

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3012 OF 2014

New Delhi, this the 27th day of October, 2016

CORAM:

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

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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1. Mohd. Tariq,
Aged 34 years,
Son of late Shakil Ahmed,
R/o H.No. 265, Opposite Moosa Masjid,
Jamia Nagar, New Delhi 110025

 2. Md.Shahnawaz Alam,
S/o Md.Safiquor Rahman,
R/o C-6/188, Yamuna Vihar,
Delhi 110053
- í í Applicants

(By Advocate: Mr.M.R.Farooqui)

Vs.

1. Delhi Subordinate Service Selection Board (DSSSB),
through its Secretary/Chairman,
Office at: FC-18, Institutional Area,
Karkardooma, Delhi.

2. Government of NCT,
through its Chief Secretary,
New Secretariat, I.P.Estate,
New Delhi.

3. South Delhi Municipal Corporation,
through its Commissioner,
office at: Dr.Shyama Prashad Mukherjee

Civic Centre, Zakir Hussain Marg,
New Delhi 110002

4. North Delhi Municipal Corporation,
through its Commissioner,
Office at: Dr.Shyama Prashad Mukherjee
Civic Centre,
Zakir Hussain Marg,
New Delhi 110002

5. East Delhi Municipal Corporation,
through its Commissioner,
Office at: CSIDC Building,
Patpar Ganj Industrial Area,
New Delhi

í í Respondents

(By Advocates: Mr.K.M.Singh for R 1 & 2, Ms.Anupama Bansal for R-3,
Ms.Anita Pandey for R-4, and Mr.R.N.Singh for R-5)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

We have perused the records, and have heard Mr.M.R.Farooqui, the learned counsel appearing for the applicants, and Mr.K.M.Singh, Ms.Anupama Bansal, Ms.Anita Pandey, and Mr.R.N.Singh, the learned counsel appearing for the respondents.

2. Respondent No.1-Delhi Subordinate Services Selection Board (DSSSB) issued an Advertisement No.004/2009 inviting applications from eligible persons for recruitment to different posts including the post of Teacher (Primary-Urdu) in Municipal Corporation of Delhi, vide Post Code 69/09. The closing date for receipt of applications was 15.1.2010. As per the Advertisement, age relaxation was admissible to Departmental employees ó

up to 42 years of age (general), up to 47 years from SC/ST, having 03 years continuous service in the same line or allied cadres. In response to the Advertisement, the applicants made applications. On the basis of admit cards issued to them by respondent no.1-DSSSB, they appeared in the recruitment examination. On 1.3.2014 respondent no.1-DSSSB published the result of the selected candidates, and a list of candidates whose candidatures were rejected for various reasons mentioned therein. In the list of candidates, whose candidatures were rejected, the names of the applicants were included, and the candidatures of the applicants were stated to have been rejected on the ground of their being "Overage". Being aggrieved, the applicants made representations requesting respondent no.1-DSSSB to grant them age relaxation for their having worked on contract basis as Teachers under the Municipal Corporation of Delhi. There being no response, O.A.No.1098 of 2014 was filed by them. The Tribunal, vide its order dated 5.5.2014, while disposing of O.A No. 1098 of 2014, directed respondent no.1-DSSSB to consider and decide the applicants' representations by passing speaking orders and to communicate their decision to the applicants within a period of three weeks from the date of receipt of copy of the order dated 5.5.2014, *ibid*. In compliance with the Tribunal's order dated 5.5.2014, respondent no.1-DSSSB considered the applicants' representations, but did not accede to the request made by the applicants. In the case of applicant no.1, respondent no.1-DSSSB issued order No.337 dated 1.8.2014, the relevant portion of which reads thus:

Whereas in compliance of the judgment of Honøble CAT dated 05/05/2014, the case of Sh.Md.Tariq was again taken up and it is observed that MCD has provided vide letter No.A/ADE/TRC/Edu/HQ/2011/1476 dated 25/11/2011 a list of 347 contract teachers, who have worked in MCD, for the benefit of age relaxation in Post Code 69/09. On scrutiny of said list, the name of applicant Sh. Md. Tariq has not appeared in the list and therefore he is not entitled to the age benefits. According to date of Birth of applicant (i.e. 30/12/1979), he became Overage in OBC category. Hence the candidature of Sh.Md.Tariq was rejected.

Therefore, in view of the above facts, Sh.Md.Tariq could not be considered for selection to the post of Teacher Primary (Urdu) MCD, Post Code 69/09.

In the case of applicant no.2, respondent-DSSSB issued order No.333 dated 17.7.2014, the relevant portion of which reads thus:

Whereas in compliance of the judgment of Honøble CAT dated 05/05/2014, the case of Sh.Md.Shahnawaz Alam was again taken up and it is observed that MCD has provided vide letter No.A/ADE/TRC/Edu/HQ/2011/1476 dated 25/11/2011 a list of 347 contract teachers, who have worked in MCD, for the benefit of age relaxation in Post Code 69/09. On scrutiny of said list, the name of applicant Sh. Sh.Md.Shahnawaz Alam has not appeared in the list and therefore he is not entitled to the age benefits. According to date of Birth of applicant (i.e. 01/04/1976), he became Overage in UR category. Hence the candidature of Sh.Md. Sh.Md.Shahnawaz Alam was rejected.

Therefore, in view of the above facts, Sh. Sh.Md.Shahnawaz Alam could not be considered for selection to the post of Teacher Primary (Urdu) MCD, Post Code 69/09.

Therefore, the applicants have filed this O.A. seeking the following reliefs:

- i) set aside the order no.333 dated 17.7.2014 and the order no.337 dated 1.8.2014 passed by respondent no.1 whereby the candidature of the applicants have been rejected by the respondent no.1;
- ii) direct the respondents to give the appointment to the applicants for the post of Teacher (Primary-Urdu) to the

- Post Code No.69/09 giving age relaxation to the applicants being the departmental candidates;
- iii) direct the respondents to consider the seniority of the applicants from the date of first appointment of the selected candidate for the post of Teacher (Primary-Urdu) to the Post Code No.69/09;
 - iv) Any other/further order(s) instruction(s) and direction(s) as this Honøble Tribunal may deem fit and proper in the facts and circumstances of the case, may also kindly be passed in favour of the applicants and against the respondents.ö

3. It has been contended by the applicants that they have been working on contract basis as Teachers under the Municipal Corporation of Delhi/respondent nos. 3 to 5 since 2005. Therefore, the respondents ought to have treated them as departmental employeesø applying for selection and recruitment to the post of Teacher (Primary-Urdu), and granted them age relaxation as stipulated in the Advertisement. The Honøble Lt. Governor, vide order dated 25.5.2010, granted one time relaxation in age to 347 Contract Teachers engaged by the Municipal Corporation of Delhi for the purpose of appearing in the competitive examination. Non-grant of similar age relaxation to them is violative of Article 14 of the Constitution of India. In support of their contentions, the applicants have relied on the decision of the Honøble Supreme Court in **Union Public Service Commission Vs. Dr.Jamuna Kurup and others**, (2008) 11 SCC 10; the decision of the Tribunal in **Mrs.Preeti Rathi and others Vs. Municipal Corporation of Delhi and others**, OA No.714 of 2009, decided on 20.8.2010, which has been upheld by the Honøble High Court of Delhi in **Delhi Subordinate Services Selection Board & another Vs. Preeti Rathi & Others**, W.P.(C)

No. 1641 of 2011, decided on 15.11.2011; **Sujeet Kumar & others Vs. Municipal Corporation of Delhi**, OA No.3989 of 2011, decided on 10.5.2012, and **Usha Rani, etc. Vs. South Delhi Municipal Corporation and others, etc.**, OA Nos.4499 and 2423 of 2013, decided on 2.9.2015.

4. In **Union Public Service Commission Vs. Dr. Jamuna Kurup and others** (supra), the respondents were engaged as Medical Officers (Ayurved) by Municipal Corporation of Delhi (MCD) on purely contractual basis till regularly selected candidates were to be made available by UPSC. While the respondents were so engaged and their terms of appointment extended from time to time, UPSC issued advertisement for regular appointments. The advertisement, *inter alia*, mentioned that upper age limit was relaxable up to five years for "employees" of MCD. The respondents claimed this relaxation. The stand of UPSC was, however, that this relaxation was meant for regular employees and not for contractual employees like the respondents. The Hon'ble High Court accepted the respondents' plea that they being employees of MCD were entitled to age relaxation. UPSC in its appeal, relied on **UPSC Vs. Girish Jayanti Lal Vaghela**, (2006) 2 SCC 482, where it was held that the term "government servant" did not refer to, or include persons employed on contract basis. It was argued by UPSC that on the same analogy, "employees" of MCD did not mean persons engaged on contract basis. Dismissing the appeal, the Hon'ble Supreme Court held as follows:

14. The term "employee" is not defined in the Delhi Municipal Corporation Act, 1957, nor is it defined in the

advertisement of UPSC. The ordinary meaning of 'employee' is any person employed on salary or wage by an employer. When there is a contract of employment, the person employed is the employee and the person employing is the employer. In the absence of any restrictive definition, the word 'employee' would include both permanent or temporary, regular or short term, contractual or ad hoc. Therefore, all persons employed by MCD whether permanent or contractual will be 'employees of MCD'.

15. The respondents who were appointed on contract basis initially for a period of six months, extended thereafter from time to time for further periods of six months each, were therefore, employees of MCD, and consequently, entitled to the benefit of age relaxation. If the intention of MCD and UPSC was to extend the age relaxation only to permanent employees, the advertisement would have stated that age relaxation would be extended only to permanent or regular employees of MCD or that the age relaxation would be extended to employees of MCD other than contract or temporary employees. The fact that the term 'employees of MCD' is no way restricted, makes it clear that the intention was to include all employees including contractual employees. Therefore, we find no reason to interfere with the judgment of the High Court extending the benefit of age relaxation.

The Honorable Supreme Court also held that a Municipal Corporation is not 'Government', and municipal employees are not government servants governed by Article 309 to 311. Though permanent employees of Municipal Corporation or other statutory bodies may be governed by statutory rules, they do not enjoy the status of government servants. Therefore, the decision in **Girish Jayanti Lal Vaghela's** case (supra), rendered with reference to government servants may not be of any assistance in interpreting the term 'employees of MCD'.

5. In **Mrs. Preeti Rathi and others Vs. Municipal Corporation of Delhi and others** (supra), the applicants were candidates for recruitment to the post of Primary Teacher in Municipal Corporation of Delhi. The

candidatures of the applicants were rejected on the ground of their being overage. Seeking age relaxation and other reliefs, the applicants approached the Tribunal. The Tribunal allowed the O.A. and directed the respondents to declare the result of the examination for the post of Primary Teachers taken by the respondents and to also grant age relaxation to the respondents, as accorded to certain others, and to, if successful in the examination, offer appointment to the respondents as Primary Teachers within a period of three from the date of receipt of copy of the order. Being aggrieved, respondent-DSSSB filed W.P. (C) No. 1641 of 2011 (**Delhi Subordinate Services Selection Board & another Vs. Preeti Rathi & Others**). Upholding the Tribunal's decision, and dismissing the writ petition, the Hon'ble High Court of Delhi, in paragraphs 11 to 16 of the judgment, observed as follows:

11. After hearing the counsels for the parties, we are of the view that impugned judgment rendered by the learned Tribunal does not call for any interference though we have our own reasons for arriving at the same conclusion and each of which reasons is independent and sufficient to sustain the order.

12. In the first instance, we may point out that as per the amended Recruitment Rules as also the advertisement issued by the petitioner, the age limit of 27 years is relaxable up to 45 years of age in respect of departmental candidates. The provision in this behalf stipulates as under:-

"Age Limit: 20-27 years (Relaxable in case of SC/ST/OBC/PH/Ex-Serviceman as per Government of India instructions issued from time to time). Relaxation in upper age limit available to:- SC/ST-05 years, OBC-03 years, PH & SC/ST-15 years and PH & OBC - 13 years, Departmental Candidates upto 45 years of age are eligible."

13. In the rules, nowhere the expression "departmental candidates" has been defined. It has to be, in these circumstances, assigned natural connotation. A departmental candidate would be the candidate who is not an outsider but is already working in the concerned department namely MCD in

the instant case. Admittedly the respondents are working in MCD as Primary Teachers on contract basis and one has to assign practical meaning to the aforesaid terminology and we are of the considered opinion that the respondents shall be treated as departmental candidates for the purpose of appointment to the post of Primary Teachers on regular basis when they are already working in the same post on ad-hoc basis for the last ten years. Reference may be made to **UPSC v. Dr. Jamuna Kurup** (2008) 11 SCC 10 where the expression "employees of MCD" in the advertisement granting age relaxation with respect to recruitment to the post of Ayurvedic Vaid was held to include both permanent or temporary, regular or short term contractual or ad hoc employees of the MCD. Accordingly those appointed on contract basis were held to be employees of MCD and entitled to age relaxation. The earlier judgment in **UPSC v Girish Jayanti Lal Vaghela** (2006) 2 SCC 482 relating to Government employees was held to be not applicable to the expression "employees of MCD". We see no reason why the said dicta of the Supreme Court be not applied to the present situation also.

14. Even in those matters whether cases of ad-hoc/casual/contract employees come up for consideration for regular appointment, there has always been a practice of giving age relaxation. In many judgments rendered by the Apex Court as well as this Court such relaxation is provided and the relevant aspect which is to be kept in mind is that at the time of initial appointment on contract/casual basis the incumbent was within the age limit and was not overage. If that is so, to the extent of service rendered by such an employee, the benefit thereof has to be given. If the relaxation of almost 10 years is to be given to the respondents for having worked for this period, in that case also they would fall within the prescribed age limit.

15. There is yet another reason not to interfere with the impugned order. In the present case the respondents herein had filed an OA for declaration that they were entitled to be considered for the post of Primary Teachers. These teachers are to be appointed in MCD. MCD is the prospective employer which had sent its requisition to the petitioner herein namely Delhi Subordinate Services Selection Board (DSSSB). After the judgment rendered by the Tribunal, MCD has not challenged, rather accepted the same. If MCD has no objection for consideration of the case of these respondents on merits for appointment on regular basis, we see no reason why the petitioner which is but a recruitment agency, should have any such objection.

16. In view thereof, we dismiss this writ petition as devoid of any merits; at the same time we clarify that the only effect of the order of the learned Tribunal or this judgment would be that the respondents would be entitled to be considered for the post of Primary Teachers on regular basis, whether they are able to get selected or not on their merits is altogether different question which has not been gone into by us.

6. In **Sujeet Kumar & others Vs. Municipal Corporation of Delhi** (supra) and **Usha Rani, etc. Vs. South Delhi Municipal Corporation and others, etc.** (supra), the coordinate Benches of the Tribunal, following the aforesaid decisions of the Honøble Supreme Court, and the Honøble High Court of Delhi, directed the respondents to grant appropriate age relaxation to the applicants and to declare their results within a stipulated period.

7. After having given our thoughtful consideration to the facts and circumstances of the case, as appearing from the materials available on record, in the light of the decisions referred to above, we have no hesitation in holding that the applicants are entitled to be given age relaxation by respondent no.2 for the period they had worked as Contract Teachers under the Municipal Corporation of Delhi up to the cut-off date, i.e., 15.1.2010. The Honøble Lt. Governor of NCT of Delhi or, for that matter, the Government of NCT of Delhi, is the competent authority to grant such age relaxation to the applicants. The applicants have not placed before this Tribunal any material to show that they had ever made any representation to the Honøble Lt.Governor of NCT of Delhi or to the Chief Secretary to the Government of NCT of Delhi (respondent no.2) to grant age relaxation to

them for the period they had worked as Contract Teachers under the Municipal Corporation of Delhi up to the cut-off date, i.e., 15.1.2010. On the facts and in the circumstances of the case, we think that the ends of justice would be met if we dispose of the present O.A. by issuing the following directions:

- (1) If the applicants make appropriate representations within one month from today requesting respondent no.2 to grant them age relaxation for the period of their working as Contract Teachers under the Municipal Corporation of Delhi up to the cut-off date, i.e., 15.1.2010, respondent no.2 shall call upon respondent nos. 3 to 5 to examine their records and furnish a report to respondent no.2 as to the exact period of engagement of the applicants as Contract Teachers under the Municipal Corporation of Delhi up to the cut-off date, i.e., 15.1.2010;
- (2) Respondent nos.3 to 5 shall examine their records and submit, within one month from the date of receipt of intimation from respondent no.2, a report to respondent no.2 as to the exact period of engagement of the applicants as Teachers on contract basis up to the cut-off date, i.e., 15.1.2010;
- (3) Respondent no.2 shall, within one month from the date of receipt of the above report from respondent nos. 3 to 5,

issue appropriate order regarding grant of age relaxation to the applicants corresponding to the period they had worked as contractual Teachers under the respondent-Municipal Corporation of Delhi up to the cut-off date, i.e., 15.1.2010;

- (4) Respondent no.2 shall forthwith communicate the above order to the applicants and respondent no.1;
- (5) Taking into consideration the report to be submitted by respondent nos. 3 to 5, and the order to be issued by respondent no.2 (as directed in sub-paragraphs (2) and (3) above), respondent no.1-DSSSB shall take appropriate decision in the case of the applicants within one month from the date of receipt of copy of the order from respondent no.2,

8. Resultantly, the O.A. is partly allowed to the extent indicated above. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

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