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

Date of Decision: 25th May, 2021

+ W.P.(C) 4749/2021 & CM APPLs.14628-14629/2021

GOVT OF NCT OF DLEHI & ORS. Petitioners

Through Ms.Avnish Ahlawat with
Mr.Nitesh Singh, Advocates.

versus

VANDANA GUPTA AND ORS Respondents

Through None

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the order dated 11th October, 2018 passed by the Central Administrative Tribunal [hereinafter referred to as the 'CAT'] Principal Bench, New Delhi in OA No. 336/2018 whereby the respondent-applicant's O.A has been allowed and they have been granted benefit of age relaxation and allowed to apply for the post of Assistant Teacher (primary). The relevant portion of the impugned order is reproduced hereinbelow:-

"3. Pursuant to Annexure A-1 Advertisement No.04/17 of Delhi Subordinate Services Selection Board (DSSSB) dated 20.12.2017, the applicants applied for the post of Assistant Teacher (Primary) in three Municipal

Corporations of Delhi. It was indicated in the Advertisement that the age limit prescribed for the said post is 30 years, which is relaxable, as indicated in para-6 of the Advertisement for various categories in the post of Guest/Contract Teachers. It is further stated therein that relaxation in upper age as a onetime measure up to the actual time spent as Guest/Contract Teachers in the Directorate of Education, subject to a maximum of 5 years provided they have worked for at least 120 working days in that particular year. It is further stated that age relaxation should be applicable only for Guest/Contract Teachers, who have worked for the academic years 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17. All these applicants satisfy this criterion, except that they have been working in the three Corporations and not under the Directorate of Education. It is well settled that the Corporations are to be treated at par with the Government Department in such matters. We have no doubt in our mind that the age relaxation applicable to Guest/Contract Teachers, as stipulated in the Advertisement, is also ipso facto applicable to these applicants as well. Our view is further fortified by order of this Tribunal in OA No.3044/2010 dated 13.01.2012 (Manju Aggarwal Vs. Govt. of NCT of Delhi & Ors), wherein it is held as under:-

“We have heard Learned Counsele for the parties in this case. After the judgment of the Hon’ble High Court in WP (C) 1641/2011 Preeti Rathi and others case (supra), there need not be any doubt that contractual employees have to be treated as departmental employees and they are entitled for age relaxation for direct recruitment. Therefore, we allow this OA and reject the decision of the respondents that applicant being a contractual employee is not a departmental candidate for the purpose of granting age relaxation. Consequently, the respondents shall consider the applicant as a departmental candidate and grant the age relaxation

as available to the departmental candidate. As the applicant has already scored a high position in the merit list, respondents shall declare her result and if found otherwise suitable & eligible, she shall be appointed as Teacher (Primary) in MCD with all consequential benefits except back wages. The aforesaid direction shall be complied with, within a period of one month from the date of receipt of a copy of this order.”

4. In view of the above, we allow this OA and direct the respondents to grant age relaxation to the applicants at par with the Assistant Teacher (Primary) on contract basis of Directorate of Education, GNCTD and, accordingly, process their candidatures for further action.”

3. Ms.Avnish Ahlawat, learned counsel for the petitioners submits that the issue involved in the present case is covered by the judgment dated 30th January, 2020 passed by the Division Bench of this Court in a batch of matters wherein the lead matter was *Govt. of NCT of Delhi & Anr. Vs. Anita Kataria & Ors. being W.P.(C) No.1445/2019*.

4. Ms.Avnish Ahlawat, further submits that the CAT failed to appreciate that the respondents had already availed age relaxation benefits in the requisition sent by MCD for the post Code 16/17 and 01/18 and appeared for the post of Assistant Teacher (Primary) in MCD schools.

5. We have perused the judgment dated 30th January, 2020 and are of the opinion that the same has no application to the facts of the present case as would be apparent from the following paragraphs in the said judgment:-

“1. In this batch of writ petitions, the petitioners are aggrieved by almost identical orders passed by Central Administrative Tribunal (‘Tribunal’).

2. To appreciate the submissions made by Mrs. Avnish Ahlawat, learned Standing Counsel appearing for petitioners, we deem it appropriate to reproduce the operative portion of interim order passed by the Tribunal in batch matters ‘Soma and Others Vs. Govt. of NCT of Delhi and Others’: O.A. No.463/2018 & others decided on 23.10.2018 :

“6. We, therefore, dispose of these OAs directing that :

(a)the respondents shall proceed to declare results of the examination which was held in pursuance of the impugned notification/advertisement.

(b)the interim order passed in these OAs, shall not be construed as conferring eligibility upon them, but the same shall be decided by the respondents separately.

(c) in case the applicants or any of them are found to be in the zone of selection, the respondents shall inform such of them through a notice as to how they are not eligible to participate in the selection process, duly indicating the reasons.

(d)the applicants shall be entitled to submit their explanation/representation putting forward their grievance, within 15 days from the date of receipt of such communication.

(e) further steps shall be taken by the respondents as regards the applicants only after passing a reasoned order, on the basis of the notice and reply, if any.

(f) the verification as indicated shall be undertaken along with the results in the examination. It shall be open to the applicants to approach the Tribunal if their grievance subsists. There shall be no order as to costs.”

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4. Mrs. Ahlawat submits that the O.As. could not have been decided without deciding the issue raised; and directions could not have

been issued allowing the applicants to submit their applications offline when a proper procedure for submitting the applications online was prescribed. She further submits that vide the interim-orders passed, the candidates who were prima-facie over-age and ineligible, for not having cleared the Central Teacher Eligibility Test (CTET), were also permitted to appear in the examination. Directions were issued to declare the results; and thereafter an unusual procedure was followed by directing the petitioners herein to inform all the candidates who were in the zone of selection through a notice as to why they are not eligible to participate in the selection process indicating reasons. The Tribunal further granted liberty to the applicants to submit their explanations/representations putting forward their grievance within 15 days; and a direction has also been passed to the petitioners to pass a reasoned order on the basis of such notice and reply.

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11. We have heard learned counsel for the parties and have examined the order passed by the Tribunal, relevant extracts of which we have already reproduced above. The Tribunal granted leave to the applicants to appear in the examination; and thereafter, vide the impugned orders, all O.As. were allowed with directions to the petitioners to declare the results; and as per direction “(c)” in the impugned order, if an applicant was not eligible, the applicant was to be informed, giving reasons for rejection; and thereafter, time was required to be given to the applicant to put-forward their explanations/representations within 15 days; and subsequently a reasoned order was to be passed by the petitioners.

12. In our view the Tribunal exceeded its jurisdiction in passing such directions, especially for the reason that there is no discussion on the merits of the matter nor have the contentions of the parties been noted muchless the law which has been relied upon. As noticed above according to the petitioners, the legal position is against the respondents. We are also of the view that the terms of the advertisement could not have been varied by the Tribunal; and, as far as possible, the court should be slow in treading on such a path since it can cause serious prejudice to the rights of the parties. We are also of the considered view that there was no necessity for calling upon the petitioners to inform each applicant the reasons

for rejection; and thereafter putting in place an elaborate process by which representations and explanations were to be received and reasoned orders were to be passed. If such procedures are encouraged, public bodies like DSSSB, UPSC etc. would find it impossible to conduct public examinations and fill-up vacancies for the user-departments.

13. Accordingly, we set-aside the impugned orders of the Tribunal, being conscious of the fact that to a large extent the orders already stand complied with. We also make it clear that if any of the respondents are aggrieved by the orders of rejection, they would be at liberty to seek such remedy as available to them in accordance with law.”

6. In fact, in the present case, the CAT has given a clear and categorical finding while disposing of the O.A that Assistant Teachers (Primary) of Municipal Corporations are at par with Government departments in matters of age relaxation.

7. As far as the submission that the respondents have already availed the age relaxation benefit in the requisition sent by MCD is concerned, we find that no such contention had been raised by the petitioners before the CAT in its reply affidavit to the O.A.

8. At this stage, Ms.Ahlawat states that out of 51 applicants who had filed the present O.A, only one applicant i.e. Ms.Manisha had been successful in the examination. She states that the fact that Ms.Manisha had availed the age relaxation benefit in the requisition sent by the MCD came to the knowledge of the petitioners post final disposal of the present O.A.

9. Since according to the petitioners, this was a fact which came to their knowledge after the passing of the impugned order, this Court grants liberty to the petitioners to file an appropriate application before

the CAT, in accordance with law, within four weeks. However, this Court clarifies that it has not expressed any opinion on the merits of the application proposed to be filed by the petitioners. All the rights and contentions of the parties with regard to the proposed application are left open. With the aforesaid liberty and findings, present writ petition along with pending applications stand disposed of.

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

MANMOHAN, J

NAVIN CHAWLA, J

MAY 25, 2021
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