

\$~14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1148/2016 & CM No.5066/2016**

Date of Decision : 2nd February, 2017

GOVT. OF NCT OF DELHI & ANR Petitioners

Through: Mr. Satyakam, ASC

versus

ASHOK PAL & ORS Respondents

Through: Mr. Deepak Dahiya, Advocate for
respondent Nos.1 and 8
Mr. Naresh Kaushik, Advocate for
UPSC

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

1. This writ petition filed on 23.1.2016 impugns the order dated 1.6.2012 passed by the Principal Bench of Central Administrative Tribunal ("Tribunal", for short) deciding OA Nos.4234/2011 and MA No.3150/2011.
2. On the first date of hearing i.e. 10th February, 2016, directions were issued, requiring the Chairman of Delhi Subordinate Service Selection Board (DSSSB) to file an affidavit to explain the cause for the delay in filing the writ petition with supporting documents. In this order we had recorded the submission that the petitioner was faced with the predicament and dilemma on account of purported conflict between

the impugned order dated 1.6.2012 and an earlier order of the Tribunal passed in OA No.121/2010 dated 20.7.2010. The petitioners had professed difficulty in deciding which of the two orders they should follow. Recording this assertion, we had issued notice and asked the respondents to enter appearance.

3. Having heard learned counsel for the petitioners and the respondents, we reject the argument of discord. The two orders are reconcilable and in fact the impugned order dated 1.6.2012 passed in OA No.4234/2011 ensures that there is no conflict with the earlier order dated 20.7.2010 deciding OA No.121/2010.
4. We would conclude that the petitioners initially did not perceive any conflict, but when it came to the last stage of implementation of the impugned order this objection surfaced .
5. There is unexplained prolonged delay of nearly four years between 1.6.2012, when the impugned order was passed, and 23.1.2016, when the present writ petition was filed. Applying the principle of delay and laches, we should summarily dismiss this petition, and not condone the lassitude and torpor. This is a case of indifference and inertia. Such apathy and carelessness should not be excused.

6. Vide advertisement No.004/09 applications were invited from eligible candidates for different posts in the departments of the GNCTD and autonomous/local bodies, including the post of Teacher (Primary) in the MCD with which we are concerned. The number of vacancies, essential qualifications for Teacher (Primary), as specified in the advertisement, were as under:

“Name of the Post: Teacher (Primary) in MCD Post Code:70/09

Number of Vacancies: 4500 (UR-1900, OBC-1044, SC-766, 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 upto 42 years of age (general), upto 47 years from SC/ST, having 03 years of

continuous service in the same line or allied cadres. Relaxable upto 37 years for (general) and upto 42 years of SC/ST-for widows, divorced women and women judicially separated from their husband and who are not re-married.”

7. The extant Recruitment Rules enacted under the second proviso to Article 309 of the Constitution published on 13.7.2007, had prescribed the following essential qualifications:

“Essential Qualifications: 1. Sr. Secondary (10+2) or intermediate or its equivalent with 50% marks from 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.”

8. Third parties who were over-aged but were otherwise eligible, had filed OA Nos.121/2010 and 151/2010 asserting that the posts of Assistant Teacher (Primary) had been upgraded to Category B and accordingly the upper-age limit should be 30 years and not 27 years. The Tribunal, vide order dated 20.7.2010, observed that the Recruitment Rules should have been amended and in case they had been amended, the applicants therein would be eligible as the upper-age limit would be then 30 years. Accordingly, the following

directions were issued:-

“12. Resultantly, we have no hesitation to hold that non-amendment of the recruitment rules by the respondents, despite change in the pay scale and classification of the post, to which the applicants have applied, they have been deprived of an opportunity and valid consideration for appointment. We also find from the record that after the advertisement, the selection is yet to begin as no examination, etc. has taken place.

13. As there is no question of right of any selectee being adversely affected by any direction issued by us, we dispose of these OAs by directing the respondents to finalize the amendment in the recruitment rules by applying the classification of the post and enhancement of the age as per office Memoranda ibid (sic) within a period 45 days from the date of receipt of a copy of this order by issuing a corrigendum to the advertisement to this effect. It goes without saying that the applicants, if are covered by the enhancement of age, would be deemed as eligible and their candidature be considered in the selection process, which would be put on hold for the aforesaid period, in such an event, law shall take its own course. No costs.”

9. We would not go into and examine the merits of the said order as it is not challenged and questioned before us. In the first sentence of para

13 quoted above, the Tribunal has recorded that there was no question of right of any selectee being adversely affected. In other words, the Tribunal believed that only the upper-age limit would be relaxed and this would not be objected to and adversely affect the candidates who had applied as per the advertisement. At best, others would also become eligible to participate in the selection process.

10. The petitioners, however, did not implement the order dated 20.07.2010 in this manner and they introduced another stipulation that the candidates applying for the posts of Assistant Teacher (Primary) in the MCD should have studied and passed English as a language at the Secondary or the Senior Secondary level. This new stipulation in the Recruitment Rules was applied even to those eligible candidates who had applied pursuant to the advertisement No.004/2009, leading to disqualification of about 20 candidates, as per the petitioners.
11. Aggrieved, 14 “disqualified” candidates filed OA No.4234/2011 asserting that they should be treated as eligible. The Tribunal, after referring to different facets, observed and held :

“4. In view of the aforementioned we dispose of present OA with a direction to respondent to fill up the vacancies of Teacher (Primary) in MCD occurred prior to 6.9.2011 by

following the RRs dated 13.07.2007. Such vacancies which occurred after said date i.e., 6.09.2011 may be filled up in accordance with provision of amended rules. No cost.”

Thus, the tribunal was of the view that the new stipulation in the amended Recruitment Rules was not retrospective and should be applied prospectively, so as to not disqualify these candidates who were eligible when the advertisement was published and had applied.

12. The Tribunal, as is clear from the aforesaid quotation, had bifurcated the vacancies which had occurred prior to 6.9.2011 in which case the earlier Recruitment Rules dated 13.7.2007 would apply and the vacancies after 6.9.2011 which would be governed by the amended Rules notified on that date.
13. The earlier order of the tribunal had only directed upward revision of the age limit and had never directed introduction of new onerous eligibility qualification.
14. We would not examine the question of retrospective effect or whether retrospective effect could have been given to the new Recruitment Rules enforced w.e.f. 6.9.2011, in view of the delay and laches for another reason. The petitioner had clearly accepted and even implemented the impugned order dated 1.6.2012 for the respondents,

14 in number, were allowed to appear and participate in the examinations held on 2.2.2014. Their results were declared with others on 5.12.2014. It is only after the respondents had excelled and were selected, that the petitioners belatedly developed second thoughts and in January, 2016 decided to challenge the impugned order, in this writ petition filed after nearly four years. This would be unfair, inequitable and unjust to the respondents.

15. The petitioners affirm that vacancies as advertised for Primary Teachers are vacant and were not filled-up.
16. The writ petition is dismissed for the aforesaid reasons. All pending applications are disposed of. Compliance of this order will be made within three months from the date a copy of this order is received by the petitioners. In case of non-compliance, the petitioners would be liable to pay salary, which would be payable to the successful respondents as Assistant Teacher (Primary) with effect from 1.6.2017.

Dasti.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

FEBRUARY 02, 2017/tp/ssn