

(2019) 04 CAT CK 0035

In the Central Administrative Tribunal

Case No : Original Application No. 1270 Of 2019

Sunita Devi

APPELLANT

Vs

South Delhi Municipal Corporation

RESPONDENT

Date of Decision : 24-04-2019

Acts Referred:

Citation : (2019) 04 CAT CK 0035

Hon'ble Judges : L. Narasimha Reddy, J; Mohd. Jamshed, J

Bench : Division Bench

Advocate : M. Rais Farooqui

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. Anybody having some idea about service law would find several wonderful things happening in the Municipal Corporations of Delhi. This case presents one such.

2. Way back in the year 2007 steps were initiated for appointment to the post of Primary Teacher with Post Code No.165/2007. Certain candidates who were working as Teachers on contractual basis, wanted to participate in the process. However, the respondents refused to consider their cases on the ground that they were over aged. A batch of candidates viz Veena Kumari and others filed Writ Petition before the Hon'ble Delhi High Court which, in turn, was transferred to the Tribunal as TA 23/2011 and disposed of on 30.01.2012. The prayer for age relaxation in terms of judgment of the Hon'ble Delhi High Court in Writ Petition No.7297/2007 was turned down. However, a direction was issued to the effect that the contractual employees shall be treated as departmental candidates and be given age relaxation to the extent admissible under the relevant regulations. It was also directed that in case the applicants therein are found eligible, they shall be appointed as Teachers with consequential benefits. Though, no mention was made about any date from which they are to be appointed actually or on

notional basis, the respondents had chosen to issue an order dated 23.11.2015 stating that 14 applicants in the said TA, are extended the benefit of notional seniority and notional increment w.e.f. 02.02.2009.

3. The applicant herein filed OA No.2691/2012 claiming the relief of age relaxation in relation to the same post. The said OA, was disposed on 19.07.2013 along with OA No.1598/12 and 1599/2012. A direction was issued to the respondents to declare the results of the applicants by giving them the benefit of relaxation of age. It is stated that the applicant has since been appointed as Teacher(Primary) through order dated 12. 11.2014. This OA is filed with a prayer to direct the respondents to extend the benefit of seniority and increment to the applicant w.e.f. 02.02.2009.

4. We heard Shri M. Rais Farooqui, learned counsel for the applicant, at length, at the stage of admission.

5. The direction issued in TA No.23/2011 reads as under:-

"11. In view of the above position, in our considered view, the applicants herein are not entitled for age relaxation in terms of the judgment of the Hon'ble High Court in WP (C) No. 7297/2007 (supra). But, being contractual employees under the MCD, they are entitled to be treated as departmental candidates and they have to be given age relaxation to that extent as admissible to regular employees of MCD and the respondents shall consider their candidature afresh.

12. We, therefore, direct the respondents to examine the cases of each of the applicants and if they come within the purview of the aforesaid judgment of the Apex Court in Dr. Jamuna Kurup (supra), they shall be given age relaxation and those who fulfill that condition and otherwise found suitable shall be given appointment as Teacher (Primary) with all consequential benefits except back wage at the earliest and in any case within a period of two months from the date of receipt of a copy of this order. No order as to costs."

6. Nowhere it was mentioned that the appointments, if made, shall have retrospective effect. However, the respondents have chosen to issue order dated 23. 11.2015 which reads as under:-

"South Delhi Municipal Corporation Education Department: HQ Dr. Shyama Prasad Mukherjee Civic Centre E-Block, 23rd Floor, JLN Marg, N. Delhi-02 No.D/ADE/Admn./Edu./HQ/2015/4803 Dated 23/11/15 In compliance of Hon'ble Central Administrative Tribunal ordered dated 30.01.2012 passed in the matter of Veena Kumari & Ors. Vs. DSSSB and Anr., TA No.23/2011 the notional seniority and notional increment of the following Teachers (Primary) will be fixed w.e.f. 02.02.2009 under post code 165/2007 and their pay be fixed accordingly.

S. No.

Name

Applicant No.

Fathers Name

Zone

School Name

Address

1.

Veena Kumari

1

Parmeshwar Prasad Singh

Karol Bagh Zone

MCPS ?H? Block Naraina Vihar

35/3, Uri Enclave, Near Brar Square, Delhi Cantt, New Delhi10

2.

Mamta

2

R.K. Dhingra

Civil Line

MCPS

Delhi seeds

Zone

Sukurpur G-1st

and Pesticides 121, Village Bharolla, New Sabzi Mandi, Azadpur New Delhi

3

Alka Manral

4

Ishwar Chand Jain

Najafgarh Zone

MCPS Dwarka Sec-1st

C-102/2, Sadh Nagar, Palam Colony, New Delhi

5.

Preeti Gupta

5

Vijay Kumar Gupta

Shahdara (South)

MCPS Marginal Bandh New - 1st

4/2979-B, Street No.3, Shalimar Park Extension, Shahdara, Delhi

6.

Mamta Aggarwal

7

B.S. Mittal

Civil Line Zone

MCPS Kewal Park

B-36, Majlis Park, Main Road, Delhi-33

7.

Ravinder Kumar

9

Ram Kishan

Shahdara (North)

MCPS Joyti Colony-IIInd

A-32, Shera Mohalla, Vill., Garhi Lajpar Nagar, New Delhi

8.

Rajiv Kumar

10

Fateh Singh

West Zone

MCPS D1- A, Janakpur

RZ-5A/1, Shankar Park, West Sagar Pur, New Delhi.

9.

Renu

12

Mukh Ram Singhal

Civil Line Zone

Majlish Park - 1st

B-203, Siv Vihar, Rohtak Road, New Delhi-87

10.

. Renu Kumari

13

Kishan Chand

Civil Line Zone

MCPS Devaram Park

3584, Street No.5, Narang Colony, Tri Nagar, Delhi-35

11.

. Mukesh Bala

14

Jai Kishan Gahlot

Narela Zone

MCPS Begumpur1st

RZ-B-256, Gopal Nagar, Najafgarh, New Delhi43

12.

Mujesh Bala

15

Jai Kishan Gahlot

Narela Zone

MCPS Nagloi Main-IIInd

RZ-B-256, Gopal Nagar, Najafgarh, New Delhi43

13.

Neetu

16

Om Prakash

Civil Line Zone

MCPS Timarpur-1

22, New Market, Timarpur, New Delhi-54

14.

Veena

17

P.C. Mohanpuria

Karol Bagh Zone

MCPS Bapa Nagar- 1st

H-19/66, Sec-7, Rohini, New Delhi-85

They will be entitled for notional seniority, increments and others applicable benefits etc. as admissible to their batch mates of post code 165/2007. They will not be eligible for back wages. The above said pay fixation is subject to final clearance from Audit.

This issues with the prior approval of competent authority."

7. Things would have been different altogether had there been a specific direction in the OA filed by the applicant regarding the date of appointment or date of commencement of seniority. The direction issued in the said OA reads as under:-

"15. In view of the above position, all the three OAs are allowed. Respondents are directed to declare the results of the applicants by giving them relaxation in age and offer appointments as Teacher (Primary) within a period of three months from the date of receipt of a certified copy of this order, provided they fulfil all other eligibility conditions and are found fit for such appointments. No costs."

8. It is clear that no mention was made about the retrospective appointment or the date with reference to the reckoning of seniority or fixation of pay scale. If the applicant was of the view that she is entitled to certain reliefs, it was obligatory on her part to claim them in that very OA. Assuming that such relief was claimed, it is deemed to have been rejected. Either way, the principle of res judicata or constructive res judicata, as the case may be, comes into play.

9. We do not find any merit in the OA, and it is dismissed accordingly. There shall be no order as to costs.