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**(2010) 09 DEL CK 0124**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 1343 of 2010**

Santosh Kumar Meena

APPELLANT

Vs

GNCT of Delhi and Others

RESPONDENT

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**Date of Decision : 07-09-2010**

**Acts Referred:**

Contract Act, 1872 — Section 20

**Citation : (2010) 09 DEL CK 0124**

**Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J**

**Bench : Division Bench**

**Advocate :** Rajat Aneja, for the Appellant; Anshum Jain, for Suparana Srivastava, for MCD in W.P. (C) Nos. 1343 and 3815/2010, Elgin Matt John, for Anju Bhattacharya, for R-1 and 3 in W.P. (C) No. 1343/2010, Rattan Lal, for GNCT of Delhi in W.P. (C) No. 3815/2010, Anjum Javed, for R-1 and 2 and Shobha Gupta, for MCD in W.P. (C) Nos. 4453 and 4456/2010, for the Respondent

**Final Decision : Dismissed**

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## **Judgement**

Pradeep Nandrajog, J.—On 12.10.2007, the Delhi Subordinate Service Selection Board (DSSSB), acting on behalf of the Municipal Corporation of Delhi issued a public notice inviting applications from eligible candidates for the post of Teacher (Primary). As per the advertisement, the last date of for applying i.e. submitting the application was 29.10.2007. As per the advertisement, the applicable educational qualification to be eligible was:

(i) Senior Secondary (10+2) or intermediate or its equivalent with 50% marks from a recognized Board.

(ii) Two Years Diploma/Certificate course in ETE/JBT or B.EI.Ed from a recognized institution.

(iii) Must have passed Hindi as a subject as secondary level.

2. Needless to state, vide serial No. (ii) of the three condition for eligibility was the candidate possessing either a two year Diploma or a Certificate course in

either of the three i.e. ETE, JBT or B.BI.Ed.

3. The petitioners of the four captioned petitions who are mostly residents of Rajasthan and all of whom had appeared for examinations conducted by Universities either in the State of Rajasthan or State of Haryana pertaining to ETE course i.e. Elementary Teacher Education applied for being appointed as Elementary Teachers by submitting their applications. But, unfortunately for them their respective University had not declared the result by the cut-off date i.e. 29.10.2007.

4. The selection process envisaged a written test followed by an interview. All the respondents successfully cleared the written test as also the interview and found their names fairly high up in the merit list, making them eligible to be offered appointment letters by the Municipal Corporation of Delhi. It be noted that by the time the selection process was over the result of the examination undertaken by the respondents with their respective universities had been announced and by the month of March 2008 all of them had obtained the respective degree. It may also be noted that unfortunately for a few the results which were expected to be declared by October 2007 got delayed on account of political turmoil in the State of Rajasthan and Western Haryana on account of agitation by the Gujjar Community in the State of Rajasthan as the members of the said Community demanded to be treated as members of a Scheduled Tribe. Qua few, the exams which were scheduled to be held in the month of September 2007 and results declared by October 2007 got delayed. The exams were held either in the month of October 2007 or thereafter but the results were declared by March 2008.

5. By the time DSSSB completed its selection process the month of September 2008 had arrived. The results were declared on 25.09.2008, by which date all the respondents had acquired the necessary educational qualifications.

6. DSSSB forwarded the select list of the empanelled candidates to the Municipal Corporation of Delhi where the empanelled candidates were summoned by the concerned officer with a direction to produce their original certificates and by November 2008, after verifying the authenticity of the certificates relied upon by the various empanelled candidates, and upon recording satisfaction that the certificates were genuine, letters offering appointments were issued to the writ petitioners of W.P.(C) No. 1343/2010, being six candidates, but appointment was denied to the writ petitioners of the other three writ petitions on the ground that they were not eligible for appointment as they had not obtained the necessary degree by the prescribed cut-off date 29.10.2007. Notwithstanding the six writ petitioners of W.P.(C) No. 1343/2010 being similarly situated, letters of offer giving them appointment as primary Teachers were issued, which they gladly accepted and joined service under the Corporation, but later on which letters of offer were withdrawn stating that the same were issued by mistake ignoring that the six petitioners were ineligible for being appointed on account of not possessing the degree by the cut-off date i.e. 29.10.2007.

7. Thus, the petitioners filed Original Applications before the Central Administrative Tribunal. Whereas the petitioners of the three captioned writ petitions other than W.P.(C) No. 1343/2010 urged before the Tribunal that due to agitation by members of the Gujjar Community the result of the ETE examination got postponed and was subsequently declared on 12.03.2008. Thus such a delay in declaration of result could not be on account of the part of the petitioners. Also the result was announced on 12.3.2008 which was a date much prior to the date of completion of the selection process conducted by the Board. Hence, they claimed that said petitioners fulfilled the educational qualifications as required by the terms of the advertisement by the time the results were declared.

8. In addition to the aforementioned averments, the petitioners of writ petition No. 1343/2010 urged that they had acted to their detriment inasmuch as petitioner Santosh Kumar Meena stated that he was an employee under Western Railways and had been issued a letter of appointment by the Kendriya Vidyalaya which he had not accepted as he had been offered appointment by the MCD. Petitioner Sushila Meena, Anuj Kumar Ran Singh and Ganga Sahai Meena stated that since they were issued letters of appointment by the MCD they did not take the examination conducted by the DSSSB for filling up vacant post of teachers in the year 2009. Petitioner Saroj Dagar claimed to have resigned as a contractual Teacher when letter of offer giving appointment was issued to him. In other words all the six writ petitioners of W.P.(C) 1343/2010 claimed special equities in their favour. They highlighted that they had made no misrepresentation to the respondents.

9. The Original Applications filed by the writ petitioners have been dismissed by the Central Administrative Tribunal. The Tribunal has held that it is settled law that eligibility has to be acquired before the prescribed cut-off date and since admittedly all the writ petitioners did not possess the requisite qualifications as on the cut-off date, none were entitled to be appointed as a Primary Teacher. It may be noted that the plea of special equity urged by the writ petitioners of W.P.(C) No. 1343/2010 has not been discussed by the Tribunal in the impugned order dated 26.02.2010 dismissing OA No. 1974/2009 filed by the said six petitioners. The two other Original Applications being OA No. 2602/2009 and OA No. 3390/2009 in which the writ petitioners of W.P.(C) No. 4453/2010, W.P.(C) No. 4456/2010 and W.P.(C) No. 3815/2010 were the applicants have been dismissed by a common order dated 16.03.2010.

10. Reason why a cut-off date, by which date all requirements relating to qualification have to be met, and cannot be ignored in an individual case, is that there may be other persons who may have applied, had they known that the date of acquiring qualification was flexible. Relaxing the prescribed requirements in the case of one individual, therefore, cause injustice to others. It was so held in the decision reported as AIR 1998 SC 91 State of Rajasthan v. Hitendra Kumar Bhatt. Stating the same, but with a different facet, is the decision reported as District Collector and Chairman, Vizianagaram Social Welfare Residential School

Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, wherein it was held that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned; the aggrieved are all those who had similar or even better qualifications than the appointee or appointees, but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement and thus it amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances, unless it is clearly stated that the qualifications are variable. Another facet of why the prescribed qualifications must be obtained before the cut-off date which has to be the last date of submitting the application and cannot be the date of selection, was brought out in the decision reported as Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others, whereof it was observed:

10. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus, swelling the number of applications. But a still worse consequence may follow, in that, it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny for the qualifications will be the last date for making the applications. We have, therefore, no hesitation in holding that when the selection committee in the present case, as argued by Sh. Manoj Swarup took into consideration the requisite qualification as on the date of selection rather than on the last date of preferring application, it acted with patent illegality, and on this ground itself, the selections in question are liable to be quashed. Reference in this connection may also be made to two recent decisions of this Court in A.P. Public Service Commission, Hyderabad v. B. Sarat Chandra and District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram v. M. Tripura Sundari Devi.

11. Whatsoever may be the reason and howsoever it may not be in the control of the writ petitioners, the fact that due to a civil disobedience movement by members of the Gujjar Community in the State of Rajasthan and Western

Haryana the results of the examination taken by the petitioners could not be declared on time is irrelevant and it must be held that the petitioners were not qualified by the cut-off date i.e. 29.10.2007 and thus we find no infirmity in the view taken by the Tribunal of the writ petitioners not being eligible for appointment. Thus, as regards the writ petitioners of W.P.(C) No. 4456/2010, W.P.(C) No. 4453/2010 and W.P.(C) No. 3415/2010, we see no scope to interfere with the impugned order dated 16.03.2010.

12. However, we have to discuss something more qua the claim of the writ petitioners of W.P.(C) No. 1343/2010 who have claimed special equities in their favour and in respect of which pleadings, we find that the Tribunal has just not bothered to discuss the law on the subject.

13. As noted in para 8 above, petitioner Santosh Kumar Meena stated that he was an employee under Western Railways and had been issued a letter of appointment by the Kendriya Vidyalaya which he had not accepted as he had been offered appointment by the MCD. Petitioners Sushila Meena, Anuj Kumar Ran Singh and Ganga Sahai Meena stated that since they were issued letters of appointment by the MCD they did not take the examination conducted by the DSSSB for filling up vacant post of teachers in the year 2009. Petitioner Saroj Dagar claimed to have resigned as a contractual Teacher when letter of offer giving appointment was issued to him. The question arises whether said special facts pleaded by them entitle them to retain the benefit of appointment which was wrongly given to them.

14. It may be highlighted here that the writ petitioners of the other three writ petitions were never issued any appointment letters and thus they stand on a different footing than the six petitioners of W.P.(C) No. 1343/2010 who claims special equities in their favour.

15. Every appointment is a matter of contract for the reason the employer issues a letter of offer to the employee offering him appointment on the terms contained in the letter of offer and on acceptance by the employee, the contract of employment stands concluded. Of course, where the employer is the Government or where the employment is governed by a Statute, the contract acquires a status. Thus, it can be said that principles of contract govern the instant case.

16. As per the MCD it committed a mistake as to a matter of fact by issuing the letter of offer offering appointment; the mistake being the MCD not realizing that the petitioners were not eligible for being appointed as Primary Teachers on account of not possessing the ETE Degree/certificate by the prescribed cut-off date i.e. 29.10.2007.

17. Section 20 of the Indian Contract Act 1872 reads: Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

18. It is apparent that every mistake as to a matter of fact does not render an agreement void. Mistakes as to matters of fact essential to an agreement render the same void. Question arises whether possessing the requisite educational qualification by the prescribed cut-off date is a matter of fact essential to the agreement. The answer has to be in the affirmative for the reason in matter pertaining to employment everything which relates to the essential qualifications for the appointment must of necessity relates to a matter of fact essential to the agreement which the parties may draw pertaining to the employment. Thus, on the principles of the law of contract, MCD would be entitled to claim that the offer and acceptance resulting in the contract has resulted in a void contract.

19. Promissory estoppel would also not apply in the instant case, for the reason, in the case of promissory estoppel the promise which is sought to be later on withdrawn and in respect of which withdrawal an estoppel is claimed is a valid promise and not a promise based on a mistake of facts. This Court knows of no decision, and indeed none was cited, where promissory estoppel was applied in respect of a promise which was found to be void. The closest we could find on facts is a decision of the Allahabad High Court dated 16.09.2004 deciding Second Appeal No. 2556/1987 UOI and Ors. v. Kumari Mukta Jain in which Kumari Mukta Jain was wrongly given appointment by the Kendriya Vidyalaya and later on it was found that she was not eligible for appointment. The appointment was withdrawn. Kumari Mukta Jain sought a declaration that the order withdrawing her appointment was illegal. With reference to the decision of the Supreme Court in M. Tripura Sunderi Devi's case (supra), it was held that an appointment of an ineligible person can be terminated and merely because she had worked for some time would create no equity in favour of Kumari Mukta Jain.

20. It may be that the petitioners altered their position but they knew completely well that they were not eligible to be appointed as Teachers, having not obtained the necessary qualifications by the prescribed date i.e. 29.10.2007 and thus they cannot claim to be innocent victims.

21. Service law or jurisprudence relating to service law pertaining to the right to be employees under the Corporation prohibits us from granting any relief to the writ petitioners of W.P.(C) No. 1343/2010, who may have a possible civil action for damages, if at all, on account of suffering due to the negligence of somebody in issuing letters of offer offering employment to them. Needless to state they may chance their luck, if they so desire by seeking damages upon proof of the fact that employees of the Corporation acted negligently and as a result of the negligence the said writ petitioners have suffered damages. Public law remedy gives no right to the said writ petitioners.

22. All the writ petitions are dismissed.

23. However, we refrain from imposing any costs.