

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

OA No.414/2016

Dated this Tuesday the 4th day of February 2020

Coram: R. Vijaykumar, Member (A).
Ravinder Kaur, Member (J).

Archana Vinubhai Patel
Aged about 39 years,
Presently Housewife,
and residing at: T-3,
Hiren Park-B,
Dilip Nagar,
Nani Daman 396 210.

...Applicant.

(By Advocate Shri S. R. Atre).

Versus

1. The Administrator,
Union Territory of
Daman and Diu,
Sachivalaya, Fort Area,
Daman 396 220.
2. The Secretary (Education),
Union Territory of Daman and Diu
Sachivalaya, Fort Area,
Daman 396 220.
3. The Director of Education,
Union Territory of Daman and Diu,
Secretariat, Daman 396 220.
4. The Assistant Director of Education,

Administration of Daman and Diu,
Nani Daman, Daman 396 210.

... Respondents.

(By Advocate Shri V. S. Masurkar).

O R D E R

Per : R. Vijaykumar, Member (A)

1. When the case is called out, Shri S. R. Atre, learned counsel appeared for the applicant and Shri V. S. Masurkar, learned counsel appeared for the respondents.

2. This application has been filed on 25.05.2016 under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following reliefs:

"A. this Hon'ble Tribunal be pleased to call for the records and proceedings of the present case an after exmining the legality and propriety thereof, quash and set aside the Impugned list of candidates dated 11th of May, 2016 wherein the Applicant's candidature for the post of Assistant Teacher has been rejected by the Respondents on the count that she is over aged, and accordingly direct the Respondents to appoint the Applicant to the post of Assistant Teacher in Sanskrit with all the consequential reliefs.

8.A Insert phrase "superseded by Order/Final Notification dated 10th

of February, 2017 [Annexure A-1-A]
after "Impugned list of candidates
dated 11th of May, 2016."

B. This Hon'ble Tribunal be
pleased to hold and declare that
the action on the part of the
Respondents in rejecting the
Applicant for the post of
Assistant Teacher in Sanskrit on
the count of being over aged, is
illegal and bad in law and the
same deserves to be quashed and
set aside.

8.B Insert phrase "superseded by
Order/Final Notification dated 10th
February, 2017 [Annexure A-1-A]
after "Impugned list of candidates
dated 11th of May, 2016."

C. Pass any such Order and/or
Orders as this Hon'ble Tribunal
deems fit and proper in the facts
and circumstances of the present
case.

D. Costs of the present
application be provided for."

3. The applicant is stated to hold an M.A.
degree in Sanskrit with date of birth 09.07.1976,
and has claimed that she was working for one year
with the Nehru Yuva Kendra at Daman, for one year
with the Shreenathji School at Varkund, for two
years as a Counselor AIDS Control Society with
Swami Vivekanand Yuvak Mandal-Daman, and for two
years with Government Middle School at

Bucharwalda Diu, from 23.06.2008 upto 15.06.2010, when she resigned from her service as primary teacher a fact that has been brought to notice by the respondents in their reply. The applicant responded to an advertisement dated 11.09.2006 for the post of Assistant Teacher comprising one OBC and three UR category posts of Assistant Teacher for which she appeared in written examination on 25.02.2007 but the selection was cancelled by the respondents. The applicant then applied against an advertisement for 50 posts of Assistant Teacher issued on 21.06.2010 with last date of 20.07.2010, at which time she was 34 years and 11 days of age in her application dated 19.07.2010, she has claimed experience of teaching in Government schools from 23.06.2008 to date of application. No examination was held for this selection. This second advertisement issued on 21.06.2010 (last date 20.07.2010) was cancelled on administrative grounds and a fresh and third advertisement was then issued by the respondents on 25.09.2014. The respondents had extended the relevant age relaxation for this

selection process of 2014 for all those persons who had applied for the previous advertisement for the year 2010 and who were eligible for consideration with reference to the crucial date of that advertisement. The respondents scrutinized the applications for the selection initiated in 2014 and on 11.05.2016, published a rejection list based on initial scrutiny of the application with the applicant at serial no.5 of this rejection list stating that she was over-aged.

4. The applicant has referred to the circular no.COL/DMN/REC-MTS/EST-11/2012-13/3955 dated 07.02.2013 (Annexure A-10) issued by the respondents which provided for relaxation of age both in cases of cancellation of recruitment due to litigation or on administrative grounds for a continuing vacancy/or where a candidate had been working on daily wages/ad-hoc/contract basis in the Union Territory Administration of Daman and Diu and if she was not over-aged at the time of initial appointment on such ad-hoc/contract basis and allowed for consideration of breaks as below:

- 1) In cases where recruitment process is held up due to litigation/administrative reasons after inviting applications for filling up the vacancy, fixation of pay crucial date for age limit i.e. the crucial date for determining the age would be the same even if the examination is shifted/postponed to some later date. Similarly, when examination is shifted/postponed to some later date after notifying the vacancy and fresh applications are invited, in such cases the candidate(s), who have applied against first advertisement will also be eligible for relaxation of age under this clause provided they were eligible at the time of their first application.
- 2) In cases where the candidate has been working on daily wages/ad-hoc/contract basis in the UT Administration of Daman & Diu for some years and was not over aged for regular appointment when he/she was initially appointed on ad-hoc/contract basis, in such cases relaxation of age is admissible to the extent of total period of service spent continuously without any break. If breaks are there, condonation to the extent of total past service (excluding breaks) in any capacity (ad-hoc/contract) can be considered.
- 3) Age relaxation, under para (2) above shall also be available to Daily Wages/Contract employees, appointed under Sarva Shiksha Abhiyan/Rashtriya Madhyamik Shiksha Abhiyan.
- 4) It may be noted that total period spent in each of the departments of the Administration shall be counted for relaxation irrespective of the department where they are applying for regular appointment, provided the post is general in nature and it doesn't require any specific technical qualification.
- 5) It is reiterated that all cases of age relaxation are subject to the primary condition that at the time of their initial engagement as Ad-hoc/Contract/Daily wages, these employees were not overage for the post they were initially engaged.
- 6) Only service shall be reckoned for relaxation under this policy (rendered upto the issue of this Circular).

7) The benefit of age relaxation shall not be available to ad-hoc/contract/daily wages employees engaged after the issue of this Circular, except to the extent of the service already rendered, if any."

5. The respondents have filed their reply to the application after which the applicant has filed rejoinder and a further additional rejoinder.

6. The issues for consideration in this OA are whether (i) the advertisement and selection of year 2006 and the vacancies thereto when the applicant appeared in the written examination is relevant for consideration in the examination of eligibility for the year 2014; (ii) the determination of the age of the applicant when she applied against the advertisement dated 21.06.2010 with cut off date of 20.07.2010 which had been subsequently cancelled on administrative grounds; (iii) if the circular dated 07.02.2013 in regard to age relaxation for cancelled advertisement and age relaxation for experience needs to be considered for the selection process made in regard to the advertisement issued in the year 2014. Associated with this issue would be

whether the circular dated 07.02.2013 would be applicable for the examination of eligibility for the cancelled advertisement of the year 2010 in regard to experience for age relaxation.

7. The learned counsels for the parties have been heard at length on this issue and pleadings have been carefully perused with reference to the facts, rules, law and precedents.

8. The learned counsel for the applicant submits that the applicant initially applied in the year 2006 and her eligibility should be decided based on her first application against the application for regular posts in the year 2006 and not the later years and further, that the applicant was undeniably within the age limit at that point in time. The learned counsel for the applicant relies on the circular issued on 07.02.2013 to argue that since both the selections of year 2006 and year 2010 were cancelled, the provisions of this circular should be extended to the applicant to grant her benefits of age relaxation.

9. In response, the learned counsel for the

respondents has referred to the decision of this Tribunal based on submissions in OA No.413/2016 which dealt with the circumstances of the cancellation of the selection of the year 2006 and the cancellation of the advertisement of the year 2010. This Tribunal has recorded the following orders in this regard:

"8. The applicant has claimed that her age should be considered with reference to the advertisement that was issued in 2006 for four posts of Assistant Teachers and for which she applied and was admittedly eligible. However, the respondents have put forward their response which remains without rebuttal that these four posts were filled up in consequence of proceedings initiated by four affected parties who were contractual employees and whose status was regularized in pursuance of orders of this Tribunal and had attained finality. Therefore, the advertisement of 2006 and the selections thereof ceased to have any significance. If the applicant had wished to challenge the appointment of four persons by way of regularization in those four advertised posts, she should have done so at the appropriate point of time wherein the issue could have been considered as to whether she had any substantive right to those posts. The fact is, that she had applied and had written the exams and no selections had taken place. Therefore, it cannot be argued that she had any right to the posts and these four vacancies were extinguished by way of appointment and nothing

remained of these four posts to which she could have been considered for selection when new posts were advertised in the year 2010."

10. Further, the learned counsel for the respondents submits that the applicant resigned from her post of primary teacher on 15.06.2010 prior to the issue of advertisement on 21.06.2010 with crucial date 20.07.2010 and for which she applied on 19.07.2010. He refers to the circular dated 07.02.2013 at (Annexure A-10) under para-2 extracted above where it is required that the candidate should have been working and any claims regarding breaks and condonation thereof were to be considered by the respondents.

11. In this case, when the applicant has resigned, the resignation amounts to a forfeiture of service. Under Service law, words have a specific meaning and it is evident that the applicant seeks an amendment in the policy with regard to that matter but has not challenged the circular itself. Again, he argues that the circular has the status of a statutory rule and has to be read in compliance with the Article 309 and cannot be subjected to any liberal

interpretation by Courts and Tribunals.

12. In rebuttal, the learned counsel for the applicant claims that there was no resignation but she has himself claimed in the additional rejoinder filed on 27.03.2019, that she never resigned but could not continue further because of some family problems. It was also admitted that the applicant has not resumed or served thereafter from 15.06.2010 till date in the teaching profession that could have been taken into consideration in the year 2014.

13. Having dealt with the claim of the applicant to be considered based on her eligibility in the year 2006 advertisement as already held in OA No.413/2016, the next issue is whether the applicant was eligible in the year 2010. At this time, the requirement was that applicants had to be below 30 years of age for UR category candidates and with 03 years of relaxation for OBC candidates, the age limit becomes 33 years. However, the applicant was 34 years and 11 days at that point in time and was clearly not eligible on this aspect. Further, the

applicant has admitted that she stopped working on daily wages basis from 15.06.2010 because of some family problems although she claims that she never resigned. The respondents have construed this absence from duty of a daily wager as a resignation but have not denied that the applicant never formally gave a letter of resignation. However, a daily wager cannot argue that this absence would constitute a technical break nor is there any evidence that she had applied for returning to the service on the same terms and thereafter, for regularization of the break from when she left service on that she ever recommenced work thereafter for which she has admitted that she is now a housewife in para 4(i) of her OA itself. Such abandonment of a daily wagers job can only then considered as resignation for the circular dated 07.02.2013 (Annexure A-10). Therefore, the period of service from 23.06.2008 to 15.06.2010 cannot be considered for the proposes of age relaxation nor can the later period be treated as a break for the purpose of condonation as rightly held by the

respondents.

14. In these circumstances, the applicant is clearly ineligible in terms of the advertisement issued in the year 2010 as on 27.07.2010 and since she cannot be granted age relaxation for experience, she also becomes ineligible in terms of the advertisement of the year 2014 and hence, it is held that the respondents rightly placed her in the list of rejected applications which has been impugned in this OA.

15. In the facts and circumstances, the OA is devoid of merits and is accordingly dismissed without any order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

v.

JD
05/02

