

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A.NO.28 OF 2015New Delhi, this the 11th day of May, 2018

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

AND

HON'BLE MS.PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER

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Pooja Dalmia,
w/o Sh.Pradeep Dalmia,
aged 35 years,
D/o lt. S.K.Jain,
R/o 1/6285, IIIrd Floor,
Gali No.3, East Rohtash Nagar,
Near Dev Public School,
Shahdra, Delhi 110032 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 Advocates: Mr.Amit Anand for Respondents 1 & 2; and Mr.R.K.Jain for Respondent 3)

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ORDER

Per Raj Vir Sharma, Member(J):

The applicant, who was a 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 19.12.2014, seeking the following reliefs:

- “i) set aside the rejection order passed by the respondent no.1 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., counter replies have been filed by respondent nos.1 and 2 and by respondent no.3. The applicant has also filed rejoinder replies refuting the stand taken by the said respondents.

2.1 Respondent nos.4 and 5, in their counter replies, have submitted that they are *pro forma* respondents, and, therefore, they 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, learned counsel appearing for respondent no.3-South Delhi Municipal Corporation (SDMC).

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 he worked as Primary Teacher in MCD for different spells during the years 2003 to 2014. She was an UR

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. 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. When the respondent no.1-DSSSB rejected the applicant's candidature on the ground of she being overage, she made a representation dated 8.3.2013 requesting the respondent-DSSSB to grant her age relaxation for the period of her service as Contract Teacher, as 347 similarly placed Contract Teachers of MCD were given age relaxation in terms of the respondent-MCD's letter on the basis of the approval/order of the Hon'ble Lt. Governor of Delhi, referred to above. In consideration of her representation, the respondent-DSSSB accepted her candidature and issued Admit Card to appear at the recruitment examination. Accordingly, she appeared at the recruitment examination. Though she was

declared to have scored 81.75 marks, 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 30.3.1979.

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 earlier accepted the applicant's candidature 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 once again rejected her candidature on the ground of she being overage as on the cut-off date. 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 the applicant for appointment to the post of Teacher (Primary) in MCD as she had scored 81.75

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.

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. 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.R.K.Jain, learned counsel appearing for the respondent no.3, besides adopting the arguments advanced on behalf of the respondent nos. 1 and 2, has contended that 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.

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 A1 (collectively) to the rejoinder reply filed by the applicant on 19.2.2016, it transpires that the respondent-MCD had engaged the applicant to work as Contract Teacher on different spells during the years 2003 to 2014. 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. The respondent-DSSSB has also admittedly accepted and considered the candidatures of 347 Contract Teachers of MCD, like the applicant, who were granted age relaxation by the respondent-MCD on the basis of the order/approval of the Hon'ble Lt. Governor. In terms of the respondent-MCD's letter dated 25.11.2011(ibid) granting age relaxation to 347 Contract Teachers of MCD on the basis of order/approval of the Hon'ble Lt. Governor of Delhi, the respondent-DSSSB had admittedly acceded to the applicant's request for age relaxation and allowed her to appear at the recruitment examination. Thus, the respondent-DSSSB ought not to have ignored their own decision in the case of the applicant, as also 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. Therefore, 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 the applicant is entitled to

be selected and appointed to the post of Teacher (Primary) in MCD against UR vacancy.

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 no.3-SDMC 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.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER