

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 2928/2015

Reserved on : 06.09.2017
Pronounced on : 12.09.2017

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)**

Sushila Meena (Age 39 years)
Working as Teacher,
S.D.M.C. Primary School
Madanpur Khadar No.2-I,
New Delhi-110076
W/o Shri Radhey Shyam Meena
R/o 377-B, Pocket-N,
Janta Flats, Sarita Vihar,
New Delhi-110076. .. Applicant

(By Advocate : Shri Shailendra Tiwary)

Versus

1. Municipal Corporation of Delhi (South),
Through Commissioner,
Civic Centre, Minto Road,
New Delhi-110002.

2. Delhi Subordinate Services Selection Board,
Through its Secretary,
Govt. of NCT of Delhi,
3rd Floor, UTCS Building,
Vishwas Nagar, Shahdara,
Delhi-110032. ... Respondents

(By Advocate : Shri Yudhister Sharma)

ORDER**By Mr. V. Ajay Kumar, Member (J)**

The applicant, an Assistant Teacher (Primary) in the respondents – South Delhi Municipal Corporation, filed the O.A. seeking the following relief:

- “(i) To allow this original application directing the Respondents for grant of due increments, arrear, seniority, pay fixation, length of service weightage w.e.f. November, 2001 to the applicant by extending the benefit of the judgment Hon’ble Central Administrative Tribunal (Principal Bench), New Delhi order dated 24.12.2014 in Original Application No.1927/2013 titled as Bhuri Devi Meena & Ors. vs. M.C.D. (South) & Ors. and judgment of the Hon’ble High Court of Delhi vide order/judgment dated 13.05.2005 in the matter of Delhi Subordinate Services Selection Board and Anr. vs. Kunwar Pal.
- (ii) To allow the Original Application with cost.
- (iii) To pass such other and further orders which the Hon’ble Tribunal deem fit and proper in the existing facts and circumstances of the case.”

2. Briefly stated, the applicant, who belongs to ST category applied for selection to the post of Assistant Teacher (Primary) in response to the Advertisement No.02/2000 for Post Code No.123/2000 (Assistant Teacher Primary) issued by the respondents and on participating in the selection process got selected as such. The respondents declared the results of most of the candidates belonging to General category in December, 2002 and issued offer of appointment letters to them during June, 2003 and, accordingly, the said candidates have joined duties. However, the respondents have not declared the results of the applicant and

certain others on the ground that they do not belong to the reserved community of Delhi and as such they are not entitled to reservation in Delhi and, accordingly, withheld the results of the applicant and others.

3. The said action was questioned by certain identically placed persons and finally the said litigation ended in favour of the candidates belonging to SC/ST categories, such as the applicant and, accordingly, the respondents issued offer of appointment to the said persons and also to the applicant in the year 2006 and consequently the applicant joined as Assistant Teacher (Primary) on 01.04.2006 vide Annexure A-2.

4. Though the respondents appointed the candidates belonging to SC/ST categories in the year 2006 but when they have not appointed them with effect from the dates on which other candidates belonging to General category of the same selection were appointed, they questioned the said action and got the decision in their favour, i.e. to grant notional seniority with reference to their position in the merit list prepared by DSSSB with all consequential benefits notionally, however, without payment of any arrears for the intervening period. One such order passed in O.A. No.1927/2013 dated 24.12.2014 is filed as Annexure A-1 to the O.A.

5. When the applicant's representations seeking to extend the benefit of the said judgment are unanswered, the applicant filed the instant O.A.

6. Heard Shri Shailendra Tiwary for the applicant and Shri Yudhister Sharma for the respondents, and perused the pleadings on record.

7. Learned counsel appearing for the respondents, while not disputing the aforesaid facts, however, opposed the O.A. on the ground of limitation and abnormal delay. The learned counsel submits that the cause of action to the O.A. arose when the applicant was appointed vide Annexure A-2 appointment letter dated 03.03.2006, and the applicant preferred the first representation seeking notional appointment on par with other candidates, who were appointed in the year 2006, in the year 2015, i.e. after lapse of more than about 10 years. The instant O.A. is filed even without filing any MA seeking condonation of the said abnormal delay. The learned counsel also opposed the O.A. by raising various contentions on merits by reiterating the averments made in the counter.

8. Firstly, the various contentions of the respondents' counsel made on merits were already considered by this Tribunal and also

by the Hon'ble High Court in various decisions, wherein identically placed persons claimed for the identical relief, i.e. appointment on par with the candidates who were selected in the same selection and as per their merit position as declared by the DSSSB and the said litigations ended in favour of the identically placed persons. Hence, there is no necessity to dwell upon the same submissions once again.

9. However, the applicant filed the O.A. in the year 2015, whereas the cause of action to the O.A. arose in the year 2006, i.e. when she was appointed as Assistant Teacher (Primary). However, it is to be seen that the applicant is seeking extension of the benefit of various decisions of this Tribunal, more particularly, the decision in the O.A. 1927/2013 dated 24.12.2014 (Annexure A-1). Even in the said case also, the applicants appointed in the year 2006 but filed the O.A. in the year 2013. Instead of the same, this Tribunal, keeping in view the peculiar facts of the case, have granted the relief in their favour. It is also a fact that in identical circumstances, this Tribunal condoned the delay of more than a decade and granted the identical reliefs.

10. It is settled principle of law that all persons similarly situated should be treated similarly and that only because one person has approached the court that would not mean that the persons

similarly situated should be treated differently (see **Inder Pal Yadav & Ors. vs. Union of India & Ors.**, 1985 (3) SCR 837, **K.I. Shephard & Ors. vs. Union of India & Ors.**, AIR 1988 SC 686, K.T. Veerappa and Others vs. State of Karnataka and Others, (2006) 9 SCC 406 and **State of Karnataka & Ors. vs. C. Lalitha**, (2006) 2 SCC 747).

11. In the circumstances and for parity of reasons, the O.A. is allowed and the respondents are directed to grant notional seniority to the applicant with reference to her position in the merit list prepared by the DSSSB, with all consequential benefits, except arrears of pay. No order as to costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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