
(2010) 11 DEL CK 0087

In the Delhi High Court

Case No : Writ Petition (C) 4677 of 2010

Delhi Subordinate Service Selection Board

APPELLANT

Vs

Parul Dhingra and Another

RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Citation : (2010) 11 DEL CK 0087

Hon'ble Judges : Siddharth Mridul, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Rohit Madan, for Aditya Madan, for the Appellant; Ashok Agarwal, for R-1 and Shobha Gupta, for R-2, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Vide impugned judgment and order dated 18.3.2010, purporting to follow the ratio of law laid down by this Court in W.P.(C) No. 7297/2007 Sachin Gupta and Ors. v. DSSSB and Ors., the Tribunal has held that the respondent Parul Dhingra would be entitled to be appointed as an Assistant Teacher (Primary) under the Municipal Corporation of Delhi.

2. Parul Dhingra had sought appointment as an Assistant Teacher (Primary) in response to an advertisement No. 8 dated 6-12 October 2007 and it is not in dispute that she was aged more than 27 years as on date of the advertisement. That she had obtained ETE Diploma in the year 2002 is also not in dispute. It may be noted that Parul Dhingra was born on 23.1.1979.

3. As per the advertisement the maximum age for eligibility was 27 years and thus, as per the advertisement Parul Dhingra was overage. Being a candidate in the general category, Parul Dhingra is admittedly not entitled to any age relaxation.

4. On the issue of educational qualifications essential to be appointed as an Assistant Teacher (Primary), there is no dispute qua Parul Dhingra's eligibility.

5. Only issue was, whether she was overage.

6. According to Parul Dhingra she was entitled to the benefit of the decision dated 28.8.2008 in Sachin Gupta's case (supra).

7. Issue which arose for consideration in Sachin Gupta's case, relevant for the purposes of adjudication of the claim of Parul Dhingra is that prior to a notification issued by the Department of Urban Development on 13.7.2007 concerning the post of Assistant Teacher (Primary) under the Municipal Corporation of Delhi the maximum age limit prescribed was 32 years for male candidate and 42 years for female candidates. By and under the notification in question the age was prescribed as 27 years, both for male and female candidates.

8. Various candidates challenged the notification and questioned the prescription of the maximum age limit to be 27 years. We may note that there were other issues pertaining to other eligibility conditions which also got changed and in respect whereof decision was pronounced in Sachin Gupta's case, but since the same are not in issue in the instant case, we ignore them.

9. The Division Bench of this Court held that it was the prerogative of the executive to prescribe the maximum age and hence there was nothing illegal in the notification dated 13.7.2007. However, with respect to candidates who had completed the ETE course or were enrolled for the said course only during the years 2006 or 2007 or 2008 it was directed, in para 64 as under:

64. To conclude, the language and marks criteria (namely passing of Hindi subject at primary level and minimum 50% marks in senior secondary examination) are upheld in their entirety. 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. This relaxation will be independent of the relaxation applicable to reserved categories. However, the Relaxation will be independent of the relaxation applicable to reserved categories. However, the Relaxation granted by this Court shall cease to operate for ETE courses after 2008 i.e. commencing from 2009 as from 30th September, 2007 the maximum age limit for ETE course has been reduced from 30 years to 24 years. Except to the above extent, legality and validity of the impugned RRs are upheld and accordingly the entire batch of writ petitions are disposed of in the above terms with no order as to costs.

10. The direction was issued following the ratio of law laid down in the decision

reported as Anuj Johri v. UOI and Ors. 2005 III AD (Delhi) 614.

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.

12. As regards the others, no such equity was found. It may be true that Parul Dhingra, who obtained the ETE diploma in the year 2002 may have thought that she could apply for and obtain appointment to the post of Assistant Teacher (Primary) at any point of time till she attained the age of 42 years, but in view of the law being that nobody has a vested right to be appointed to a post under the Government and it is within the domain of the executive to prescribe and amend the eligibility conditions, including age limit, no relief can be granted to Parul Dhingra.

13. The writ petition is accordingly allowed. Impugned order and judgment dated 18.3.2009 is set aside. OA No. 2983/2009 is dismissed.

14. No costs.