

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1436 of 2015

New Delhi, this the 28th day of May, 2018

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
AND

HON'BLE MS.NITA CHOWDHURY, ADMINISTRATIVE MEMBER

.....

Leena Sharma,
w/o Sh.Deepak Sharma,
D/o Sh.Luxmi Kant Sharma,
R/o C-3/140, Dayal Pur,
Near Adarshila Public School,
Dehli 110094

..... Applicant

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

Vs.

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

..... Respondents

(By Advocate: Mr.Amit Anand for Respondents 1 & 2; and
Mr.S.K.Tripathy for Ms.Anita Pandey for respondent 4)

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ORDER

Per Raj Vir Sharma, Member(J):

The applicant, who was an UR/Widow candidate for selection and appointment to the post of Teacher (Primary) in Municipal Corporation of Delhi (MCD) pursuant to the Advertisement No.004/2009, Post Code 70/09, read with the corrigendum dated 13.9.2011, issued by the respondent-Delhi Subordinate Services Selection Board (DSSSB), has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, on 8.4.2015, seeking the following reliefs:

- “i) set aside the rejection order passed by Dy. Secretary, Govt.of NCT,Delhi Subordinate Services Selection Board in respect of the candidature of the applicant on account of overage vide Office Order No.344 dated 05.12.2014;
- ii) direct the respondents to give the appointment to the applicant giving age relaxation to consider her candidature as eligible to the Post Code No.70/09 for the recruitment of Teacher (Primary);
- iii) direct the respondents to consider the seniority of the applicant from the date of first appointment of the selected candidate for the post of Teacher (Primary) to the Post Code No.70/09;
- iv) Any other/further order(s) instruction(s) and direction(s) as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case, may also kindly be passed in favour of the applicant and against the respondents.”

2. Resisting the O.A., three counter replies have been filed by respondent nos.1 and 2, and by respondent no.3, as well as by respondent no.4.

2.1 The applicant has also filed rejoinder reply refuting the stand taken by the respondent nos.1 and 2.

2.2 Respondent no. 5, in its counter reply, has submitted that it is a *pro forma* respondent, and, therefore, its name may be deleted from the array of respondents.

3. We have carefully perused the records and have heard Mr.M.R.Farooqui, learned counsel appearing for the applicant, and Mr.Amit Anand and Mr.S.K.Tripathy, learned counsel appearing for respondent nos.1 &2, and for respondent no.4 respectively.

4. The brief facts of the case, which are relevant for the purpose of deciding the controversy and are not disputed by either side, are that the applicant worked as a Contract Teacher in MCD Schools for different spells during the years 2005 to 2013. She was an UR/Widow candidate for selection and appointment to the post of Teacher (Primary) in MCD pursuant to the Advertisement No.004/2009 (Post Code 70/09), read with the corrigendum dated 13.9.2011, issued by the respondent-DSSSB. She appeared at the recruitment examination. Though she was declared to have scored 79.25 marks and the last selected UR candidate scored 79 marks in the recruitment examination, yet the respondent no.1-DSSSB, by the impugned rejection notice dated 5.12.2014 (Annexure A), declared her as

ineligible and rejected her candidature on the ground of she being overage as on the cut-off date, i.e., 15.1.2010; her date of birth being 20.6.1979. The respondent-MCD, vide letter No.D/ADE/TRC/ Educ./HQ/2011/1476 dated 25.11.2011, issued a list of 347 Contract Teachers of MCD, who were granted age relaxation for appearing in the recruitment examination for the post of Teacher (Primary) conducted by the respondent-DSSSB. In the aforesaid list of 347 Contract Teachers, the name of the applicant did not appear.

5. It has been contended by Mr.M.R.Farooqui, learned counsel appearing for the applicant, that the applicant being similarly placed as other 347 Contract Teachers of the respondent-MCD, who were granted age relaxation to appear at the recruitment examination pursuant to the same Advertisement, and the respondent-DSSSB, having accepted and considered the candidatures of the aforesaid 347 Contract Teachers by granting age relaxation in terms of the respondent-MCD's letter dated 25.11.2011 issued on the basis of approval/orders of the Hon'ble Lt.Governor of Delhi, and having allowed the applicant to appear at the recruitment examination, ought not to have rejected the applicant's candidature on the ground of she being overage as on the cut-off date, i.e., 15.1.2010. Therefore, the impugned rejection notice dated 5.12.2014, qua the applicant, is bad, illegal and liable to be quashed, and the respondent-DSSSB should be directed to select and recommend the applicant for appointment to the post of Teacher (Primary) in MCD as she had scored 79.25 marks and the last selected

candidate under UR category had scored 79 marks in the recruitment examination. It has also been contended by Mr.M.R.Farooqui that due to pendency of litigations pertaining to the said selection process and also due to non-availability of sufficient eligible/suitable candidates, all the advertized posts have not yet been filled up and a number of posts under UR category and other categories are still lying vacant. Therefore, there would be no impediment for the respondent-DSSSB and the respondent-MCD for appointing the applicant to the post of Teacher (Primary) in MCD against UR vacancy. In support of his contentions, Mr.M.R.Farooqui has relied on the decision of the Tribunal in **Pooja Dalmia vs. Delhi Subordinate Services Selection Board (DSSSB) and others**, OA No.28 of 2015, decided on 11.5.2018. Mr.M.R.Farooqui has also submitted that the case of the present applicant is squarely covered by the said decision of the Tribunal.

6. On the other hand, it has been contended by Mr.Amit Anand, learned counsel appearing for the respondent nos.1 and 2 that the respondent-DSSSB is bound to conduct the selection process in accordance with the terms and conditions of the Advertisement and the provisions of the Recruitment Rules. The applicant's candidature has been rightly rejected in terms of the Advertisement. The applicant was provisionally allowed to appear at the recruitment examination, subject to her fulfilling the terms and conditions of the Advertisement and the requirement of the Recruitment Rules. As the applicant's name was not included in the list of 347 Contract

Teachers of MCD, who were allowed age relaxation to appear at the recruitment examination on the basis of the approval/order of the Hon'ble Lt. Governor, her claim for grant of age relaxation is baseless. The applicant cannot claim selection and appointment solely on the basis of the marks scored by her in the recruitment examination, when she was admittedly overage as on the cut-off date and her candidature has been rejected.

7. Mr.S.K.Tripathy for Ms.Anita Pandey, learned counsel appearing for the respondent no.4, has adopted the arguments advanced on behalf of the respondent nos. 1 and 2.

8. After having given our thoughtful consideration to the rival contentions, we have found substantial force in the contentions of the applicant.

9. From the copies of office orders issued by the Education Department of the respondent-MCD, which have been filed as Annexure E (collectively) to the O.A., it transpires that the respondent-MCD had engaged the applicant to work as Contract Teacher on different spells during the years 2005 to 2013. The respondents have not refuted the statement made by the applicant that on the basis of those office orders issued by the Education Department of the respondent-MCD she had worked as Contract Teacher in MCD Schools during the aforesaid period. Thus, the mere non-inclusion of the name of the applicant in the list of 347 Contract Teachers of MCD, who were granted age relaxation to appear at the recruitment examination for the post of Teacher (Primary) in MCD, would not take away

and/or extinguish the applicant's right to claim similar age relaxation and to be considered for selection and appointment to the post of Teacher (Primary) in MCD pursuant to the Advertisement No.04/2009 (Post Code 70). The respondent-DSSSB has admittedly accepted and considered the candidatures of those 347 Contract Teachers of MCD, who were granted age relaxation by the respondent-MCD on the basis of the order/approval of the Hon'ble Lt. Governor. Therefore, the respondent-DSSSB ought not to have ignored their own decision and the decision of the respondent-MCD in the cases of the said 347 similarly placed Contract Teachers of MCD at the time of publication of the final result of selection and rejected the applicant's candidature on the ground of her being overage. After going through the decision of the Tribunal in **Pooja Dalmia vs. Delhi Subordinate Services Selection Board (DSSSB) and others**(supra), wherein the plea of respondent nos. 1 and 2 regarding disentitlement of the similarly placed applicant-Contract Teacher of MCD due to non-inclusion of her name in the aforesaid list of 347 Contract Teachers (as now raised by the respondent nos. 1 and 2 in the present proceedings) has been rejected by the Tribunal, and it has been held by the Tribunal that the applicant-Contract Teacher of MCD is entitled to same age relaxation as has been granted to those 347 Contract Teachers of MCD, we see no reason to differentiate between the present applicant and the applicant in the aforesaid case. Thus, we have no hesitation in holding that the rejection of the applicant's candidature by the respondent-DSSSB, vide the impugned notice dated 5.12.2014(Annexure A), being

discriminatory, is bad and illegal and liable to be quashed, and that the applicant is entitled to be selected and appointed to the post of Teacher (Primary) in MCD against UR vacancy as she had scored 79.25 marks and the last selected UR candidate had scored 79 marks in the recruitment examination.

10. In the light of our above discussions, we quash the impugned rejection notice dated 5.12.2014 (Annexure A) qua the applicant and direct the respondent-DSSSB to select and recommend the applicant for appointment to the post of Teacher (Primary) in MCD against UR vacancy within one month from today. Respondent-MCD is directed to appoint the applicant to the post of Teacher (Primary) in MCD against UR vacancy within one month from the date of receipt of recommendation and dossier in respect of the applicant from the respondent-DSSSB. Considering the facts and circumstances of the case, we order that the applicant shall only be entitled to the service benefits from the date of her joining the service as Teacher (Primary) in MCD.

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

(NITA CHOWDHURY)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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