

Central Administrative Tribunal
Principal Bench
New Delhi

M.A.No.558/2013 and M.A.No.2558/2014
in
O.A.No.2878/2012

Order Reserved on: 10.03.2016
Order pronounced on 14.03.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

Miss Kusum Lata Applicant

(By Advocate: Sh. Mahender Singh)

Versus

Delhi Subordinate Services Selection Board & Ors.. Respondents

(By Advocate: Ms. Rashmi Chopra)

ORDER

By V. Ajay Kumar, Member (J):

M.A.No.558/2013:

In July, 2010, Respondent No.1-Delhi Subordinate Services Selection Board (DSSSB) published the Result Notice for the post of PGT (English) [Female] for appointment under Post Code No.22/10 in the Directorate of Education, Govt. of NCT of Delhi. From the said notice, an SC category candidate Vandana Hari who was at Sl. No.4 and obtained 95 marks was provisionally selected and recommended for appointment to the aforesaid post. However, the name of the

applicant who is also an SC category candidate was shown in the merit list at Sl. No.49, in spite of having obtained 96 marks by her and she has not been recommended for appointment to the aforesaid post of PGT (English)[Female].

2. Aggrieved by the said action of the respondents, the applicant filed the OA No.2878/2012 and this Tribunal, following a Full Bench Judgement of the Hon'ble High Court of Delhi in **Deepak Kumar and Others v. District and Sessions Judge and Others in WP (C) No.5390/2010**, decided on 12.09.2012, disposed of the said OA on 21.01.2013, as under:

"7. In view of the above position, we dispose of this O.A. with the direction to the respondent No. 1 - DSSSB to re-examine the case of the applicant herein also as in the case of Deepak Kumars case (supra) and if her case is covered by the aforesaid judgment of the High Court of Delhi, she shall also be recommended for appointment to the post of PGT (English)(Female) under the Post Code 22/10 subject to fulfilment of all other requirements as per rules. They shall also issue necessary orders within a period of one month from the date of receipt of a copy of this order. In that case, she will also be entitled for all consequential benefits which are being enjoyed by her batch mates except back wages. In case she is not found eligible for the aforesaid post for any other reason, she shall be informed about it by issuing a reasoned and speaking order within the aforesaid period. There shall be no order as to costs."

3. The respondents, in compliance of the aforesaid orders of this Tribunal, after re-examining the case of the applicant, issued order No.313 dated 14.02.2013, which reads as under:

"1. The applicant had applied for the post of PGT (English) under post code No.22/10. The DSSSB had conducted the examination for this post on 10.12.2011 and the result was declared on 17.8.2012.

2. The applicant Kusum Lata was short listed in part – I examination in SC category on the basis of her claim in the application form. This is due to the fact that the Board does

not conduct pre-examination scrutiny at the time of declaration of the result of Part-I.

3. The candidate obtained 96/200 marks as per final merit list and her case was carefully examined before declaration of the result. The documents furnished by the candidate were scrutinized and it was observed that the applicant was a SC Migrant i.e. her SC certificate was based on her father's caste certificate of Uttar Pradesh.

Accordingly, she was not found eligible for appointment under SC category for the jobs under Govt. of Delhi.

4. As per the then existing policy of the Govt. of Delhi, the benefit of SC category was not admissible to SC outsider/SC Migrants candidates instead they were considered under UR category only.

5. In the light of the judgment of the Hon'ble Supreme Court of India dated 04.08.2009 as passed in Civil Appeal No.5092 of 2009 arising out of petition(s) for Special Leave to Appeal (Civil No(s).24327/05-Subhash Chandra & Anr. V/s DSSSB & Ors. she being a SC migrant (UR) not found eligible for selection under the SC category. The reservation policy was confirmed by Delhi High Court also in the case titled as DSSSB & Anr. Vs. Mukesh Kumar & Others in WP(C) No.610/2011 & connected cases.

6. Later, in the matter titled Deepak Kumar & Ors. District & Session Judge Delhi & Ors. WPC No.5390/2010 and connected petitions decided on 12.9.2012. However, the result for the post of PGT (English) post code 22/10 (Female) was declared before 12-9.2012, therefore, the law as applicable on that date has to be followed. Accordingly, the result in this case does not require any change.

In view of the above facts, the applicant Kusum Lata cannot be considered for selection to the post of PGT (English) under post Code 22/10 under SC category, the result of which was declared before the decision of the Hon'ble High Court of Delhi in the case referred above.

This issues with prior approval of the competent authority."

4. Aggrieved by the said order, the applicant filed MA No.558/2013 in OA No.2878/2012 seeking to issue directions for execution of the order dated 21.01.2013 in OA No.2878/2012 and for other consequential directions.

5. This Tribunal, after hearing both sides, in the said MA 558/2013, passed orders on 23.05.2013 and the relevant part of which reads as under:

"2. Learned counsel for the parties appearing in this case have submitted that this case is identical to CP No.107/2013 in OA No.4622/2011 wherein certain order has been passed on 07.05.2013. The relevant part of the same is as under:-

"2. The Respondent-Delhi Subordinate Services Selection Board (DSSSB in short) in purported compliance of the aforesaid order passed the order dated 15.1.2013 stating that the Applicant cannot be considered for selection to the post of TGT (English) under post Code 02/10 under SC category, the result of which was declared before the decision of the Hon'ble High Court of Delhi in the case of **Deepak Kumar & Ors.** (supra) decided on 21.09.2012.

3. According to the learned counsel for the petitioner, the aforesaid stand taken by the Respondent-DSSSB is Contempt of Court. He also stated that the respondent has deliberately and wilfully ignored the directions of this Tribunal as evident from their aforesaid order dated 15.01.2013 whereby, they have rejected the case of the petitioner without examining as per directions of this Tribunal as mentioned in its order. Once the respondents were directed to re-examine the case of petitioner to decide as to whether her case is covered by the judgement of the High Court dated 12.09.2012, the respondents were required to pass specific order stating therein as to whether the case is covered or not. He has also stated that a perusal of the order dated 15.01.2013 makes it very clear that the respondent has not disputed the fact that the case of the applicant is in fact covered by the aforesaid decision of Hon'ble High Court dated 12.09.2012, but it rejected her case on the technical ground that judgement of the High Court in the case of **Deepak Kumar & Ors.** (supra) came on 12.09.2012 and the result of the applicant was declared on or before that date on 12.09.2012. His contention is that such a stand taken by the respondent-DSSSB is absolutely irrational and illogical for the single reason that is such a stand is taken by the respondents in **Deepak Kumar & Ors.** case, they cannot implement order of the High Court to give appointment to the petitioner therein before their result was also announced in 2010/2011 but the judgement was pronounced only on 12.09.2012. The Respondent has filed its reply justifying their stand in the aforesaid order dated 15.01.2013. They have further stated that result of the post of TGT (English), post code 02/10 was declared on 11.3.2011 and the petitioner was not considered for benefit of reservation in SC category being SC (Outside) (U.P.) In view of the judgment dated 04.08.2009 of Hon'ble Supreme Court of India passed in Civil Appeal No.5092/09 (arising out of SLP Civil No.24327 of 2005) – **Subhash Chandra & Anr. vs. Delhi Subordinate Services Selection Board.** They have further stated that the High Court has passed its judgement in **Deepak Kumar & Ors. vs. District & Session Judge Delhi & Ors.,** in WP(C) 5390/10 and connected petitions only on 12.09.2012 and therefore, the law laid down therein needs to be followed only

prospectively and the result in this case requires no change.

4. We have considered submissions made by the counsel for the parties. In our Considered view, the Respondent-DSSSB has taken a very hyper technical view in the matter to frustrate the case of the applicant. The Applicant is a candidate belonging to SC category and denial of her right for regularisation is a denial of her Constitutional rights. Moreover, the Apex Court's two Member Bench judgment in the case of **Subhash Chandra & Anr.** has already been held to be not binding as the law of laid done by the Supreme Court in a decision delivered by a Bench of lesser or co-equal strength **Vide** judgement in **State of Uttranchal vs. Sandeep Kumar & Ors.** 2010 (iv) 453 decided on 07.10.2010. In the said judgment, the Apex Court has held that the decision rendered in three judges Bench in the case of **S. Pushpa & Ors. vs. Sivachanmugavelu & ors.,** (2005) 3 SCC 1, to be applied per incurrium.

5. Therefore, it is immaterial whether the result of the PGT (English) post code 02/2010 was declared on 11.3.2011 and High Court has delivered its judgment in **Deepak Kumar's** case only on 12.09.2012. Moreover, some of the petitioners in **Deepak Kumar's** case (supra) filed their Writ Petitions in the year 2010 and some in the year 2011. They got the benefit of the said judgment delivered on 12.09.2012 from a retrospective date."

3. The aforesaid order will apply in this case also.

4. List this case on 23.07.2013."

6. However, when CP No.107/2013, filed in an identical OA No.4622/2011, was heard along with the present MA 558/2013 in OA No.2878/2012, this Tribunal by its order dated 23.08.2013, after hearing both sides, observed as under:

"7. In our considered opinion, the respondent-DSSSB is not realizing the fact that the applicant's right for reservation is a fundamental right and she cannot be deprived of the same. Once Hon'ble High Court of Delhi in its judgment in **Deepak Kumar's** case (supra) has clearly held that by virtue of specific ruling applicable in the case of Union Territories, in *Pushpa*, whatever may be the doubts entertained as to the soundness of its reasoning, the High Courts have to apply its ratio, as it is by a formation of three judges wherein the earlier judgments in *Marri and Action Committee*. It also submits that the discipline by the doctrine of precedent compels this court to follow the *pushpa* ruling. Therefore, the respondent-DSSSB was duty bound to follow the aforesaid judgment and to grant reservation to the applicant herein. Moreover, their submission that by implementing the order of this Tribunal, they would be opening a Pandora box is

absolutely absurd. The respondents are duty bound to act in accordance with the Constitutional provisions. They cannot deny the right of reservation admissible to a candidate just because they have to review many other similar cases.

8. In the above facts and circumstances of the case, we direct the DSSSB to once again re-consider the case of the applicant strictly in accordance with the directions of the Hon'ble High Court of Delhi in **Deepak Kumar's** case and to pass appropriate orders immediately irrespective of the fact that they may have to consider other similar cases.

9. List the matter for further scrutiny on 31.10.2013."

7. In terms of the aforesaid order and other orders passed in other identical cases, the respondents once again reconsidered the whole issue and passed another order on 30.10.2013, which reads as under:

In compliance of the above mentioned order of the Hon'ble CAT, the case of applicant i.e. Ms. Kusum Lata has been reconsidered for the post PGT (English)(Female), post code 22/10 and following are the facts:-

1. As directed by the Hon'ble CAT in the above mentioned order, the case of Ms. Kusum Lata was re-considered and found that the case of the applicant is covered in accordance with the directions of Hon'ble High Court of Delhi in Deepak Kumar's case, but there is no vacancy available under SC category of the said post of PGT (Female) English, Post code 22/10 as all the available 05 vacancies under SC category in the said post code have been filled up by the Board. In fact all the 21 vacancies under all categories in this post code were filled up by the Board and the recruitment process was closed by the Board. Thus, the applicant cannot be considered for selection to the post of PGT (English) (Female), Post Code 22/10.

The details of the case are given below:-

Initially 04 SC candidates were selected vide final result of post of PGT (Female) (English), Post Code 22/10 declared vide Result Notice No.286 dated 17.08.12 and the candidature of one SC candidate was kept pending due to want of 'SC caste certificate'. Later, after the candidate submitted the requisite caste certificate, she was also declared selected vide Result Notice No.305 dated 01.02.2013. Thus, all the 05 available vacancies of post of PGT (Female)(English), Post Code 22/10 were filled up by the Board and as such there is no vacancy under SC category. Copies of Result Notice No.286 dated 17.08.12 and Result Notice No.305 dated 01.02.13 are annexed as Annexure-I and Annexure-II respectively. In fact, all the available

vacancies under all categories of post of PGT (Female) English), Post Code 22/10 were filled up by the Board and there is no vacancy available under any category in post code 22/10. The recruitment process for the post of PGT (Female)(English), Post Code 22/10 was subsequently closed with the approval of the Competent Authority. A copy of vacancy position of post of PGT (Female)(English), Post Code 22/10 sent to the user department after closure of recruitment process is annexed as Annexure-III.

2. Further, It is submitted that there are 05 SC (Migrant/Outsider) candidates who are above in the merit list as compared to the applicant i.e. Ms. Kusum Lata and were also declared 'Not eligible' by the Board due to judgment dated 04.08.2009 of Hon'ble Supreme Court of India which was applicable for admissibility of benefit of reservation in SC/ST category as per the advertisement of the said post. The cases of these 05 candidates are also covered in accordance with the directions of Hon'ble High Court of Delhi in Deepak Kumar's case but as there is no vacancy available under SC category of the said post of PGT (Female)(English), Post code 22/10, and as such they also cannot be considered for selection by the Board.

In view of the above, it is regretted that the applicant, i.e., Ms. Kusum Lata cannot be considered for selection to the post of PGT(Female)(English), Post code 22/10 as there is no vacancy available and the recruitment process of the said post has been closed."

8. Heard both sides and perused the pleadings on record.

9. It is the specific case of the respondents that there are 5 SC (Migrant/Outsider) candidates who are above in the merit list as compared to the applicant, and were also eligible for consideration in view of the identical orders of the Courts, the cases of those 5 candidates and the applicant were also considered but as no vacancy is available, neither the said persons who are above the applicant in the merit list under the category of SC nor the applicant could be considered for selection and accordingly, as there is no vacancy

available, and since the recruitment process has been closed, the applicant cannot be accommodated.

10. In the circumstances and in view of the re-consideration of the case of the applicant as per the directions of this Tribunal in terms of **Deepak Kumar's** case (supra), we do not find any merit in the MA No.558/2013 and accordingly the same is dismissed.

11. In view of the dismissal of MA No.558/2013, the MA No.2558/2014 also disposed of as no further orders are necessary.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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