



2025:DHC:74-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 5179/2018 and CM APPLs. 20099/2018 and 37452/2019

GOVT OF NCT OF DELHI & ORSPetitioners

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

versus

DURGA PARSHAD & ORSRespondent

Through: Mr. Ashok Agarwal, Mr. Kumar Utkarsh, Mr. Manoj Kumar and Ms. Ashna Khan, Advocates
Mr. Tushar Sannu and Mr. Shivraj Singh Tomar, Advocates for MCD

+ W.P.(C) 6169/2018 and CM APPL. 23845/2018

DELHI SUBORDINATE SERVICES SELECTION BOARD (DSSSB)Petitioner

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

versus

SMT. SAVITA CHAUDHARYRespondent

Through: Mr. Avadh Bihari Kaushik, Ms. Saloni Mahajan and Mr. Rishabh Kumar, Advocates

+ W.P.(C) 7081/2018 and CM APPL. 26922/2018

GOVT OF NCT OF DELHI & ANRPetitioner

Through: Mrs. Avnish Ahlawat, Standing

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Counsel with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates

versus

SUMAN ROHILLA & ORSRespondents
Through: Mr. Ashok Agarwal, Mr. Kumar Utkarsh, Mr. Manoj Kumar and Ms. Ashna Khan, Advocates
Mr. Roshan Lal Goel, Ms. Anju Gupta, Mr. Tushar Sannu and Mr. Shivraj Singh Tomar, Advocates for MCD

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)
08.01.2025

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C. HARI SHANKAR, J.

1. These cases are fully covered by the order dated 20 September 2017 passed by the Supreme Court in *Praveen Kumar v Delhi Subordinate Service Selection Board*¹.
2. Nonetheless, a brief overview of the facts would be appropriate.
3. As these writ petitions involved identical issues, we deem it appropriate to advert to the facts with respect to WP (C) 5179/2018².

¹ "the DSSSB", hereinafter

² *Govt of NCT of Delhi v Durga Parshad*



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4. The respondents in WP (C) 5179/2018 were the applicants before the Central Administrative Tribunal³ in OA 450/2015. Respondents 1 and 3 to 6 passed the Diploma in Education⁴ Examination, which was a two year course conducted by the Board of Secondary Education, Bhopal in 2008. Respondent 2 passed the Dip Ed Examination conducted by the Secondary Education Department, Haryana, also a two year course, in 2008. As such, it is not in dispute that all the respondents had obtained the Dip Ed qualification, as conferred by the Board of Secondary Education in different States in 2008.

5. The DSSSB, by Advertisement 04/2009, invited applications from persons who desired to be recruited to the post of Teacher (Primary) in the Municipal corporation of Delhi⁵. The respondents applied in pursuance to the advertisement. They appeared in the written examination which was conducted on 2 February 2014. The results of the examination were published by the DSSSB by Office Order dated 5 December 2014. In pursuance thereof, candidates were provisionally selected and recommended for appointment to the post of Teacher (Primary).

6. The grievance of the respondents stemmed from a subsequent Office Order issued by the DSSSB on 5 December 2014, by which several candidates, including the respondents, were declared as ineligible for recruitment and appointment as Teacher (Primary) as they were overage.

7. The respondents represented, against the said decision, to the

³ “the Tribunal”, hereinafter

⁴ “Dip Ed” hereinafter

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DSSSB. In their representation, they relied on the judgment passed by a Division Bench of this Court in *Sachin Gupta v DSSSB*⁶. In that case, the Division Bench of this Court had held that candidates who had completed the Elementary Teacher Education⁷ Course between 2006 and 2008 were entitled to age relaxation while being considered for recruitment to the post of Teacher (Primary) following Advertisement 04/2009. The respondents sought the benefit of the said judgment.

8. As the DSSSB rejected their representation, the respondents instituted OA 450/2015 before the Tribunal, in which they prayed that they be considered for appointment as Teacher (Primary) in the MCD pursuant to Advertisement 04/2009 in view of the judgment passed by the Division Bench of this Court in *Sachin Gupta*.

9. The OA was contested by the petitioners as the respondents before the Tribunal. The petitioners contended that the respondents were not entitled to the benefit of the decision in *Sachin Gupta*, as the candidates in *Sachin Gupta* had cleared the ETE qualification in 2008, whereas the respondents were holders not of ETE but of the qualification of Dip Ed, though also obtained in 2008.

10. We may note, there, that Mr N.K. Singh, appearing for the petitioner, advances this as his primary submission before us, as well.

11. The Tribunal found that the issue raised by the respondent was no longer *res integra* in view of its earlier decision rendered on 2 February

⁵ "the MCD", hereinafter

⁶ 2008 SCC Online Del 989

⁷ "ETE", hereinafter



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2015 in ***Praveen Kumar v DSSSB***⁸.

12. There can be no real dispute that the situation of the respondents in the present petition is identical to that of the applicants in ***Praveen Kumar***. The applicants in ***Praveen Kumar*** were also admittedly holders of the Dip Ed qualification obtained in 2008. They had also applied for recruitment as Teacher (Primary) in the MCD, pursuant to advertisement 04/2009. Their case was also rejected on the ground that they were not entitled to the benefit of the decision in ***Sachin Gupta***, as the applicants in ***Sachin Gupta*** were holders of the ETE qualification, whereas the applicants in ***Praveen Kumar*** were Dip Ed holders.

13. The case set up by the petitioners before the Tribunal in ***Praveen Kumar*** was negated by the Tribunal in the following paragraphs in the following passages from its judgment:

“11. In the instant case, the certificate of Diploma in Education (Two Years Course) 2008, granted by the Board of Secondary Education, Madhya Pradesh, Bhopal, to the applicant, shows that the applicant completed the said course in the year 2008. *It is not disputed by the respondents that the said Diploma in Education (Two Years Course) completed by the applicant in the year 2008 is equivalent to Certificate Course in ETE. It is also not disputed by the respondents that a candidate, who possesses the Diploma in Education (Two Years Course), like the applicant, is eligible for selection and appointment to the post of Teacher (Primary) in MCD.* Thus, it is clear that (i) candidates possessing Two years diploma/Certificate course in ETE/JBT', (ii) candidates possessing 'B.El.Ed. from recognized institutions', and (iii) candidates, like the applicant, possessing 'Diploma in Education(Two Years Course)', which is equivalent to 'Two Years diploma/Certificate course in ETE/JBT or B.El.Ed. from recognized institutions', who in response to the Advertisement made applications for selection and recruitment to the post of Teacher (Primary) in MCD, formed one and same class. Therefore, all such candidates are entitled to same and equal treatment in the matter of determination of their

⁸ OA 4616/2014



eligibility for selection and appointment to the post of Teacher (Primary) in MCD on the basis of marks obtained by them in the recruitment examination. If a candidate, who completed 'Two Years Certificate Course in ETE' in 2008, is held eligible for selection and appointment to the post of Teacher (Primary) in MCD by giving him/her age relaxation up to 32 years in accordance with the judgment of the Hon'ble High Court of Delhi in ***Sachin Gupta's case (supra)***, it would be irrational and arbitrary to deny such age relaxation to a candidate, like the applicant, because he/she acquired 'Two Years Diploma in Education' in the year 2008, and further because the Hon'ble High Court of Delhi in ***Sachin Gupta's case (supra)*** did not specifically direct the respondents to grant age relaxation up to 32 years to such a candidate and permit him/her to appear in the examination for recruitment of Assistant Teacher (Primary). As has been observed by the Hon'ble High Court in ***Sachin Gupta's case (supra)***, the old Recruitment Rules for the post of Assistant Teachers (Primary) in the Government of NCT of Delhi, and in the Municipal Corporation of Delhi, prescribed the age limit of 32 years for male candidates and 42 years in the case of female candidates. The new Recruitment Rules notified by the Directorate of Education on 8.5.2006, and by the Department of Urban Development on 13.7.2007, prescribed the maximum age limit of 27 years for both male and female candidates belong to UR category. In ***Sachin Gupta's case (supra)***, the Hon'ble Court took the view that the aforesaid reduction of age limit would cause hardship to candidates already enrolled in the ETE course, who might suddenly find themselves overage and ineligible. With a view to ameliorate the hardship of already enrolled students in ETE course, it was directed by the Hon'ble High Court that the respondents would permit all those candidates who completed the ETE course either in the year 2006 or 2007 or 2008 to appear in the examination conducted by the respondents for the post of Assistant Teacher (Primary), provided they did not exceed the upper age limit of 32 years for male candidates and 42 years for female candidates, and they fulfilled all other eligibility conditions. As already noted, in the present case, the applicant completed Diploma in Education (Two Years Course) in the year 2008. Because of reduction of age limit from 32 to 27 years by view of the new Recruitment Rules for the post of Teacher (Primary) in the years 2006 and 2007, the applicant was held to be overage as on the cutoff date, i.e., 15.1.2010, and consequently, his candidature was rejected by the respondents, although he obtained 88 marks in the written examination, and the last UR category candidate, who was selected and recommended for appointment, obtained 79 marks in the written examination. Although it was not specifically directed by the Hon'ble High Court in ***Sachin Gupta's case (supra)*** that candidates, who completed 'Two Years Diploma in Education 2006 or 2007 or



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2008, would be permitted by the respondents to appear in the examination by giving them age relaxation up to 32 years for male candidates and 42 years for female candidates, yet, in our considered view, the applicant and other similarly placed candidates are entitled to age relaxation up to 32 years for male candidates and 42 years for female candidates on the ratio of the judgment passed by the Hon'ble High Court of Delhi and/or on the same viewpoint as expressed by the Hon'ble Court in ***Sachin Gupta's case (supra)***, and denial of such age relaxation to the applicant and other similarly placed candidates would be irrational, arbitrary and discriminatory and thus violative of Articles 14 and 16 of the Constitution of India inasmuch as candidates completing 'Two Years Diploma/Certificate Course in ETE' in the year 2008 and candidates completing 'Diploma in Education (Two Years Course)' in the year 2008, constituted and formed one and same class of candidates eligible for selection and appointment to the post of Teacher (Primary) in MCD and were, thus, entitled for equal treatment in the matter of determination of their eligibility.

12. In the light of our above discussions, we hold that the impugned Office Order No.344 dated 5.12.2014 (Annexure A/1) qua the applicant, is unsustainable liable to be quashed and accordingly, the same is hereby quashed. Consequently, the respondents are directed to consider the candidature of the applicant for selection and appointment to the post of Teacher (Primary) in MCD by giving him age relaxation up to 32 years, provided he did not exceed the upper age limit of 32 years as on the cutoff date, i.e., 15.1.2010, and he fulfilled all other eligibility conditions, as stipulated in the Advertisement. The respondents shall take appropriate decision in the case of the applicant within one month from today.”

14. Thus, the Tribunal held in ***Praveen Kumar*** that it was an admitted position that the qualification of Dip. Ed. was equivalent to the qualification of ETE. Inasmuch as the Division Bench of this Court in ***Sachin Gupta*** had permitted holders of the qualification of ETE, obtained in 2008 the benefit of age relaxation, the same benefit, it was held was available to holders of the Dip. Ed. Qualification, also obtained in 2008, for recruitment to the post of Teacher (Primary) following Advertisement 04/2009.



15. The Tribunal has, therefore, in the impugned judgment, followed its own earlier decision in **Praveen Kumar** and has granted the respondents the benefit of age relaxation. Resultantly, the OA filed by the respondents has been disposed of, with the following directions and observations in para 8 of the impugned judgment:

“8. In the present case, we find no other reason to take a view different from what has already been taken by the Tribunal in **Praveen Kumar's case (supra)**. Therefore, we hold that the office order No.344, dated 5.12.2014 (Annexure A/12), qua the applicants, is unsustainable and liable to be quashed, and, accordingly, the same is hereby quashed. Consequently, the respondents are directed to consider the candidatures of the applicants for selection and appointment to the post of Teacher (Primary) in MCD by giving them age relaxation in accordance with the decision of the Hon'ble High Court of Delhi in Sachin Gupta's case (supra). The respondents shall take decision in the case of the applicants within one month from today.”

16. Aggrieved thereby, the GNCTD and the DSSSB have approached this Court, under 226 of the Constitution of India by means of the present writ petitions.

17. We have heard Mr. N.K. Singh, learned counsel for the petitioner and Mr. Aggarwal as well as Mr. Kaushik, learned counsel for the respondents.

18. Before we advert to the contention raised by learned counsel, we the further path of the litigative trajectory, after the rendition, by the Tribunal, of the impugned judgment.

19. The decision in **Praveen Kumar** was challenged before this Court in a writ petition which came to be decided by this Court vide judgment



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dated 20 July 2016 in **DSSB v Praveen Kumar**⁹. The said decision was carried by the DSSSB further in appeal to the Supreme Court by way of Civil Appeal 10824/2016. The said Civil Appeal was disposed of by the Supreme Court by a detailed judgment dated 11 November 2016¹⁰. The Supreme Court in its judgment noted that the challenge before the Supreme Court in **Sachin Gupta** was to the Notification dated 13 July 2007 whereby the Recruitment Rules for appointment to the post of Assistant Teacher (Primary) in the MCD were notified. This Court negated the challenge holding that the rules were statutory and had legislative character and could not be challenged on the ground of malafides. The plea of legitimate expectation which was also raised was rejected.

20. As such in its decision in **Praveen Kumar**, the Supreme Court observed that **Sachin Gupta**, in effect, negated the challenge raised before this Court to the validity of the Recruitment Rules for appointment to the post of Assistant Teacher (Primary).

21. After having rejected the said challenge, the Supreme Court noted that, in order to ameliorate hardship which could have been faced by the candidates, the High Court, had in **Sachin Gupta**, granted a one time relaxation. The observations of the Supreme Court in this regard, in paras 8 to 10 of the decision in **Praveen Kumar**, deserve to be reproduced thus:

“8. The High Court in **Sachin Gupta** case also accepted the well-recognised principle that it is the employer's prerogative to decide the age-limit and academic suitability of candidates which they wish to employ and so long as the same are not contradictory

⁹ 2016 SCC Online Del 4105

¹⁰ DSSSB v Parveen Kumar, (2017) 11 SCC 283



to the academic eligibility as prescribed by the NCTE Act, any challenge to the same, merely because it renders some candidates ineligible, ought to be rejected. Fixing of such age-limit for a given post is a matter of policy as held by this Court in *Union of India v Shivbachan Rai*¹¹.

9. After rejecting the contentions on merits and upholding the validity of the Recruitment Rules, the Court went into the issue of hardship because of sudden reduction in the upper age-limit and only on that ground one-time relaxation was given to the petitioners in the said petition. A direction was given to permit all those candidates who had completed the ETE course either in the year 2006 or 2007 or 2008 to appear in the examination. Thus, this was one-time relaxation given for the examination which was to be conducted in the year 2008, in order to ameliorate the hardship.

10. Once, we understand the contours and scope of the judgment and directions, it becomes abundantly clear that the said judgment of the High Court in *Sachin Gupta case* cannot be made applicable for all times. The respondent herein was not the candidate in the recruitment to the said post in the year 2008. On the contrary, he applied for the post pursuant to the advertisement published in the year 2009. In the impugned judgment the High Court has failed to consider the aforesaid analysis of its earlier judgment in *Sachin Gupta case*.”

22. The respondents before the Supreme Court in *Praveen Kumar* filed Review Petition C 486/2017 seeking a review/correction of the judgment dated 11 September 2016 rendered by the Supreme Court. The Review Petition came to be allowed by an order dated 20 September 2017, which we may reproduce in *extenso* thus:

“By this petition filed by the review petitioner (respondent in C.A. No. 10824/2016), review of judgment dated 11.11.2016 rendered in the aforesaid appeal is sought for.

It is pointed out that there is an error, which has crept in this judgment and in order to demonstrate that Mr. Prashant Bhushan, learned counsel appearing on behalf of the review petitioner has referred to para 10 of the judgment, which reads as under:

"10 After rejecting the contentions on merits and

¹¹ (2001) 9 SCC 356



upholding the validity of the Recruitment Rules, the Court went into the issue of hardship because of sudden reduction in the upper age limit and only on that ground one time relaxation was given to the petitioners in the said petition. A direction was given to permit all those candidates who had completed the ETE course either in the year 2006 or 2007 or 2008 to appear in the examination. Thus, this was one time relaxation given for the examination which was to be conducted in the year 2008, in order to ameliorate the hardship."

He submits that in the aforesaid para this Court has categorically observed that those who had completed the ETE course either in the year 2006 or 2007 or 2008 were eligible to appear in the examination. He points out that in spite of this observation in para 10, in para 11 the benefit is denied to the review petitioner on the ground that he was not the candidate in the recruitment to the said-post in the year 2008 and he had applied for the post pursuant to the advertisement published in the year 2009. It is his submission that it was not necessary for the review petitioner to be the candidate in the recruitment, which was carried out in the year 2008. The year 2008 is relevant for the purpose of completion of ETE course. We find justification in the submissions made by Mr. Bhushan.

The admitted, facts are that the review petitioner had completed the ETE course in, the year 2008. We have gone through the judgment in the case of Sachin Gupta vs. DSSSB & Ors. which was decided by the High Court on 28.08.2008 and that clearly shows that the benefit, of relaxation was given to the candidates who have completed the ETE course in the year 2006 or 2007 or 2008. The appearance in the examination in the year 2009 is, therefore, of no consequence.. We also clarify that as per the judgment of Sachin Gupta's case the relaxation granted by the High Court ceased to operate for the ETE courses -after 2008 i.e. commencing from the year 2009 inasmuch as from 30th September, 2007 the maximum age limit for ETE course had been increased from 30 years to 34 years.

We, thus, rectify the error which has crept in paras 11 and 12 of the judgment and the said paras are substituted, to the following para:

"Once, we understand the contours and scope of the judgment, it becomes abundantly clear that the said judgment of the High Court in Schin Gupta's case cannot be made applicable for all times. The benefit of relaxation is given to those candidates who had completed the. ETE course either in year 2006 or 2007 or 2008, to appear in the



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examination. Since the respondent completed the ETE course in year 2008 and pursuant thereto he appeared in the examination conducted in the year-2009. Pursuant to an addendum to advertisement dated 11.12.2009, he was entitled to one-time relaxation in terms of Sachin Gupta's case. Therefore, his candidature was wrongly cancelled by the appellant. We, therefore, find no fault in the impugned judgment of the High Court.

At the same time, it needs to be clarified as to how the case of the respondent has to be deal with. The outcome of the above would be that if the persons below the respondent in the merit list were appointed he shall also be given the appointment. He will be assigned that date of appointment on which, the last person in the said selection of the year 2009 was appointed. His notional seniority shall be counted from that date. It is also made clear that in the batch of 2009, he shall be ranked junior most. It is that the respondent shall not be entitled to any back-wages for the intervening period except the seniority as mentioned above, and continuity of service for all other purposes. This order is passed in the facts and circumstances of the present case and it cannot be treated as a precedent."

The review petition stands disposed of in the above stated terms.

23. The sequitur of the aforesaid litigative journey is, therefore, that, ultimately, the applicants before the Tribunal in **Praveen Kumar** succeeded in their challenge and were permitted one time relaxation for consideration of their candidature for the post of Teacher Primary in the MCD following Advertisement 04/2009.

24. There is absolutely no basis on which the applicants in **Praveen Kumar** can be distinguished from the respondents in the present case, except perhaps, in their names and individual idiosyncrasies. As in the case of the applicants in **Praveen Kumar**, the respondents in the present case, also applied for appointment to the post of Teacher (Primary) and the MCD, following Advertisement 04/2009. As in the case of the applicants in **Praveen Kumar**, at all the respondents in the present case



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had also obtained the Dip. Ed. qualifications in 2008.

25. The situation of the respondents in the present case therefore is identical to Praveen Kumar, *et al.*

26. There can be no gainsaying that the respondent would therefore be entitled to the benefit of the judgment of the Supreme Court in ***Praveen Kumar***, rendered on 20 September 2017 in Review Petition 486/2017.

27. Mr. Singh then falls back to the concluding observation of the Supreme Court while disposing of the Review Petition which reads, “this order is passed in the facts and circumstances of the present case and it cannot be treated as a precedent”.

28. We are unable to agree that the said observation can be used as a ground to deny to the respondents, the benefit which was granted to the candidates before the Supreme Court in ***Praveen Kumar***, when they are identically situated. The observation that the order cannot be treated as a precedent in our view is relatable to Article 141 of the Constitution of India and is intended to convey that the judgment of the Supreme Court should not be treated as laying down a legal principle of general application so as to be applied in other cases as a precedent, within the meaning of Article 141. It certainly cannot be intended to mean that other candidates, identically situated, would not be given the same benefit. We may note that this view was earlier adopted by a learned Single Judge of the High Court of Bombay in ***D. Navinchandra v UOI***. We respectfully agree.

29. In fact, we may note that the Supreme Court has, in various cases,

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including *Inder Pal Yadav v UOI*¹², *Amrit Lal Berry v Collector of Central Excise*¹³, *State of U.P. v Arvind Kumar Srivastava*¹⁴ and the recent decision in *Lt Col Suprita Chandel v UOI*¹⁵, held that the executive should ideally *suo motu* apply the decisions of Courts to candidates who are identically situated, without driving every candidate to Court.

30. In view of the aforesaid, we are in agreement with the Tribunal that the respondents were entitled to the benefit of age relaxation on the basis of the Dip. Ed. qualification which they had obtained in 2008.

31. The judgment of the Tribunal is, therefore, upheld in its entirety.

32. Let the judgment of the Tribunal be implemented within eight weeks from today.

33. The writ petition stands accordingly dismissed.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 8, 2025/yg

[Click here to check corrigendum, if any](#)

¹² (1985) 2 SCC 648

¹³ (1975) 4 SCC 714

¹⁴ (2015) 1 SCC 347

¹⁵ 2024 SCC OnLine SC 3664