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

+ **W.P. (C) 5083/2020**

GOVT. OF NCT OF DELHI & ORS.

..... Petitioners

Through: Mrs. Avnish Ahlawat, Standing
Counsel, GNCTD (Services) with
Mr. Nitesh Kumar Singh, Advocate.

versus

SIBI THOMAS

..... Respondent

Through: Mr. J.L. Joel, Advocate.

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Date of Decision: 07th August, 2020

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J: (Oral)

CM Appl. 18332/2020

Allowed, subject to all just exceptions.

W.P.(C) 5083/2020 & CM Appl. 18331/2020

1. The petition has been listed before this Bench by the Registry in view of the urgency expressed therein. The same has been heard by way of video conferencing.
2. Present writ petition has been filed challenging order dated 31st January, 2020 passed by Central Administrative Tribunal in OA No. 3757/2017 whereby the Tribunal has allowed the respondent's OA and

directed the petitioner to consider respondent's application for appointment against the vacancy arising due to non-acceptance of the post of Speech Therapist by Ms. Deepti M. or against future vacancies. The relevant portion of the impugned order is reproduced hereinbelow:-

"4. Counsel for the respondents submits that the dossier of one selected candidate who was sent offer of appointment letter on 07.10.2016, returned back by the user department on 04.01.2017 for the reason of her non acceptance and it was received in DSSSB office on 25.01.2017, i.e., beyond one year from the date of declaration of result notice, which is referred to as Annexure A-5. The relevant portion of the submissions are extracted below:

"4.7 That the contents of para 4.6 & 4.7 are denied. As per official records, the results for the Speech Therapist (post code 03/14) was declared by DSSSB in January 2016 (Annexure -1) and same was forwarded to Dept. of H.FW, GNCTD, with the letter dated 09.09.2016 (Annexure-2), after a time lapse of almost 8 months after result notification. Accordingly, nomination of candidate recommended for Appointment to the post of Speech Therapist with the approval of Competent Authority was issued from Dept. of H&FW in the name of Ms. Deepthi M. on 07.10.2016 (Annexure-3), against which as appointment letter was issued to the candidate by LNH in the month of Nov. 2016. She sent her non acceptance on 02.12.2016 (Annexure-4) and her Dossier was returned by the LNH on 04.01.2017 (Annexure-5) to Department of H&FW and further it was returned to DSSSB on 25.01.2017 (Annexure-6). Since, Department of H&FW, GNCTD, has not delayed the matter at any stage, hence denied."

5. Counsel for the respondents referred to para 11 of the advertisement notice which is extracted below:

11. The DSSSB shall draw a reserve panel/waiting list upto the extent of 10% of the posts notified, in addition to the number of candidates selected as per the notified vacancies. The reserve panel/waiting list shall be valid for a period of one year from

the date of declaration of result and the vacancies arising due to non-acceptance of the offer of appointment, not joining the post after acceptance of appointment, the candidate not found eligible for appointment or due to resignation of selected candidates, within one year of joining the post, shall be filled up from this reserve panel/waiting list."

(Emphasis supplied)

6. From the perusal of para 11 extracted above, it is clear that that if the vacancies were to arise on account of non joining of the post within one year, the said vacancies shall be filled up from the reserve panel/waiting list.

7. In view of the second portion of para 11 extracted above as also in view of the fact that the said Ms, Deepthi M, had sent non acceptance on 07.10.2016 and counting one year from that date would be 06.10.2017. But even though her dossier was received on 25.01.2017, the applicant was denied appointment.

8. Admittedly the applicant is at S1. No.1 in the wait list. In view of the facts and circumstances narrated above, the OA requires to be allowed. Accordingly, the OA is allowed and the respondents are directed to consider the applicant for appointment against the vacancy arising due to non acceptance of said Ms. Deepthi M. or against the future vacancies."

3. Mrs. Avnish Ahlawat, learned counsel for the petitioner, submits that the Tribunal has failed to appreciate that the Notification dated 13th June, 2013 categorically states that the life of waitlist will be one year only from the date of publication of results and the said Notification nowhere states that the one year period will start from the date when a candidate refuses to accept the offer of appointment. In support of her submission, she relies upon the judgment of Supreme Court in *Gujarat State, Dy. Executive Engineers' Association Vs. State of Gujarat & Ors., 1994 Supp (2) SCC 591* as well as the judgment of this Court in *Kavita Vs. Government of NCT of Delhi and Others, WP (C) 13185/2019*.

4. Having perused the paper-book, this Court is in agreement with the submission advanced by Mrs. Ahlawat that the reasoning given by the Tribunal in para 7 of the impugned order is contrary to settled law and in particular the aforesaid judgments relied upon by her.

5. However, keeping in view the fact that Ms. Deepti M., the successful candidate, had informed the Medical Superintendent, Lok Nayak Hospital, that she would not be accepting the offer of appointment and would not be joining the post vide letter dated 28th November, 2016 i.e. within one year of declaration of the result on 06th January, 2016, this Court is of the view that the vacancy arose within one year of the declaration of the result. Consequently, in the opinion of this Court, the petitioners should have offered the vacant post to the respondent as the vacancy arose within one year of declaration of the result in accordance with para 11 of the advertisement notice, as extracted in para 5 of the impugned order.

6. Accordingly, the present writ petition and application are dismissed and the order of the Central Administrative Tribunal is upheld, albeit on a different ground.

7. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

AUGUST 07, 2020

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