CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.591/2016

Reserved on : 07.01.2019

Pronounced on : 18.01.2019

HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. ARADHANA JOHRI, MEMBER (A)

1. Bhavna Dabas
D/o Shri Rajbir Singh Dabas
Aged about 38 years,
Assistant Teacher
Govt. SKV, Rani Jhansi,
Railway Colony, Tughlakabad
N.D-44

2. Rekha
D/o Shri Kishan Lal
W/o Shri Lal Chand
Aged about 39 years
Assistant Teacher
R.S.K.V No.1
Bhola Nath Nagar,
Shahdara, Delhi-92

3. Jyoti Rohilla
D/o Shri Jaipal Rohilla
Aged about 33 years
Presently TGT, Maths
GGSSS Shahabad Mohammadpur
Sector-8, Dwarka, New Delhi-77

4. Ms. Parveen
aged about 44 years,
W/o Jitender Malik
R/o L-185, Sarojini Nagar
New Delhi-23
Assistant Teacher
Sarvodaya Co-Ed
Sr. Secondary School
Safdarjung Enclave

New Delhi-20

5. Sanjay Kumar
Aged about 40 years
S/o Shri Kehar Singh
Presently TGT Social Science
GBSSS, Aya Nagar, N.D-47

6. Chitra Dudi
D/o Shri Chanderhash
Aged about 40 years
Assistant Teacher
SKV, Sector-1, PKT-7
Dwarka, Delhi-45

7. Rupesh Kumar
S/o Shri Suresh Dutt Dixit
Aged about 38 years
Presently posted as TGT, N.Sc.
GBSSS, Raj Nagar Extension-II
Palam Village, New Delhi-77

8. Jugal Kishore
S/o Shri Ram Het Sharma
Aged about 52 years
Presently TGT, Hindi
R.K.GSBB, Madanpur Khadar
New Delhi-76

9. Kusum,
D/o Mahabir Singh
Aged about 34 years
Assistant Teacher,
SKV Madanpur Khader
New Delhi-76

10. Pawan Kumar
S/o Shri Harichand
Aged about 41 years
TGT, SST
GBSSS Hari Nagar Ashram
New Delhi-53

11. Shyam Lal
Aged about 38 years
S/o Shri Bhagirath Mal
Presently TGT SKT.
GBSSS, Sector-I, Pocket-7
Dwarka, New Delhi-75 .....Applicants

(By Advocate:Shri Ranjit Kumar)

Versus

1. The Govt. of N.C.T, Delhi
Through the Principal
Secretary (Services)
Delhi Secretariat
I.P. Estate, N.D-1

2. The Director of Education,
Govt. of N.C.T, Delhi
Sham Nath Marg,
Delhi-54

3. Delhi Subordinate Service
Selection Board (DSSSB)
through its Chairman
FC-18, Institutional Area,
Karkardooma, Delhi-92 ....Respondents

(By Advocate: Shri Vijay Pandita)

ORDER

By Shri V. Ajay Kumar, Member (J)

It is submitted that, in pursuance of an Advertisement issued by Delhi Subordinate Selection Services Board (DSSSB) in the year 2002, the applicants applied for selection to the post of Assistant Teacher (Primary) (Post Code No.013/2002 and 014/2002). A common examination was held by Delhi Subordinate Services Selection Board (DSSSB) for all categories, i.e. General, OBC, SC and ST. The results were declared and the applicants were also

declared qualified in the said examination but their results were withheld and they have not been given appointments.

2. On enquiries, the applicants came to know that the persons who were declared selected and belong to the general category were given appointments but the applicants and others belonging to the reserved categories though selected, were not given appointment orders and their results were withheld. The reason for withholding the results of the candidates who were selected but belong to reserved category was that the applicants and others were not having valid caste certificates. The fathers of these persons were originally residents of different parts of the country and were first generation migrants to Delhi. The certificates issued to them and the castes of the applicants were not recognized as SC/ST/OBC in Delhi. Certain persons, who were identically placed like the applicants, i.e., belonging to the reserved categories though selected but were not issued appointment orders in respect of year 2002, filed CWP Nos. 5061/2001 and batch - **Kunwar Pal and Others Vs. Govt. of NCT of Delhi and Another** and a Learned Single Judge of the Hon'ble High Court of Delhi, while disposing of the said Writ Petitions by a common judgment dated 31.05.2002 held as under:-

> "In view of the aforesaid a writ of mandamus is issued to appoint such of the petitioners in the present writ petitions who are born and brought up in Delhi but the certificate issued to them is on the basis of the certificates issued to their fathers who were the migrants from other states.
>
> The petitioners who are so appointed should also be entitled to the consequently benefits of seniority and pay scale

> though in view of the fact that they not been working for this period of time they shall not be entitled to the back wages for the said period of two months from today.
>
> The writ petitions are disposed of in the aforesaid terms leaving the parties to bear their own costs".

3. The LPA No.625/2002 and batch in **Delhi Subordinate Services Selection Board and Another Vs. Kunwar Pal and Others** filed against the aforesaid decision of the Learned Single Judge was also dismissed by a common order dated 13.05.2005.

4. In pursuance of the aforesaid orders, the respondents finally appointed the applicants and other similarly situated persons during the year 2004.

5. The applicants filed the present OA seeking a direction to the respondents to grant them seniority in the post of Assistant Teacher as per their merit position in the selection with all consequential benefits.

6. Heard Shri Ranjit Kumar, the learned counsel for the applicants and Shri Vijay Pandita, the learned counsel for respondents and perused the pleadings on record.

7. It is not in dispute that, if the applicants are identically placed like the petitioners in CWP No.5061/2001, i.e., Kunwar Pal and Others and batch, they are also entitled for the same benefit. In fact, the Hon'ble High Court of Delhi while allowing the Writ Petition of **Kunwar Pal and Others** while directing the respondents to appoint the petitioners therein, specifically declared that they are

entitled for consequential benefits of seniority and pay scale though the back wages were denied. Though the respondents ought to have granted all the benefits conferred on **Kunwar Pal and Others** to all the similarly situated persons also, i.e., including seniority and other consequential benefits, they extended the said judgment to the extent of issuing appointment orders only but the consequential benefit of granting seniority was denied on the ground that they were not parties in **Kunwar Pal and Others** case.

8. As a result, the applicants who are claiming to be identically placed like **Kunwar Pal and Others** were compelled to approach this Tribunal for the same benefits which were granted to the identically placed persons on the declaration of the principle of law. In **Inder Pal Yadav Vs. Union of India, 1985 (3) SCR 837**, the Hon'ble Apex Court held that those who do not come to the court need not be at a disadvantage to those who rushed to the Courts and if they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this court. In **State of Karnataka and Others Vs. C. Lalitha, (2006) 2 SCC 747**, it was held that service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently (also see **K.I. Shephard Vs. Union of India, AIR 1988 SC 686**; and **K.T. Verappa and Others**

Vs. State of Karnataka and Others, 2006 (9) SCC 406).

9. In the circumstances and for the aforesaid reasons, the OA is allowed and the respondents are directed to consider the claims of the applicants who were appointed belatedly in compliance of the decision in **Kunwar Pal and Others** (supra), and to grant notional seniority, fixation of pay as per their position in the merit list prepared by DSSSB in the relevant year, with all consequential benefits, except back wages, as admissible to their batchmates belonging to the unreserved/general category candidates. This exercise shall be completed within 90 days from the date of receipt of a copy of this order.

All the pending MAs also stand disposed of. No costs.

(ARADHANA JOHRI)
Member (A)

(V. AJAY KUMAR)
Member (J)

RKS