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

+ **Date of Decision: 23.08.2017**

% **W.P.(C) 7240/2017 & CM APPL. 29999/2017**

RAJ BALA AND ANR Petitioner

Through: Mr. Yashpal Rangi, Advocate

versus

GOVT OF NCT OF DELHI AND ORS Respondent

Through: Mr. Gautam Narayan, ASC

% **W.P.(C) 7244/2017 & CM APPL. 30014/2017**

POONAM Petitioner

Through: Mr. Yashpal Rangi, Advocate

versus

GOVT. OF NCT OF DELHI & ORS Respondent

Through: Mr. Gautam Narayan, ASC

% **W.P.(C) 7250/2017 & CM APPL. 30026/2017**

GEETA RANI AND ANR Petitioner

Through: Mr. Yashpal Rangi, Advocate

versus

GOVT OF NCT OF DELHI AND ORS Respondent

Through: Mr. Satyakam, ASC with Mr. Pravin
Sharma, Adv

% **W.P.(C) 7288/2017 & CM APPL. 30163/2017**

MONIKA YADAV

..... Petitioner

Through: Mr. Yashpal Rangi, Advocate

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondent

Through: Mr. Manzar Anis, Adv. for Mr.
Naushad Ahmad Khan, ASC for R-1

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The petitioners have preferred the aforesaid four writ petitions to assail the common order dated 28.04.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. Nos.1430/2017, 201/2015, 111/2015 and 418/2015 respectively. By the impugned order, the tribunal has dismissed the aforesaid OAs along with several others preferred by the petitioners and other applicants. The said OAs were preferred before the tribunal to seek the setting aside of the advertisement No.2/2014 issued by the respondents GNCTD/ DSSSB, wherein the upper age limit for the post of Physical Education Teachers (PET) in the Directorate of Education (DoE) was prescribed as 30 years. The petitioners also sought a direction to the respondents to raise the age limit to, "not exceeding 32 years" for PET, and also to implement the age relaxation of upto 10 years in terms of the notification dated 01.11.1980 issued by the Lt. Governor of Delhi under Rule 43 of the Delhi School

Education Rules (DSE Rules). Since the tribunal did not find merit in the said OAs, they have been dismissed.

2. The background facts are that vide notification dated 09.12.2011, rules were framed under the proviso to Article 309 of the Constitution of India, namely, *“The Directorate of Education, Physical Education Teachers (Group-B Post) Recruitment Rules, 2011”* (hereinafter referred to as *“the Rules of 2011”*). These rules pertained to the eligibility conditions for recruitment, etc. of PET by the DoE. Under these rules, the post of PET was classified as a Group-B post. The age limit for direct recruits under these rules was prescribed as follows:

“Not exceeding 30 years.

(Relaxable for Government servants upto 5 years in accordance with the instructions/ or order issued by the Central Government)

Note: The crucial date for determining the age limit shall be the closing date for receipt of applications from candidates in India (and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Ladakh Division of Jammu and Kashmir State, Lahaul and Spiti Districts and Pangi Sub-Division of Chamba District of Himachal Pradesh, Anadaman and Nicobar Islands or Lakshwadeep”.

3. Prior to the enforcement of the aforesaid Rules of 2011, under the earlier prevailing rules, the upper age limit for recruitment of teachers in the DoE prescribed was 32 years, not only for the PET but for other category of teachers. When the earlier rules were in force, the Lt. Governor of Delhi issued a notification dated 01.11.1980 bearing F.1/16/3/R&S/79 by resort to

Rule 43 of the DSE Rules, 1973 granting to women candidates “*a general relaxation for 10 years in the maximum age limit to prescribed in the recruitment rules for recruitment to various posts of teachers in Delhi Schools*”.

4. Consequent to the framing of the Rules of 2011, the respondents issued the advertisement No.2/2014 on 12.12.2014 in respect of post code 210/2014 for PET, prescribing the age limit as “*not exceeding 30 years*”. Relaxation in upper age limit was available to SC/ST candidates for 5 years; OBC candidates for 3 years; Departmental Candidates/ Government Servants for 5 years; Ex-Servicemen as per DoPT guidelines. Pertinently, the post of PET was not identified suitable for physically handicapped persons as per the requisition of the user department.

5. The petitioners were aggrieved by, firstly, the lowering of the age limit from 32 to 30 years, which prevailed prior to the enforcement of the Rules 2011, and also by the denial of any general age relaxation to women candidates of 10 years in terms of the notification dated 01.11.1980 issued by the Lt. Governor of Delhi under Rule 43 of the DSE Rules.

6. The submission of the petitioners was that there was no conscious decision taken by the Lt. Governor of Delhi to discontinue the application of the notification dated 01.11.1980 after the making of Rules of 2011. The further submission was that the general age relaxation granted by the statutory notification dated 01.11.1980 would apply with equal force, even in respect of the Rules of 2011.

7. The petitioners sought to place reliance on a Division Bench of this

court in W.P. (C.) No.1035/2014 decided on 22.08.2014 in ***Asha v. GNCTD & Ors.***, wherein this court held that in respect of the posts of Librarian in the GNCTD – who are also considered as teachers, the age relaxation of 10 years granted by the notification dated 01.11.1980 was applicable.

8. The respondents filed their counter-affidavit before the tribunal. The stand taken by the respondents, in substance, was that the Rules of 2011 were the amended rules in respect of the post of PET. On the recommendation of the 6th CPC, the posts of teachers-including that of PET, were upgraded from Group-C to Group-B by the DoPT. Under the DoPT, there is no notification or norm for granting age relaxation to women candidates. The argument of the respondent was that in view of the changed scenario, namely, the enforcement of Rules 2011 and upgradation of the post from Group-C to Group-B, the notification dated 01.11.1980 – which had been issued during the subsistence of the earlier recruitment rules for teachers, could not be applied since the upper age limit had specifically been prescribed as “*not exceeding 30 years*”, and there was no provision in the recruitment rules themselves, vesting power for the age relaxation in respect of women candidates. Wherever age relaxation was intended, was granted either in the Rules of 2011 for the Govt. Servants – upto 5 years, or by the DoPT guidelines/ instructions, such as for the SC/ST; OBC; and; ex servicemen category.

9. The further submission of the respondents was that while amending the Recruitment Rules for PET, the notification dated 01.11.1980 of the Lt. Governor had been taken into account. In fact, the notification dated 09.11.2011 shows that Rules of 2011 had been framed by the Hon’ble Lt.

Governor. The Recruitment Rules for PET had been amended in consultation with the UPSC, and that the same were as per DoPT norms.

10. The respondents also placed reliance on the decision of the Division Bench of this court in *Sachin Gupta v. DSSSB*. In this decision, the Division Bench held that it was the prerogative of the employer to decide the age limit and academic suitability of candidates whom they wished to employ, and so long as they are not contradictory to the eligibility conditions prescribed by the National Council of Teacher Education, they could not be challenged. The Division Bench also accepted the submission of the respondents in that case, that the notification dated 01.11.1980 issued under Rule 43 of the DSE Act would not govern the recruitment to the posts of teachers in Government/ DoE schools. It was further observed that since the impugned Recruitment Rules in that case had been approved by the Lt. Governor, who had also issued the earlier notification dated 01.11.1980, it would mean that the said notification stands impliedly repealed.

11. Learned counsel for the petitioner urges the same submissions as advanced before the tribunal. Learned counsel submits that the Recruitment Rules did not specifically state that age relaxation granted in respect of women candidates vide notification dated 01.11.1980 – which was issued in exercise of the statutory power under Rule 43 of DSE Act, would not be applicable to the process of recruitment undertaken under the Rules of 2011. He submits that the said notification has not been rescinded and it would, therefore, continue to apply even after the enforcement of the Rules of 2011. He further submits that in respect of other posts of teachers, the said notification dated 01.11.1980 continues to be applied even now. Thus, there

is no justification to not apply the same in respect of PETs. He further submits that not only the posts of PETs, but all the posts of teachers were upgraded from Group 'C' to Group 'B', as per the VIth CPC recommendations. Thus, the upgradation of the posts of PETs from Group 'C' to Group 'B' could not be a justification for not granting the age relaxation, since it is being granted in respect of other category of Teachers in the DOE.

12. He also places reliance on the decision of the Division Bench in *Asha* (supra), and submits that this court should follow the decision in *Asha* (supra) and not the one rendered by the Division Bench in *Sachin Gupta* (supra).

13. Having heard learned counsel for the petitioners, we find no merit in these petitions. The foundation of the petitioners' case is the notification dated 01.11.1980 issued by the Hon'ble Lt. Governor under Rule 43 of the DSE Rules granting age relaxation of 10 years to women candidates in respect of posts of Teachers. Firstly, the Division Bench in *Sachin Gupta* (supra) held that the said notification did not relate to recruitment of Teachers in the DoE of the GNCTD. We are bound by the said finding and, even otherwise, we see no reason to take a different view. The said issue, firstly, was not raised before the Division Bench dealing with *Asha* (supra), and *Sachin Gupta* (supra) was not even considered in the said decision. The issue raised in *Asha* (supra) was materially different. In that case, despite the post of Librarian in Government Schools of the DoE having been declared as teaching posts for all purposes with immediate effect on 21.01.2011, the age relaxation applicable to women candidates was not

being extended to those applying for the post of Librarian, even though the same was granted to women candidates applying for other posts of teachers in the DoE. It is on the aforesaid premise that the action of the respondent – GNCTD was found to be discriminatory by this Court, and this Court directed the respondents to grant the said age relaxation to the petitioner Asha as well. It was not urged before the Division Bench in *Asha* (supra), that the said age relaxation granted by the Hon'ble Lt. Governor vide notification dated 01.11.1980 did not apply to recruitments by the DoE in the GNCTD. The decision in *Sachin Gupta* (supra), which is an earlier decision of a Division Bench of this Court was not even brought to the notice of the Court while dealing with *Asha* (supra). Therefore, it cannot be said that there is any conflict of judicial opinion between *Sachin Gupta* (supra) and *Asha* (supra). In any event, the reliance placed by the petitioners on the notification dated 01.11.1980 appears to be misplaced and is of no avail.

14. We are also of the view that the finding returned by the Tribunal that the said notification dated 01.11.1980 cannot be pressed into service after the Rules of 2011 have been framed for the purpose of recruitment of PETs, is correct and does not call for interference. This Court has held in *Sachin Gupta* (supra) that it is the prerogative of the employer to decide the age limit and academic suitability of candidates whom they wish to employ, and so long as the same are not in conflict with the academic eligibility and age prescribed by the NCTE. Challenge to the said prescription cannot be sustained, merely on the ground that the eligibility conditions render some candidates ineligible.

15. There is nothing unreasonable in the respondents prescribing the maximum age limit for PETs as 30 years under the Rules of 2011. PETs constitute a distinct class of teachers when compared to teachers of other subjects. The scope of responsibilities and duties of PETs is materially different inasmuch, as, they have to discharge their functions and duties in the field, as opposed to other teachers who primarily render their services in a class room environment. Their duties involve much greater and rigorous physical activity. The benchmark of physical fitness expected of a PET would, therefore, be far greater than that of the other teachers. A PET who is not himself/herself physically fit, would not be in a position to instruct the students in physical education in the desired manner. If the respondents were to permit women PETs to join up to the age of 40 years (by granting 10 years' age relaxation), their tenure as effective PETs would be highly curtailed. For this reason, the prescription of the maximum age limit for PET as 30 years, as opposed to other teachers - such as, music teachers, drawing teachers, and domestic science teachers for whom the upper age limit is fixed at 32 years, cannot be said to be discriminatory as there is valid and reasonable classification, which has nexus to the object of the said classification. We agree with the Tribunal that it is not necessary for the respondents to have identical qualifications and age limit for all posts and teachers and different qualifications, age limit and physical fitness standards may be prescribed for different posts. Pertinently, on account of the nature of the job expected to be rendered by the PETs, reservation for the physically handicapped persons has also not been provided, which is provided in respect of other category of teachers.

16. The submission of the petitioner that the notification dated 01.11.1980 should be superimposed on the Rules of 2011 has no merit, also for the reason that the age relaxation - which could be granted in respect of candidates for appointment as PETs, has been set out in the Rules of 2011, or the DoPT guidelines/ instructions. If the intention of the rule making authority was to grant age relaxation to women candidates for posts of PETs, the same would have been specifically provided either in the Rules of 2011, or in the DoPT guidelines/instructions. In the Rules of 2011, the age relaxation is only in respect of government servants up to 5 years in accordance with instructions/orders issued by the Central Government. The DoPT guidelines/instructions do not provide for age relaxation to women candidates while it provides age relaxation to SC/ST, OBC and ex-servicemen category candidates.

17. The submission of learned counsel for the petitioners that there was no conscious decision taken to do away with the age relaxation granted vide notification dated 01.11.1980, after the making of the Rules of 2011, also has no merit. This is for the reason that the Rules of 2011 have been made by the Hon'ble Lt. Governor of NCT of Delhi himself in exercise of powers conferred by proviso to Article 309 of the Constitution of India. There is a presumption of validity attached to official acts, and it was for the petitioners to rebut the same by producing cogent material. The petitioners, apart from claiming that there was no conscious decision taken by the Hon'ble Lt. Governor, not to apply the notification dated 01.11.1980 in respect of recruitment of PETs under the Rules of 2011, has not produced any material in support of the said plea. On the other hand, the respondents,

in their counter affidavit before the Tribunal have specifically averred that while amending the recruitment rules for PET, vide Rules of 2011, the notification dated 01.11.1980 had been taken into account and that the Recruitment Rules for PET had been amended in consultation with the UPSC and that they were as per the DoPT norms.

18. The relaxation granted to women candidates by the Hon'ble Lt. Governor vide notification dated 01.11.1980 in exercise of powers under Rules 43 of the Delhi School Education Rules was granted when the pre-existing rules were in force. With the enforcement of the amended Rules of 2011 in respect of recruitment of PETs, in our view, it could not be said that the said relaxation continued when the amended Recruitment Rules, in no uncertain terms place an upper age limit of "not exceeding 30 years" and neither the Rules of 2011, nor the DoPT instructions/guidelines provide any age relaxation to women candidates.

19. In view of the aforesaid, we find no merit in the petition and dismiss the same leaving the parties to bear their respective costs.

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VIPIN SANGHI, J

REKHA PALLI, J

AUGUST 23, 2017

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