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

+ W.P.(C) 1678/2017 & CM No.7528/2017

RISHI PAL

..... Petitioner

Through: Mr. S.S. Tiwari, Advocate

versus

COMMISSIONER EAST DELHI MUNICIPAL CORPORATION

AND ORS

..... Respondents

Through: Mr. Kumar Rajesh Singh, Standing
Counsel for respondent Nos.1 and 2
Mr. Rakesh Mittal, Standing Counsel
for the SDMC

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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28.02.2017

The petitioner had applied for selection as a Primary Teacher in the erstwhile Municipal Corporation of Delhi ('MCD') in July, 1996.

2. The criteria for selection of Other Backward Classes ('OBC') candidates was partly modified, with preference being given to those within the age group of 28 to 30 years by the cut-off date, i.e., 31.7.1996, in order to ensure that the OBC seats/posts were filled-up. This criteria was challenged before the Central Administrative Tribunal ('Tribunal') in several cases including **TA No. 163/2009**, titled ***Shashi & Ors. v. MCD &***

Ors. The petitioner did not file any OA, challenging the said criteria and was not a party to any of the proceedings before the Tribunal.

3. The Tribunal vide order dated 05.06.2009 overturned the said criteria. This order was challenged by the unified MCD in **WP(C) No.11331/2009**, which was dismissed vide the judgment dated 7.9.2009. A Special Leave to Appeal was preferred and dismissed on 21.1.2015 (learned counsel for the petitioner states that this is the date given by him in the writ petition but may be incorrect).

4. In the meanwhile, a number of OAs were filed by OBC candidates who had not approached the Tribunal earlier. These OAs suffered dismissal on the ground of limitation, delay and laches. One such unsuccessful candidate, Urmila Goswami filed **WP(C) No.9095/2015**, which has been dismissed by a detailed reasoned order, dated 22.9.2015, passed by a Coordinate Division Bench of this Court. This order records in detail the history of litigation for selection to the posts of Primary Teacher in the unified MCD vide the Advertisement published on 16.7.1996. Applying the law of limitation incorporated under Section 21 of the Administrative Tribunals Act, 1985 and principles of delay and laches, it was held that the claim of the petitioner, Urmila Goswami, should not be accepted at the

belated stage.

5. Learned counsel for the petitioner submits that the aforesaid judgment in the case of Urmila Goswami (supra) is no longer good law, in view of the decision of the Supreme Court in (2015) 1 SCC 347, ***State of Uttar Pradesh & Anr. v. Arvind Kumar Srivastava & Ors.*** Counsel submits that the decision of the Tribunal in ***Shashi & Ors.*** (supra) and the judgment of the Delhi High Court in WP(C) No.11331/2009 were judgments/decisions *in rem* and, therefore, the authorities should have uniformly granted the same benefit to all candidates including the petitioner. The petitioner had made a representation dated 30.3.2011 to this effect.

6. We have considered the submission but regret our inability to accept the said contention in the factual matrix of the present case.

7. The Tribunal vide order dated 05.06.2009 in TA 163/2009 had directed:-

“ 18. There is no case that the application fee received from the applicants has been refunded. When application fee is received, according to us, there is a corresponding obligation on the part of the respondents to ensure that the application is considered on merits. Otherwise it becomes unjust enrichment, which a State should not practice. On the basis of a policy decision, valid applications definitely cannot be put to the dustbin. We feel that injustice has been done to the applicants and the respondents are to repair the loss that has been inflicted on the applicants. We, therefore,

direct that within a period of one month from the date of receipt of a copy of this order, the applicants are to be issued with appointment orders since there is no contention that they were not in any way ineligible vis-a-vis qualifications and had secured well above the cut off marks prescribed.

19. After securing appointment, the applicants will be entitled to make further submissions as to fixation of their seniority position at least notionally with persons who were lucky enough to get earlier appointment if they so choose. Such rights are protected. Applications are disposed of as above. We make no order as to costs. ”

8. In another TA No. 348/2009, titled ***Mrs. Nirmal Sachdeva & Ors v. Govt. of NCT of Delhi & Ors.*** decided on 20.08.2009, the Tribunal had observed:-

“9. Accordingly, the present OA is disposed of with a direction to the respondents to pass appropriate orders in respect of the applicants herein in the light of the Coordinate Bench Judgment in Shashi’s case (supra), within a period of one month from the date of receipt of a copy of this order. No Costs. ”

9. The petitioner claims the same relief as granted in TA Nos. 163/2009 and 348/2009 on the basis that these were judgments *in rem*. A bare reading of the paragraphs extracted above will make it clear that the relief granted was restricted and confined to the applicants therein who were before the Tribunal, and no direction was passed that the same relief ought to be granted to others who were similarly placed, but had not approached the Tribunal. It is noticeable that the respondent authorities had not treated the

decisions of the High Court in **W.P. 11331/2009, Shashi & Ors.** (supra) and the Tribunal in **TA No. 348/2009, Mrs. Nirmal Sachdeva & Ors** (supra) as judgments *in rem*. They were not ready or willing to grant the identical relief to others.

10. The Tribunal vide the impugned order dated 19.02.2016 has rightly dismissed **OA No. 3312/2012**, titled **Sh. Rishi Pal v. Commissioner, EDMC & Ors.** filed by the petitioner relying upon Section 21 of the Administrative Tribunals Act, 1985, and the decision in W.P. (C) No. 9095/2015, **Urmila Goswami** (supra) holding that the prayers made were barred by limitation, delay and laches.

11. The cause of action arose in favour of the petitioner in the year 1996 and delay in filing of the Original Application is substantial. The challenge to the age criteria and cut-off date was made in 2012. As the selection was undertaken in the year 1996, any direction to give appointment to the petitioner after a delay of nearly 20 years would not be correct and justified. The situation has gone inevitable change in this period of 20 years and the needs and requirements demand that younger people come into teaching positions. The clock cannot and should not be put back. The impugned order dated 19.02.2016 has rightly held that the delay in approaching the Tribunal

defeats the petitioner's claim to seek relief.

12. The writ petition has no merit and the same is accordingly dismissed.

CM No.7528/2017 is also dismissed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

FEBRUARY 28, 2017

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