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

% *Date of Order : 5th February, 2020*

+ W.P.(C) 1343/2020, CM APPLs. 4644/2020 & 4646/2020
SUSHMA GUPTA Petitioner

versus

CHIEF SECRETARY GOVT. OF NCT OF DELHI AND ORS.
..... Respondents

+ W.P.(C) 1344/2020, CM APPLs. 4647/2020 & 4649/2020
MADHUBALA Petitioner

versus

CHIEF SECRETARY GOVT. OF NCT OF DELHI AND ORS.
..... Respondents

+ W.P.(C) 1366/2020, CM APPLs. 4754/2020 & 4756/2020
NIRMALA RANI Petitioner

versus

CHIEF SECRETARY GOVT. OF NCT OF DELHI AND ORS.
..... Respondents

Present : Mr. Tarun Kumar, Advocate for petitioners in all items.
Mrs. Avnish Ahlawat, Standing Counsel for GNCTD
(Services) with Mr. N.K. Singh, Advocate in all items.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

CM APPL. 4645/2020 (exemption) in W.P.(C) 1343/2020

CM APPL. 4648/2020 (exemption) in W.P.(C) 1344/2020

CM APPL. 4755/2020 (exemption) in W.P.(C) 1366/2020

1. Exemptions are allowed subject to all just exceptions.
2. Applications stand disposed of.

W.P.(C) 1343/2020 & CM APPLs. 4644/2020 & 4646/2020

W.P.(C) 1344/2020 & CM APPLs. 4647/2020 & 4649/2020

W.P.(C) 1366/2020 & CM APPLs. 4754/2020 & 4756/2020

3. The present petitions are directed against order dated 21.10.2019 passed by Central Administrative Tribunal ('Tribunal').
4. Notice to show cause as to why the petitions be not admitted. Mrs. Avnish Ahlawat, learned Standing Counsel accepts notice on behalf of the respondents.
5. Since a common question arises for consideration in all these three writ petitions, we are deciding them by a common order.
6. For the sake of convenience the facts in W.P.(C) 1343/2020 are being noticed for disposal of all the writ petitions.
7. Pursuant to an advertisement bearing No.04/2017 dated 20.12.2017 in respect of the post of Assistant Teacher (Nursery) with Post Code 88/17 in W.P.(C) 1343/2020, Post Code 90/17 in W.P.(C) 1344/2020 and Post Code 90/17 in W.P.(C) 1366/2020, the petitioners approached the Tribunal seeking age relaxation. In the batch of matters, vide orders dated 22nd/23rd October 2010, directions were issued to the respondents to allow the candidates to appear in the examination; and subsequently a final order was passed directing the respondents to declare the results and allow the candidates who were not selected to make representations. All three petitioners herein have cleared the examination but their candidature has been rejected on account of being over-age.
8. Counsel for petitioners submits that (i) petitioner-Sushma Gupta was over-age by only 5 months and few days, (ii) petitioner/Nirmala Rani was over-age by 6 months and few days, despite age relaxation of 10 years being SC candidate and also guest teachers; and (iii) petitioner-

Madhubala was over-age by four years and few months despite giving benefit of 8 years being OBC candidate and a guest-teacher.

9. Learned counsel for petitioners submits that at the time of being appointed as guest-teachers, the petitioners were within the age limit and thus should not be penalized and ought to be given age relaxation for the entire time that they served as guest-teachers. Counsel has relied upon a Notification dated 01.11.1980 issued by Lt. Governor of Delhi wherein, under Rule 43 of the Delhi School Education Rules 1973, age relaxation of upto 10 years has been provided to women candidates. Counsel further submits that judgments relied upon by the Tribunal would not apply to facts of the present case.
10. Mrs. Ahlawat submits that there is no infirmity in the order of the Tribunal. She submits that all three petitioners have already been given the maximum permissible age relaxation. Petitioner-Sushma Gupta has been given age relaxation of 5 years for being a guest-teacher. Similarly, petitioner-Madhubala has been given age relaxation of 8 years; 5 years for being guest-teacher and 3 years for being an OBC candidate; and Petitioner-Nirmala Rani has been given age relaxation of 10 years, 5 years for being guest-teacher and 5 years for being an SC candidate. She submits that further age relaxation is not possible. She submits that despite the relaxation given candidate Sushma Gupta is over-age by 5 months and few days; Nirmala Rani is over-age by 6 months and few days and Madhubala is over-age by 4 years and few months.
11. Mrs. Ahlawat submits that the question with regard to applicability of Notification dated 01.11.1980 sought to be relied upon by the

petitioners has been dealt with by a Division Bench of this court in ***Raj Bala & Another Vs. GNCTD & others*** W.P. (C) 7240/2017 decided on 23.08.2017. She relies on paras 6, 17 & 18 of this judgment, which we reproduce below :

6. The submission of the petitioners was that there was no conscious decision taken by the Lt. Governor of Delhi to discontinue the application of the notification dated 01.11.1980 after the making of Rules of 2011. The further submission was that the general age relaxation granted by the statutory notification dated 01.11.1980 would apply with equal force, even in respect of the Rules of 2011.

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17. The submission of learned counsel for the petitioners that there was no conscious decision taken to do away with the age relaxation granted vide notification dated 01.11.1980, after the making of the Rules of 2011, also has no merit. This is for the reason that the Rules of 2011 have been made by the Hon'ble Lt. Governor of NCT of Delhi himself in exercise of powers conferred by proviso to Article 309 of the Constitution of India. There is a presumption of validity attached to official acts, and it was for the petitioners to rebut the same by producing cogent material. The petitioners, apart from claiming that there was no conscious decision taken by the Hon'ble Lt. Governor, not to apply the notification dated 01.11.1980 in respect of recruitment of PETs under the Rules of 2011, has not produced any material in support of the said plea. On the other hand, the respondents, in their counter affidavit before the Tribunal have specifically averred that while amending the recruitment rules for PET, vide Rules of 2011, the notification dated 01.11.1980 had been taken into account and that the Recruitment Rules for PET had been amended in consultation with the UPSC and that they were as per the DoPT norms.

18. The relaxation granted to women candidates by the Hon'ble Lt. Governor vide notification dated 01.11.1980 in

exercise of powers under Rules 43 of the Delhi School Education Rules was granted when the preexisting rules were in force. With the enforcement of the amended Rules of 2011 in respect of recruitment of PETs, in our view, it could not be said that the said relaxation continued when the amended Recruitment Rules, in no uncertain terms place an upper age limit of “not exceeding 30 years” and neither the Rules of 2011, nor the DoPT instructions/guidelines provide any age relaxation to women candidates.”

12. Mrs. Ahlawat further submits that a similar issue was also raised and dealt with in a batch of 90 writ petitions connected with **Sachin Gupta & Others Vs. DSSSB** reported as 152 (2008) DLT 378 (DB). Counsel contends that once Recruitment Rules of 2011 are in place, there was no reason to rely upon Notification dated 01.11.1980.
13. We have heard learned counsel for the parties and have considered their rival submissions.
14. It is not in dispute that all three petitioners have been working as guest-teachers for approximately 5-8 years. It is also not in dispute that all three petitioners were given age relaxation in compliance with the Recruitment Rules of 2011, in the following manner :

S.No.	Petitioners	Age relaxation
1	Sushma Gupta in W.P. (C) 1343/2020	5 years, being guest-teacher
2	Madhubala in W.P. (C) 1344/2020	8 years (5 years, being guest-teacher and 3 years, being OBC candidate)
3	Nirmala Rani in W.P. (C) 1366/2020	10 years (5 years, being guest-teacher and 5 years, being SC candidate)

15. In view of the law laid down in the case of **Raj Bala** (*supra*) and also the fact that despite being given a permissible age relaxation all three

petitioners are still over-age, no relief could have been granted to the petitioners. We find no infirmity in the order of Tribunal.

16. Counsel for petitioner has relied upon order/direction dated 02.07.2019 in the case of *Syed Mehedi v. Govt. of NCT of Delhi & others* (W.P. (C) No.1200/2016) to show that in the said cases male candidates have been given age relaxation upto 10 years. Mrs. Ahlawat disputes that such age relaxation has been given. Additionally, learned counsel for the petitioners submits that age relaxation should be given as was given in the case of *DSSSB & anr. Vs. Preeti Rathi & ors.* (W.P. (C)1641/2011) decided on 15.11.2011. In case any appointment has been made granting age relaxation as counsel for the petitioners is pointing-out, the same treatment will be met-out to the petitioners as well.
17. Mrs. Ahlawat submits that in the said judgments the court has dealt specifically with a special class of teachers/special educators.
18. In view of above, we find no merit in the writ petitions; and all the writ petitions and pending applications are accordingly dismissed.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 05, 2020/ck