$~6

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

\+ **W.P.(C) 3521/2017 and CM APPL. 15383/2017 (stay)**

MEENAKSHI ..... Petitioner
Through: Mr. Sudhanshu Tomar, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS ..... Respondents
Through: Mr. Naushad Ahmed Khan, ASC for GNCTD.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **18.12.2019**

1. The present petition challenges an order dated 2nd November, 2016, of the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT'), by which the Petitioner's OA No. 1529/2016 was dismissed for being barred by limitation.

2. The short question that arose for determination before the CAT was whether the Petitioner was entitled to age relaxation of 10 years for the post of Librarian for which an advertisement had been issued by the Delhi State Subordinate Selection Board ('DSSSB') in 2013. The Petitioner sought to rely on the decision of this Court dated 22nd August, 2014 in W.P.(C) No. 1035/2017 ***(Asha v. Govt. of NCT of Delhi).,*** where relief similar to the one prayed for by the Petitioner herein was granted by the Court.

3. According to the CAT, the limitation period for the Petitioner to claim relief commenced from 10th September 2013, when the rejection notice was published. The CAT was of the view that the Petitioner had to explain the delay in filing the petition from 10th September, 2014 till 28th April, 2016, and that she had not shown any satisfactory reason, except pointing out to the judgment of this Court in ***Asha v. Govt. of NCT of Delhi*** *(supra)*. Accordingly, MA No. 1516/2016 filed by the Petitioner seeking condonation of delay was rejected and resultantly, O.A. No. 1529/2016 itself stood dismissed.

4. When the petition was first listed for hearing on 25th April, 2017, while directing notice to issue to the Respondents, this Court noted that Review Petition No. 17/2016 filed by the Respondents against the judgment in ***Asha v. Govt. of NCT of Delhi*** was listed for hearing on 28th April, 2017. Accordingly, the Court then adjourned the petition to await the decision in the review petition.

5. On 6th November, 2019, the Court was informed that the Review Petition filed by the GNCTD stood dismissed. Learned counsel for the Respondent at that stage sought time for considering whether the benefit of the decision in ***Asha v. Govt. of NCT of Delhi*** could be extended to the Petitioner herein.

6. Learned counsel for the Respondent today again pointed out that there was no satisfactory explanation offered by the Petitioner for the delay in approaching the CAT. He, however, submitted that if the Court were not to agree with this submission then the case of the Petitioner should be on the

same footing as that of the Petitioner in ***Asha v. Govt. of NCT of Delhi*** and her case too would be covered by the aforesaid decision of this Court.

7. On the question of delay, the Court finds that although the rejection notice which included the name of the Petitioner was published on 10th September, 2013, the Petitioner may have been hesitant to approach the Court immediately for relief. When Ms. Asha, who was also a candidate in the same exam succeeded in her petition before this Court, and an order was passed to consider her candidature by giving her benefit of age relaxation, the present Petitioner may have been encouraged to seek legal advice to approach the Court for similar relief. In that context, the gap between the date of judgment of this Court in ***Asha v. Govt. of NCT of Delhi*** *(supra)* i.e. 22nd August, 2014 and the date of filing of O.A. No. 1529/2016 i.e. 28th April, 2016, cannot be said to be so inordinate, as to not been condoned.

8. Consequently, the Court disagrees with the conclusion of the CAT that there was no valid explanation for the delay on the part of the Petitioner in approaching it for relief. Accordingly, the impugned order of the CAT is set aside.

9. The Court is not inclined to remand the matter to the CAT for a decision on merits, since the case of the Petitioner is obviously covered on all fours by the decision of this Court dated 22nd August, 2014 in ***Asha v. Govt. of NCT of Delhi*** *(supra).*The relevant paras of the said judgment read as under:

> "13. In view of the GNCTD's silence as to the supersession or inapplicability of the 01.11.1980 circular - clearly its position

> that age relaxation for women candidates cannot be granted, is violative of Article 14 of the Constitution; it amounts to not giving effect to the discretion vested in it for no reason except that it has failed to carry out the necessary consequential amendment to the recruitment rules giving effect to the equation which occurred. The GNCTD also does not dispute that for other categories of teaching staff or teachers in its schools, the 10 year relaxation, based upon 01.11.1980 circular or rules-which assimilated its mandate, have, been given effect to.
>
> 14. The impugned order of the Tribunal also has noticed a judgment of this Court in Smt. Promila Dixit v. GNCTD in W.P.(C) 1234/2010 decided on 26.11.2010, Were an identical contention with respect to the equation of TGT with librarian for the purposes of recruitment and age relaxation was upheld. This Court is of the opinion that this being the position even before the issuance of 21.01.2011 circular, the GNCTD's stand in this case appears to be obstinate to put it mildly. Furthermore, the CAT, in our opinion, fell into error in ignoring a direct judgment on the issue even after noticing its effect and purport.
>
> 15. For the foregoing reasons, the petition has to succeed. The impugned order of the CAT is, accordingly, set aside. The respondents are hereby directed to accent the petitioner's application and allow her to appear in the competitive examination scheduled on 31.08.2014."

10. In that view of the matter, the Respondents are now directed to appoint the Petitioner as a Librarian by issuing appropriate orders in that regard within a period of 8 weeks from today. For the purposes of notional fixation of seniority, pay and other benefits the date on which the last of the Librarians was appointed pursuant to the same advertisement would be reckoned. The Petitioner would not however be entitled to any arrears of

pay and allowances for the period before she actually joined duty.

11. The petition is allowed in the aforesaid terms. The pending application is disposed of. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 18, 2019
AK