

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

O.A. No. 413/2016

Date Of Decision: 8th April, 2019.

CORAM: R. VIJAYKUMAR, MEMBER (A).
R.N. SINGH, MEMBER (J).

Bhavinkumari Khandubhai Patel,
Aged about 36 years,
Presently working as: Assistant Teacher,
On contract basis at GHS Kharadpade,
Silvassa, and residing at:
13/173, Dhakliniwadi, Nani Daman- 396 210.
...Applicant.

(By Advocate Shri S R Atre)

Versus

1. The Administrator,
Union Territory of Daman and Diu,
Sachivalaya, Fort Area, Daman- 396 220.
2. The Secretary(Education),
Union Territory of Daman and Diu,
Sachivalaya, Fort Area, Daman- 396 220.
3. The Director of Education,
Union Territory of Daman and Diu,
Secretariat, Daman- 396 220.
4. The Assistant Director of Education,
Administration of Daman and Diu,
Nani Daman, Daman- 396 210.

...Respondents.

(By Advocate Shri V S Masurkar)

Reserved on : 20.03.2019

Pronounced on : 08.04.2019

ORDER

PER:- R. VIJAYKUMAR, MEMBER (A).

This application has been filed on
25.05.2016 under Section 19 of the

Administrative Tribunals Act, 1985 seeking the following reliefs:

"8.A. This Hon'ble Tribunal be pleased to call for the records and proceedings of the present case and after examining the legality and propriety thereof, quash and set aside the impugned list of candidates dated 11th of May, 2016 superseded by Order/Final Notification dated 10th of February, 2017 (Annexure A-1-A) wherein the Applicant's candidature for the post of Assistant Teacher has been rejected by the Respondents on the count that she is over aged, and accordingly direct the Respondents to appoint the Applicant to the post of Assistant Teacher in Mathematics with all the consequential reliefs.

8.B. This Hon'ble Tribunal be pleased to hold and declare that the action on the part of the Respondents in rejecting the applicant for the post of Assistant in the subject of Mathematics on the count of being over aged is illegal and bad in law and accordingly quashed and set aside the same.

8.C. Pass any such order and/or orders as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present case.

8.D. Costs of the present application be provided for."

2. The applicant has been working as Assistant Teacher on contract basis at the Government High School, Kharadpada, Silvassa in the Union Territory of Dadra and Nagar

Haveli from the year 2005 till date. The applicant responded to an advertisement published on 11.09.2016 by respondent who is the Administrator of the Union Territory of Daman & Diu, inviting applications for filling up posts, interalia numbering four Assistant Teachers of which three fell in the General Category to which the applicant belongs and with the requirement that the age limit was 30 years and below. The applicant appeared in the written test in February 2007 but results were not published. Later, in June 2010, an advertisement was published by the respondents to fill 50 posts of Assistant Teachers to which he applied but the examination was cancelled by a Press Note dt. 21.07.2011. A fresh advertisement was issued on 25.09.2014 which included the posts advertised in 2010 and for which the applicant again gave an application and appeared in the written examination on 22.01.2016 and was placed in the merit list. However, when she was awaiting appointment, the respondents published a list of

candidates on 11.05.2016 wherein it was stated that the applicant was rejected on the ground that she was over-aged for the post of Assistant Teacher in Mathematics.

3. The applicant has argued that the Circular No. COL/DMN/REC-MTS/EST-11/2012-13/3955 dt. 07.02.2013 sets policy guidelines for relaxation of age as under:-

"1. In cases where recruitment process is held up due to litigation/administrative reasons after inviting applications for filling up the vacancy, fixation of the crucial date for age limit i.e. the crucial date for determining the age would be the same even if the examination is shifted/postponed to some later date. Similarly, when examination is shifted/postponed to some later date after notifying the vacancy and fresh applications are invited, in such cases the candidate(s), who have applied against first advertisement will also be eligible for relaxation of age under this clause provided they were eligible at the time of their first application.

2. In cases where the candidate has been working on daily wages/ad-hoc/contract basis in the UT Administration of Daman & Diu for some years and was not over aged for regular appointment when he/she was initially appointed on ad-hoc/contract basis, in such cases relaxation of age is admissible to the extent of total period of service spent continuously without any break. If breaks are there condonation to the extent of

*total past service(excluding breaks)
in any capacity(ad-hoc/contract) can
be considered."*

4. The applicant also states that when the respondents shifted the selection to a further , date by cancelling a previous advertisement, they cannot put her to disadvantage and they would have to give her the benefit of age relaxation from the date on which she was appointed on contract basis as Assistant Teacher and at the time of advertisement in 2006/2010.

5. The respondents have noted that her date of birth is 08.07.1979 and she was over-aged, being 31 years at the time of advertisement issued on 21.06.2010. This advertisement had been cancelled on administrative grounds and therefore, the applicants for that advertisement were entitled to be considered for the vacancies advertised in 2014. However, the applicant was over-aged for the 2010 advertisement and continued to be in the same situation for the 2014 advertisement. Further, they have

submitted that following their advertisement in 2006 for four posts of Assistant Teacher, the affected contractual employees had filed an OA No. 111/2007 and were granted interim relief by the Hon'ble High Court of Bombay. Finally, orders were passed in the OA on 31.12.2007 and on appeal, the Writ Petition was withdrawn in 2012 and the concerned four applicants were regularized in the four available vacancies that had been notified in the advertisement of the year 2006. Therefore, no posts as contained in the advertisement of the year 2006 remained to be filled and over which a right could be claimed by the applicant for consequent transfer consideration for the advertisement of 2010 and thereafter, to the year 2014. In these circumstances, the advertisement of 2006-07 was not cancelled and neither was it postponed or shifted and therefore, the circular dt. 07.02.2013 did not apply in such a case. They have also submitted that the applicant was a contractual employee of the Union Territory of Dadra and Nagar Haveli

and not of the Union Territory of Daman and Diu. Therefore, she could not make any claims of age relaxation on the basis that she was being employed from the year 2005 since this work location was in a different Union Territory and that age relaxation could not be passed across Union Territories and States.

6. In rejoinder, the applicant has reiterated her contentions and has raised the issue that she belongs to an Other Backward Class(OBC). She has also referred to an order of this Bench in OA No. 660/2015 dt. 05.07.2016 to support the application of her age in the year 2006 and her falling within the age limit. In MA No. 319/2017, the applicant has also modified her OA to the extent that she has replaced the provisional selection list by a final selection list for 77 posts issued on 10.02.2017.

7. We have heard the learned counsel for the applicant and learned counsel for the respondents and carefully considered the facts and circumstances, law points and rival

contentions in the case.

8. The applicant has claimed that her age should be considered with reference to the advertisement that was issued in 2006 for four posts of Assistant Teachers and for which she applied and was admittedly eligible. However, the respondents have put forward their response which remains without rebuttal that these four posts were filled up in consequence of proceedings initiated by four affected parties who were contractual employees and whose status was regularized in pursuance of orders of this Tribunal and had attained finality. Therefore, the advertisement of 2006 and the selections thereof cease to have any significance. If the applicant had wished to challenge the appointment of four persons by way of regularization in those four advertised posts, she should have done so at the appropriate point of time wherein the issue could have been considered as to whether she had any substantive right to those posts. The fact is, that she had applied and had

written the exams and no selections had taken place. Therefore, it cannot be argued that she had any right to the posts and these four vacancies were extinguished by way of appointment and nothing remained of these four posts to which she could have been considered for selection when new posts were advertised in the year 2010. Therefore, the relevant point for determination of age would be the advertisement and conditions specified in the year 2010. At this point of time, the applicant was not eligible as she had crossed 31 years of age. She had become 31 years and 12 days old by this time. When reference is made to her application, it is found that she had served for nearly 9 ½ months in a private school in Daman but this period is not available for being counted for the purpose of age relaxation since this was a private school and she was not serving with the Government as a contractual or ad-hoc employee. Therefore, the applicant was clearly ineligible and over-aged for the 2010 advertisement and was rightly rejected when

the merit list was finalised in 2014/2017.

9. The applicant has pleaded that she is an OBC and therefore, she should be given benefit of age relaxation. Reference to her applications for the year 2006, 2010 & 2014, reveal that against the Serial No. 6 on whether she is an SC/ST/OBC, she has recorded, 'No' in respect of the application of the year 2014. In the application for the year 2010, when posts were advertised for OBC/ST/SC vacancies, her application does not make any mention of reserved category. Therefore, she cannot now claim that she belongs to an OBC Category and should be allowed to produce evidence to support a claim for age relaxation.

10. The third aspect is on whether her experience as Assistant Teacher from 2005 would entitle her to age relaxation in terms of the aforesaid circular. Admittedly, the applicant was working in a different Union Territory of Dadra & Nagar Haveli at Silvassa. Her employment was not with the Union Territory of Daman & Diu. As

respondents have argued, the contractual experience given in a different State/U.T. cannot be claimed for the purpose of age relaxation or for regularization or for any other matter in a different Union Territory. In these circumstances, this aspect of the claim of the applicant also lacks basis.

11. In view of the above, the OA clearly lacks merits and is dismissed without any order as to costs.

(R.N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

Ram.

gnd
10/6

