
(2019) 01 CAT CK 0100

In the Central Administrative Tribunal

Case No : Original Application No. 4170, 4199, 4279 Of 2016, Miscellaneous Application No. 3814 Of 2016

Yash Pal

APPELLANT

Vs

North Delhi Municipal Corporation And

RESPONDENT

Date of Decision : 08-01-2019

Acts Referred:

Citation : (2019) 01 CAT CK 0100

Hon'ble Judges : V. Ajay Kumar, J; Aradhana Johri, Member (A)

Bench : Division Bench

Advocate : H.D. Sharma, Anubha Bhardwaj, Manjeet Singh, R.K. Jain

Final Decision : Allowed

Judgement

V. Ajay Kumar, J

1. Since the facts and law involved in these OAs are identical, the same are disposed of by way of this common order.

2. It is submitted that, in pursuance of an Advertisement issued in the year 2002, the applicants applied for selection to the post of Assistant Teacher (Primary) (Post Code No.013-C). A common examination was held by Delhi Subordinate Services Selection Board (DSSSB) for all categories, i.e. General, OBC, SC and ST. The results were declared and the applicants were also declared qualified in the said examination but their results were withheld and they have not been given appointments.

2A. On enquiries, the applicants came to know that the persons who were declared selected and belong to the general category were given appointments but the applicants and others belonging to the reserved categories though selected, were not given appointment orders and their results were withheld. The reason for withholding the results of the candidates who were selected but belong to reserved category was that the applicants and others were not having valid caste certificates. The fathers of these persons were originally residents of

different parts of the country and were first generation migrants to Delhi. The certificates issued to them and the castes of the applicants were not recognized as SC/ST/OBC in Delhi. Certain persons, who were identically placed like the applicants, i.e., belonging to the reserved categories though selected but were not issued appointment orders in respect of year 2002, filed CWP Nos. 5061/2011 and batch - Kunwar Pal and Others Vs. Govt. of NCT of Delhi and Another and a Learned Single Judge of the Hon'ble High Court of Delhi, while disposing of the said Writ Petitions by a common judgment dated 31.05.2002 held as under:-

"In view of the aforesaid a writ of mandamus is issued to appoint such of the petitioners in the present writ petitions who are born and brought up in Delhi but the certificate issued to them is on the basis of the certificates issued to their fathers who were the migrants from other states.

The petitioners who are so appointed should also be entitled to the consequently benefits of seniority and pay scale though in view of the fact that they not been working for this period of time they shall not be entitled to the back wages for the said period of two months from today.

The writ petitions are disposed of in the aforesaid terms leaving the parties to bear their own costs".

3. The LPA No.625/2002 and batch in Delhi Subordinate Services Selection Board and Another Vs. Kunwar Pal and Others filed against the aforesaid decision of the Learned Single Judge was also dismissed by a common order dated 13.05.2005.

4. In pursuance of the aforesaid orders, the respondents finally appointed the applicants and other similarly situated persons during the year 2004.

5. The applicants filed the present OA seeking a direction to the respondents to grant them seniority in the post of Assistant Teacher as per their merit position in the selection with all consequential benefits.

6. Heard Shri H.D. Sharma with Ms. Anubha Bhardwaj, the learned counsel for the applicants in all the OAs and Shri Manjeet Singh Reen, the learned counsel for respondents No.1 in all the OAs and Shri R.K. Jain, the learned counsel for respondents No.2 in all the OAs and perused the pleadings on record.

7. It is not in dispute that, if the applicants are identically placed like the petitioners in CWP No.5061/2001, i.e., Kunwar Pal and Others and batch, they are also entitled for the same benefit. In fact, the Hon'ble High Court of Delhi while allowing the Writ Petition of Kunwar Pal and Others while directing the respondents to appoint the petitioners therein, specifically declared that they are entitled for consequential benefits of seniority and pay scale though the back wages were denied. Though the respondents ought to have granted all the benefits conferred on Kunwar Pal and Others to all the similarly situated persons also, i.e., including seniority and other consequential benefits, they extended the said judgment to the extent of issuing appointment orders only but the

consequential benefit of granting seniority was denied on the ground that they were not parties in Kunwar Pal and Others case.

8. As a result, the applicants who are claiming to be identically placed like Kunwar Pal and Others were compelled to approach this Tribunal for the same benefits which were granted to the identically placed persons on the declaration of the principle of law. In *Inder Pal Yadav Vs. Union of India*, 1985 (3) SCR 837, the Hon'ble Apex Court held that those who do not come to the court need not be at a disadvantage to those who rushed to the Courts and if they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this court. In *State of Karnataka and Others Vs. C. Lalitha*, (2006) 2 SCC 747, it was held that service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently (also see *K.I. Shephard Vs. Union of India*, AIR 1988 SC 686; and *K.T. Verappa and Others Vs. State of Karnataka and Others*, 2006 (9) SCC 406).

9. Shri Manjeet Singh Reen and Shri R.K. Jain, the learned counsel appearing for the respondents vehemently opposed the OAs, on the ground that they are hopelessly time barred. It is submitted that the cause of action arose to the applicants when they were finally appointed as Assistant Teachers (Primary)/ Teachers (Primary) in the year 2004 and hence, the OAs are liable to be dismissed on the sole ground of limitation itself.

10. It is true that the OAs are filed with abnormal delay. However, as observed by the Hon'ble High Court that though the respondents were ought to have granted the seniority, pay fixation and all other consequential benefit to all the similarly placed persons, such as, applicants herein and once the issue was decided in *Kunwar Pal and Others* and when it is not in dispute that the applicants were also identically placed like *Kunwar Pal and Others* and when the delay in their appointment was solely attributable to the respondents, the delay is condonable. In these circumstances, and as this Tribunal has condoned the identical abnormal delay in certain identical matters and the respondents have already complied with the said orders, we condone the delay in these batch of OAs also.

11. Accordingly all the MAs filed for seeking condonation of delay are allowed.

12. In the circumstances and for the aforesaid reasons, the OAs are allowed and the respondents are directed to consider the claims of the applicants who were appointed belatedly in compliance of the decision in *Kunwar Pal and Others* (supra), and to grant notional seniority, fixation of pay as per their position in the merit list prepared by DSSSB in the relevant year, with all consequential benefits, except back wages, as admissible to their batchmates belonging to the unreserved/general category candidates. This exercise shall be completed within 90 days from the date of receipt of a copy of this order. No costs.

Let a copy of this order be placed in all the connected OAs.