

COCN No.1138 of 2019
Date of Decision: 5.4.2019

Sunita Sharma

.....Petitioner

Versus

Rakesh Kumar Gupta

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Pankaj Sharma, Advocate, for the petitioner.

Mr. Manish Jain, Advocate and
Ms. Divya Sharma, Advocate, for UPSC.**NIRMALJIT KAUR, J. (ORAL)**

The present contempt petition has been filed for non-compliance of the order dated 20.2.2015 passed by the Central Administrative Tribunal, Chandigarh (for short, 'the Tribunal') as well as order dated 6.2.2017 passed by the Division Bench of this Court, vide which, the writ petition filed by the UPSC against the order of Tribunal was dismissed.

Learned counsel for the petitioner contends that the respondents are not called the petitioner to participate in the interview in spite of the direction that all the contractual employees like the petitioner, are entitled to participate in the regular process of selection. The petitioner is being ignored on the ground that she is over age, as per the advertisement.

Learned counsel for the State, on the other hand, has filed counter reply by way of affidavit of Rakesh Kumar Gupta, Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi dated 3.4.2019. As per the said counter reply, the cut of date of age is of 35 years on 27.6.2013 and a candidate like the petitioner is entitled to age

relaxation only upto 5 years. Hence, a candidate should not be more than 40 years of age as on 27.6.2013. Since, the petitioner was more than 40 years of age on the said date, she cannot be considered.

The said argument cannot be sustained in view of the order and judgment dated 6.2.2017 passed by the Division Bench of this Court in CWP No.12069 of 2015, which has been passed in the case of the petitioner. The order of the Tribunal was challenged by the UPSC specifically on the ground of age relaxation. The writ petition was dismissed by holding that 'the contractual appointees were thus entitled for the benefit of age relaxation being employees of MCD'. The distinction was qua the regular and permanent employees only and that too if there was stipulation in the advertisement. Even the appeal against the said judgment was dismissed by Hon'ble the Apex Court vide order and judgment dated 28.8.2017. The argument that the said age relaxation can be only up till 5 years is neither made out from the judgments nor such an argument to limit the age relaxation upto 5 years was raised either before the Tribunal or the Division Bench nor anything to the said extent has been pointed out from these judgments before this Court. Neither any clarification has been sought qua the same.

Accordingly, in case, the petitioner is not allowed to participate in the said interview, the same shall be held as contempt of the Court order.

The contempt petition is accordingly disposed of at this stage, with liberty to the petitioner to file fresh one, in the case, the respondent does not allow the petitioner to participate in the interview.

Copy of this order be given dasti to learned counsel for the parties under signature of the Bench Secretary.

(NIRMALJIT KAUR)
JUDGE

5.4.2019
sharmila

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No