

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 3167/2017

New Delhi, this the 19th day of March, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

1. Asha
W/o Sh. Satyawar
R/o H. No. 147, Khasra No. 322,
NEB Sarai, New Delhi – 110068.
Aged about 34 years.
2. Pinky
D/o Sh. Yashpal
R/o A-816, Bhalswa Dairy, Delhi – 110042.
Aged about 34 years.

(Group 'B')

(Candidates for the post of Special Educator in GNCT)

...Applicants

(By Advocate : Mr. Ajesh Luthra)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary,
A-wing, 5th Floor Delhi Secretariat,
I.P. Estate, New Delhi.
2. Delhi Subordinate Services Selection Board (DSSSB)
Through its Secretary,
FC-18, Karkardooma Institutional Area,
Delhi – 92.
3. South Delhi Municipal Corporation,
Through its Commissioner,
9th Floor, Civic Centre,
New Delhi.
4. North Delhi Municipal Corporation,
Through its Commissioner,
4th Floor, Dr. S. P. M. Civic Centre,
JLN Marg, New Delhi – 110002.

5. East Delhi Municipal Corporation,
Through its Commissioner,
419, IInd Floor, Udyog Sadan,
Industrial Area, Patpar Ganj,
Delhi – 110092.
6. Lieutenant Governor of Delhi,
Raj Niwas, Rajpur Road,
Delhi.

...Respondents

(By Advocate : Mr. Manjeet Singh Reen, Mr. R. K. Jain and Mr. H.
A. Khan, Additional Standing Counsel for DSSSB)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman:

Three Municipal Corporations in Delhi, i.e., Respondents No. 3, 4 and 5, herein intended to fill various posts in the schools under their control. They entrusted the matter to Delhi Subordinate Services Selection Board (DSSSB), the second respondent herein. Advertisement No. 2/17 was issued on 07.08.2017. One of the posts was of Special Educator (1540 Posts). The age limit stipulated for that post is 30 years, relaxable to the extent of 5 years in favour of SC/ST candidates, 3 years for OBC candidates and 10 years for Physically Handicapped candidates. The applicants crossed the prescribed age limits, therefore, their applications were not considered.

2. According to the applicants, the Lieutenant Governor of Delhi, issued Notification dated 01.11.1980 in exercise of the

power under Section 43 of Delhi Education Act, relaxing the age limit in favour of female candidates by 10 years, and that they are entitled for the said benefit. This OA is filed with a prayer to declare that the age relaxation of 10 years available under notification dated 01.11.1980 is available to them and to direct the respondents not to reject their applications. Other consequential reliefs are also claimed.

3. The applicants contend that the post in question was created in compliance with the directions issued by the Hon'ble Delhi High Court and though large number of vacancies were being notified year after year, they were not being filed for want of suitable candidates and at least in that context, the facility of relaxation ought to have been extended. It is also pleaded that schools within the limits of Municipal Corporations are also covered by the notification issued by Lieutenant Governor in exercise of power under Delhi Education Act. Other grounds are also pleaded.

4. Respondents filed separate counter affidavits opposing the OA. Gist of their plea is that notification dated 01.11.1980 issued by Lieutenant Governor is for the post in the Educational Institutions under the control of Delhi Administration and that the posts in Municipal Corporations are governed by separate set of rules. It is also stated that the posts in question are governed by Recruitment Rules framed by the Department of Urban Development, issued vide notification dated 10.05.2012, which in

turn were approved by Lieutenant Governor and since no relaxation is provided therein, the applicants are not entitled to the relief claimed in the OA.

5. We heard Mr. Ajesh Luthra, learned counsel for the applicants and Mr. Manjeet Singh Reen, Mr. R. K. Jain and Mr. H. A. Khan, Additional Standing Counsel for DSSSB.

6. The post in question is Special Educator in Municipal Corporation of Delhi. The age limit for this post is stipulated as 30 years, relaxable to certain extent in favour of respective categories. Even if the relaxation meant for OBCs, is extended to them, the applicants are not within the prescribed age limit. They fall back upon the notification dated 01.11.1980 issued by Lieutenant Governor. The notification reads as under:-

“6

**General Age Relaxation of 10 years for
Women Candidates for Recruitment to
Teachers Post”**

1. In exercise of the powers vested in him under Rule 43 of the Delhi School Education Rules, 1973, the Administrator is pleased to prescribe for women candidates a general relaxation for 10 years in the maximum age limits prescribed in the Recruitment Rules for recruitment to various posts of teachers in Delhi Schools.
2. The Managing Committees shall, while considering women candidates for appointment to vacancies in their schools, consider such candidates as per the revised age limit for women candidates.”

7. As mentioned in the notification itself, it was issued in exercise of powers under Section 43 of Delhi School Education Rules, 1973 framed under the Delhi Education Act.

8. A perusal of the Delhi Education Act and Rules made there under reveals that they regulate the schools situated within the Capital Territory of Delhi in certain respects. It is essential to take note of the fact that the schools, not only established by the Delhi Administration but also by local authorities such as Municipal Corporation, and Central Government establishments are governed by the same. It is, however, different from stating that the Delhi Government has the competence to regulate the schools in its territory in all aspects. Much would depend upon the authorities that have established the schools. For example, the mere fact that a Kendriya Vidyalaya is established within the limits of Delhi does not empower the Delhi Government to regulate the affairs in those schools including the one of stipulating the qualification for appointment of teachers, etc.

9. The question as to whether the notification dated 01.11.1980 issued by Lieutenant Governor of Delhi applies to the various posts in the educational institutions was examined extensively by the Hon'ble Delhi High Court in its Judgment in the matter of **Raj Bala & Anr. Vs. Govt. of NCT of Delhi & Ors**, decided on 23.08.2017. The discussion on this aspect was dealt with in paras 13 to 15, which read as under:-

“13. Having heard learned counsel for the petitioners, we find no merit in these petitions. The foundation of the petitioners' case is the notification dated 01.11.1980 issued by the Hon'ble Lt. Governor under Rule 43 of the DSE Rules granting age relaxation of 10 years to women candidates in respect of posts of Teachers. Firstly, the Division Bench in Sachin Gupta (supra) held that the said notification did not relate to recruitment of Teachers in the DoE of the GNCTD. We are bound by the said finding and, even otherwise, we see no reason to take a different view. The said issue, firstly, was not raised before the Division Bench dealing with Asha (supra), and Sachin Gupta (supra) was not even considered in the said decision. The issue raised in Asha (supra) was materially different. In that case, despite the post of Librarian in Government Schools of the DoE having been declared as teaching posts for all purposes with immediate effect on 21.01.2011, the age relaxation applicable to women candidates was not being extended to those applying for the post of Librarian, even though the same was granted to women candidates applying for other posts of teachers in the DoE. It is on the aforesaid premise that the action of the respondent - GNCTD was found to be discriminatory by this Court, and this Court directed the respondents to grant the said age relaxation to the petitioner Asha as well. It was not urged before the Division Bench in Asha (supra), that the said age relaxation granted by the Hon'ble Lt. Governor vide notification dated 01.11.1980 did not apply to recruitments by the DoE in the GNCTD. The decision in Sachin Gupta (supra), which is an earlier decision of a Division Bench of this Court was not even brought to the notice of the Court while dealing with Asha (supra). Therefore, it cannot be said that there is any conflict of judicial opinion between Sachin Gupta (supra) and Asha (supra). In any event, the reliance placed by the petitioners on the notification dated 01.11.1980 appears to be misplaced and is of no avail.

14. We are also of the view that the finding returned by the Tribunal that the said notification dated 01.11.1980 cannot be pressed into service after the Rules of 2011 have been framed for the purpose of recruitment of PETs, is correct and does not call for interference. This Court has held in Sachin Gupta (supra) that it is the prerogative of the employer to decide the age limit and academic suitability of candidates whom they wish to employ, and so long as the same are not in conflict with the academic eligibility and age prescribed by the NCTE. Challenge to the said prescription cannot be

sustained, merely on the ground that the eligibility conditions render some candidates ineligible.

15. There is nothing unreasonable in the respondents prescribing the maximum age limit for PETs as 30 years under the Rules of 2011. PETs constitute a distinct class of teachers when compared to teachers of other subjects. The scope of responsibilities and duties of PETs is materially different inasmuch, as, they have to discharge their functions and duties in the field, as opposed to other teachers who primarily render their services in a class room environment. Their duties involve much greater and rigorous physical activity. The benchmark of physical fitness expected of a PET would, therefore, be far greater than that of the other teachers. A PET who is not himself/herself physically fit, would not be in a position to instruct the students in physical education in the desired manner. If the respondents were to permit women PETs to join up to the age of 40 years (by granting 10 years' age relaxation), their tenure as effective PETs would be highly curtailed. For this reason, the prescription of the maximum age limit for PET as 30 years, as opposed to other teachers - such as, music teachers, drawing teachers, and domestic science teachers for whom the upper age limit is fixed at 32 years, cannot be said to be discriminatory as there is valid and reasonable classification, which has nexus to the object of the said classification. We agree with the Tribunal that it is not necessary for the respondents to have identical qualifications and age limit for all posts and teachers and different qualifications, age limit and physical fitness standards may be prescribed for different posts. Pertinently, on account of the nature of the job expected to be rendered by the PETs, reservation for the physically handicapped persons has also not been provided, which is provided in respect of other category of teachers. “

10. Shri Ajesh Luthra, Learned counsel for the applicants submits that the judgment referred to above is *per incuriam* inasmuch as it did not properly appreciate the judgment in Sachin Gupta's case. We are afraid whether such a situation exists at all. As a matter of fact, the question as to whether there exists, any comparison between the judgment in Sachin Gupta's case, on the

one hand, and Asha's, on the other, was taken note of by the Hon'ble Delhi High Court itself, and at the end of para 13, the issue was clarified.

11. The Rules of 2012 were issued in respect of Municipal Corporations in Delhi. The plea of the applicants that once the Lieutenant Governor had issued the notification dated 01.11.1980, they apply to all the schools within the territory of Delhi, stands rejected on account of the fact that the 2012 Rules were also approved by the Lieutenant Governor.

12. The stipulation of various conditions such as, educational qualification and age limit is the prerogative of the employer. The nature of duties that are required to be discharged by the selected candidates, the standard to be maintained, etc., are the factors to be taken into account. It is not for the Courts to substitute the conditions which are stipulated by an employer unless they are found to be in contravention of any specific enactment.

13. We do not find any merit in the OA. It is accordingly dismissed. There shall be no orders as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/ankit/