

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.2541 OF 2015

New Delhi, this the 11th day of January, 2018

CORAM:

**HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
AND**

HON'BLE MS.PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER

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Ms.Suman Rohilla,
Aged 38 years,
w/o Shri Tilak Raj Rohilla,
R/o House No.341,
Khera Khurd,
Delhi 110082

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Applicant

(By Advocate: Mr.Anuj Aggarwal)

Vs.

1. Government of NCT of Delhi,
Through the Chief Secretary,
Secretariat, I.P.Estate,
New Delhi 110002
2. Delhi Subordinate Services Selection Board(DSSSB),
Through its Secretary,
FC-18, Institutional Area,
Karkardooma,
Delhi 110092
3. North Delhi Municipal Corporation (NDMC),
Through its Commissioner (North),
Dr.S.P.M.Civic Centre,
J.L.Nehru Marg,
New Delhi 110002
4. South Delhi Municipal Corporation (SDMC),
Through its Commissioner (South),
23rd Floor, Civic Centre,
Minto Road,
New Delhi 110002
5. East Delhi Municipal Corporation (EDMC),
Through its Commissioner (East),
419, Udyog Sadan Patparganj Industrial Area,

New Delhi 110096

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Respondents

(By Advocates: Mr.Amit Anand for R-1&2, Mr.D.S.Mahendru for R-3, Ms.Anupama Bansal for R-4, and Mr.R.K.Shukla for R-5)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

Brief facts of the case, which are not in dispute, are as follows:

1.1 In December 2009, Delhi Subordinate Services Selection Board (hereinafter referred to as 'DSSSB') published Advertisement No.004/2009 (Annexure A/2) inviting applications for recruitment to the post of Teacher (Primary) in Municipal Corporation of Delhi, under Post Code No.70/09.

The relevant portion of the Advertisement is as follows:

“Name of the Post: Teacher (Primary) in MCD

Post Code: 70/09

Number of Vacancies: 4500(UR-1900, OBC 1044, SC 786, ST-790, including PH (OH-OA/OL/OAL/BL – 52, PH(VH-B/LV)-96, EXSM-982)

Essential Qualifications:

- 1. Sr. Secondary (10+2) or Intermediate or its equivalent with 50% marks from a recognized Board.**
- 2. Two years diploma/Certificate course in ETE/JBT or B.El.Ed. from recognized institutions or its equivalent.**
- 3. Must have passed Hindi as a subject at Secondary Level.**

Desirable Qualification: Computer knowledge.

Pay Scale: 9300-34800- plus Grade Pay Rs.4200/-.
Group-C Non-Gazetted.

Probation Period: Two years.

Age Limit: 20-27 years. Relaxable for SC/ST – 05 years, OBC-03 years, PH-10 years, PH&SC/ST-15 years. PH&OBC – 13 years.

Departmental employees - up to 42 years of age (General), up to 47 years for SC/ST, having 03 years of continuous service in the same line or allied cadres.

Relaxable up to 37 years for (General) and up to 42 years for SC/ST – for widows, divorced women and women judicially separated from their husband and who are not remarried.”

1.2 DSSSB also published an ‘Addendum of Advertisement Number 04/2009’ increasing the number of vacancies from 4500 to 6500 in the post of Teacher (Primary) in MCD (Post Code 70/09).

1.3 The applicant had completed Two Years Diploma in Education in the year 2007. In response to the above Advertisement, she made application, along with copies of testimonials pertaining to her qualifications essential for the post of Teacher (Primary) in MCD. She was issued Admit Card to appear in the written examination. Accordingly, she appeared in the written examination.

1.4 DSSSB, vide office order No.343, dated 5.12.2014 (Annexure A/5), published result notice on the basis of the written examination held on 2.2.2014, whereby candidates belonging to different categories were provisionally selected and recommended for appointment to the post of Teacher (Primary) in MCD (Post Code 70/79), subject to outcome of Court cases/CAT cases pending in respect of the said Post Code. As per the said result notice, the last OBC category candidate, who obtained 69.25 marks in the written examination, was provisionally selected and recommended for appointment to the post of Teacher (Primary) in MCD.

1.5 DSSSB, vide office order No.344,dated 5.12.2014 (Annexure A/1), published another notice indicating the names of several candidates, including the name of the applicant, who were declared as “Not Eligible” and whose candidatures were rejected due to various reasons shown against their names in the remarks column of the list of those candidates. The applicant’s name figured at Sl.No.688 of the list of candidates contained in the said office order. She was shown to have obtained 75.5 marks in the written examination, and the reason for rejection of her candidature was mentioned in the remarks column as “Overage”.

1.6 The applicant made a representation 16.12.2014 to and served legal notice on the DSSSB and brought to its notice the judgment, dated 28.8.2008, passed by the Hon’ble High Court of Delhi, in W.P. (C) No. 7279 of 2009 (**Sachin Gupta and others v. DSSSB**), wherein it was directed that the respondents would permit the candidates who completed ETE course during 2006 to 2008 to appear in the recruitment examination, by giving them age relaxation up to 32 years for male and 42 years for female candidates. On the basis of the said judgment of the Hon’ble High Court, the applicant claimed before DSSSB that she was entitled to age relaxation up to 42 years, and her date of birth being 31.8.1976, she was eligible for selection and appointment to the post of Teacher (Primary) in MCD. She, therefore, pleaded before DSSSB that rejection of her candidature on the ground of her being overage was arbitrary and discriminatory, and the office order No.344, dated 5.12.2014 (Annexure A/1), as regards rejection of her candidature, was liable to be withdrawn. The last OBC category candidate obtaining

69.25 marks in the written examination having been selected and recommended for appointment to the post of Teacher (Primary) in MCD, she should be selected and recommended for such appointment.

1.7 DSSSB having failed to redress her grievance, the applicant filed the present O.A. on 14.7.2015, seeking the following reliefs:

- “(i) issue an appropriate order or direction thereby setting aside the impugned Rejection Notice dated 05/12/2014 whereby the candidature of the applicant for the post of Teacher (Primary) (Post Code 70/09) was rejected;
- (ii) issue an appropriate order or direction thereby declaring that the rejection of the candidature of the applicant on the ground of being “Overage” by the respondent no.2/DSSSB is arbitrary, discriminatory, punitive, unreasonable, unconstitutional and violative of Articles 14, 16 & 21 of the Constitution of India;
- (iii) issue an appropriate order or direction thereby directing the respondents to consider the candidature of the applicant for the post of Teacher (Primary) and, after such consideration, appoint the applicant to the post of Teacher (Primary) with all consequential benefits thereof;
- (iv) issue any other appropriate order or direction as this Hon’ble Tribunal may deem fit and proper in the interest of justice and in favour of the applicant; and
- (v) allow the present application with cost, in favour of the applicant.”

2. The respondents have filed separate counter replies.

2.1 In their counter reply (which has been verified by Mr.A.K.Yadav, Dy.Secretary, DSSSB, GNCTD), respondent nos. 1 and 2, while resisting the O.A., have averred, *inter alia*, that as per the judgment dated 28.8.2008 of Hon’ble High Court of Delhi in W.P. (C) No. 7207 of 2007 (**Sachin Gupta & others Vs. DSSSB**), the age relaxation is allowed to those candidates who have completed ETE course either in the year 2006 or 2007 or 2008 to appear in the examination conducted by the DSSSB. The

DSSSB considered all those candidates for age relaxation who had completed their ETE in 2006 or 2007 or 2008. The applicant had not done ETE, but had done DED. Therefore, the O.A. filed by her is devoid of merit and liable to be dismissed.

2.2 In its counter reply, the respondent no.3-North DMC has stated that the matter mainly pertains to respondent nos. 2 and 4 and it is only a pro forma respondent.

2.3 In its counter reply, the respondent no.4-South DMC has stated that the matter mainly pertains to respondent no.2 which has to file proper reply to the averments made in the O.A.

2.4 In its counter reply, the respondent no.5-East DMC has stated that after trifurcation of the MCD, respondent no.3-North DMC is designated as lead Corporation for handing court cases, and all works relating to the recruitment are looked after by respondent no.4-South DMC. It is, therefore, prayed by the respondent no.5-East DMC that its name should be deleted from the array of respondents.

3. The applicant has filed a rejoinder reply refuting the stand taken by the respondent nos.1 and 2 in their joint counter reply.

4. We have heard Mr. Anuj Aggarwal, learned counsel appearing for the applicant, and Mr.Amit Anand, learned counsel appearing for respondent nos. 1 and 2, Mr.D.S.Mahendru, learned counsel appearing for respondent no.3, Ms.Anupama Bansal, learned counsel appearing for respondent no.4, and Mr.R.K.Shukla, learned counsel appearing for respondent no.5.

5. After considering the pleadings of the applicant and of the respondent nos. 1 and 2, and upon hearing the learned counsel appearing for the parties, we have found that the only issue that arises for consideration in this case is as to whether or not the applicant, who had passed Two Years Diploma in Education in the year 2007 from the Board of Secondary Education, Madhya Pradesh, Bhopal, is entitled to the benefit of age relaxation for selection and appointment to the post of Teacher (Primary) in MCD as per the judgment passed by the Hon'ble High Court of Delhi in **Sachin Gupta and others v. DSSSB** (supra) and the respondent no.2 was justified in rejecting her candidature for selection and recruitment to the post of Teacher (Primary) in MCD.

6. It has been submitted by Mr. Anuj Aggarwal, learned counsel appearing for the applicant that the very same issue, which is formulated in the above paragraph, was considered and decided by the coordinate Bench of this Tribunal in **Praveen Kumar Vs. DSSSB and another**, OA No.4616 of 2014, decided on 2.9.2015. W.P. (C) No.3104 of 2016 (**DSSSB Vs. Praveen Kumar**) filed by the respondent-DSSSB challenging the above decision of the Tribunal was dismissed by the Hon'ble High Court of Delhi, vide judgment dated 20.7.2016. Though the Civil Appeal No.10824 of 2016 (arising out of Special Leave Petition (C) No.28948 of 2016) (**Delhi Subordinate Services Selection Board Vs. Praveen Kumar**) against the decisions of the Tribunal and of the Hon'ble High Court was allowed and the decisions of the Tribunal and of the Hon'ble High Court were set aside by the Hon'ble Supreme Court of India, vide its judgment dated 11.11.2016,

yet, in Review Petition (C) No. 486 of 2017 (in Civil Appeal No.10824 of 2016) (**Praveen Kumar Vs. Delhi Subordinate Services Selection Board**), the Hon'ble Supreme Court reviewed its judgment dated 11.11.2016(ibid) and upheld the decisions of the Tribunal and of the Hon'ble High Court which were impugned in the Civil Appeal No.10824 of 2016(ibid). The applicant has furnished copies of the aforesaid orders/judgments along with M.A.No.3169 of 2016 after serving copies thereof on the learned counsel appearing for the respondents.

7. The learned counsel appearing for the respondents have not controverted the above submission made by Mr.Anuj Aggarwal, learned counsel appearing for the applicant.

8. In **Praveen Kumar Vs. DSSSB and another** (supra), the applicant before the Tribunal was a male UR/General category candidate for selection and recruitment to the post of Teacher (Primary) in MCD pursuant the Advertisement No.004/2009(Post Code No.70/09), which is also the subject-matter of the present O.A. The applicant had completed/passed Two Years Diploma in Education in the year 2008. As per the result notice, the last UR category candidate, who obtained 79 marks in the written examination, was provisionally selected and recommended for appointment to the post of Teacher (Primary) in MCD. In the rejection notice dated No.344, dated 5.12.2014 (ibid), the applicant's name figured at Sl.No.198 of the list of candidates contained in the said office order. He was shown to have obtained 88 marks in the written examination, and the reason for rejection of his candidature was mentioned in the remarks column as

“Overage”. The applicant’s representation requesting the respondent-DSSSB to grant him age relaxation in terms of the judgment passed by the Hon’ble High Court of Delhi in **Sachin Gupta and others v. DSSSB** (supra) and to consider and select him for appointment, having yielded no fruitful result, the applicant filed the O.A. The respondent-DSSSB took the stand that since the applicant had passed Two Years Diploma in Education and not ETE in the year 2008, he was not entitled to the age relaxation as per the judgment in **Sachin Gupta and others v. DSSSB** (supra). It was also pleaded that in the absence of any direction being issued by the Hon’ble High Court in **Sachin Gupta and others v. DSSSB** (supra) to the respondent-DSSSB to permit the candidates, who had completed the Diploma in Education (Two Years Course) in 2008, like the applicant in the instant case, to appear in the recruitment examination for the post of Assistant Teacher (Primary) by giving them age relaxation up to 32 years for male and 42 years for female, the respondent-DSSSB cannot be faulted for rejecting the candidature of the applicant as he was overage as on the cutoff date stipulated in the Advertisement. Thus, the issue before the Tribunal was as to whether or not, on the ratio of the judgment passed by the Hon’ble Court of Delhi in **Sachin Gupta’s** case (supra), the applicant, who completed Diploma in Education (Two Years Course) in 2008, was entitled for age relaxation up to 32 years as a male candidate so as to be eligible for selection and appointment to the post of Teacher (Primary) in MCD, and the respondents were justified in rejecting the applicant’s candidature on the ground of his being overage. The coordinate Bench of the Tribunal, after

discussing all aspects of the matter and referring to the judgment passed by the Hon'ble High Court of Delhi in **Sachin Gupta and others v. DSSSB** (supra), decided the issue in favour of the applicant and observed thus:

“11. In the instant case, the certificate of Diploma in Education (Two Years Course) 2008, granted by the Board of Secondary Education, Madhya Pradesh, Bhopal, to the applicant, shows that the applicant completed the said course in the year 2008. It is not disputed by the respondents that the said Diploma in Education (Two Years Course) completed by the applicant in the year 2008 is equivalent to Certificate Course in ETE. It is also not disputed by the respondents that a candidate, who possesses the Diploma in Education (Two Years Course), like the applicant, is eligible for selection and appointment to the post of Teacher (Primary) in MCD. Thus, it is clear that (i) candidates possessing ‘Two years diploma/Certificate course in ETE/JBT’, (ii) candidates possessing ‘B.El.Ed. from recognized institutions’, and (iii) candidates, like the applicant, possessing ‘Diploma in Education(Two Years Course)’, which is equivalent to ‘Two Years diploma/Certificate course in ETE/JBT or B.El.Ed. from recognized institutions’, who in response to the Advertisement made applications for selection and recruitment to the post of Teacher (Primary) in MCD, formed one and same class. Therefore, all such candidates are entitled to same and equal treatment in the matter of determination of their eligibility for selection and appointment to the post of Teacher (Primary) in MCD on the basis of marks obtained by them in the recruitment examination. If a candidate, who completed ‘Two Years Certificate Course in ETE’ in 2008, is held eligible for selection and appointment to the post of Teacher (Primary) in MCD by giving him/her age relaxation up to 32 years in accordance with the judgment of the Hon'ble High Court of Delhi in **Sachin Gupta's** case (supra), it would be irrational and arbitrary to deny such age relaxation to a candidate, like the applicant, because he/she acquired ‘Two Years Diploma in Education’ in the year 2008, and further because the Hon'ble High Court of Delhi in **Sachin Gupta's** case (supra) did not specifically direct the respondents to grant age relaxation up to 32 years to such a candidate and permit him/her to appear in the examination for recruitment of Assistant Teacher (Primary). As has been observed by the Hon'ble High Court in **Sachin Gupta's** case (supra), the old Recruitment Rules for the post of Assistant Teachers (Primary) in the Government of NCT of Delhi, and in the Municipal Corporation of Delhi, prescribed the age limit of 32 years for

male candidates and 42 years in the case of female candidates. The new Recruitment Rules notified by the Directorate of Education on 8.5.2006, and by the Department of Urban Development on 13.7.2007, prescribed the maximum age limit of 27 years for both male and female candidates belonging to UR category. In **Sachin Gupta's** case (supra), the Hon'ble Court took the view that the aforesaid reduction of age limit would cause hardship to candidates already enrolled in the ETE course, who might suddenly find themselves overage and ineligible. With a view to ameliorate the hardship of already enrolled students in ETE course, it was directed by the Hon'ble High Court that the respondents would permit all those candidates who completed the ETE course either in the year 2006 or 2007 or 2008 to appear in the examination conducted by the respondents for the post of Assistant Teacher (Primary), provided they did not exceed the upper age limit of 32 years for male candidates and 42 years for female candidates, and they fulfilled all other eligibility conditions. As already noted, in the present case, the applicant completed Diploma in Education(Two Years Course) in the year 2008. Because of reduction of age limit from 32 to 27 years by virtue of the new Recruitment Rules for the post of Teacher (Primary) in the years 2006 and 2007, the applicant was held to be overage as on the cutoff date, i.e., 15.1.2010, and consequently, his candidature was rejected by the respondents, although he obtained 88 marks in the written examination, and the last UR category candidate, who was selected and recommended for appointment, obtained 79 marks in the written examination. Although it was not specifically directed by the Hon'ble High Court in **Sachin Gupta's** case (supra) that candidates, who completed 'Two Years Diploma in Education' in 2006 or 2007 or 2008, would be permitted by the respondents to appear in the examination by giving them age relaxation up to 32 years for male candidates and 42 years for female candidates, yet, in our considered view, the applicant and other similarly placed candidates are entitled to age relaxation up to 32 years for male candidates and 42 years for female candidates on the ratio of the judgment passed by the Hon'ble High Court of Delhi and/or on the same viewpoint as expressed by the Hon'ble Court in **Sachin Gupta's** case (supra), and denial of such age relaxation to the applicant and other similarly placed candidates would be irrational, arbitrary and discriminatory and thus violative of Articles 14 and 16 of the Constitution of India inasmuch as candidates completing 'Two Years Diploma/Certificate Course in ETE' in the year 2008 and candidates completing 'Diploma in Education (Two Years Course)' in the year 2008, constituted and formed one and same class of candidates eligible for

selection and appointment to the post of Teacher (Primary) in MCD and were, thus, entitled for equal treatment in the matter of determination of their eligibility.

12. In the light of our above discussions, we hold that the impugned Office Order No.344 dated 5.12.2014 (Annexure A/1), qua the applicant, is unsustainable and liable to be quashed, and accordingly, the same is hereby quashed. Consequently, the respondents are directed to consider the candidature of the applicant for selection and appointment to the post of Teacher (Primary) in MCD by giving him age relaxation up to 32 years, provided he did not exceed the upper age limit of 32 years as on the cutoff date, i.e., 15.1.2010, and he fulfilled all other eligibility conditions, as stipulated in the Advertisement. The respondents shall take appropriate decision in the case of the applicant within one month from today.”

It is found that the Hon’ble High Court of Delhi, vide its judgment dated 20.7.2016 passed in W.P. (C) No. 3140 of 2016 (**Delhi Subordinate Services Selection Board Vs. Praveen Kumar**), upheld the decision of the Tribunal in **Praveen Kumar Vs. DSSSB and another** (supra). It is also found that though the Hon’ble Supreme Court of India, vide judgment dated 11.11.2016 passed in Civil Appeal No. 10824 of 2016 (arising out of Special Leave Petition (C) No. 28948 of 2016) (**Delhi Subordinate Services Selection Board Vs. Praveen Kumar**) set aside the said decisions of the Tribunal and of the Hon’ble High Court, yet, in Review Petition (C) No. 486 of 2017 (in Civil Appeal No.10824) (**Praveen Kumar Vs. Delhi Subordinate Services Selection Board**), the Hon’ble Supreme Court, vide judgment dated 20.9.2017, reviewed its judgment dated 11.11.2016(ibid) and upheld the said decisions of the Tribunal and of the Hon’ble High Court, by substituting paragraphs 11 and 12 of the judgment dated 11.11.2016(ibid) for the following paragraphs:

“Once, we understand the contours and scope of the judgment, it becomes abundantly clear that the said judgment of the High Court in Sachin Gupta’s case cannot be made applicable for all times. The benefit of relaxation is given to those candidates who had completed the ETE course either in year 2006 or 2007 or 2008, to appear in the examination. Since the respondent completed the ETE course in year 2008 and pursuant thereto he appeared in the examination conducted in the year 2009, pursuant to an addendum to advertisement dated 11.12.2009, he was entitled to one-time relaxation in terms of Sachin Gupta’s case. Therefore, his candidature was wrongly cancelled by the appellant. We, therefore, find no fault in the impugned judgment of the High Court.

At the same time, it needs to be clarified as to how the case of the respondent has to be dealt with. The outcome of the above would be that if the persons below the respondent in the merit list were appointed he shall also be given the appointment. He will be assigned that date of appointment on which the last person in the said selection of the year 2009 was appointed. His notional seniority shall be counted from that date. It is also made clear that in the batch of 2009, he shall be ranked junior most. It is also made clear that the respondent shall not be entitled to any back-wages for the intervening period except the seniority as mentioned above and continuity of service for all other purposes. This order is passed in the facts and circumstances of the present case and it cannot be treated as a precedent.”

9. From the copy of the result notice no. 599 dated 13.11.2017(which has been filed by the applicant along with MA No.3169 of 2016), it is found that in compliance with the aforesaid decisions of the Tribunal, Hon’ble High Court of Delhi, and Hon’ble Supreme Court, the respondent-DSSSB has selected and recommended Mr.Praveen Kumar for appointment to the post of Teacher (Primary) in MCD.

10. In the light of our above discussions, we have no hesitation in holding that the applicant, who had passed Two Years Diploma in Education in the year 2007 from the Board of Secondary Education, Madhya Pradesh, Bhopal, is entitled to the benefit of age relaxation up to 42 years as a female

candidate for selection and appointment to the post of Teacher (Primary) in MCD, as per the judgment passed by the Hon'ble High Court of Delhi in **Sachin Gupta and others v. DSSSB** (supra). Therefore, the impugned Office Order No.344 dated 5.12.2014 (Annexure A/1), qua the applicant, is unsustainable and liable to be quashed, and accordingly, the same is hereby quashed. Consequently, respondent nos. 1 and 2 are directed to consider the candidature of the applicant for selection and appointment to the post of Teacher (Primary) in MCD by giving her age relaxation up to 42 years as a female candidate, provided she did not exceed the upper age limit of 42 years as on the cutoff date, i.e., 15.1.2010, and she fulfilled all other eligibility conditions, as stipulated in the Advertisement. The respondents shall take appropriate decision in the case of the applicant within one month from today.

11. Resultantly, the O.A.is partly allowed to the extent indicated above. No costs.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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