



2025:DHC:622-DB



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

Date of decision: 30th January, 2025

+ W.P.(C) 1196/2025
LAKSHMI

.....Petitioner

Through: Dr. Amit George, Dr. Swaroop
George, Mr. Mobashshir
Sarwar, Mr. Rupam Jha and
Mr. Abhinandan Jain, Advs.

versus

UPSC & ORS.

.....Respondents

Through: Mr. Ravinder Agarwal and Mr.
Manish Kumar Singh, Advs. for
R-1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

SHALINDER KAUR, J. (ORAL)

CM APPL. 5786/2025 (exemption)

1. Allowed, subject to all just exceptions.

**W.P.(C) 1196/2025, CM APPL. 5785/2025 & CM APPL.
5787/2025**

2. The present petition has been filed by the petitioner, assailing the Order dated 15.10.2024 passed by the learned Central Administrative Tribunal (Tribunal), Principal Bench, New Delhi in Original Application (OA) No. 3977 of 2023, whereby the OA filed by the petitioner was dismissed. The petitioner also seeks quashing of

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the notice dated 28.11.2023 issued by the Union Public Service Commission (UPSC), to the extent that the candidature of the petitioner has been rejected.

3. The brief facts leading to the filing of the present petition as emerging from the record are that the petitioner was appointed as a Primary Teacher in the Municipal Corporation of Delhi (MCD) on 03.10.2006 and was serving in the said post till 22.07.2019. She was, thereafter, selected as Post Graduate Teacher (PGT), English under the Directorate of Education, Government of NCT, Delhi, pursuant to the Advertisement No. 04/2017. She could join the said post only after her technical resignation was approved by the MCD. The Department of Education had decided to count her past service rendered from 03.10.2006 to 22.07.2019 as Primary Teacher in MCD for the purpose of retirement gratuity and death gratuity, which the petitioner claims is possible only if her service rendered with the MCD School is taken as Government/ Union Territory Service.

4. The UPSC issued an Advertisement No. 10/2022 for filling 131 posts of Vice-Principal by way of direct recruitment. Pursuant thereto, the petitioner applied as a general category candidate. The petitioner's date of birth is 15.07.1985, and, therefore, her age at the time of the closing of application, that is 16.06.2022, was 36 years 11 months and 1 day; the maximum age limit prescribed for general category candidates was 30 years. She sought age relaxation as per the Recruitment Rules, which provides that the age can be relaxed by 5 years for a government servant for the Central/UT Government Servants. However, the petitioner had completed 2 years, 10 months,



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and 25 days service with the Department of Education, thereby having a shortfall of 35 days in meeting the above criteria.

5. The petitioner underwent the selection test and successfully cleared it. Thereafter, the UPSC sent a notice dated 25.09.2023 to the petitioner stating that the candidature of the petitioner was being cancelled due to her not meeting the requisite experience for the post. In response to the same, the petitioner submitted a representation with her experience certificate, however, the UPSC issued another notice dated 28.11.2023, whereby, the petitioner's candidature was cancelled due to her being "*Overage- Less than 3 years in Govt. Service*".

6. Aggrieved by this, the petitioned filed the OA before learned Tribunal, challenging her disqualification.

7. The learned Tribunal, *vide* an *interim* Order dated 15.12.2023, allowed the petitioner to participate in the interview process, although the result was not to be declared. The learned Tribunal dismissed the said OA *vide* the Impugned Order dated 15.10.2024 holding that the petitioner, having only 02 years of experience as a PGT Teacher, could not have claimed for the age relaxation of 05 years which is admissible only for the Government servants with 03 years of continuous service in the Central Government/UT or in the allied cadre. Dissatisfied with this, the petitioner has filed the present petition before this Court invoking the writ jurisdiction under Article 226 of the Constitution of India.

8. The learned counsel for the petitioner submits that the requirement for age relaxation was that the candidate should have



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three years' experience as a Government/Union Territory Servant. The petitioner worked as a Primary Teacher at the MCD from 03.10.2006 and remained there till 22.07.2019, and if the period for which the petitioner worked as a MCD teacher is considered, then the petitioner would meet the said requirement of having served more than three years as a Government/ Union Territory Servant.

9. He submits that the MCD is a local authority having public functions akin to that of the government, thus, it would fall within the ambit of a Government/Union Territory. He further submits that even for the purposes of Article 12 of the Constitution of India, MCD is treated as a Public Authority, as it is an instrumentality or agency of the Government. Consequently, the age relaxation as requested by the petitioner as a Government employee is reasonable and justified.

10. The learned counsel submits that if only the petitioner's experience as a PGT with the Directorate of Education is taken into account, it totals to nearly three years of service. Even according to the UPSC, the petitioner had 2 years, 10 months and 25 days of experience as Government Servant, and, therefore, merely because of a shortfall of 35 days, the petitioner was denied the benefit of age relaxation. Moreover, she would have completed her 3 years of the required period, if not for the procedural delay in seeking the acceptance of her resignation by MCD to join the post of PGT (English). This delay, he submits, shortened the petitioner's tenure.

11. He submits that the Directorate of Education, being the ultimate employer, serves as the final authority for appointing the Vice-Principal, and it had previously counted the past service of the



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petitioner for the purpose of retirement gratuity and death gratuity, which is only possible, if the previous service rendered by her is considered as a Government/ Union Territory Service. Therefore, the objection from the UPSC concerning age relaxation is unjust and arbitrary.

12. He places reliance on the Judgments of the Supreme Court in the case titled *Tejas Constructions and Infrastructure Pvt. Ltd. v. Municipal Council, Sendhwa & Anr.*, (2012) 6 SCC 464 and *Kumari Shrilekha Vidyarthi & Ors. v. State of U.P. & Ors.*, (1991) 1 SCC 212, and stated that the action of the State should be fair and not arbitrary, and the State must act validly for a discernible reason and not whimsically.

13. *Per contra*, the learned counsel for the respondents, while relying on the decision of the Supreme Court in *Delhi Subordinate Services Selection Board & Anr. v. Seema Kapoor* (2021) 20 SCC 380, submits that the Municipal Corporation established under a specific Statue, is an autonomous body. Therefore, the petitioner being an employee of an autonomous body, that is, MCD, is not entitled to age relaxation as a government servant.

14. We have considered the submissions of the learned counsels for the parties and perused the record.

15. The petitioner has primarily raised two pleas. *Firstly*, that her tenure of 12 years, 9 months, and 20 days with the MCD, as a teacher, should be considered as relevant experience for the purpose of granting her the benefit of age relaxation. *Secondly*, that even if, only her service of 2 years, 10 months and 25 days under the Department of



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Education is taken into account, the shortfall of 35 days in completing three years of continuous service should not preclude her from availing the said benefit and the same shall be condoned. The dispute, therefore, lies in determining whether the service rendered by the petitioner for the MCD can be counted for the grant of benefit of age relaxation and whether the shortfall of 35 days in her tenure with the Department of Education can be condoned.

16. We may begin by noting the clause 5(c) of advertisement no. 10/2022 issued by the respondents, which deals with the age relaxation for the Central/ Union Territory Government employees. The same reads as under:

“(c) Age relaxation for Central Government employees:

The upper age limit is relaxable for Central/U.T. Government servants up to 5 years as per instructions issued by the Government of India from time to time. (This implies that Scheduled Castes / Scheduled Tribes category candidates would get maximum 10 years age relaxation including 5 years age relaxation meant for their respective categories. Similarly, OBC candidates would get maximum upto 8 years including 3 years age relaxation meant for OBC category). This relaxation will be admissible to Government servants with 3 years continuous service in Central Government and working in posts which are in the same line or allied cadre and where a relation could be established that the service already rendered in that particular post will be useful for the efficient discharge of the duties of the post to which recruitment is being made. Decision in this regard will rest with the Commission. A candidate claiming to belong to the category of Central Government servant and thus seeking age relaxation under



this para would be required to produce a Certificate in the prescribed proforma issued after the date of advertisement from his/her Employer on the office letter head to the effect that he/she is a regularly appointed Central Government servant and not on casual/adhoc/daily wages/hourly paid/contract basis employee”

17. At this stage, it may also be apposite to note the observations made by the Supreme Court in ***Delhi Subordinate Services Selection Board*** (supra). The relevant extract of which is reproduced herein below:

“8. 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.”

(Emphasis Supplied)



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18. From the perusal of the above, it is evident that employees of the Municipal Corporations are not considered as Government employees, as these Corporations are autonomous bodies which are established under special Statutes. Merely because the service rendered by the petitioner with the MCD has been counted for the purposes of retirement and gratuity, would not come to the aid of the petitioner as far as the eligibility condition prescribed in the subject advertisement is concerned; the purpose of the same being entirely different.

19. Therefore, the petitioner being an employee of the MCD, which is an autonomous body, cannot be considered as a Government employee for the purpose of granting the benefit of age relaxation.

20. Insofar as the second submission of the learned counsel for the petitioner is concerned, we are afraid, we do not find any merit in the said submission. Once the advertisement under which the petitioner applied, explicitly stipulates in Clause 5(c), as noted herein above, a requirement of three years of continuous service, and the petitioner while applying under the said advertisement had accepted this condition, and there being no challenge to the said condition (rightly so), even a miniscule shortfall cannot be condoned.

21. We are, therefore, unable to find merit in both the pleas raised by the learned counsel for the petitioner.

22. Accordingly, the Impugned Order dated 15.10.2024 passed by the learned Tribunal does not suffer from any infirmity to warrant any interference from this Court.



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23. Consequently, the petition is dismissed and the pending applications are disposed of.

SHALINDER KAUR, J

NAVIN CHAWLA, J

JANUARY 30, 2025/sds/sk/VS

Click here to check corrigendum, if any

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