



2024:DHC:7448-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 13503/2024, CM APPL. 56477/2024 & CM APPL. 56478/2024

DELHI SUBORDINATE SERVICES
SELECTION BOARD & ANR.

.....Petitioners

Through: Mr. Gaurav Dhingra and
Mr. Shashank Singh, Advocates

versus

MEENU DADEIA@MEENU
VARDHAN & ANR.

.....Respondents

Through: Ms. Anjana Gosain,
Ms. Nippun Sharma and
Mr. Devesh Khangarwal,
Advocates for R-1 with R-1 in
person

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

% **25.09.2024**

C. HARI SHANKAR, J.

1. This writ petition assails judgment dated 10 July 2024 passed by the learned Central Administrative Tribunal in OA 4543/2017 (*Meenu Dadeia v DSSSB*).

2. The only issue that arose before the learned Tribunal – and, indeed, the only issue that arises before this court – is whether Respondent 1 was entitled to age relaxation for selection and appointment to the post of Publicity Assistant in the Municipal



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Corporation of Delhi¹. Annexure-II to the advertisement governing the post reads thus:

“POST CODE: 88/14 PUBLICITY ASSISTANT in
MUNICIPAL CORPORATIONS OF DELHI

Number of vacancies: Total: 06 (UR-05, OBC-01)

Essential Qualification: (i) Degree from a recognized University or equivalent with both English and Hindi/Urdu as a subject. (ii) Degree or equivalent Diploma in Journalism from a recognized University /Institutes or equivalent. OR (iii) 2 years experiences of Journalistic/Publicity work under a Government Department or in a newspaper/news agency or publicity organization.

Note 1. Qualifications are relaxable at the discretion of the SSC/Competent Authority in case of candidates otherwise well qualified.

Note 2. The qualification(s) regarding experience is/are relaxable at the discretion of the SSC/ Competent Authority in the case of candidates belonging to scheduled castes or scheduled tribes. If at any stage of selection of the SSC is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill-up the posts reserved for them.

Pay Scale: Rs. 9300-34800+Grade Pay 4200/-

Age Limit: 30 years (relaxable for Govt. Employees/Departmental candidates 05 years). This post is identified not suitable for PH persons as per the requisition of the User Department. R.No.F.D-116/DPI/NDMC/2012 Dated 9/11/2012.”

3. Respondent 1 was born on 16 May 1980. Admittedly, on the closing date for submitting the application for the aforesaid post, she was 33 years 9 months and 11 days of age. She was issued an admit card, on the basis of which she participated in the selection process and qualified in the written examination as well as in the interview. However, the notice dated 5 December 2017, whereby the results of

Signature Not Verified¹ MCD, hereinafter

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the selection were announced, rejected her candidature on the ground that she was over-aged, treating 30 years as the cut off age for selection.

4. Aggrieved, the applicant moved the learned Tribunal by way of OA 4543/2017, in which the presently impugned judgment has come to be rendered.

5. The only issue which arose before the learned Tribunal, as already noted, was whether Respondent 1 was entitled to age relaxation as a “Government Employee/Departmental Candidate”. Respondent 1 contended that, in rejecting her candidature on the ground that she was overage, the petitioner had erred.

6. The petitioner, on the other hand, contented that Respondent 1 had joined as a contractual employee with the MCD on 14 September 2011 and was working as such till date. A candidate who was appointed on contractual basis with the MCD, according to the petitioner, would not be entitled to be treated as a “Departmental Candidate”.

7. Para 15 of the impugned judgment identifies the issue arising for consideration thus:

“15. The main facts are not in dispute. The only issue arises for our consideration is whether the applicant being a contractual employee is entitled for the benefit of age relaxation meant for departmental candidates. As per the Advertisement, the maximum age limit prescribed for the post in question is 30 years and with age relaxation upto five years for departmental candidates, the candidates up to the age of 35 years can apply. Admittedly, as on



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the cutoff date, the applicant's age was 33 years 9 months and 11 days. *The respondents seem to have rejected the claim of the applicant merely on the ground that being a contractual employee, she cannot be considered as a departmental candidate.*

(Emphasis supplied)

8. The learned tribunal has, after following the judgment of this court in *Annu Yadav v GNCTD*², held that a contractual employee was also entitled to be treated as a departmental candidate and, consequently, was eligible for age relaxation.

9. Aggrieved thereby, the DSSSB has filed the present writ petition before this court.

10. We have heard Mr. Gaurav Dhingra, learned Counsel for the petitioner at some length.

11. Mr. Dhingra draws our attention to the advertisement and the stipulation, therein, that age relaxation was available to “departmental candidates with at least three years continuous service in Central Government/Government of Delhi”. He submits that, as the MCD is an autonomous body and does not fall within the definition of “Central Government/Government of Delhi”, the Respondent 1 would not be entitled to age relaxation.

12. On perusing the judgment of the learned tribunal, we find that no such contention was ever advanced by the petitioner before the learned Tribunal. To our mind, the petitioner cannot be entitled to



make out an entirely new case before this court.

13. Besides, we cannot lose sight of the fact that the appointment was for the post of Publicity Assistant in the MCD. There is no dispute about the fact that the Respondent 1 was actually working in the MCD, albeit as a contractual employee. When examining whether she was a departmental candidate, therefore, this factor would weigh in her favour.

14. Mr. Dhingra also sought to draw out attention to the following passages from the judgment of the Supreme Court in *J&K Public Service Commission v Israr Ahmad*³:

5. We have considered the rival contentions advanced by both the parties. The contention of the first respondent cannot be accepted as he has not applied for selection as a candidate entitled to get reservation. He did not produce any certificate along with his application. The fact that he has not availed of the benefit for the preliminary examination itself is sufficient to treat him as a candidate not entitled to get reservation. He passed the preliminary examination as a general candidate and at the subsequent stage of the main examination he cannot avail of reservation on the ground that he was successful in getting the required certificate only at a later stage. The nature and status of the candidate who was applying for the selection could only be treated alike and once a candidate has chosen to opt for the category to which he is entitled, he cannot later change the status and make fresh claim. The Division Bench was not correct in holding that as a candidate he had also had the qualification and the production of the certificate at a later stage would make him entitled to seek reservation. Therefore, we set aside the judgment of the Division Bench and allow the appeal. No costs.

The aforesaid passage from *J&K Public Service Commission* is on an entirely different aspect. It deals with the case in which the candidates in question were seeking reservation at a subsequent stage of an



examination, after having qualified at an earlier stage in another category. No issue of age relaxation was even in question before the Supreme Court in *J&K Public Service Commission*. In the present case the Respondent 1 cannot be treated as having chosen to declare herself to be in one category at an initial stage and seeking a change of category at a later stage.

15. The decision in *J&K Public Service Commission*, therefore, would not apply.

16. The petitioner has, in the present writ petition, cited two decisions of the Supreme Court in *UPSC v Girish Jayanti Lal Vaghela*⁴ and *DSSSB v Seema Kapoor*⁵.

17. The decision in *Girish Jayanti Lal Vaghela* deals with the issue of whether the respondent in that case was a “government servant”. Inasmuch as the provision for age relaxation in the present case does not use the expression “government servant”, the decision in *Girish Jayanti Lal Vaghela* cannot be of any help to the petitioner.

18. In fact, the judgment in *Seema Kapoor* would militate *against* the argument that Mr. Dhingra seeks to canvas. In that case, the Supreme Court considered the ambit of the expression “government servants” and “departmental candidates”, in the context of age relaxation. Para 8 from the report in *Seema Kapoor* reads thus:

“8. We have heard learned counsel for the parties and find that the order passed by the Central Administrative Tribunal and that of

⁴ (2006) 2 SCC 482

⁵ (2021) 20 SCC 380



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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 Candidate” 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.”

(Emphasis supplied)

19. The Supreme Court, therefore, contradistinguished the expressions “government servants” and “departmental candidates”. According to the Supreme Court, the expression “departmental candidates” is in respect of the candidates who are working in the department concerned. As such, the only criteria that the Supreme Court has underscored for a candidate to be treated as a departmental candidate is that she, or he, must be working in that department. Nothing else is required.

20. There is no dispute about the fact that Respondent 1 was in fact working with the MCD since 2011.

21. Applying the understanding of the expression “departmental candidate” in *Seema Kapoor*, therefore, there is no error whatsoever in the decision of the learned Tribunal to treat Respondent 1 as a departmental candidate and, consequently, entitled for age relaxation.



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22. Resultantly, we find no reason to interfere with the impugned judgment of the learned Tribunal within the confines of our jurisdiction under Article 226 of the Constitution of India.

23. The writ petition is accordingly dismissed, with no order as to costs.

24. The petitioner is directed to comply with the order passed by the learned Tribunal within a period of four weeks from today.

C.HARI SHANKAR, J

DR. SUDHIR KUMAR JAIN, J

SEPTEMBER 25, 2024/dsn/N

Click here to check corrigendum, if any