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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment : 11th October, 2019

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W.P.(C) 10645/2019

MS. SAVITA KUMARI

..... Petitioner

Through

Mr. Vishwendra Verma, Advocate.

versus

LADY HARDING MEDICAL COLLEGE & SMT. S. K. HOSPITAL
AND ORS.

..... Respondents

Through

Ms. Aakanksha Kaul, Mr. P. Singh &
Mr. Manek Singh, Advocates for R-1
& R-2.

Ms. Ruchita Gupta, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

1. The petitioner is aggrieved by a decision dated 10.04.2019 rendered in O.A. No.4320/2013 by the Central Administrative Tribunal ('Tribunal') and the order dated 16.07.2019 passed in a review application being R.A. No.122/2019 filed by the petitioner.
2. With the consent of counsels for the parties, the writ petition is set down for final hearing and disposal.
3. Some necessary facts required to be noticed for disposal of this writ petition are that pursuant to an advertisement, which was released by respondent No.1, inviting applications for the post of Lab Technician in the year 2007, the petitioner made an application, which was rejected on the ground of petitioner being over-age.

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4. Mr. Vishwendra Verma, learned counsel appearing for the petitioner submits that as per the advertisement, the upper age limit was fixed at 28 years. However, being an OBC candidate, the petitioner was entitled to further relaxation of 3 years, which is not in dispute. Accordingly, the petitioner had contended before the Tribunal that she was within the age limit as prescribed by the advertisement. Reliance is placed by learned counsel appearing for the petitioner on a decision rendered in *Shankar K. Mandal and others Vs. State of Bihar and others*, AIR 2003 SC 4043, wherein the Supreme Court of India has observed that in case no cut-off date is fixed then the cut-off date would be the last date of submitting the application form.
 5. Mr. Verma has also raised an additional plea before us that the petitioner would be entitled to another 5 years of age-relaxation being a government servant.
 6. Ms. Aakanksha Kaul, learned counsel appearing for respondents No.1 and 2 submits that there is no infirmity, illegality or impropriety in the order passed by the Tribunal, which would require interference in a proceeding under Article 226 of the Constitution of India. Counsel contends that the prescribed age limit for an "Unreserved" candidate is 28 years and the petitioner was given benefit of age relaxation of 3 years, being an OBC candidate. Despite the age relaxation, it was found that the petitioner was over age by 11 months; and accordingly, the O.A was dismissed. Ms. Kaul further submits that no other ground was urged before the Tribunal. Ms. Kaul also submits that as far as the plea raised with respect to the petitioner being a government servant is concerned, neither any ground was urged in the O.A. nor any

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submission was made at the time of hearing of the O.A. Ms. Kaul further submits that even otherwise, this ground is not available to the petitioner as the petitioner is only working as a contractual employee; and thus cannot seek benefit of being a government servant.

7. We have heard learned counsels for the parties and considered their rival submissions.
8. In the afore-going paragraph, we have noticed some undisputed facts. The date of birth of the petitioner is 13.02.1976. It is not in dispute that being an OBC candidate, the petitioner was entitled to age relaxation of three years. Despite the benefit of age relaxation, the petitioner is admittedly over-age by 11 months. In the case of ***Shankar K. Mandal*** (*supra*), the Supreme Court of India held as under:

“(1) The cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules.

(2) If there is no cut-off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for applications.

(3) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority.”

9. Applying the law laid down to the facts of the present case, no benefit, other than the 3 years' age relaxation for OBC category, would accrue in favour of the petitioner.
10. Moreover, admittedly, as far as the second ground urged before us, namely that the petitioner is a government servant is concerned, no such

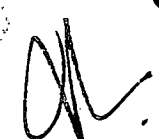
ground was raised by the petitioner in the O.A; and accordingly, such plea of the petitioner cannot be considered. However, Mr. Verma submits that the petitioner had raised this ground in the review petition. This submission of Mr. Verma cannot be entertained as once the O.A. was decided, the Tribunal correctly rejected the review petition as the ground was not raised in the O.A. itself. However, that apart, being a contractual employee, the petitioner cannot take benefit of being a government servant.

11. We accordingly find no merit in the present writ petition. Resultantly, the writ petition is dismissed.

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12. In view of the order passed in the writ petition, the application also stands dismissed.


G.S. SISTANI, J


ANUP JAIRAM BHAMBHANI, J

OCTOBER 11, 2019

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