

(2013) 01 DEL CK 0164
In the Delhi High Court
Case No : LPA No. 746/2012

Yatendra Singh Meena and Another

APPELLANT

Vs

Delhi Subordinate Services Selection Board and Others

RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0164

Hon'ble Judges : D. Murugesan, C.J;Rajiv Sahai Endlaw, J

Bench : Division Bench

Judgement

Rajiv Sahai Endlaw, J.—This intra court appeal impugns the judgment dated 28th September, 2012 of the learned Single Judge of this Court dismissing W.P.(C) No. 8198/2009 preferred by the appellants as not maintainable, for the reason of the jurisdiction to entertain the lis raised therein being of the Central Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 but granting liberty to the appellants to approach the said Tribunal and further providing that upon the appellants so approaching the Tribunal within six weeks, the delay in approaching the Tribunal, shall be condoned. The appellants however instead of approaching the Tribunal have preferred this appeal.

2. The appellants belonging to the reserved categories, were the applicants for the posts of Junior Engineer (JE) (Civil) in respondent No. 2 Delhi Municipal Corporation (MCD) and respondent No. 3 New Delhi Municipal Corporation (NDMC) advertised by the respondent No. 1 Delhi Subordinate Services Selection Board (DSSSB). They appeared in the test held by the DSSSB for the said purpose and filed the writ petition from which this appeal arises impugning the selection process adopted/followed by DSSSB. It is their contention that DSSSB has prepared separate merit lists for the unreserved and the reserved categories, thereby depriving the meritorious reserved category candidates from selection in the unreserved category posts and which is not permissible in law. It is further their case that if the meritorious candidates ahead of them in the reserved category had been selected in the unreserved category, the applicants would

have been selected in the reserved category.

3. The writ petition was entertained and certain interim orders reserving the posts also made. However, ultimately the learned Single Judge, following the order dated 28th July, 2011 in LPA No. 606/2011 titled Delhi Subordinate Services Selection Board Vs. Shikha Arora, dismissed the writ petition for want of jurisdiction as aforesaid. The interim orders earlier made were however continued for six weeks in which time liberty was granted to the appellant to approach the Tribunal.

4. The Division Bench of this Court in Shikha Arora (supra) had negated the plea that since DSSSB is not covered u/s 14(1) of the Act, the Tribunal had no jurisdiction and had held that as the DSSSB is only the recruiting agency and u/s 3 r/w Section 14(1) of the Act it is the ?post? that matters and determines the jurisdiction, and not the recruiting agency. It was further held that this Court could not have jurisdiction in the matter of recruitment to the posts in authorities notified u/s 14 of the Act. It may be mentioned that SLP (Civil) No. 3268/2012 and SLP (Civil) No. 26294/2011 preferred against the said judgment of the Division Bench were also dismissed.

5. The counsel for the appellants has however contended that the Tribunal u/s 14(1)(a) has jurisdiction in matters relating to recruitment and/or concerning recruitment only to All India Services or civil services of the Union or a civil post under the Union or to a post connected with defense or in the defense services being a post filled by a civilian only and not in other cases. It is contended that recruitment to the post of JE (Civil) in MCD and NDMC is not an All India Service or a civil service of the Union or a civil post under the Union or a post connected with defense or in the defense services being filled by a civilian. It is further the contention of the counsel for the appellants that for the Tribunal to exercise jurisdiction over any authority by notification u/s 14(2) of the Act, such authority has to be under the control of the Government of India. It is yet further contended that for authorities u/s 14(3), no notification even is necessary. The counsel contends that all these questions were not considered in Shikha Arora and the judgment wherein is thus per incuriam.

6. We are unable to agree. Section 14(2) of the Act enables the Central Government to, by notification, apply the provisions of Sub-section 3 to local or other authorities within the territory of India or within the control of Government of India, not being a local or other authority owned by a State Government. It is not in dispute that both MCD as well as NDMC, qua recruitment to posts in which this lis is raised, were vide notification dated 1st December, 2008 issued in exercise of powers u/s 14(2) of the Act, included in the Schedule to the earlier notification dated 2.5.1986 as the authorities/organizations to which the provisions of the Act apply with effect from 15th December, 2008. No challenge was/is made in the writ petition or before us to the said notification. Section 14(3) of the Act confers the jurisdiction on the Tribunal to entertain disputes including those relating to recruitment, which before the date of the notifications

were entertained by other Courts. Matters concerning recruitment to MCD & NDMC were earlier entertained by this Court and invoking which power the writ petition was filed. Thus, the jurisdiction to entertain disputes relating to recruitment in MCD and NDMC, is clearly of the Tribunal.

7. As for as the contention of DSSSB being not notified is concerned, the same is squarely covered by the judgment in Shikha Arora and with which we see no reason to differ. There is thus no merit in this appeal which is dismissed. We however, if the posts which were protected under the interim orders have not been filled up as yet, deem it expedient to grant further six weeks from today to the appellants to approach the Tribunal and extend the interim order for the said period of six weeks.

No costs.