between 28 and 30 years automatically became entitled to appointment (subject to their fulfilling the other conditions), while those below the age of 28 years were all straightaway eliminated from the process of selection, even though they were extremely competent. Treating that to be a case of discrimination only on the basis of age, this Court had negated this approach, though noting that discrimination between two equally placed persons is permissible if there is a reasonable classification, and that reasonable classification is based on an intelligible differentia. This Court also held that if there is age discrimination, on the basis of certain classification, the State would have to show that the classification is reasonable and is based on intelligible differentia.*

x) *This Court had further observed that selection of only those candidates who fall within the age of 28 or 30 years would necessarily mean that even those persons who had better educational qualifications, experience and knowledge, might not be appointed, only because of their age, and for no other reason, at the same time it had taken note of the Hon'ble Apex Courts judgment in State of Haryana v. Subhash Chander Marwaha and Others, (1974) 3 SCC 220, wherein the Hon'ble Apex Court had found nothing wrong in the fixation of such a criterion, as the minimum score required for mere eligibility, on the ground that a higher score would result in maintenance of higher standards of competence.*

3. Mr. S.S Tiwari, learned counsel appearing on behalf of the petitioner submits that the order passed by the Central Administrative Tribunal is unjust, illegal, arbitrary and unconstitutional. It is contended that if the Date of Birth had to be a criteria, it should have been prescribed from the beginning of the recruitment, as it is a trite law that the Rules of the process of recruitment cannot be changed in between the selection process. The counsel for the petitioner further clarified that her appointment was ignored due to the subsequent policy decision of the appointing authority.
4. The counsel for the petitioner contends that the case of the petitioner is similar to the facts of the case, ***Commissioner MCD Vs. Shashi & Ors. CWP 11331/09*** dated 07.09.09 passed by this Court and ***Ms. Nirmal Sachdeva & ors Vs Lt. Governor & Ors.***

passed by the Tribunal in O.A. 1853/11 dated 21.11.11, hence, benefit of these orders were claimed by her.

5. Per contra, Mr. Kumar Rajesh Singh, Standing counsel for the East Delhi Municipal Corporation vehemently urged that the claim of the petitioner is hopelessly barred by Limitation and she had not filed any objections to the public notice issued on 24.01.1998 in regard to short-listing criteria which was proposed to be adopted by the appointing authorities and the same got completed by the year 1999. Counsel for the respondent further clarified that the eligible candidates who got appointed at that time have acquired seniority therefore their settled seniority cannot now be disturbed at this stage.
6. We have heard learned counsel for the parties and considered their rival submissions. We have also carefully examined the impugned order passed by the Central Administrative Tribunal dated 23.07.2015. It is the case of the petitioner that the persons similarly situated as her i.e. those who scored 55 marks out of 85 in the Other Backward Classes (OBC) category but, younger to the petitioner, had been issued appointment orders subsequent to the change of criteria midway, which had been declared to be illegal and unsustainable by the learned Tribunal on 05.06.2009 and thereafter, this finding was upheld by this Court on 07.09.2009. The petitioner further submits that the respondents had fixed a wrong criterion for selection and discrimination has been carried out by the respondents in the name of policy decision. The short point which comes up for consideration before this Court is that

whether the petitioner is entitled to the relief granted in CWP No. 11331/09 *Commissioner of Municipal Corporation of Delhi vs. The Commissioner, MCD & Ors.*?

7. The learned Tribunal vide order dated 23.07.2015 dismissed the above mentioned O.A. It would be useful to reproduce para 16 of the judgment of the Central Administrative Tribunal, which reads as under:

“16. Therefore, by not agitating her perceived rights from 24.01.1998, when notification regarding the criterion to be adopted for selecting short listed candidates had been published through a public notice, and all the candidates were asked to file their objections, when the applicant has chosen to file her OA only on 30.10.2012, we cannot but agree with the submissions of the learned counsel for the respondents that the reliefs as prayed for in this OA cannot be granted to her, because of the delay and laches. Even otherwise, even if the judgment and order dated 21.11.2011 Smt. Vanita (supra), which had not noticed the law as laid down by D.C.S Negi (supra), was to be applied, the applicant cannot be given an appointment or service benefits from retrospective date. As on today, she has also crossed the maximum age limit prescribed for fresh appointments, and, therefore, even on merits also, her case would not have merited consideration, if the primary hurdle of delay and laches and limitation had ever been crossed by her.”

8. In our view the petitioner seems to be a fence sitter who was watching the proceedings for all these years and has come now seeking relief on the basis of resemblance with other cases and this conduct of the petitioner indicates that she is trying to derive the

benefit of an earlier judgment, by filing an independent O.A., notwithstanding the fact that she was a part and parcel of the earlier round of litigation and after sleeping over her rights for more than 18 years, she cannot be permitted to extract benefits on the principle of equity.

9. On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others. In ***Jagdish Lal and Ors. Vs. State of Haryana and Ors. (1997) 6 SCC 538***, the Appellants who were general candidates belatedly challenged the promotion of Scheduled Caste and Scheduled Tribe candidates on the basis of the decisions in ***Ajit Singh Januja Vs. State of Punjab (1996) 2 SCC 715***, ***Union of India Vs. Virpal Singh Chauhan (1995) 6 SCC 684*** and ***R.K. Sabharwal v. State of Punjab (1995) 2 SCC 745***, the Hon'ble Supreme Court refused to grant the relief by observing as under:

“...this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or Article 32 of the Constitution. It is not necessary to reiterate all the catena of precedents in this behalf. Suffice it to state that the Appellants kept sleeping over their rights for long and elected to wake up when they had the impetus from Virpal Chauhan and Ajit Singh ratios. But Virpal Chauhan and Sabharwal cases, kept at rest the promotion already made by that date, and declared them as valid; they were limited to the question

of future promotions given by applying the rule of reservation to all the persons prior to the date of judgment in Sabharwal case which required to be examined in the light of the law laid in Sabharwal case. Thus earlier promotions cannot be reopened. Only those cases arising after that date would be examined in the light of the law laid down in Sabharwal case and Virpal Chauhan case and equally Ajit Singh case. If the candidate has already been further promoted to the higher echelons of service, his seniority is not open to be reviewed. In A.B.S. Karamchari Sangh case a Bench of two Judges to which two of us, K. Ramaswamy and G.B. Pattanaik, JJ. were members, had reiterated the above view and it was also held that all the prior promotions are not open to judicial review. In Chander Pal v. State of Haryana a Bench of two Judges consisting of S.C. Agrawal and G.T. Nanavati, JJ. considered the effect of Virpal Chauhan, Ajit Singh, Sabharwal and A.B.S. Karamchari Sangh cases and held that the seniority of those Respondents who had already retired or had been promoted to higher posts could not be disturbed. The seniority of the Petitioner therein and the Respondents who were holding the post in the same level or in the same cadre would be adjusted keeping in view the ratio in Virpal Chauhan and Ajit Singh; but promotion, if any, had been given to any of them during the pendency of this writ petition was directed not to be disturbed....”

After perusing the above cases, we are of the considered view that the petitioner preferred to sleep over her rights and approached the Central Administrative Tribunal belatedly in 2012, she cannot be extended the benefit of the orders passed earlier in this context. Accordingly, this submission of the learned Counsel for the petitioner must fail on the ground of the delay and laches in approaching the proper forum.

10. In view of the aforesaid facts and circumstances of the case, we feel that the petitioner does not deserve the relief which has been set out by her in the writ petition and accordingly the writ petition is dismissed as it does not have any merit.
11. We find no infirmity in the judgment of the Central Administrative Tribunal. No order as to costs.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 22, 2015

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