

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
O.A.NO.450 OF 2015**

New Delhi, this the 22nd day of December, 2015

CORAM:

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER
AND**

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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1. Durga Parshad,
s/o Sh.Raj Kumar,
H.No.46B, Street No.1,
Durgapuri Ext., Shahdara,
Delhi 110093

2. Virender Kmar,
S/o Sh.Jagdish,
Village Naya Bans,
Tehsil-Ganour,
District-Sonepat, Haryana

3. Reema Yadav,
w/o Satish Yadav,
D/o Sher Singh Yadav,
H.No.116, F-24, Sector-3,
Rohini, Delhi 110085

4. Bimlesh Panwar,
w/o Rajesh Kumar,
D/o Sh.Om Prakash,
H.No.336, VPO Kakrola,
Near Dwarka, Sector 16B,
Delhi 110078

5. Sunita,
d/o Sh.Mange Ram,
W/o Satish Kumar,
RZ-74/1 B, Street No.10,
East Sagarpur,

New Delhi 110046

(By Advocate: Mr.Sumit Kumar with Mr.Anil Kumar)

Vs.

1. Government of National Capital Territory of Delhi, through the Chief Secretary, Old Secretariat, Delhi
2. Delhi Subordinate Services Selection Board, through Chairman, FC-18, Institutional Area, Karkardooma, Delhi-92
3. North Delhi Municipal Corporation, through Commissioner, 16th Floor, Civic Centre, Minto Road, New Delhi
4. South Delhi Municipal Corporation, through Commissioner, Dr.SPM Civic Centre, Near Minto Road, New Delhi
5. East Delhi Municipal Corporation, through Commissioner, Udyog Sadan, 419, Patparganj, Industrial Area, Delhi 110092

(By Advocates: M/s Rshmi Chopra, R.K.Jain & Balendu Shekhar)

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ORDER

RAJ VIR SHARMA, MEMBER(J):

The brief facts of the applicants' case are as follows:

1.1 Applicant Nos.1 and 3 to 6 had completed and passed Diploma in Education (Two Years Course) Examination conducted by the Board of Secondary Education, Madhya Pradesh, Bhopal, in the year 2008. Applicant

No.2 had completed and passed Diploma in Education (Two Years Course) Examination conducted by the Secondary Education Department, Haryana, in the year 2008.

1.2 Applicant nos. 1, 2, 4, and 6 belong to UR category, while applicant nos. 3 and 5 belong to OBC category.

1.3 In response to the Advertisement No.004/2009 issued by the respondent-Delhi Subordinate Services Selection Board (hereinafter referred to as 'DSSSB'), the applicants made applications for the post of Teacher (Primary) in Municipal Corporation of Delhi, under Post Code 70/09 of the said Advertisement. They appeared in the written examination held on 2.2.2014. DSSSB, vide office order No.343, dated 5.12.2014, published a result notice on the basis of the written examination held on 2.2.2014, whereby candidates belonging to different categories were provisionally selected and recommended for appointment to the post of Teacher (Primary) in MCD (Post Code 70/09), subject to the outcome of Court cases/CAT cases pending in respect of the said Post Code. As per the aforesaid result notice, the last UR category candidate, who obtained 79 marks in the written examination, was provisionally selected and recommended for appointment to the post of Teacher (Primary) in MCD, and the last OBC category candidate, who obtained 76 marks in the written examination, was provisionally selected and recommended for appointment to the post of Teacher (Primary) in MCD.

1.4 DSSSB, vide office order No.344, dated 5.12.2014 (Annexure A/12), published another notice indicating the names of several candidates, including the names of the applicants, who were declared as "Not Eligible" and whose candidatures were rejected due to various reasons shown against their names in the remarks column of the list of those candidates. The applicants' names figured at Sl.No.421, 227, 832, 336 789, and 274, respectively, of the list of candidates contained in the said office order. They were shown to have obtained 81.75, 87, 72, 84, 73 and 85.5, respectively, in the written examination, and the reason for rejection of their candidatures was mentioned in the remarks column as "Overage".

1.5 The applicants made representations to DSSSB and brought to its notice the judgment, dated 28.8.2008, passed by the Hon'ble High Court of Delhi, in W.P. (C) No. 7279 of 2009 (**Sachin Gupta and others v. DSSSB**), wherein it was directed that the respondents would permit the candidates who had completed ETE course during 2006 to 2008 to appear in the recruitment examination, by giving them age relaxation. On the basis of the said judgment of the Hon'ble High Court, the applicants claimed before DSSSB that they were entitled to age relaxation, and their dates of birth being 1.5.1979 13.9.1979, 4.11.1975, 17.9.1976, 21.6.1973 and 2.1.1979 respectively, they were eligible for selection and appointment to the post of Teacher (Primary) in MCD. Thus, they requested DSSSB to consider their candidatures by granting them age relaxation in terms of the judgment of the Hon'ble High Court in **Sachin Gupta's case** (supra).

1.6 DSSSB having failed to redress their grievance, the applicants filed the present O.A. on 29.1.2015, seeking the following reliefs:

- ða) To direct the Respondents to consider the applicants for appointment as Teacher (Primary) for the post code 70/09 in advertisement No.004/2009 in accordance with directions of Hon'ble High Court passed in Judgment and order dated 28.8.2008 in Sachin Gupta and Ors vs. Delhi Subordinate Services through its Chairman and Ors. (WP (C) Nos.7297 of 2007) etc. etc. and give appointment with all consequential benefits, and
- (b) To pass such other order/orders as this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case.ð

2. Opposing the O.A., the respondent-DSSSB has filed a counter reply, wherein it is, *inter alia*, stated that on the basis of verification of dossiers of all the candidates, office order Nos.343 and 344, both dated 5.12.2014, were issued. The category-wise breakups of results were as follows:

Category	Selected	Not recommended	Pending
UR	1643	595	77
OBC	563	375	46
SC	355	313	188
ST	59	196	263
OH	48	17	27
VH	8	4	2
Total	2676	1500	603

The respondent-DSSSB has stated that the applicants had completed Diploma in Education in the year 2008 and not ETE. In the judgment passed by the Hon'ble High Court in **Sachin Gupta's** case (supra), it was directed that the candidates who had completed ETE course either in the year 2006 or 2007 or 2008 would be permitted by the respondents to appear in the

recruitment examination for the post of Assistant Teacher (Primary) by giving them age relaxation up to 32 years for males and 42 years for females. It has nowhere been directed by the Hon'ble High Court in the said judgment that candidates having qualification of Diploma in Education will also be benefitted. Thus, the respondent-DSSSB submits that the applicants are not entitled to the aforesaid age relaxation, and their candidatures have rightly been rejected as they were overage as on the cut-off date, i.e., 15.1.2010. In the above view of the matter, the respondent-DSSSB submits that the O.A. is liable to be dismissed.

3. Respondent nos. 3 and 4, in their counter replies, have stated that they are only *pro forma* respondents, and that the Tribunal, after considering the counter reply filed by the respondent-DSSSB, may pass appropriate orders.

4. In their rejoinder reply, the applicants, while reiterating more or less the same averments and contentions as in their O.A., have controverted the stand taken by the respondent-DSSSB.

5. We have perused the records, and have heard Mr.Sumit Kumar and Mr.Anil Kumar, the learned counsel appearing for the applicants, and Ms.Rashmi Chopra, Mr.R.K.Jain, and Mr.Balendu Shekhar, learned counsel appearing for the respondents.

6. During the course of hearing, Mr.Sumit Kumar, the learned counsel appearing for the applicants, invited our attention to the order dated

2.9.2015 passed by the Tribunal in OA No.4616 of 2014, **Praveen Kumar v. DSSSB and another**, and contended that the applicants in the present case are similarly placed as the applicant in O.A.No.4616 of 2014. It was, therefore, submitted by Mr.Sumit Kumar that the present O.A. may be decided by the Tribunal in terms of the order passed in **Praveen Kumar's case** (supra).

7. In **Praveen Kumar's case** (supra), the applicant had completed Two Years Diploma in Education in the year 2008. He was an UR category candidate for the post of Teacher (Primary) in MCD under Post Code 70/09 of the Advertisement No.04/2009,*ibid*. Though he scored 88 marks in the written examination, his name did not figure in the result notice, vide office order No.343 dated 5.12.2014. His candidature was rejected by DSSSB on the ground that he was overage, vide office order No.344 dated 5.12.2014. The plea taken by the respondent-DSSSB in the said case was that he was not entitled to the age relaxation in terms of **Sachin Gupta's case** (supra), as he had not completed Two Years Diploma/Certificate Course in ETEØ in the year 2008, but had completed Diploma in Education (Two Years Course)Ø in the year 2008. After referring to the decision of the Honble Supreme Court in **Sachin Gupta's case** (supra), the Tribunal, in paragraphs 11 and 12 of the order dated 2.9.2015 passed in **Praveen Kumar's case** (supra), held thus:

Ø11. 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.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.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 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 belonging 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 virtue 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* in 2006 or 2007 or 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 and 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.ö

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 appropriate decision in the case of the applicants within one month from today.

9. In the result, the O.A. is partly allowed to the extent indicated above. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

