

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

O.A. No. 3585/2015

New Delhi, this the 28<sup>th</sup> day of July, 2017

**Hon'ble Mr. V. Ajay Kumar, Member (J)**

Umesh  
Age 26 years,  
D/o Baljeet,  
D-3/280 Sultanpuri,  
Delhi-110086. .. Applicant

(By Advocate: Shri Naresh Kaushik)

Versus

1. Govt. of NCT Delhi through  
Its Chief Secretary,  
Delhi Secretary,  
I.P. Estate.
2. Delhi Subordinate Services Selection Board,  
Through its Chairman,  
F-18, Karkardooma Institutional Area,  
New Delhi.
3. The Commissioner,  
South Delhi Municipal Corporation,  
Dr. D.P.M. Civil Centre, Minto Road,  
New Delhi. .. Respondents

(By Advocates: Mrs. Harvinder Oberoi for R-1 & 2 and  
Shri R.K. Jain for R-3)

**ORDER**

In view of difference of opinion expressed by Hon'ble Mr. Sudhir Kumar, Member (A) and Hon'ble Mr. Raj Vir Sharma, Member (J) while disposing of the instant O.A. on 08.04.2016, the

same is referred as a Third Member reference on the points of difference.

2. Heard Shri Naresh Kaushik for the applicant and Mrs. Harvinder Oberoi on behalf of respondents No.1 and 2 and Shri R.K. Jain on behalf of respondent No.3 and examined the proceedings on record including order dated 08.04.2016.

3. The brief facts of the case, as dealt by both the Hon'ble Members in detail vide order dated 08.04.2016, read as under:

“The applicant of this OA has challenged the rejection of her candidature by the respondents through the impugned Office Order dated 16.04.2015 on the sole ground that her OBC Non-Creamy Layer certificate was issued after the cut off date for receipt of applications, which was 15.01.2010 as per the original Advertisement. She has challenged such rejection on the further ground that when the original Advertisement dated 11-16.12.2009 itself was amended vide Notice dated 13.09.2011, and the last date for submission of fresh application forms was extended and fixed as 17.10.2011, the date for determining the eligibility was wrongly continued to be fixed as the original cut off date on 15.01.2010. She has further submitted that it is evident from the language of the Advertisement that the cut off date of 15.01.2010 was fixed only for determining eligibility in respect of (i) age, (ii) educational qualification, and (iii) experience, and not in respect of (iv) reservation category. Her grievance is that in view of the new amended Advertisement, when the respondents had invited and accepted fresh applications along with relevant documents, and the higher prescribed fees, they could not have insisted on the reservation category certificate being of a date prior to 15.01.2010. She has, therefore, assailed the actions of the respondents as being totally arbitrary, illegal, unreasonable, unjust and improper, and unsustainable in law, and liable to be quashed.

4. The reference order enumerated the points of difference between both the Hon'ble Members as under:

- “(1) Whether the issue discussed and answered by the Administrative Member in the proposed order has arisen on the facts and in the circumstances of the case?
- (2) Whether the issue discussed and answered by the Judicial Member in the dissenting order has arisen on the facts and in the circumstances of the case? And
- (3) Whether the view taken by the Administrative Member rejecting the O.A., or the view taken by the Judicial Member allowing the O.A., is correct?”

5. Hon'ble Mr. Sudhir Kumar, Member(A), while accepting that the subject matter of the O.A. is squarely covered by a decision of the Hon'ble Apex Court in **Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board & Another**, (2016) 4 SCC 754, however, dismissed the O.A. by holding that since the said decision is against the law declared by a Larger Bench of the Hon'ble Apex Court in **Indra Sawhney vs. Union of India**, 1992 Supp.3 SCC 217 and also to various other decisions, whereas the Hon'ble Shri Raj Vir Sharma, Member(J), while allowing the O.A., held that the decision of Nine Judge Bench in **Indra Sawhney** (supra) and various other decisions referred by the Hon'ble Member(A) have no direct application to the subject matter of this O.A. and that the decision of the Hon'ble Apex Court in **Ram Kumar Gijroya** (supra) only has a direct application and, hence,

the same is required to be applied to the facts in the instant O.A. and, accordingly, allowed the O.A.

6. In view of what is stated above, the only difference of view between both the Learned Members is that whether the law declared by the Hon'ble Apex Court in **Ram Kumar Gijroya** (supra) can be applied to the facts of the present case or that in view of certain observations made by certain earlier Larger Benches and also of the Coordinate Benches of the Hon'ble Apex Court, the decision in **Ram Kumar Gijroya** (supra) cannot be made applicable.

7. In **Ram Kumar Gijroya** (supra), the Hon'ble Apex Court held that a candidate, who appears in an examination under the OBC category and submits the caste certificate after the last date mentioned in the advertisement, is eligible for selection to the post under the OBC category.

8. The Hon'ble Apex Court while deciding **Ram Kumar Gijroya's** case considered number of previous decisions of the Hon'ble Apex Court including the Constitution Bench decision in **Indra Sawhney** (supra) and various other decisions which were considered by the Hon'ble Member (A) while coming to his conclusion that **Ram Kumar Gijroya** (supra) cannot be followed and cannot be made applicable to the facts of the instant O.A.

9. In my opinion, the view expressed by the Hon'ble Apex Court in **Ram Kumar Gijroya** (supra) is more relevant and applicable to the facts of the instant O.A. and the other decisions are more relating to larger questions than the issue on hand.

10. In the circumstances and for the reasons mentioned above, I agree with the view expressed by the Hon'ble Member (J) and, accordingly, the O.A. is allowed and the DSSSB is directed to consider the candidature of the applicant as an OBC candidate, along with other similarly placed persons, for selection and recruitment to the post of Teacher (Primary), within a period of three months from today. No order as to costs.

**(V. AJAY KUMAR)**  
**Member (J)**

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