

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

C.P.NO.633 OF 2016
(In OA No.3826/2013)

New Delhi, this the 26th day of April, 2017

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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1. Ms.Rajni Meena,
D/o Sh.C.R.Meena,
Q.No.149/Sec.I, Sadiq Nagar,
New Delhi 110049

2. Ms.Sumita Meena,
D/o Sh.Raja Ram Meena,
Q.No.GI-1031, Sarojini Nagar,
New Delhi 110023

3. Mr.Vikram Ram Meena,
S/o Sh.Raja Ram Meena,
R/o House No.2, Village Meethapur,
Post Badarpur, New Delhi 110044

í í í Petitioners

(By Advocate: Mr.Naresh Kaushik)

Vs.

1. Deepak Mohan Spolia,
Chief Secretary,
Govt. of NCT,
Players Building, IP Extension,
Delh

2. V.K.Singh,
Secretary,
Delhi Subordinate Services Selection Board,
FC-18, Institutional Area, Karkardooma,

(Near Railway Reservation Centre),
Delhi 110092

(By Advocates: Mr. K.M.Singh & Mr.R.K.Jain)

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ORDER

Per Raj Vir Sharma, Member(J):

We have perused the records, and have heard Mr.Naresh Kaushik, the learned counsel appearing for the applicant-petitioners, and Mr. K.M.Singh and Mr.R.K.Jain, the learned counsel appearing for the respondent-opposite parties.

2. The applicant-petitioners had filed OA No.3826 of 2013 seeking the following reliefs:

- “(i) allow the present Original Application;
- (ii) direct the respondent no.1 to declare the merit list for the recruitment of the ST category candidates for the post of primary teachers undertaken in pursuance to the Advertisement No.2 of 2008 pertaining to post code No.16/08.
- (iii) Consequently direct the respondents to undertake all the necessary steps as the inaction of the respondents in withholding the results for the ST category is untenable in the law.”

3. The Tribunal had disposed of the said O.A.No.3826 of 2013, vide order dated 11.8.2016, the relevant/operative part of which is reproduced below:

“6.3 As far as limitation is concerned, Hon’ble High Court of Delhi in **Ms.Nirmala’s** case (supra) has already set aside the order of this Tribunal dismissing a similar O.A. on the grounds of limitation. Thus, this issue stands settled. Since the result of the ST category has still not been declared by the respondents, the question of limitation in this case does not arise.

6.4 As far as merits of the case are concerned, the respondents have not disputed that the applicants were similarly placed as petitioners in the case of **Ms.Babita Kumari** (supra), which was allowed by Hon’ble High Court of Delhi following the judgments in the case of **Deepak Kumar** (supra).

7. Accordingly, we allow this O.A. and direct the respondents to extend the benefit of the judgment of Hon’ble High Court of Delhi in the case of **Ms.Babita Kumari** (supra) to the applicants herein as well. This benefit shall be extended to them within a period of 60 days from the date of receipt of a certified copy of this order. No costs.”

4. Alleging non-compliance of the above order dated 11.8.2016 passed by the Tribunal in OA No.3826 of 2013, the applicant-petitioners filed the present Contempt Petition on 15.12.2016.

5. On 14/17.2.2017, an affidavit was filed on behalf of the respondent-opposite parties stating, inter alia, that in compliance with the direction of the Tribunal, the DSSSB considered the cases of the applicant-petitioners and passed an order dated 2.2.2017 which is reproduced below:

“ORDER”

This order is being passed in compliance of the directions of CAT issued vide its order dated 11.08.2016 in OA No.3826/2013, MA 1737/2016, MA 2911/2013 as well as in CP No.373/2016 in the matter of Rajni Meena & Ors. Vs. DSSSB.

Rajni Meena, Sumita Meena and Vikram Ram Meena had applied for the post of Teacher (Primary) in MCD, Post Code 17/08 under the ST category in response to the advertisement published by DSSSB in 2008. The eligibility of candidates for the said posts was determined as on the closing date of receipt of applications which was 12.08.2008. Part I & II of the written examinations for the said post were conducted on 15.02.2009 and result for part I was declared on 29.05.2009. The applicants were shortlisted for the Part II examination and the result was declared on 06.10.2009. The applicants were shortlisted under the ST category as no pre-scrutiny of documents was done at the initial stages. The documents of only those candidates who had qualified the Part II examination were subjected to detailed scrutiny to determine their eligibility as regards their educational qualifications and caste certificates.

During the scrutiny of the applicants' documents, it was found that the applicant, namely, Ms.Sumati Meena had submitted caste certificate issued by the Sub Divisional Magistrate, Najafgarh on the basis of her father's ST certificate which was issued from Rajasthan. Ms.Rajni Meena had submitted a certificate issued by SDM, South on the basis of her father's ST certificate which was issued from Rajasthan, while Sh.Vikram Ram Meena had submitted a certificate issued by SDM, South on the basis of his father's ST certificate which was issued from Rajasthan. As all of them were STs with respect to the State of Rajasthan, their candidature in respect of ST category was rejected on the ground that from 04.08.2009 to 12.09.2012 the benefit of reservation in respect of posts/services under the Govt. of NCT of Delhi and local/autonomous bodies under the Govt. was not being granted to SC/ST candidates hailing from States/UTs other than Delhi. This policy was being followed in compliance

of the judgment of the Division Bench of the Hon'ble Supreme Court of India in the case titled as "**Subhash Chandra & Anr. Vs. DSSSB**" (SLP (C) No. 24327 of 2005 along with another Writ Petition © No. 507 of 2008 titled as "Sarv Rural & Urban Welfare Society vs. Union of India and Ors. wherein it was held that SCs/STs moving from one State to another State or Union Territory, shall not be entitled to carry his reservation to the State or Union Territory where he has moved.

All the applicants are claiming the benefit of reservation in respect of recruitment selection which took place in 2009 (final result was declared on 06.10.2009) when the said benefit was not available to SC/ST candidates hailing from States/UTs other than Delhi as DSSSB was strictly following the law laid down by the Hon'ble Supreme Court vide judgment dated 04.08.2009 in the matter of "**Subhash Chandra vs. DSSSB**".

The CAT while disposing off the case of Rajni Meena & Ors vide its order dated 11.08.2016 had directed as under:

“6.4 As far as merits of the case are concerned, the respondents have not disputed that the applicants were similarly placed as petitioners in the case of **Ms. Babita Kumari** (supra), which was allowed by Hon'ble High Court of Delhi following the judgments in the case of **Deepak Kumar** (supra).

7. Accordingly, we allow this O.A. and direct the respondents to extend the benefit of the judgment of Hon'ble High Court of Delhi in the case of **Ms. Babita Kumari** (supra) to the applicants herein as well. This benefit shall be extended to them within a period of 60 days from the date of receipt of a certified copy of this order. No costs.”

As can be seen from the above order, Hon'ble CAT has relied on the order of Hon'ble High Court in the matter of **Babita Kumari & Ors.** which was passed on 14.03.2013, the operative part of which is reproduced below:

“A Full Bench of this Court, in the decision dated September 12, 2012 W.P. (C) No. 5390/2010 **Deepak Kumar & Ors Vs. District & Sessions Judge Delhi & Ors.** has held that Delhi being a Union Territory, persons residing anywhere in India would be entitled to the benefits of reservation if appointments have to be made in Delhi by the Government of NCT of Delhi as per the notifications issued by the Central Government.

3. Admittedly, the writ petitioner belongs to a tribe notified as a Scheduled Caste as per the central list.

4. Conceding as aforesaid, learned counsel for the respondents justifies the decision taken by the Tribunal not to grant employment to the petitioners, not on the strength of the reasoning of the Tribunal, which view is incorrect in view of the law declared subsequently by the Full Bench of this Court, which decision has not been made prospective in its application, but on the plea that the vacancies have lapsed.

5. Now what does that mean?

6. As per DSSSB, since no tribe has been notified in Delhi as Scheduled Tribe by the Delhi Government and since the writ petitioners belong to the Meena Tribe, a Scheduled Tribe in Rajasthan, and also that other candidates who were competing as ST candidates were found not to be belonging to a Tribe notified as a Scheduled Tribe in Delhi, DSSSB intimated to the Directorate of Education that the said vacancies could not be filled up. It is not that the posts have been filled up by somebody else in the interregnum.

7. Thus the petitioners would be entitled to relief in the form of a direction issued to DSSSB to forward their names to the Directorate of Education who shall thereafter do the needful.

8. Ordered accordingly.”

DSSSB has examined the candidature of the applicant in view of the aforesaid judgment of Hon'ble High Court of Delhi as well as the judgment of Hon'ble High Court of Delhi titled as **“Deepak Kumar & Ors. Vs. District & Sessions Judge, Delhi & Ors.** in W.P.(C) No. 5390/2008, C.M.No.20815/2008 which was delivered/passed on 12.09.2012 wherein, while examining the **“Subhash Chandra”** judgment, it was stated that “by virtue of the 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 Court have to apply its ratio, as it is by a formation of three judges, the said decision did notice the earlier judgments in **Marri and Action Committee**, Article 141 and the discipline enjoined by the doctrine of precedent compels this Court to follow the **Pushpa** ruling.”

In accordance with the directions of CAT, the candidature of the applicants has been examined with reference to the above mentioned judgment in the case of **“Deepak Kumar”**. In this connection, it is relevant

emphasize that ever since 04.08.2009 benefit of reservation to SC/ST candidates hailing from States/UTs other than Delhi was not being given in the services/posts under the Govt. of NCT of Delhi in view of the law laid down by the Hon'ble Supreme Court vide its judgment dated 04.08.2009 in the case of "**Subhash Chandra & Anr. Vs. DSSSB** (SLP (C) No. 24327 of 2005. The judgment titled "**Deepak Kumar & Ors. Vs. District & Sessions Judge, Delhi & Ors.**" bearing No.W.P.(C) No. 5390/2008, C.M.No.20815/2008 was prospective, accordingly the said judgment was followed uniformly and strictly by DSSSB in respect of all recruitments carried out after 12.09.2012.

Since the selection for the post of Govt. of NCT of Delhi Teacher (Primary) in MCD Post Code 16/08 was carried out/completed in the year 2010 (06.10.2010) which was earlier than the date on which the judgment in the case of "**Deepak Kumar**" was passed/delivered (12.09.2012), accordingly the case of the applicants is not at all covered by the judgment of Hon'ble High Court in the case of "**Deepak Kumar**". As per standard principle of jurisprudence, no law or judgment can be applied retrospectively for the obvious reason that retrospective application of any law or court ruling can unsettle and render as topsy-turvy matters/issues, which have already been settled and closed. The period during which the recruitment/selection of MCD Primary Teachers Post Code 16/08 was carried out, the law as laid down by the Hon'ble Supreme Court in the case of "**Subhash Chandra**" was in force and was being followed strictly, uniformly and without any exception. Keeping in view the above said legal position, the benefit of reservation was rightly denied to all the outsider SC/ST candidates including the applicants since they were ST with respect to the State of Rajasthan and not with respect to NCT of Delhi. In fact, in their judgment in the case of **Deepak Kumar**, the Hon'ble Court had observed that no STs had been notified for the NCT of Delhi vide any Presidential Notification. The judgment of the Hon'ble High Court in the case of "**Deepak Kumar**" being prospective does not come to the rescue of the applicants at all.

It is pertinent to mention here that prior to 10.05.2013, DSSSB was not maintaining any panel of waitlisted candidates meaning thereby that once candidates were selected and their dossiers were

forwarded to the user Department, the said recruitment was treated as closed irrespective of the fact whether all the selected candidates had joined or not in the instant case also, in pursuance of declaration of final result dated 06.10.2009 the recruitment to the said posts stood closed.

The Board had followed the law laid down by Hon'ble Supreme Court in case of "**Subhash Chander**" from 04.08.2009 to 12.09.2012 and had accordingly stipulated in unambiguous terms in the advertisements issued in this regard that benefit of reservation in the services/posts under the Govt. of NCT of Delhi and local/autonomous bodies subordinate to the Government will not be admissible in case of SC/ST candidates hailing from outside States/UTs. Consequently, benefit of reservation was not extended to outsider SC/ST candidates during the period 04.08.2009 to 12.09.2012 on the strength of the judgment of Hon'ble Supreme Court in the case of "**Subhash Chandra**" which was the law of the land during the said period. This judgment has neither been set aside nor has it been overruled. Since the law laid down by the Hon'ble Supreme Court vide judgment dated 04.08.2009 in the case of "**Subhash Chandra**" was in force from 04.08.2009 onwards, all the actions taken by DSSSB in compliance of the said judgment including denial of the benefit of reservation to outside SC/ST candidates, which included the applicants also, were lawful and valid. Further, even the ruling in the case of "**S.Pushpa**" vis-à-vis the ruling in the case of "**Subhash Chandra**" has been referred for a decision before a larger bench in the case of "**State of Uttarakhand vs. Sandeep Kumar Singh**".

As regards grant of benefit of reservation to outsider SC/ST candidates, by DSSSB, in some cases, in compliance of Hon'ble High Court/CAT orders, it is pertinent to refer to the judgment of Hon'ble Supreme Court in the case titled "**Basawaraj & Anr. Vs. The Spl. Land Acquisition Officer**", AIR 2014 SC 746 wherein it was, inter alia, laid down that:

"It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate any illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but only has a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well."

If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order.

A wrong order/decision in favour of any particular party does not entitle any other party to claim benefit on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far, for otherwise it would make functioning of administration impossible.”

It is abundantly clear from the aforesaid observations of Hon’ble Supreme Court that any wrong/erroneous or illegal decision cannot be treated as a precedent and cannot be perpetuated. Treating a wrong/error or an illegal decision as a precedent would amount to perpetuation of such wrong/error or illegality which is not permitted/warranted as per the ruling of Hon’ble Supreme Court in the case of “**Basawaraj**”. It is relevant to point out that extension of benefit of reservation to SC/ST candidates hailing from States/UTs other than Delhi was not in accordance with the law as laid down by the Hon’ble Supreme Court in the case of “**Subhash Chandra**” which was in force w.e.f. 04.08.2009 to 12.09.2012. The grant of benefit of reservation to SC/ST candidates hailing from outside States/UTs was thus erroneous and liable to be withdrawn.

Granting benefit of reservation on pick & choose basis to outsider SC/ST candidates in respect of Exams conducted and results declared during the period 04.08.2009 to 12.09.2012 will unsettle the entire recruitment/selection process in a number of cases as more than 110 result were declared in the said period. Majority of the selected candidates have been in job for more than 04 years now and in case these results are reopened or revised, the jobs of these incumbents would be put to jeopardy and may need to be terminated. Even otherwise, the resultant vacancies have been carried forward to subsequent recruitments made by DSSSB. The recruitment process has already been closed. After the closure of recruitment process, DSSSB ceases to have any role. Since the judgment dated 12.09.2012 of Hon’ble High Court in the case of “**Deepak Kumar**” was prospective, accordingly the DSSSB complied with the

directions as contained in the said judgment of “**Deepak Kumar**” prospectively. The implementation of the judgment with retrospective effect will open a Pandora’s Box for the Board. The established merit list will be turned topsy-turvy and will further lead to a litany of court cases.

Keeping in view the law laid down by the Hon’ble Supreme Court vide its judgment dated 04.08.2009 in the case of “**Subash Chandra**”, taking into account the fact that the judgment dated 12.09.2012 of Hon’ble High Court in the case of “**Deepak Kumar**” was prospective, further relying upon the judgment of Hon’ble Supreme Court in the case of “**Basawaraj & Anr.**” and in light of the reasons recorded in the foregoing paragraphs, benefit of reservation cannot be accorded to the applicants namely Ms.Rajni Meena, Ms. Sumita Meena and Sh.Vikram Ram Meena, in respect of the post of Primary Teacher in MCD (Post Code 16/08). Accordingly, the status of the candidature of the applicants for the above said post remains unchanged (not qualified).

This issues with the approval of the Competent Authority.”

6. From the above order dated 2.2.2017 issued by the respondent-DSSSB, it is clear that in compliance with the direction of the Tribunal in its order dated 11.8.2016(ibid) the respondent-opposite parties have considered the cases of the applicant-petitioners, but in view of the law laid down by the Hon’ble Supreme Court in **Subhash Chandra & Anr. Vs. DSSSB** (supra) and further in view of the fact that the recruitment process had already been closed in the year 2010, they found it difficult to extend to applicant-petitioners the benefit of the judgment of the Hon’ble High Court of Delhi in the case of **Ms.Babita Kumari** (supra).

7. In **Baburam Vs. C.C.Jacob and others**, (1999) 3

SCC 362, the Hon'ble Supreme Court has observed that the prospective declaration of law is a devise innovated by the Apex Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a devise adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of the law prior to its date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by the Apex Court are also duty bound to apply such dictum to cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law.

8. On the facts and in the circumstances of the case, compelling the respondent-opposite parties to extend to applicant-petitioners the benefit of the judgment of the Hon'ble High Court of Delhi in the case of **Ms. Babita Kumari** (supra) would be tantamount to this Tribunal directing the respondent-opposite parties to act in contravention of the law

laid down by the Hon'ble Supreme Court in **Subhash Chandra's** case (supra).

9. In the above view of the matter, the respondent-opposite parties cannot be said to have deliberately and willfully flouted the Tribunal's order dated 11.8.2016 passed in OA No.3826 of 2013.

10. Furthermore, it is trite law that contempt jurisdiction is to be exercised sparingly and in very deserving cases only and not casually. Such a power is not intended to be exercised as a matter of course.

11. In the light of what has been discussed above, we do not find a case of contempt of this Tribunal to have been made out against the respondent-opposite parties. Accordingly, the Contempt Petition is dismissed, and the notices issued against the respondent-opposite parties are discharged. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

