

**Central Administrative Tribunal
Principal Bench**

O.A. No. 2250/2014

This the 28th day of November, 2019

**Hon'ble Mr. R.N. Singh, Member (J)
Hon'ble Ms. Aradhana Johri, Member (A)**

Firdaus Jahan
W/o Mohd. Safdar
D/o Mr. Husain Ahmad
R/o A-22/169, Block-A22,
DDA Flats, Inder Lok,
Delhi-110035

Age-31 years
Fresh Appointment

...Applicant

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

VERSUS

1. Delhi Subordinate Service Selection Board
(DSSSB) Through its Secretary/Chairman
Office at: FC-18, Industrial 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 Mukahrjee
Civic Center, Zakir Hussain Marg,
New Delhi-110002

...Respondents

(By Advocate: Ms. Purnima Maheshwari for Respondents
No. 1 and 2;
Sh. R.K. Jain for Respondent No. 3)

ORDER (Oral)**Hon'ble Mr. R.N. Singh, Member (J):**

Heard the learned counsels for the parties.

2. The applicant, who is stated to have participated in the selection process for the post of Teacher (Primary-Urdu) vide Post Code No. 69/09 in the schools of Municipal Corporation of Delhi (in short, MCD) in pursuance to Advertisement No. 004/2009 dated 29.12.2009 is aggrieved by the rejection of her candidature. She has filed the present OA seeking the following reliefs:-

“i) set-aside the rejection order passed by respondent no. 1 in respect of the candidature of the applicant on account of overage vide office order No. 323 dated 1.3.2014;

ii) direct the respondents to give the appointment to the applicant for the Post of Teacher (Primary-Urdu) to the Post Code No. 69/09 considering her candidature as eligible and under the age limit of 30 years;

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-Urdu) to the Post Code No. 69/09;

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.”

3. In response to the notice issued by this Tribunal, respondents have filed their reply and they have disputed and denied the claim of the applicant. Learned counsel for respondents submits that though the applicant has applied as OBC category candidate relying upon the OBC certificate, however, as the same was not issued by the Competent Authority in Delhi, the applicant was considered as UR category candidate. During such consideration, the applicant was found overage by 14 days and therefore, her candidature has been rejected.

4. To substantiate the claim of the applicant, learned counsel for the applicant submits that during the selection process, the respondents were in the middle of processing the amendment of the rules and when the rule was amended on 06.09.2011, the necessary Corrigendum to the advertisement was issued by the respondents. However, Corrigendum dated 13.09.2011 was issued for two Post Codes, i.e., Post Code No. 70/09 and Post Code No. 71/09, whereas the applicant has applied against the Post Code No. 69/09.

5. Learned counsel for applicant submits that the rules were amended for the post of Primary Teacher for all the languages and not for any particular language only and therefore, the applicant was required to be considered in accordance with the amended rules. Had she been considered under the amended rules, she would have been found within the age limit prescribed for the Post Code No. 69/09. He further referred and placed reliance upon the order/judgment dated 11.05.2016 by this Tribunal in OA No. 1134/2014 titled *Mumtaz Parveen vs. SDMC & Ors.*

6. The paras 2 to para 5 of the order/judgment in *Mumtaz Parveen (supra)*, read as under:

“2. After issue of the amended Recruitment Rules, the respondents issued a Corrigendum to the Advertisement No. 004/2009, which is available at page-42 of the paper-book. The grievance of the applicant is that Post Codes-70/2009 and 71/2009 have been covered by this Corrigendum. But the respondents have not covered Post Code-69/2009 i.e. the post of teacher (Primary-Urdu) in MCD by the Corrigendum. Consequently, they have rejected the applicant’s candidature based on the Recruitment Rules as they existed prior to the Notification dated 06.09.2011 and have rejected applicant’s case finding her not to be having the necessary 50% marks at Senior Secondary or Intermediate level.

3. Learned counsel for the respondents argued that the amendment carried out by them in the Recruitment Rules vide Notification dated 06.09.2011 covered only Teachers (Primary) of MCD and did not cover teachers (Primary-Urdu). Hence, the post of Teacher (Primary-Urdu) was not included in the corrigendum.

4. We have considered the submissions of both sides and have perused the material on record. It is not disputed that in the Notification dated 13.07.2007 there was only one rule for all the posts of teacher (Primary) for different subjects including teachers of different languages, such as, Urdu, Tamil, Bengali and Punjabi. The Notification dated 06.09.2011 has been issued in supersession of the Notification dated 13.07.2007 as is obvious from the reading of this Notification itself. Under the new Recruitment Rules notified vide this Notification, educational qualification required was only Senior Secondary or Intermediate without any minimum marks prescribed at this level. If the contention of the respondents that these Rules were applicable only for the post of Teacher (Primary) and did not apply to Teacher (Primary-Urdu) was to be accepted, then it would imply that posts of teacher (Urdu) have been left without any Recruitment Rules after issue of Notification dated 06.09.2011 since the earlier Recruitment Rules have been superseded by this Notification. This was obviously unacceptable. Moreover, even in the old rules as far as essential educational qualification was concerned, it was same for all types of primary teachers. Therefore, the contention of the respondents that the qualification has been changed only for primary teachers other than those of the different languages does not appear to be convincing at all.

5. Therefore, in our opinion, the respondents have erred by issuing a corrigendum only for Post Codes-70/2009 and 71/2009 and leaving out Post Code-69/2009 when this post was also covered by the amendment in the Recruitment Rules. We, therefore, find substantial justification in the contention of the applicant that her case has been wrongly rejected by the respondents on the ground that she did not possess the required 50% marks at intermediate level.”

The para 7 of the said order/judgment in *Mumtaz*

Parveen (supra), reads as under:-

“7. We, therefore, allow this O.A. and quash the impugned order dated 01.03.2014 qua the applicant by which her candidature was rejected for not possessing the necessary educational qualification. We further direct the respondent DSSSB to process the case of the

applicant as per the Recruitment Rules notified on 06.09.2011 within a period of 60 days from the date of receipt of a certified copy of this order. In case the applicant succeeds, she shall be so appointed and shall also be entitled to consequential benefits of pay fixation and seniority. No costs."

7. Learned counsel for the applicant submits that the claim of the applicant is squarely covered by the aforesaid judgment of the Tribunal in *Mumtaz Parveen (supra)* whereas, per contra the learned counsel for respondents submits that in the case of *Mumtaz Parveen (supra)*, the issue before this Tribunal was regarding the requisite educational qualification and not the prescribed age for the post against the Post Code No. 69/09.

8. We heard the counsels for the parties and considered and perused the pleadings on record.

9. We are of the considered view that once it is an admitted fact that the consideration for the post of Primary Teacher against the Post Code No. 69/09 was made on the basis of taking into consideration the requisite qualification for such post as per the amended rules, there is no reason or justification available to the respondents not to consider the age criteria for the same post against same post code in

accordance with the provisions in this regard as provided in the amended Recruitment Rules.

10. Accordingly, we are of the considered view that the claim of the applicant is covered by the judgment of this Tribunal in *Mumtaz Parveen (supra)*. However, at this stage, learned counsels for the parties submit that the judgment of this Tribunal in *Mumtaz Parveen (supra)* is the subject matter of adjudication before Hon'ble High Court in W.P. (C) No. 1272/2017 titled ***DSSSB vs. Mumtaz Parveen & Anr..***

11. In view of the aforesaid, we order that the claim of the applicant will be governed by the judgment in Hon'ble High Court in W.P. (C) No. 1272/2017 titled ***DSSSB vs. Mumtaz Parveen & Anr..***

12. OA disposed of in the aforesaid terms.

13. No order as to costs.

(Aradhana Johri)
Member (A)

(R.N. Singh)
Member (J)

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