



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

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Date of Decision: August 25, 2023

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+ W.P.(C) 11008/2023, CM APPL. 42661/2023

DSSSB

..... Petitioner

Through: Mrs. Avnish Ahlawat, Standing Counsel with Ms. Tania Ahlawat, Mr. Nitesh Kumar Singh, Ms. Palak Rohmetra, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates.

versus

RAVI KUMAR AND ANR.

..... Respondents

Through: Ms. Pragnya Routray, Advocate.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO (Oral)

CM APPL. 42662/2023

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 11008/2023 & CM APPL. 42661/2023

3. The challenge in this writ petition is to an order dated May 08, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. 4318/2017, whereby the Tribunal has allowed the O.A. in favour of respondent no. 1 herein by stating in paragraphs 7 & 8 as under:-

“7. In view of above, we have no doubt in our minds that the issue and the facts of the present case are identical and same to the one in O.A. No. 1012/2019 irrespective of the Post Code. Therefore, we have no reason to take a divergent view. Accordingly, this O.A. is also allowed.

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8. In view of the above, the present OA is allowed. The impugned order dated 06.07.2017 is quashed and set aside. We hereby direct the respondents to proceed with an offer of appointment to the applicant, if otherwise found eligible, except for the issues raised above. The respondents are also directed to grant consequential reliefs to the applicant on notional basis. This exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order.”

4. Some of the relevant facts are that the respondent No.1 had participated in the selection process conducted by the DSSSB i.e. petitioner herein, for the post of Assistant Malaria Inspector. The respondent No. 1 who belongs to the SC category, secured 83.5 marks and the cutoff for his category was 60 marks. However, post the uploading of the relevant documents, the candidature of the respondent No. 1 was rejected by the petitioner on the ground of he being overaged for the concerned post, by way of Rejection Notice dated July 06, 2017.

5. In the O.A. filed by the respondent No. 1, the case set up by him was that his candidature for Assistant Malaria Inspector was rejected on the ground that he was found to be of overaged. It was also his case that he is entitled to age relaxation as per Column 6 at Sr. No. 6 of the advertisement published by the petitioner. The relevant portion of the concerned advertisement, wherein the stipulation qua the age relaxation is prescribed, has been reproduced as under:

<i>POST CODE:21/14 ASSISTANT MALARIA INSPECTOR</i> <i>In MUNICIPAL CORPORATION OF DELHI</i> <i>Number of vacancies: Total-302 (UR-152, OBC-82, SC-45, ST-23)</i> <i>including PH-09 (OH-03, HH-03, VH-03)</i> <i>Essential Qualification: (i) 10th pass under 10+2 system or higher</i>
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*secondary system from a recognized Board/School or equivalent.
p{ii} Sanitary Inspector Diploma from a recognized institutes or equivalent.*

Desirable: Knowledge of Hindi.

Pay Scale: Rs, 5200-20200 + Grade Pay Rs. 2400/-

Age Limit: Between 18-27 years (relaxable for SC/ST-05 yrs, OBC-03 yrs, PH-10 yrs, PH & SC/ST-15 yrs, PH & OBC-13 yrs, Department candidates up to 40 yrs, SC/ST-05 yrs).

This post is identified suitable for PH (OH, HH, VH) persons as per the requisition of the User Department.

R.No.F.PA/MHO/HQ/SDMC/2013/57 Dated 7/6/2013.

6. The respondent No.1 has relied upon the judgment of the Supreme Court in ***Union Public Service Commission v. Dr. Jamuna Kurup and Ors.***, (2008) 11 SCC 10. He had also relied upon the judgment of the coordinate bench of this Court in ***Delhi Subordinate Services Selection Board & Anr. v. Preeti Rathi & Ors.***, W.P.(C) 1641/2011, decided on November 15, 2011. Reliance was also placed on the judgment of the Principal Bench of Tribunal in ***Sujeet Kumar and Ors. v. Municipal Corporation of Delhi and Ors.***, O.A. No. 3989/2011, decided on May 10, 2012. The respondent no. 1 had primarily relied upon the aforesaid judgment to contend that he is entitled to age relaxation.

7. On the other hand, the case of the petitioner before the Tribunal was that no age relaxation could be given to the respondent no. 1 as the same can be availed by a government employee or regular departmental candidates only.

8. The paragraph 7 of the judgment in O.A. No. 1012/2019, decided on February 22, 2023, which has been relied upon by the Tribunal in the impugned order dated May 08, 2023, while allowing the O.A., is reproduced



as under:

*“7. As already discussed hereinabove in **Dr. Jamuna Kurup** (supra), wherein it has been held that “When there is a contract of employment, the person employed is the employee and the person employing is the employer. In the absence of any restrictive definition, the word ‘employee’ would include both permanent or temporary, regular or short term, contractual or ad hoc. Therefore, all persons employed by MCD whether permanent or contractual will be ‘employees of MCD’.” and in **Preethi Rahti** (supra) also the present issue of age relaxation has already been dealt with and accordingly, no divergent view can be taken in the peculiar facts and circumstances of the present case.”*

9. In other words, the Tribunal has relied upon the judgments in **Dr. Jamuna Kurup & Ors.** (supra) and **Preeti Rathi & Ors.** (supra), while allowing the O.A. The relevant directions passed by the Tribunal in paragraph 7 & 8, have already been reproduced in paragraph 3 (above) of this order.

10. As far as this writ petition is concerned, Mr. Nitesh Kumar Singh, learned counsel appearing on behalf of the petitioner has primarily relied upon the judgment of Supreme Court in **Delhi Subordinate Services Selection Board & Anr. vs. Seema Kapoor**, Civil Appeal No. 4461/2021, decided on July 22, 2021, to contend that the respondent no. 1 being a contractual employee, is neither a government servant nor a departmental candidate and as such he shall not be entitled to the benefit of age relaxation.

11. We are unable to agree with the aforesaid submission of Mr. Singh. The judgment of **Seema Kapoor** (supra), which has been relied upon by Mr. Singh, is clearly distinguishable on facts, inasmuch as, in the said case, the Supreme Court was concerned with the facts, wherein the respondent before



the Supreme Court was serving as a Teacher (Primary) in SDMC since April 07, 2006. The DSSSB (petitioner therein) invited applications for various posts including the post of PGT (English) female in the Directorate of Education. The advertisement in respect of the post for which the respondent (before the Supreme Court), had applied, reads as under:

“Age Limit: Below 36 years & relaxable in case of Govt. Servant and departmental candidates upto 05 years in accordance with the instructions or orders issued by the Central Government. This post is identified as suitable for OH/VH persons only as per the Requisition of the User Department.”

12. The Supreme Court, in paragraph 8, has held as under:

“We have heard learned counsel for the parties and find that the order passed by the Central Administrative Tribunal and that of the High Court are not sustainable. Firstly, the High Court has quoted a wrong provision in the order passed relating to subsequent advertisement. Secondly, the benefit of age relaxation is permissible for government servants and departmental candidates. It is not even the stand of the respondent that she is a government servant and, rightly so, as she is employed in an autonomous body i.e. Municipal Corporation established under a specific statute. The expression ‘Departmental Candidates’ is in respect of the candidates who are working in the concerned Department i.e. Education. The Circular of the Government of India dated 27.3.2012 has made it explicitly clear that the benefit of age relaxation is only meant for civil employees of the Central Government and not to the employees of the autonomous bodies, public sector undertakings etc. Therefore, the respondent, as an employee of the autonomous body, i.e. the Corporation, is not entitled to age relaxation either as a departmental candidate or as a government servant.”

13. Suffice to state that the Supreme Court has firstly held that a person working in an autonomous body like Municipal Corporation, is not a



government employee. The Supreme Court further held that since the respondent therein, who was though working on contractual basis in SDMC, could not come under the expression of departmental candidate as the advertisement concerned therein sought candidates working in the concerned department i.e. Education. Suffice to state the respondent therein was serving as a Teacher (Primary) in SDMC, which was not the concerned department i.e. Education. However, it is not such a case here. In the present case, the respondent no. 1 herein, has been working in the concerned department i.e. MCD on contractual basis w.e.f. 2005 and even the advertisement concerned herein had invited applications for recruitment to the post of Assistant Malaria Inspector from the department where the respondent no. 1 has been working. If the issue is seen from that perspective, the Supreme Court in the case of **Dr. Jamuna Kurup** (*supra*), has in paragraph 12, 13 & 14 stated as under:

“12. Recruitment to posts in MCD is governed by the Delhi Municipal Corporation Act, 1957 ('Act' for short). Section 90 of the Act contemplates appointment of persons to either permanent posts or temporary posts. Section 90(6) provides that the Standing Committee may on the recommendations of the Commissioner create for a period not exceeding six months any category A or category B post. Section 92 provides that the power to appoint employees whether permanent or temporary shall vest in the Commissioner. Section 96 provides that no appointment to any category A post shall be made except after consultation with the UPSC, but no such consultation is necessary for selection for appointment to any acting or temporary post for a period not exceeding one year. We have referred to these provisions only to show that employment under the Municipal Corporation of Delhi could be either permanent/regular or short term/contractual.



13. The term 'employee' is not defined in the Delhi Municipal Corporation Act, 1957. Nor is it defined in the advertisement of UPSC. The ordinary meaning of 'employee' is any person employed on salary or wage by an employer. When there is a contract of employment, the person employed is the employee and the person employing is the employer. In the absence of any restrictive definition, the word 'employee' would include both permanent or temporary, regular or short term, contractual or ad hoc. Therefore, all persons employed by MCD whether permanent or contractual will be 'employees of MCD'. The respondents who were appointed on contract basis initially for a period of six months, extended thereafter from time to time for further periods of six months each, were therefore, employees of MCD, and consequently, entitled to the benefit of age relaxation. If the intention of MCD and UPSC was to extent the age relaxation only to permanent employees, the advertisement would have stated that age relaxation would be extended only to permanent or regular employees of MCD or that the age relaxation would be extended to employees of MCD other than contract or temporary employees. The fact that the term 'employees of MCD' is no way restricted, makes it clear that the intention was to include all employees including contractual employees. Therefore, we find no reason to interfere with the judgment of the High Court extending the benefit of age relaxation.

14. The learned counsel for appellant submitted that the advertisement granted age relaxation to employees of MCD and employees of government of India, and that the words 'permanent' or 'regular' were not used either with reference to 'employees of government' or 'employees of MCD'. It is pointed out that in Vaghela (supra), this Court while dealing with persons employed in identical circumstances, that is 'engaged for a period of six months from the date of joining or till a candidate selected by UPSC joined on regular basis', held that the term 'government servant' did not refer to or include persons employed on contract basis. It is argued that on the same principle, the term 'employees of MCD' cannot include a contract employee of MCD. We cannot agree.



Vaghela (Supra) related to contract employment by a government whereas in this case the contract employment is by a Municipal Corporation. The reason that weighed with this Court in Vaghela to hold that a contract employee was not a government servant, was in view of the special connotation of the term 'government servant'. This Court after referring to the decision of the Constitution Bench in Roshanlal Tandan vs. Union of India 1968 (1) SCR 185, and the decision in [Dinesh Chandra Sanpma vs. State of Assam](#), 1977 (4) SCC 441, held that employment under the government is a matter of status and not a contract even though acquisition of such a status may be preceded by a contract; and that contract employees of the government were governed by the terms of contract and did not possess the status of government servants nor were governed by rules framed under [Article 309](#) of the Constitution, nor enjoyed the protection under [Article 311](#). But a Municipal Corporation is not 'government', and municipal employees are not government servants governed by [Article 309](#) to 311. Though permanent employees of municipal corporation or other statutory bodies may be governed by statutory rules, they do not enjoy the status of government servants. Therefore, the decision in Vaghela, rendered with reference to government servants may not be of any assistance in interpreting the term 'employees of MCD'. In fact, for that very reason, these matters were de-linked from the hearing of Vaghela."

14. The judgment of the Supreme Court in **Dr. Jamuna Kurup & Ors.** (supra) has been followed by Coordinate Bench of this Court in the case of **Preeti Rathi & Ors.** (supra), wherein this Court has in paragraph 13, held as under:

"13. In the rules, nowhere the expression "departmental candidates" has been defined. It has to be, in these circumstances, assigned natural connotation. A departmental candidate would be the candidate who is not an outsider but is already working in the concerned department namely MCD in the instant case. Admittedly the respondents are



working in MCD as Primary Teachers on contract basis and one has to assign practical meaning to the aforesaid terminology and we are of the considered opinion that the respondents shall be treated as departmental candidates for the purpose of appointment to the post of Primary Teachers on regular basis when they are already working in the same post on ad-hoc basis for the last ten years. Reference may be made to UPSC v. Dr. Jamuna Kurup (2008) 11 SCC 10 where the expression "employees of MCD" in the advertisement granting age relaxation with respect to recruitment to the post of Ayurvedic Vaid was held to include both permanent or temporary, regular or short term contractual or ad hoc employees of the MCD. Accordingly those appointed on contract basis were held to be employees of MCD and entitled to age relaxation. The earlier judgment in UPSC v Girish Jayanti Lal Vaghela (2006) 2 SCC 482 relating to Government employees was held to be not applicable to the expression "employees of MCD". We see no reason why the said dicta of the Supreme Court be not applied to the present situation also."

15. From the reading of the above judgments, it is clear that all those persons, who were appointed on contractual basis, are held to be the departmental candidates for them to be entitled to age relaxation in the same organization, MCD, in the present case and for that matter, even in paragraph 14, the Division Bench has stated as under:

"14. Even in those matters whether cases of ad-hoc/casual/contract employees come up for consideration for regular appointment, there has always been a practice of giving age relaxation. In many judgments rendered by the Apex Court as well as this Court such relaxation is provided and the relevant aspect which is to be kept in mind is that at the time of initial appointment on contract/casual basis the incumbent was within the age limit and was not overage. If that is so, to the extent of service rendered by such an employee, the benefit thereof has to be given. If the relaxation of almost 10 years is to be given to the respondents for



having worked for this period, in that case also they would fall within the prescribed age limit.”

16. Perusal of paragraph 14 of the judgment of Coordinate Bench as reproduced above reveals that this Court has held that even in the case where ad-hoc/casual/contractual employees come up for consideration for regular employment, there has always been a practice of giving age relaxation. In that sense, since the respondent no. 1 has been working as Domestic Breeding Checker w.e.f. 2005 and is seeking a regular appointment as an Assistant Malaria Inspector, surely, by applying the ratio of ***Preeti Rath & Ors.*** (supra), he shall be entitled to age relaxation.

17. In view of our above discussion, we are of the view that the impugned order of the Tribunal needs no interference. Accordingly, the writ petition filed by the petitioner is hereby dismissed.

18. Since, we have dismissed the writ petition, we grant further time of three months for the petitioner to comply with the order of the Tribunal. No costs.

CM APPL. 42661/2023

In view of the dismissal of the writ petition, CM APPL. 42661/2023 is also dismissed as infructuous.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

August 25, 2023/akc