

\$~41 to 45

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

+ **W.P.(C) 5640/2018 & CM APPL.22033/2018 (stay)**

GOVT OF NCT OF DELHI & ORS Petitioners

Through Ms. Avnish Ahlawat, Standing
Counsel with Mr. N. K. Singh,
Advocate

versus

RAUT SUNITA NIVRATIRAO Respondent

Through Mr. M. K. Bhardwaj, Ms. Prabhjot
Kaur and Mr. Akash Dahiya,
Advocates

+ **W.P.(C) 5642/2018 & CM APPL. 22036/2018 (stay)**

GOVT OF NCT OF DELHI & ORS Petitioners

Through Ms. Avnish Ahlawat, Standing
Counsel with Mr. N. K. Singh,
Advocate

versus

BHARAT Respondent

Through Mr. Naresh Kaushik, Mr. Keekshay
Juneja and Ms. Vibhuti Tyagi,
Advocates

+ **W.P.(C) 6161/2018 & CM APPL. 23830/2018 (stay)**

GOVT. OF NCT OF DELHI AND ORS. Petitioners

Through Ms. Avnish Ahlawat, Standing
Counsel with Mr. N. K. Singh,
Advocate

versus

NARESH KUMAR TANWAR Respondent
Through Mr. M. K. Bhardwaj, Ms. Prabhjot
Kaur and Mr. Akash Dahiya,
Advocates

+ **W.P.(C) 6840/2018 & CM APPL. 25993/2018 (stay)**

GOVT. OF NCT OF DELHI AND ORS. Petitioners
Through Ms. Avnish Ahlawat, Standing
Counsel with Mr. N. K. Singh,
Advocate

versus

SATYANARYAN BAIRWA Respondent
Through Mr. P. C. Misra, Advocate

+ **W.P.(C) 10026/2018 & CM APPLs. 39071/2018 & 24501/2019**

GOVT OF NCT OF DELHI & ORS. Petitioners
Through Ms. Avnish Ahlawat, Standing
Counsel with Mr. N. K. Singh,
Advocate

versus

DEEPIKA Respondent
Through Mr. M. K. Bhardwaj, Ms. Prabhjot
Kaur and Mr. Akash Dahiya,
Advocates

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
05.12.2019

%

Dr. S. Muralidhar, J.:

1. These writ petitions by the Government of NCT of Delhi (GNCTD), the Delhi Subordinate Services Selection Board (DSSSB) (Petitioner No.2) and the Director of Education ('DoE') (Petitioner No.3) raise common questions and are accordingly being disposed of by this common order.

2. W.P.(C) No.5640/2018 is directed against an order dated 8th August, 2016 passed by the Central Administrative Tribunal, Principal Bench ('CAT') allowing OA No.2643/2016 filed by the Respondent, directing the Petitioners to examine the case of the Respondent in light of the judgment of the CAT dated 28th March, 2014 in OA No.1096/2013 (*Meenakshi Chauhan v. GNCTD*).

3. It must be mentioned here that pursuant thereto, the Petitioners examined the case of the Respondent in light of the order of the CAT in OA No.1096/2013 and rejected her candidature for the post of Trained Graduate Teacher ('TGT') (English), pursuant to the Advertisement No.01/2010 issued by the DoE, on the ground that she was an "outsider Scheduled Castes (SC) candidate" and that therefore, the benefit of reservation could not be extended to her.

4. It should also be noted that the Respondent thereafter filed Contempt Petition No.767/2017 in the CAT alleging non-compliance with the order dated 8th August, 2016. By the order dated 23rd March, 2018, the Petitioner was given four weeks' time for compliance.

5. Meanwhile, on 25th May, 2018 while issuing notice in this petition, this Court passed an interim order directing that no coercive steps would be taken against the Petitioners for implementation of the judgment dated 8th August, 2016.

6. W.P.(C) No.5642/2018 by the same Petitioners is directed against the impugned order dated 20th September, 2016 passed by the CAT allowing OA No.3353/2014 filed by the Respondent granting the same relief as was granted in OA No.1096/2013. Here again, by a speaking order passed on 2nd February, 2017 the DSSSB rejected the claim of the Respondent leading to the filing by the Respondent of Contempt Petition No.172/2017, in which while issuing notice, the matter was adjourned by the CAT to 25th May, 2018. It must be noticed here that in the present case the Respondent had applied for the post of Primary Teacher pursuant to the Advertisement No.02/08 under post Code No.16/08. In this petition too, on 25th May, 2018 while directing notice to issue, an interim order was passed by this Court directing that no coercive steps will be taken against the Petitioners for implementing the judgment dated 20th September, 2016.

7. W.P.(C) No. 6161/2018 by the Petitioners is directed against the order dated 8th August, 2016 passed by the CAT in OA No.2644/2016 filed by the Respondent granting the same relief as in OA No.10968/2013. Here, the Respondent was seeking appointment as TGT (English) pursuant to the Advertisement No.01/2010.

8. Pursuant to the said direction, the DSSSB by speaking order dated 2nd

February, 2017 rejected the Respondent's candidature leading to the filing of the Contempt Petition No.620/2016 in which a detailed order was passed on 9th April, 2018 rejecting the plea of the Petitioners and granting further six weeks' time to file a compliance report. This order too has been challenged by the Petitioners. By an order dated 31st May, 2018 this Court while directing notice to issue in the petition directed that the Respondent would not press the Contempt Petition pending before the CAT.

9. W.P.(C) No.6840/2018 was directed against an order dated 20th February, 2018 passed by the CAT, Principal Bench, Delhi allowing OA No.791/2018 filed by the Respondent who had applied for the post of TGT (English) pursuant to the Advertisement No.01/2010 and granting her the same relief as granted in OA No.1486/2011 (*Tejwati Mahawar v. GNCTD*). The Respondent was asked to make a representation to the Petitioners which was to be decided by them within four weeks. Pursuant thereto, the Respondent made a representation which was rejected by the Petitioners on 2nd May, 2018. The Respondent filed Contempt Petition No.195/2018 in which an order was passed on 2nd April, 2018. On 4th July, 2018 while directing notice to issue this Court directed that no coercive steps would be taken against the Petitioners till the next date.

10. Finally, W.P.(C) No.10026/2018 by the Petitioners is directed against the order dated 23rd July, 2016 passed by the CAT, Principal Bench in OA No.3949/2014 directing the Petitioners to examine the case of the Respondent therein in light of the order passed in OA No.1096/2013. The Respondent applied for the post of TGT (Natural Science) pursuant to

Advertisement No.01/2010 and post code No.08/2010.

11. By an order dated 17th February, 2017 the DSSSB rejected the Respondent's plea, leading to the filing of Contempt Petition No.19/2017 by the Respondent in the CAT in which an order was passed on 23rd April, 2018, by the CAT requiring the Petitioners to again examine the case of the Respondent in light of the earlier orders of the CAT. When this petition was first listed on 24th September, 2018, this Court issued notice in the present petition. Thereafter, no interim order appears to have been passed till date.

12. At the outset, it requires to be noticed that while the Respondents in W.P.(C) No.5640/2018, 6161/2018, 6840/2018 and 10026/2018 are all Scheduled Caste (SC) candidates, the Respondent in W.P.(C) No. 5642/2018 is a Scheduled Tribe (ST) candidate.

13. The common issue in all these petitions stems from the fact that the Respondents, one of whom is a ST, and the remaining SC candidates, sought the benefit of reservation in the post for which they applied. However, their candidature was rejected on the ground that for the period between 4th August, 2009 and 12th September, 2012, the benefit of reservation in respect of posts/services under the GNCTD and Local/Autonomous Bodies under the Government was not being granted to SC/ST candidates hailing from States/Union Territories ('UTs') other than Delhi. This policy was adopted in view of the decision of the Supreme Court ***Subhash Chandra v. DSSSB*** and ***Sarv Rural and Urban Welfare Society v. Union of India (2009) 15 SCC 458***, which held that SCs/STs moving from one State to another State

or UT shall not be entitled to carry their reservation to the State or Union Territory to which they have moved.

14. A Full Bench of this Court subsequently by its decision dated 12th September, 2012 in W.P.(C) No. 5390/2010 **Deepak Kumar v. District and Sessions Judge 192 (2012) DLT 602 (FB)** noted that the judgment in **Subhash Chandra (supra)** was contrary to the earlier judgment of a larger Bench in **Pushpa v. V. Sivachanmugavelu (2005) 3 SCC 1** which could not be held to have been overruled.

15. Meanwhile on 11th October, 2011, following **Subhash Chandra (supra)** the CAT had dismissed OA No.530/2010 filed by Ms. Babita Kumari and Others, who filed W.P.(C) No.7977/2012 in this Court. By its judgment dated 14th March, 2013 this Court allowed W.P.(C) No.7977/2012 (**Ms. Babita Kumari v. DSSSB**) following the decision of the Full Bench in **Deepak Kumar (supra)**. The DSSSB implemented the judgment of this Court in **Babita Kumari** and appointed her and others in the posts to which they had applied.

16. Among the other petitions filed as a result of the judgment of this Court in **Deepak Kumar (supra)**, was OA No.2551/2015 filed by Neeta Gautam which is allowed by the CAT, Principal Bench by its judgment dated 17th July, 2015 following the decision of this Court in **Deepak Kumar (supra)**. Pursuant thereto, the DSSSB passed an order appointing Neeta Gautam. Likewise, the CAT on 28th March, 2014 allowed OA No.1096/2013 filed by Ms. Meenakshi Chauhan and in that case too, the order was implemented by

the DSSSB. Nirmal Sagar filed OA No.4662/2011 which was allowed on 29th November, 2012. Tejawati Mahawar filed OA No.1486/2011 which came to be allowed on 6th December, 2012. One other case where the orders were implemented was that of Ms. Mausam where by a judgment dated 4th November, 2016 in OA No.4027/2013 was allowed.

17. In all these cases, the respective Respondents had applied pursuant to the very same Advertisements namely 01/2010 or 02/2008 and for posts of teachers i.e. TGT (English) i.e. for the post code of 02/10, 01/10 or Primary Teacher (MCD) with post code of 16/08. In one case it was TGT (Natural Science) under post code of 08/2010. The facts are identical, viz., that each of the candidates was claiming the benefit of reservation which initially was denied by applying **Subhash Chandra** (*supra*). With the law having been clarified subsequently in **Deepak Kumar**, the benefit was given to each of them.

18. In a decision dated 30th April, 2019 in W.P.(C) No.6661/2017 (**Rajni Meena v. DSSSB**) this Court dealt with yet another challenge to an order dated 26th April, 2017 passed by the Principal Bench, CAT in Contempt Petition No.633/2016 arising out of OA No.3826/2013. There the Petitioners had challenged the order of the CAT dismissing the Petitioners' Contempt Petition against the non-compliance by the Respondents of the directions issued by the CAT.

19. In other words, there are several cases where the orders passed by the CAT, pursuant to the orders of this Court in **Deepak Kumar** (*supra*) and

Babita Kumari (*supra*) have been implemented. However, selectively, including in the present cases, the Petitioners have chosen to contest the orders of the CAT and resisted implementation. The defence of the Petitioners is that the implementation of the orders of the CAT would unsettle the appointments already made and with the selection process having already been closed, it was not possible to open it in order to accommodate the successful Applicants.

20. A Full Bench of this Court in **Deepak Kumar** (*supra*) expressly negated the plea that the law laid down by the Court following **Pushpa** (*supra*) would apply only prospectively and not retrospectively. Yet the same plea, has been taken even in these petitions.

21. The Petitioners indeed cannot be allowed to selectively implement the law comprehensively declared by this Court by a Full Bench in **Deepak Kumar**. Incidentally, it may be noted that the law has been further settled by the Supreme Court subsequently in **Bir Singh v. Delhi Jal Board (2018) 10 SCC 312**. The CAT too has in **Mausam v. DSSSB** in its order dated 12th February, 2018 in CP No.172/2017 arising out of OA No.4027/2013, followed the law declared in **Deepak Kumar** and negated the pleas of the Petitioners which has been implicitly approved by this Court in **Rajni Meena v. DSSSB** (*supra*).

22. It is contended by Ms. Ahlawat, learned counsel for the Petitioners, that each of the Respondents had approached the CAT late i.e. several years after the selection process was complete and that therefore they should be denied

relief on the ground of laches.

23. This Court is unable to accept this plea. In each of the cases discussed hereinbefore applications had been made in 2013 or 2014 and even 2016. The Respondents noticed that relief was being granted to many of their counterparts, who applied pursuant to the same advertisement, even in 2014 or 2015. They therefore naturally approached the CAT for similar relief. The selective granting of the relief to some of the candidates, while denying it to others cannot be accepted in matters involving open competitive selection.

24. The Court is unable to find any error having been committed by the CAT in any of the impugned orders.

25. The petitions are accordingly dismissed. The interim order stands vacated. The pending applications are also dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 05, 2019

mw