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

+ **W.P.(C) 8052/2017**

UNION TERRITORY OF DAMAN & DIU & ANR Petitioner
Through: Ms.Sunita Sharma, Advocate.

versus

ROOPALI RAVINDRA MATHUR & ANR Respondent
Through: Mr.S.K. Gupta, Adv. for R-1.
Mr.Naresh Kaushik & Mr.Omung
Gupta, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

ORDER
% 12.09.2017

The petitioner-Union Territory of Daman and Diu has preferred the present writ petition to assail the order dated 20.03.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.3471/2013 whereby the said original application preferred by the respondent-applicant has been allowed and the Tribunal has, while quashing the order dated 19.09.2013 directed the petitioner to consider the case of the respondent for age relaxation in terms of their circular dated 07.02.2013 and in the event, of the authorities being

satisfied about the age relaxation keeping in view the long service rendered by the respondent in the Union Territory of Daman and Diu, the same be communicated to the UPSC. The further direction which has been issued, is that in case age relaxation is granted to the respondent, UPSC shall call the respondent for interview within a period of two months from the date of communication for age relaxation and based upon the performance of the respondent, consequential recommendations shall be made by the UPSC to the competent authority which shall pass the final order thereafter within a time bound manner.

The facts in brief are that the respondent was engaged on contract basis as a Public Health Dentist on 28.09.2000 in Union Territory of Daman & Diu. She continued in the same capacity upto 08.05.2011 and was again re-engaged on 22.08.2011 whereafter, she continued upto 12.09.2012. She was again given re-engagement on 13.09.2012 and continued to work till the date of issuance of experience certificate dated 12.08.2013. The respondent-Union Public Service Commission (UPSC) issued an advertisement No.06/2013 in the Employment News dated 11-17.05.2013 inviting applications for the post of Public Health Dentist at Sl. No.21 of the advertisement notice. The said advertisement *inter alia* related to recruitment of '*Two Public Health Dentist in Directorate of Medical and Health Services Administration of Daman and Diu*' (emphasis supplied). The notes appended to the said advertisement *inter alia* provided in respect of the said post, that the same is in the PB-3,

Rs.15,600-39,100/- with grade pay of Rs.5,400/-. It also provided that the said post belongs to the General Central Service, Group 'A', Gazetted.

The upper age limit prescribed for the said post in the advertisement was 35 years. Since the respondent had crossed the said age and was 38 years of age at the relevant time, while making her application, she sought age relaxation. The UPSC issued a call letter dated 30.08.2013 calling upon the respondent, to attend the interview for the said post on 19.09.2013. When she appeared for the said interview, she was communicated the impugned communication dated 19.09.2013 which stated that the UPSC had, in the mean time, received a reference from the Union Territory of Daman and Diu rejecting her case for grant of age relaxation. It also informed the respondent that the commission has no policy to grant age relaxation, consequently, the respondent's candidature was cancelled. The respondent then approached the Tribunal by filing the aforesaid original application.

The petitioners herein sought to place reliance on the decision of the Supreme Court in ***Union Public Service Commission vs. Girish Jayanti Lal Vaghela & Others***, Appeal (C) No.933/2006 decided by the Supreme Court on 02.02.2006 wherein the Supreme Court opined that an employee working on contract basis could not be said to be a Government servant and, therefore, would not be eligible for relaxation of upper age limit while seeking regular appointment to be made for the post. The Tribunal has, however, rejected the said

reliance, on the basis of the circular dated 07.02.2013 issued by the petitioner administration of the Union Territory of Daman and Diu which *inter alia* provides as follows:-

“Time and again individual/departmental requests are made to the Hon'ble Administrator for relaxation of Recruitment Rules especially on maximum age bar on various grounds.

In the cases where age relaxation is requested in respect of daily rated and other contractual employees, who have been working as such for prolonged periods, it has also been noticed in many cases that although the employees were well within their age limit at the time of their initial engagement, appointment, however, over a period of time, they get over-aged when the regular vacancies become available, thus depriving them of their chance to apply for regular appointments/compete with others.

After careful consideration of such cases, the Hon'ble Administrator, Daman & Diu has been pleased to order that for posts filled up by the UT Administration of Daman & Diu, the following policy guidelines are hereby laid down for granting relaxation of age to those who have crossed the maximum age prescribed as per existing R.R.s.:-

1) In cases where recruitment process is held up due to litigation/administrative reasons after inviting applications for filling up the vacancy, fixation of the crucial date for age limit i.e. the crucial date for determining the age would be the same even if the examinations is shifted/postponed to some later date. Similarly, when examination is shifted/postponed to some later date after notifying the vacancy and fresh

applications are invited, in such cases the candidates (s), who have applied against first advertisement will also be eligible for relaxation of age under this clause provided they were eligible at the time of their first application.

2) In cases where the candidate has been working on daily wages/ad-hoc/contract basis in the UT Administration of Daman & Diu for some years and was not over aged for regular appointment when he/she was initially appointed on ad-hoc/ contract basis, in such cases relaxation of age is admissible to the extent of total period of service spent continuously without any break. If breaks are there, condition to the extent of total past service (excluding breaks) in any capacity (ad-hoc/contract) can be considered.

3) Age relaxation under para (2) above shall also be available to Daily Wages/Contract employees, appointed under Sarva Shiksha Abhiyan / Rashtriya Madhyamik Shiksha Abhiyan.

4) It may be noted that total period spent in each of the departments of the Administration shall be counted for relaxation irrespective of the department where they are applying for regular appointment provided the post is general in nature and it doesn 't require any specific technical qualification.

5) It is reiterated that all cases of age relaxation are subject to the primary condition that at the time of their initial engagement as Adhoc/Contract/Daily wages, these employees were not overage for the post they were initially engaged.

6) Only service shall be reckoned for relaxation under this policy (rendered upto the issue of this Circular).

7) The benefit of age relaxation shall not be available to ad-hoc/contract/daily wages employees engaged after the issue of this Circular, except to the extent of the service already rendered , if any.” (emphasis supplied)

The said circular has been issued with the approval of the Hon’ble Administrator of Daman and Diu. The Tribunal by applying the said circular held that since the respondent had served in the Union Territory of Daman and Diu between the years 2000 upto 2015 on contract basis with minor breaks, the service rendered by her during the said period was entitled to be considered for grant of age relaxation. In the facts and circumstances, the Tribunal allowed the original application as noticed hereinabove.

The submission of learned counsel for the petitioners is that though the post in question was in the Directorate of Medical and Health Services, Administration of Daman and Diu, the same was a General Central Service, Group ‘A’ gazetted post. The submission is that age relaxation granted by the circular dated 07.02.2013 was applicable in respect of posts which are filled by the Union Territory of Daman and Diu, and not by the UPSC. Learned counsel further submits that the respondent also applied against the same post in the year 2011, when she was not age barred, but she did not qualify. The further submission is that the two advertised posts have already filled and there is no vacancy against which the respondent can be appointed.

The respondent has appeared through counsel upon noticing the matter in the cause list. We have heard the submissions of learned counsels and have perused the record, including the impugned order and we are not inclined to interfere the same.

As noticed hereinabove, the post which had been advertised was a post in the Directorate of Medical and Health Services in the Administration of Daman and Diu and since Daman and Diu is a Union Territory, the recruitment appears to have entrusted to the UPSC. Again, for the same reason, the said post has been classified as a General Central Service Group 'A' gazetted post. However, it cannot be said that the said post is a Central Government post. There is nothing to show that the said post is transferable from the Union Territory of Daman and Diu to any other Union Territory or State. The age relaxation contemplated vide circular dated 07.02.2013, was, therefore, in our view, clearly applicable in the case of the respondent. Pertinently, it is the administration of the Union Territory of Daman and Diu which has filed the present petition and it is the said administration which is aggrieved by the impugned order. The Central Government has not assailed the impugned order by claiming that the said age relaxation has been directed to be granted in respect of Central Government post. Merely because the respondent may have appeared in the earlier recruitment process in the year 2011 - when she was not over age, and may not have succeeded then, there is no ground to deny her age relaxation, as per circular dated 07.02.2013, which, she is clearly entitled to. The respondent cannot

be made to suffer on account of the petitioner not filling up the post on a regular basis for a long period, during which period, she has become over age.

So far as the submission of learned counsel for the petitioner - that there is no existing vacancy against which the respondent can be appointed is concerned, we may note that when the original application was preferred in the year 2013, the appointments had still not been made and the Tribunal had directed that one post be kept vacant till the matter is decided. The submission of the petitioner is that the said interim order was not communicated by the date the appointments had been made. This submission is not borne out from the record. The list of dates filed by the petitioner itself shows that the petitioner was put to notice of the original application on 14.10.2013, whereas the appointment letters were issued on 09.12.2013.

In the aforesaid circumstances, we find no merit in the present petition and the same is dismissed. The petitioner shall comply with the directions passed by the Tribunal without any further delay.

VIPIN SANGHI, J

REKHA PALLI, J

SEPTEMBER 12, 2017
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