

Jyoti Dua and Another Vs. Dsssb and Others

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Court : Delhi

Decided On : Apr-23-2012

Judge : Badar Durrez Ahmed & V.K. Jain

Appeal No. : W.P.(C) 8147 & 8572 OF 2011

Appellant : Jyoti Dua and Another

Respondent : Dsssb and Others

Judgement :

V.K. JAIN, J.

1. By this common order, we will dispose of both the writ petitions referred above. WP(C) No. 8147/2011 is directed against the order dated 4.8.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'Tribunal'), whereby OA Nos.751/2010 and 15140/2010 filed by the petitioners in this case were dismissed. WP(C) No. 8572/2011 is directed against the order of the Tribunal dated 20.10.2011 whereby OA No.1489/2010 filed by the petitioner in this case, was dismissed by the Tribunal, following its earlier order passed in OA No. 751/2010 and 1540/2010.

2. The facts giving rise to filing of these writ petitions can be summarized as under:

The petitioners, who passed their Elementary Teachers Examination (ETE) in the year 2005, either appeared or were eligible to appear in the examination

conducted by the Delhi Sub-ordinate Service Selection Board (DSSSB) in the year 2006, pursuant to its advertisement No. 01/06, for the post of Primary Teacher in MCD. At that time, the upper age limit, for the persons who could appear in the said examination, was 32 years in the case of male candidates and 42 years in the case of female candidates. The petitioners, however, did not qualify in that examination.

3. Vide notification dated 8.5.2006, Recruitment Rules for appointment to the post of Assistant Teachers in Govt. of NCT, Delhi and MCD, were notified prescribing the maximum age as 27 years for both males as well as females. The notification was challenged before this Court in **WPC 7297/2007 Sachin Gupta and Ors. v. Delhi Subordinate Service Selection Board** and connected writ petitions. Vide order dated 28.8.2008, a Division Bench of this Court upheld the validity of the notification reducing the upper age limit. However, considering that the maximum age prescribed for the post of Assistant Teacher (Primary) in MCD and NCT of Delhi had been reduced from 32 years for male candidates and 42 years for female candidates to 27 years and to ameliorate the hardships caused to the persons who had already enrolled in the ETE course and suddenly found themselves overage and ineligible, this Court directed that all the candidates, who had applied in the ETE course either in the year 2006 or in the year 2007 or 2008, would be allowed to appear in the examination conducted by the respondent for the post of Assistant Teachers (Primary), provided they did not exceed the upper age limit of 32 years in the case of male candidates and 42 years in the case of female candidates and fulfilled all eligibility requirements. This was also made applicable to the candidates who had already taken the examination, pursuant to the permission granted by the Court. The relaxation was to cease for the ETE courses after 2008.

Out of the petitioners in WP(C) 8147/2011, petitioner No.1 qualified in the subsequent examination held pursuant to the advertisement No. 57/06, whereas the remaining petitioners qualified in the examination held pursuant to advertisement No. 164/07 and 165/07. The sole petitioner in WP(C) 8572/2011 qualified in the examination held pursuant to the advertisement No. 08/07. It would be pertinent to note here that these petitioners were provisionally permitted by this

Court to appear in the said examination. Appointment was, however, denied to them on the ground that they were overage and were not covered by the decision of this Court in **Sachin Gupta** (supra).

4. OA Nos. 498/2010, 751/2010 and 1489/2010 were filed by the petitioners before the Tribunal Court seeking appointment to the post of primary teacher. They placed reliance upon the decision of this Court in **Sachin Gupta** (supra) in support of their applications. The Tribunal in allowing these OAs followed its earlier decision in **Parul Dhingra v. DSSSB**, OA No. 2983/2009. The OAs were allowed vide order dated 8.7.2010 and the respondents in the OAs were directed to offer appointment to the applicants. The order of the Tribunal was challenged before this Court in WP(C) 8523/2010, 8524/2010 and 8545/2010. This Court noticed that the decision of the Tribunal in **Parul Dhingra** (supra) has been set aside by this Court in WP(C) 4377/2010 vide order dated 2.11.2010. The learned counsel for the petitioners before this Court, however, contended that the candidates who passed the ETE examination in the year 2005 as well as those who passed the examination in the year 2006 had equal opportunity to appear in the examination conducted on 2.7.2006 pursuant to advertisement No.01/06 and this Court had granted leave to the candidates who had appeared for the ETE/JBT examination in the year 2005 as well as 2006 to provisionally appear in the examination conducted by the respondents vide Code No. 57/06, 164/07 and 165/07 but despite that, respondents had considered the candidature of only those who had appeared in the examination conducted in the year 2006 or 2007 or 2008, and therefore, it was a case of discrimination. This Court, noticing that the contention had not been dealt with by the Tribunal, set aside the order impugned before it and remanded the matter to the Tribunal to re-decide the same. It was further directed that while doing so, the Tribunal would take note of the decision of this Court in WP(C) 4677/2010.

5. Pursuant to remand by this Court, OA No. 751/2010 as well as 1540/2010 were dismissed by the Tribunal on the ground that the petitioners had passed ETE examination in the year 2005 whereas the benefit of the decision of this Court in **Sachin Gupta** (supra) had been extended to only those who passed ETE examination in the year 2006 or 2007 or 2008. In taking this view, the Tribunal also

took note of the decision by this Court in WP(C) 4677/2010 whereby the decision of the Tribunal in **Parul Dhingra** (supra) had been set aside.

6. It is an admitted position before us that all the petitioners before this Court had passed the ETE examination in the year 2005. The result of the examination having been declared on 24.8.2005, they had an opportunity to appear in the examination for appointment of Assistant Teacher (Primary) conducted by DSSSB pursuant to advertisement No. 01/06. It is also an admitted position that as per the cut-off date fixed by DSSSB for the examination held pursuant to the advertisement No. 01/06, those persons, who passed ETE examination in the year 2005 were eligible to appear in that examination since the upper age limit at that time was 32 years for the male candidates and 42 years for the female candidates. Therefore, it cannot be said that the petitioners had no opportunity to appear in any examination conducted by DSSSB for the posts of Assistant Teacher (Primary). More importantly, while upholding the notification whereby the upper age limit was reduced to 27 years in the cases of male as well as female candidates, this Court carved out an exception only in respect of those candidates who had appeared in the ETE examination held in the year 2006 or 2007 or 2008. Para 59 of the judgment and the following extracts from of the said judgment, in this regard, are relevant:

“59. However, considering that the maximum age prescribed for the post of Assistant Teachers (Primary) for the MCD and NCT has been reduced from 32 years for males and 42 years for females to 27 years, we are of the view that this would cause hardship to candidates already enrolled in the ETE course, who might suddenly find themselves over-age and ineligible. With a view to ameliorate this hardship and as one-time measure, following the ratio in the case of *Anuj Johri vs. Union of India and Ors.* reported in 2005 III AD (Delhi) 614., it is directed that the respondents would permit all those candidates who have completed the ETE course either in the Year 2006 or 2007 or 2008 to appear in the examination conducted by the Respondents for the posts of Assistant Teachers (Primary) once each of the Respondents i.e. MCD and Govt. of NCT of Delhi provided they do not exceed the upper age limit of 32 years for males and 42 years for females and also fulfill all other eligibility conditions. This would also apply to candidates, who

have already taken the examination as permitted by this Court.

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64. Even the age criteria (namely minimum and maximum eligibility age as 20-27 years respectively) is upheld but with a view to ameliorate the hardship of already enrolled students in ETE courses, it is directed that the respondents would permit all those candidates who have completed the ETE course either in the year 2006 or 2007 or 2008 to appear in the examination conducted by the Respondents for the posts of Assistant Teachers (Primary) once each of the Respondents i.e. MCD and Govt. of NCT of Delhi provided they do not exceed the upper age limit of 32 years for males and 42 years for females and also fulfill all other eligibility conditions. This would also apply to candidates, who have already taken the examination as permitted by this Court.

The above referred extracts from the decision of this Court in **Sachin Gupta** (supra) leaves absolutely no doubt with respect to the scope of the exception carved out by this Court. The exception was limited only to those who had completed ETE course in the year 2006 or 2007 or 2008. Those candidates who were not parties before this Court, but had completed ETE course in the year 2006 or 2007 or 2008 were also allowed to appear in the examination conducted by the respondent for the post of Assistant Teacher (Primary), though only once each. The Petitioners having not qualified the ETE course in the year 2006 or 2007 or 2008 were, therefore, clearly out of the exception carved out by this Court in the case of **Sachin Gupta**.

7. Learned counsel for the petitioners contended that since the exception carved out by this Court was also made applicable to the candidates who had already taken examination permitted by this Court and the petitioners though they had qualified ETE course in the year 2005, had been permitted by this Court to appear in the examination and pursuant to that permission they had not only appeared but also cleared the examination conducted by DSSSB, it was not open to the respondents to deny the benefit of the judgment in **Sachin Gupta's** case to the petitioners. We, however, do not find any merit in the contention. In our view, when the Court said that its directions would also apply to the candidates who had

already taken the examination as permitted by this Court, it was referring to those candidates who had already completed ETE course in the year 2006 or 2007 or 2008 and were provisionally permitted by the Court to appear in the examination conducted by DSSSB for the post of Assistant Teacher (Primary). Had the intention of this Court been to extend the benefit of exception carved out by it, also to those who had qualified the examination in the year 2005, it would have directed the respondents to permit those candidates who had completed ETE course in the year 2005, 2006, 2007 or 2008 to appear in the examination for the post of Assistant Teacher (Primary). We need to keep in mind that the exception carved out by this Court in **Sachin Gupta** was not confined to those who were parties before this Court. It was made applicable also to those who had completed the ETE course in the year 2006 or 2007 or 2008 but had not filed petitions before this Court. The obvious logic behind excluding those who completed ETE course in the year 2005 and earlier seems to be the fact that they had an opportunity to appear in the examination held by DSSSB pursuant to advertisement No. 01/06 irrespective of whether they appeared in that examination or not.

8. It was contended by the learned counsel for the petitioners that even those who completed ETE course in the year 2006 had an opportunity to appear in the examination conducted pursuant to advertisement No. 01/06 since the result for ETE course of the year 2006, was declared on 24.5.2006 whereas the cut-off date to appear in that examination was 31.5.2006. This was countered by the learned counsel for the respondent who submitted that those who completed ETE course in the year 2005 and earlier had more time at their disposal to prepare for the examination conducted pursuant to the advertisement No. 01/06, as opposed to those who completed the said course in the year 2006 and whose results were declared just one week before the cut-off date. We, however, need not delve into this aspect of the matter for the simple reason that the petitioners before this Court were also parties in the writ petitions which were decided by this Court in **Sachin Gupta and Ors**, on 28.8.2008. They knew that the Court had extended the benefit of the exception carved out by it only to those who had completed the ETE course in the years 2006 or 2007 or 2008. If their grievance was that those who completed the course in the year 2006 were similarly situated to those who completed course in the year 2005, the remedy available to them was either to

seek a review of the decision of this Court in **Sachin Gupta** (supra) or to file a Special Leave Petition against that order. The learned counsel for the respondents submitted before us that not only was a review petition filed but also a Special Leave Petition in respect of the decision of this Court in **Sachin Gupta**. The Special Leave Petition was dismissed by the Supreme Court and the review petition was dismissed on the ground that the Special Leave Petition against the order had been dismissed.

9. A perusal of the decision of this Court dated 2.11.2010 in **WP(C) 4677/2010** would show that the petitioner in that case had obtained ETE diploma in the year 2002 and she was overage when advertisement No. 8/07 was issued by the DSSSB for appointment to the post of Assistant Teacher (Primary) in MCD. In that advertisement, the upper age limit was stipulated as 27 years, and therefore, the respondent before this Court was overage in terms of that advertisement. Referring to the decision of this Court in **Sachin Gupta's** case, this Court allowed the writ petition filed by DSSSB and set aside the order of the Tribunal. This Court interpreting the decision in **Sachin Gupta** (supra) which had been followed in **Anuj Johri v. UOI and Ors. 2005 III AD (Del) 614**, inter alia, held as under:-

“11. Suffice would it be to state that the ratio of law is that candidates who had completed the ETE course either in the years 2006 or 2007 or were enrolled for the ETE course in the year 2008, undertook the course on the legitimate expectation that they would be eligible to be appointed as Assistant Teacher (Primary) as long as males had not crossed the age of 32 years and females had not crossed the age of 42 years. It was thus held that to ameliorate the hardship to only such candidates i.e. those who had enrolled and obtained ETE diplomas in the year 2006, 2007 and 2008, equity required that qua them age limit would be 32 years for males and 42 years for females.”

10. At this stage, it would be appropriate to take note of the order of this Court dated 8.9.2009 in CM No. 11093/2009 in **WP(C) 7297/07 Sachin Gupta and Ors. v. DSSSB**. The applicants before this Court were persons who had completed ETE course in the year 2005. The prayer made by them to this Court was that the direction contained in paragraph 64 of the decision of this Court in **Sachin Gupta**,

be also applied to the applicants who had completed the course in the year 2005. Rejecting the application, this Court, inter alia, held as under:-

“By this application, the applicant prays that the directions contained in paragraph 64 of the said judgment and order dated 28th August, 2008 be applied to applicants who have completed ETE course in 2005 also.

We may mention that with a view to ameliorate the hardship of already enrolled students in ETE courses, we had directed the respondents to permit all those candidates who had completed ETE course either in the year 2006 or 2007 or 2008 to appear once each in the examination conducted by the respondents (MCD and Govt. of NCT of Delhi) for the post of Assistant Teacher (Primary) provided they do not exceed the upper age limit of 32 years for males and 42 years for females and also fulfill all other eligibility conditions. Upon a perusal of the application, we find that the applicant herein was even over-age for a prior examination held in pursuance to the advertisement No. 03/06 dated 27th July, 2006. Consequently, the reason to ameliorate her hardship and shock did not arise. Moreover, we find that the entire basis for moving the present application on 21st August, 2009 was available to the applicant way back on 12th January, 2009. We are informed by learned counsel for respondents that pursuant to our judgment dated 28th August, 2008, not only results have been declared but also the vacancies which had not been filled, have been carried forward to the next examination for which an advertisement has already been issued. Consequently, at this belated stage, we do not think it proper to entertain the present application. Accordingly, the present application is dismissed but with no order as to costs.”

11. It would thus be seen that under the relevant recruitment rules, the petitioners before this Court were overage to appear in the examination conducted by DSSSB after the upper age limit was reduced to 27 years for both males and females. The validity of the notification reducing the upper age limit from 42 years in the case of females and 32 in the case of males to 27 years for both males and females, was upheld by this Court in WP(C) 7297/2007 **Sachin Gupta and Ors** (supra). The exception carved out by this Court to ameliorate the hardships of certain candidates was restricted to only those who had completed the ETE course in the

years 2006 or 2007 or 2008. Since the petitioners before this Court had completed the said course in the year 2005, they are not entitled to benefit of the one-time exception granted by this Court.

12. Learned counsel for the petitioner also relied upon the decision of this Court in **WP(C) 1641/2011 Delhi Subordinate Services Selection Board and Anr. v. Preeti Rathi and Anr.** A perusal of the decision would show that the respondents before this Court were appointed as Primary Teachers in MCD on contract basis. They had passed the qualifying ETE diploma course and as per the Rules applicable at that time, they were eligible for employment as Primary Teachers, the upper age limit being 32 years for males and 42 for females at that time. The respondents filed writ petitions, inter alia, seeking regularization of their service. By an interim order dated 4.5.2006 passed by the Court, they were permitted to participate in the regular recruitment process and MCD was directed to consider granting age relaxation to them. The recruitment rules were amended vide notification dated 13.07.2007 thereby reducing the age limit of 27 years for both males as well as females. The results of the examination taken by the respondents pursuant to the order of this Court, was withheld.

The Tribunal vide its order dated 20.8.2010, held that since the age relaxation had been granted to those who had passed ETE course in the year 2006-2008, the respondents who had passed the course earlier, had been discriminated. The Tribunal also relied upon its decision in **Parul Dhingra** (supra). The order of the Tribunal was challenged by DSSSB before this Court. This Court was informed that a writ petition against the decision of this Court in **Parul Dhingra** (supra) was pending. It was contended on behalf of the respondents that they had been working as primary teachers in MCD since 2001 and were within the age limit as per the rules which were in force at the time of their appointment. Their contention was that since they had been continuously working for all these years, they cannot be denied their due consideration for appointment on regular basis as Primary Teachers.

This Court noticed that as per the advertisement and recruitment rules, the age limit was relaxable upto 48 years in case of departmental candidates. Noticing that

the respondents were working in MCD as Primary Teachers, this Court was of the view that the expression 'departmental candidate' which had not been defined anywhere, has to be given a practical meaning and giving such a meaning, respondents were to be treated as 'departmental candidates' for the purpose of appointment to the post of Primary Teachers on regular basis, when they had been already working on the same post on ad hoc basis for the last ten years. This Court further observed that in those matters where the cases of ad hoc/casual/contract employees came up for consideration for regular appointment, there had always been a practice giving age relaxation and keeping in mind the aspect that at the time of initial appointment on contract/casual basis, the incumbents were within the age limit, relaxation of almost ten years is to be given to the respondents and in that case they would fall within the prescribed age limit.

Another reason given by this Court for not interfering with the order of the Tribunal was that MCD, which was the prospective employer, had not challenged it. The Court, therefore, felt that DSSSB which was only a recruiting agency, should, in such circumstances, have no objection to the order of the Tribunal.

However, the petitioners before this Court have not been working either in MCD or in Govt. of NCT of Delhi. Though, they appeared in the examination conducted by DSSSB pursuant to the interim orders passed by this Court, they were never appointed on contract/casual/ad hoc basis. The rule providing for relaxation in case of 'departmental candidates' on which reliance was placed by this Court while dismissing the writ petition filed by DSSSB, therefore, does not apply to the petitioner. This judgment, therefore, does not help the petitioners before this Court in any manner.

13. For the reasons stated hereinabove, we find no infirmity in the view taken by the Tribunal. The writ petitions are devoid of any merit and are, hereby, dismissed. There shall be no order as to costs.

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