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

+ **WRIT PETITION (CIVIL) NO. 837/2017**

Reserved on : 31st January, 2017

Date of decision: 1st May, 2017

NEHA

.... Petitioner

Through Mr. Kartar Singh & Mr. Dharam
Singh, Advocates

Versus

CHIEF SECRETARY, GOVERNMENT OF
NCT OF DELHI & ANR.

..... Respondents

Through Mr. Devesh Singh, ASC

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.:

The petitioner-Neha has challenged the order dated 04.08.2016 whereby OA No. 838/2015 filed by her has been dismissed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short)

2. The dispute pertains to the appointment of Teacher's (Primary)/ Assistant Teachers in the Government of NCT of Delhi (GNCTD), the first respondent herein. In order to appreciate the controversy before us, it is pertinent that we make a detailed reference to the facts leading up to the present writ petition, including the previous litigation.

3. The Delhi Subordinate Selection Board (DSSSB, for short), vide Advertisement No. 004/2009 published in the newspapers on 11.12.2009 and in the Employment News on 26.12.2009, had invited applications for 4500 vacancies in the post of Teacher (Primary)/ Assistant Teachers in the GNCTD vide Post Code Nos. 70/09 and 71/09. The last date of application was 15.01.2010. The eligibility criteria prescribed for the post of Teacher (Primary) was:

"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."

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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 for Sc/St- for widows, divorced women and women judicially separated from their husband and who are not married.

The upper age limit for the post of Teacher (Primary) was 27 years.

4. The upper age limit as fixed was challenged as the post of Teacher (Primary) was earlier a Group C post, and pursuant to the recommendations of the Sixth Central Pay Commission, the said post was classified as a Group B

post with effect from 01.01.2006. The upper age limit as mandated for direct recruitment to Group B posts was 30 years. The Recruitment Rules of the GNCTD and the Municipal Corporation of Delhi (MCD), which were communicated and notified earlier in point of time on 13.07.2007, had treated the post of Teacher (Primary) as a Group C post, the upper age limit for which was 27 years.

5. The challenge was accepted by the Tribunal in O.A No. 121/2010 and O.A. No. 151/2010 vide order dated 20.07.2010 Direction was issued to the GNCTD and the MCD to amend the Recruitment Rules to bring them in conformity with the prescribed age criteria for Group B posts.

6. Consequently, the Recruitment Rules were amended and notified by the GNCTD and the MCD and vide notification dated 16.09.2011, the post of Teachers (Primary) was re-classified from Group C to Group B category.

7. The DSSSB thereafter issued a corrigendum advertisement dated 16.09.2011 prescribing the upper age limit of 30 years and extended the last date for receipt of applications to 17.10.2011. The number of vacancies for the posts of Teacher's (Primary) was also increased to 7020 from 4500. The cut-off date for both age and educational qualifications was retained as 15.01.2010.

8. The corrigendum advertisement led to the second round of litigation. This time, the challenge was with regard to the cut-off date of 15.01.2010. OA No. 3633/2011 challenged the retention of the cut-off of 15.01.2010 date

as arbitrary and that the cut-off date be shifted to 17.10.2011 i.e. the last date for applications. The OA was allowed by the Tribunal vide order dated 30.03.2012.

9. This in turn created further confusion, for candidates who were less than 30 years of age as on 15.01.2010, but were more than 30 years of age as on 17.10.2011 stood disqualified. The decision of the Tribunal had adversely affected the rights of those candidates who despite meeting all the eligibility criteria as earlier stipulated, stood qualified for appointment owing to the shift in the cut-off date.

10. The decision of the Tribunal was challenged by the DSSSB before the High Court of Delhi in Writ Petition No. 3397/2012 titled ***Delhi Subordinate Services Selection Board & Anr. versus Preeti Balayan & Anr.*** which was partly allowed. Referring to the earlier litigations pertaining to the recruitment process and noticing the conflict of the rights of candidates who were below the age of 30 on 15.01.2010 but would become ineligible with the shift in the cut-off date to 17.10.2011, the High Court vide order and judgment dated 06.02.2013 held:

"24. The first reason of the law which acts as our compass is that ordinarily vacancies have to be filled up from amongst the eligible candidates pertaining to the year of the vacancy and if for some reasons the selection process is postponed, only those who were eligible in the year of the vacancy should be considered. The second reason of the law which acts as our compass is that wherever in an ongoing process a derailment takes place at a particular point, the rail should be put back at the point where it

derailed after removing the cause of derailment and letting the train chug along.

25. Guided by the aforesaid two reasons of law we unhesitatingly reach the conclusion that the only corrective action which could be directed to be taken was, as was directed by the Tribunal when the Original Applications filed by candidates who pointed out a hiatus between retaining the upper age limit of 27 years and the classification of the post was decided with a direction to amend the Recruitment Rule and issue a corrigendum making eligible candidates up to the age of 30 years; requiring the cut-off date January 15, 2010 to be retained. The subsequent decision mandating that the eligibility cut-off date should be shifted to October 17, 2011 would amount to modifying the track and as a result making ineligible many candidates who cross the age of 30 years as of January 15, 2010. It must be also remembered that the vacancies pertained to the vacancy year 2010 and this explains the cut-off date being January 15, 2010.

26. Accordingly, we dispose of the writ petition setting aside the impugned judgment and order dated March 30, 2012 leaving the parties to bear their own costs."

The Review Petition No. 135/2013 in aforesaid decision was dismissed vide order dated 18.03.2013. The Special Leave Petition filed against the aforesaid decision has also been dismissed vide order dated 10.05.2013. The decision fixing the cut-off date as 15.01.2010 and the aforesaid directions have attained finality.

11. The petitioner-Neha had applied for the post of Teacher (Primary) pursuant to the corrigendum advertisement dated 16.09.2011. She had

appeared as an OBC candidate in the written examination held on 2.02.2014, and despite having secured 85.25 marks, was not selected, though unreserved candidates with lower marks were selected. The reason was that as per the Certificate/Diploma submitted by the petitioner, she was awarded the Diploma in Education on 06.10.2010, that is, after the cut-off date of 15.01.2010. Therefore, the petitioner did not possess the essential educational qualifications as on the cut-off date and therefore was not eligible for appointment as Teacher (Primary).

12. The Tribunal, in the impugned order has rightly dismissed the OA filed by the petitioner noticing the aforesaid lack of qualification as on the cut-off date. To be eligible for appointment to the post, the candidate must satisfy the minimum eligibility qualifications as on the cut-off date, in this case, 15.01.2010. The fact that the petitioner had secured higher or better marks would be of no consequence, if she did not meet the minimum eligibility qualifications for appointment to the post. Eligibility qualifications cannot be ignored on account of higher marks.

13. The Supreme Court in ***Santosh Kumar Meena & Ors. Versus Government of NCT of Delhi & Ors.***, (2013) 11 SCC 58, on the question of eligibility requirements on the cut-off date, has held that if the candidate does not possess the requisite qualification on the last date of submission of the application, he/she would not be eligible. Only a person who meets the prescribed criteria of qualifications on the last date is entitled to be considered for appointment. Divergence from this principle would amount to violation of

the doctrine of equality, for a large number of persons, who may not be qualified, could have applied in case they were aware of the relaxation being granted. A similar view has been taken by the Supreme Court in *Orissa Power Transmission Corporation Ltd. versus Khageswar Sundaray & Ors.*, (2013) 8 SCC 269.

14. The petitioner has placed reliance on the decision of the Tribunal in OA NOs. 299/2015 and 145/2015 titled *Abhimanyu & Ors. versus Delhi Subordinate Services Selection Board & Ors.* The said OAs had been filed by persons whose candidature was rejected by the DSSSB pursuant to the decision in *Preeti Balayan* (supra) for they did not meet the qualifications on the cut-off date of 15.01.2010. The applicants had challenged the rejection orders contending that the decision in *Preeti Balayan* (supra) was binding only on the parties to the writ petition and the order of the Tribunal dated 30.03.2012 fixing the cut-off date as 17.10.2011 would be applicable to all others. The OAs were disposed of observing as under:

"16. As far as the ramification of the Order dated 30.3.2012 passed by this Tribunal in batch of Original Applications (ibid) is concerned, we agree with the submissions put forth by Mr. Amit Anand, learned counsel for respondents that once the Order passed by the Tribunal (ibid) was reversed by the Hon'ble High Court (ibid), in the wake of aforementioned judgments of the Apex Court, the same would be deemed reversed qua the applicants in all the Original Applications. There is also sufficient merit in his plea that once the Tribunal had passed the Order after taking note of all 6500 vacancies and once the Order has been reversed by the Hon'ble High Court, it cannot be

viewed that the additional 2000 vacancies can be kept separately to determine the eligibility of the applicants herein with reference to the date (17.10.2011), i.e., by which the candidates who were not eligible on 15.1.2010 could submit their applications. Nevertheless, we find that the emphasis of the Hon'ble High Court in the Order passed in Writ Petition (C) No.3397/2012 - DSSSB v. Preeti Balayan & another is that the Tribunal could not have interfered with the cut-off date, i.e., 15.1.2010, as the change of cut-off date to 17.10.2011 could render a number of candidates, who were eligible on 15.1.2010, as ineligible.

17. In terms of the ratio decidendi of the judgment of Hon'ble High Court, the eligibility of the candidates need to be determined with reference to the year of vacancy. We are also apprised that in the examination / selection process held pursuant to the aforementioned Advertisement, sufficient number of candidates are not found qualified / suitable and a large number of vacancies have remained unfilled. The ramification of such factual position would be that the respondents will have to advertise the posts again to invite the fresh applications to fill up the posts. The applicants before us have already participated in the examination. Maybe by the fresh cut off dates many of the candidates, who were eligible by 17.10.2011, may become ineligible. In the circumstances, in all fairness, the Board may assess the candidatures of the applicants herein against the unfilled vacancies on their own."

15. The argument of the petitioner is that the decision of the Tribunal directing that the DSSSB shift the cut-off date to 17.10.2011 in order to make appointments to the unfilled vacancies would result in the petitioner being eligible for appointment as Teacher (Primary). A reading of the concluding

paragraphs of the decision of the Tribunal quoted above would show that the Tribunal had merely taken note of the fact that pursuant to the decision in *Preeti Balayan* (supra), a number of candidates were disqualified and thus only 2176 candidates were selected for 7020 posts. In these circumstances, the Tribunal observed that in case the cut-off date was shifted to 17.10.2011, many others would become eligible. The DSSSB may consider the candidature of the applicants, if found eligible on the fresh cut-off date, for they had already appeared in the examination. The said observations did not amount to mandate and were not in the nature of a direction, for any such direction would not only be contrary to the decision in *Preeti Balayan* (supra), but also to the principles expounded in the decisions of the Supreme Court in *Santosh Kumar Meena* (supra) and *Khageswar Sundaray* (supra). Reliance on the decision of the Tribunal in *Abhimanyu & Ors* (supra) is therefore misplaced.

16. In view of the aforesaid, we do not find any merit in the present writ petition and the same is accordingly dismissed. There will be no order as to costs.

(CHANDER SHEKHAR)
JUDGE

(SANJIV KHANNA)
JUDGE

MAY 01, 2017

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