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

% **Judgment Dated: 20th July, 2016**

+ W.P.(C) 3104/2016

DELHI SUBORDINATE SERVICES SELECTION BOARD

..... Petitioner

Through : Ms. Harvinder Oberoi, Mr. Vinod Kumar
Bhati, Advocates for Mr. Devesh Singh,
Additional Standing Counsel.

versus

PRAVEEN KUMAR

..... Respondent

Through : Mr. Amit Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (ORAL)

W.P.(C) 3104/2016

1. Challenge in this writ petition is to the order dated 2nd September, 2015 passed by the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal' in short) by which the OA filed by the respondent has been allowed. The Tribunal has directed the petitioner to consider the candidature of the respondent for selection and appointment to the post of Teacher (Primary) in Municipal Corporation of Delhi by giving him age relaxation up to 32 years provided that he does not exceed the upper age limit of 32 years as on the cutoff date i.e on 15th January, 2010.

2. With the consent of the parties, we set down the petition for final hearing and disposal. Some necessary facts which are required to be noticed for disposal of this petition are that in December, 2009, the petitioner published an

advertisement No. 004/2009 inviting applications for recruitment to the post of Teacher (Primary) in Municipal Corporation of Delhi of Government of NCT of Delhi under post code No. 70/09. The respondent who had completed a two years' diploma in Education in the year 2008, applied for the post of Teacher (Primary) in MCD as an unreserved category candidate along with the copies of testimonials pertaining to his qualifications essential for the post. Pursuant to the application made, an Admit Card was issued to the respondent to appear in the written examination. The respondent appeared in the written examination which was held on 2nd February, 2014. The petitioner vide office order No. 343 dated 5th December, 2014 published the result on the basis of the written examination held on 2nd February, 2014 whereby the candidates belonging to different categories were provisionally selected and recommended for appointment to the post of Teacher (Primary) in Municipal Corporation of Delhi.

3. On 5th December, 2014, a reject list was published by the petitioner. The respondent was placed at serial No. 198 of this list and his candidature was rejected for the reason of being over age, his date of birth being 29th June, 1978. In December, 2014, the respondent approached the Tribunal challenging the reject notice dated 5th December, 2014. This OA was allowed by an order of the Tribunal dated 2nd September, 2015 (hereinafter referred to as 'the impugned order') which has led to the filing of this writ petition.

4. Learned counsel for the petitioner submits that the impugned order of the Tribunal suffers from non application of mind as the same is in violation of Articles 14 and 16 of the Constitution of India. The Tribunal has erred in directing the petitioner to consider the case of the respondent at par with those candidates who had completed the ETE course in the year 2008 and with those candidates, who were granted the age relaxation for appointment to the post of Teacher (Primary) in Municipal Corporation of Delhi. It is contended that the

Tribunal proceeded on an erroneous assumption that the diploma in Education is equivalent to the ETE course. Counsel further contends that a strong reliance has been placed by the Tribunal on the decision rendered by the High Court of Delhi in *Writ Petition (Civil) No. 7279/2009* in the case of *Sachin Gupta and Others v. DSSSB* which is misplaced.

5. Learned counsel further contends that the aforesaid matter relates to grant of age relaxation for those candidates who had completed the ETE course in 2006, 2007 and 2008 only. It is thus, contended that the respondent has qualified a diploma in Education which cannot be compared or equated to the ETE course and thus, the judgment in the case of *Sachin Gupta (supra)* would not be applicable to the facts of the present case and the respondent cannot be given the same treatment as those who had completed the ETE course.

6. Learned counsel further submits that the Delhi High Court in the case of *Sachin Gupta (supra)* had clearly mentioned about the candidates who had completed the ETE course and it has nowhere been mentioned that the candidates having equivalent qualifications would be benefitted and thus the respondent who was overage and had completed the diploma in Education and not the ETE course was rightly rejected by office order No.344 dated 5th December, 2014.

7. Learned counsel for the respondent on the other hand submits that there is no infirmity in the order passed by the Tribunal which would require interference by this court in the proceedings under Article 226 of the Constitution of India. Learned counsel contends that the order of the Tribunal is a well reasoned order. The Tribunal has rightly placed reliance on the decision in the case of *Sachin Gupta (supra)* and granted the same benefit to the respondent who was eligible as per the advertisement published by the petitioner

as the ETE course and the diploma in Education are both equivalent and thus, it is submitted that it would be highly unfair for different persons to have different eligibility criteria when the course is the same.

8. We have heard the learned counsels for the parties.

9. An advertisement was published bearing No. 004/009 seeking applications for recruitment to the post of Teacher (Primary) in Municipal Corporation of Delhi under post code No. 70/009. The relevant portion of the advertisement reads as under:-

“Name of the Post: Teacher (Primary) in MCD

Post Code: 70/09

Number of Vacancies: 4500 (UR-1900, OBC 1044, SC 786, ST-790, including PH (OH-OA/OL/OAL/BL-52, PH(VH-B/LV)-96, EXSM-982)

Essential Qualifications:

1. Sr. Secondary (10+2) or Intermediate or its equivalent with 50% marks from a recognized Board.

2. Two years diploma/Certificate course in ETE/JBT or B.El.Ed. from recognized institutions or its equivalent.

3. Must have passed Hindi as a subject at Secondary Level.

Desirable Qualification: Computer knowledge.

Pay Scale: 9300-34800- plus Grade Pay Rs.4200/-.

Group-C Non-Gazetted.

Probation Period: Two years.

Age Limit: 20-27 years. Relaxable for SC/ST – 05 years, OBC-03 years, PH-10 years, PH&SC/ST-15

years. PH&OBC – 13 years.

Departmental employees – up to 42 years of age (General), up to 47 years for SC/ST, having 03 years of continuous service in the same line or allied cadres.

Relaxable up to 37 years for (General) and up to 42 years for SC/ST – for widows, divorced women and women judicially separated from their husband and who are not remarried.”

10. By an ‘Addendum to Advertisement No. 04/2009, the number of vacancies for the post of Teacher (Primary) in MCD were increased from 4500 to 6500, it is not in dispute that the respondent has completed the two years’ diploma in Education in the year 2008. Based on clause 2 of the Advertisement, it cannot be disputed that the respondent was eligible as he had obtained a diploma in education. He made an application along with copies of relevant documents pertaining to his qualifications consequent to which he was issued an Admit Card to appear in the written examination which the respondent appeared on 2nd February, 2014. The candidature of respondent was rejected not because of lack of qualification but on account of the fact that he was overage. The respondent has relied upon the case of *Sachin Gupta (supra)* where it was directed that the candidates who had completed the ETE course during the years 2006 to 2008 would be granted age relaxation up to 32 years. The respondent has sought a similar concession. The basic argument of learned counsel for the petitioner is that the case of *Sachin Gupta (supra)* would not be applicable to the case of the respondent as it pertains only to ETE course and not any other course including the diploma in Education which has been completed by the respondent. Counsel submits that there was no material before the Tribunal to reach to the conclusion that the persons who had completed the diploma in

Education course suffer the same predicament which was considered by the court in the case of *Sachin Gupta (supra)*

11. We find that based on the advertisement, the essential qualifications which have been prescribed for the post of Teacher (Primary) in MCD which a candidate required were as follows:

- I a Senior Secondary (10 + 2) or intermediate or its equivalent with 50% marks from a recognized board.
- II Two years' diploma/certificate course in ETE/JBT or B.El.Ed. from recognized institutions or its equivalent.
- III Must have passed Hindi as a subject at Secondary Level.

12. There is an agreement between the parties which is also borne out from the fact that the respondent was permitted to appear in the examination as far as the educational qualifications were concerned, which means that he was eligible. The equivalence of the ETE course and the diploma in Education is not in dispute. However, in Delhi, the nomenclature is certificate in ETE course while in other states a different nomenclature is adopted, for example in Bhopal, it is diploma in Education, in Haryana, it is JVT and similarly, BLT is in some other state. Learned counsel for the respondent has submitted that there cannot be a difference in criteria for the same post for different states as this was not the objection in terms of the advertisement and in case, a candidate who had completed ETE course from Delhi is to be given age relaxation as per the decision in *Sachin Gupta (supra)*, the same age relaxation should be provided to the persons who are identically placed in terms of educational qualification.

13. We find force in the submissions of the learned counsel for the respondent that there cannot be different age criteria for different candidates when the educational qualification and equivalence thereof stands recognized by the petitioner herein. In our view, the Tribunal had correctly applied the law to the

facts of this case. We find no ground to interfere with the impugned order. Resultantly, the writ petition is dismissed. The order of the Tribunal shall be complied with forthwith.

CM No.13167/2016 (stay)

14. In view of the order passed in the writ petition, this application has been rendered infructuous. The same stands disposed of as such.

**G.S.SISTANI
(JUDGE)**

**I.S. MEHTA
(JUDGE)**

JULY 20, 2016
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