

DELHI SUBORDINATE SERVICES SELECTION
BOARD & ANR.

A

v.

SEEMA KAPOOR

(Civil Appeal No. 4461 of 2021)

B

JULY 22, 2021

[SANJAY KISHAN KAUL AND HEMANT GUPTA, JJ.]

Service Law – Age relaxation – When not entitled to – Applications invited by appellant for various posts including the post of PGT (English) Female – As per the advertisement, age relaxation of five years permissible for Govt. Servant and departmental candidates – Claimed by Respondent, a Teacher (Primary) in South Delhi Municipal Corporation – OA allowed by CAT, Principal Bench, New Delhi – Affirmed by High Court – Held: Respondent, as an employee of the autonomous body i.e. the Corporation, is not entitled to age relaxation either as a departmental candidate or as a government servant – Further, the Circular of the Government of India dtd. 27.3.12 made it clear that the benefit of age relaxation is only meant for civil employees of the Central Government and not to the employees of the autonomous bodies, public sector undertakings etc. – High Court quoted a wrong provision relating to subsequent advertisement – Respondent not entitled to age relaxation as she cannot be considered as a departmental candidate for appointment by way of direct recruit – Orders passed by the High Court and Central Administrative Tribunal, set aside.

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Jai Prakash Wadhwa & Ors. vs Lt. Governor, Delhi Admn. & Anr. (1997) 11 SCC 174 – referred to.

Case Law Reference

(1997) 11 SCC 174 referred to Para 6

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CIVIL APPELLATE JURISDICTION: Civil Appeal No.4461 of 2021

From the Judgment and Order dated 20.02.2019 of the High Court of Delhi at New Delhi in W.P. (C) No.1738 of 2019.

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A Madhvi Divan, ASG, Ayush Puri, Sanjeev Prakash Upadhyay, Jay Anant Dehadrai, Sidharth Arora, B. V. Balaram Das, Advs. for the appellants.

Somesh Chandra Jha, Umesh P. Wadhwani, Rahul Narang, Advs. for the respondent.

B The Order of the Court was passed by

HEMANT GUPTA, J.

Leave granted.

C 1. The challenge in the present appeal is to an order passed by the Delhi High Court on 20.2.2019 affirming the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi on 5.9.2018 whereby an original application (OA) filed by the respondent herein was allowed, holding that she was entitled to age relaxation of five years for appointment to the post of PGT (English) Female.

D 2. The respondent is serving as Teacher (Primary) in South Delhi Municipal Corporation¹ since 7.4.2006. The appellant invited applications for various posts including the post of PGT (English) Female, Post Code No. 133/2012, vide Advertisement No. 2/2012. The age limit as per the advertisement in respect of the post for which the respondent was an applicant reads thus:

E “Age Limit: Below 36 years & relaxable in case of Govt. Servant and departmental candidates upto 05 years in accordance with the instructions or orders issued by the Central Government. This post is identified as suitable for OH/VH persons only as per the Requisition of the User Department.”

F 3. The respondent’s date of birth is 10.2.1976 and on the closing date of the receipt of the applications i.e. 15.6.2012, she was more than 36 years of age. The learned Tribunal allowed the OA filed by the respondent holding that she was entitled to age relaxation as the Corporation falls under the ambit of Government Organisation. It is the said order which was affirmed by the High Court.

G 4. It is admitted by Mr. Jha, learned counsel for the respondent, that the reproduction by the High Court from the advertisement as mentioned in para 4 is a condition in respect of a subsequent selection process initiated vide advertisement in the year 2016.

H ¹ For short, the ‘Corporation’

5. Learned counsel for the appellants argued that as per the conditions of advertisement, the age could be relaxed in case of Government servants and departmental candidates. It is argued that the respondent is not a government servant nor a departmental candidate, therefore, the benefit of age relaxation is not permissible. It is also argued that the Circular of the Government of India dated 27.3.2012 in respect of relaxation of upper age limit allowed to various categories of various Government servants are applicable only to Central Government civilian employees holding civil posts and are not applicable to the personnel working in the autonomous/statutory bodies, public sector undertakings etc. which are governed by regulations/statutes issued by the concerned administrative Ministries/Departments. The relevant clause reads as under:

“3. These instructions are applicable only to Central Government Civilian Employees holding Civil posts and are not applicable to personnel working in autonomous/statutory bodies, public sector undertakings etc. which are governed by regulations/statute issued by the concerned administrative Ministries/Departments. In certain cases the benefit of age relaxation, was allowed to a specified category of personnel for a limited period. The validity of relaxation in such cases will be for the period specified in the original instructions or as amended from time to time.

In case of recruitment through the UPSC and the Staff Selection Commission (SSC), the crucial date for determining the age-limit shall be as advertised by UPSC/SSC. The crucial date for determining age for competitive examination held by UPSC/SSC is fixed as per the instructions in this Department’s O.M. No. 42013/1/79-Estt.(D) dated 4.12.1979 and O.M. No. AB. 14017/70/87-Esst.(RR) dated 14.07.1988.”

6. It is also argued that in terms of judgment of this Court in *Jai Prakash Wadhwa & Ors. v. Lt. Governor, Delhi Admn. & Anr.*², Assistant Teachers in the Municipal Corporations are not government servants holding a post in a substantive, temporary or officiating capacity. In the aforesaid case, the appellants were employed as Assistant Teachers in the schools run by the Municipal Corporation. Such schools were taken over by Delhi Administration in 1970. The appellants sought fixation of pay in terms of provisions of Fundamental Rule 22-C. Such

²(1997) 11 SCC 174

A claim was negated by this Court on the ground that teachers in the Municipal Corporation are not the government servants. This Court held as under:

B “5. Fundamental Rule 22-C, in its own terms is restricted in its application to a government servant holding a post in a substantive, temporary or officiating capacity, who is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attached to the post held by him. The appellants were employees of the Municipal Corporation and were not government servants and since they were not government servants they could not invoke the protection of Fundamental Rule 22-C.”

D 7. On the other hand, Mr. Jha argued that the respondent is a departmental candidate working with the Corporation which is evident from the “Recruitment Rules for the post of Trained Graduate Teacher (MIL) under the Directorate of Education, Delhi Administration, Delhi”³ notified on 30.12.1992 wherein Assistant Teachers are eligible for promotion. It is thus contended that as a teacher working in the Corporation, she has a right to be promoted under the State Government. Therefore, the respondent falls in the feeder cadre leading to inference that she is a departmental candidate.

E 8. We have heard learned counsel for the parties and find that the order passed by the Central Administrative Tribunal and that of the High Court are not sustainable. Firstly, the High Court has quoted a wrong provision in the order passed relating to subsequent advertisement. Secondly, the benefit of age relaxation is permissible for government servants and departmental candidates. It is not even the stand of the respondent that she is a government servant and, rightly so, as she is employed in an autonomous body i.e. Municipal Corporation established under a specific statute. The expression ‘Departmental Candidates’ is in respect of the candidates who are working in the concerned Department i.e. Education. The Circular of the Government of India dated 27.3.2012 has made it explicitly clear that the benefit of age relaxation is only meant for civil employees of the Central Government and not to the employees of the autonomous bodies, public sector undertakings etc. Therefore, the respondent, as an employee of the

H ³ Hereinafter referred to as Recruitment Rules

autonomous body, i.e. the Corporation, is not entitled to age relaxation either as a departmental candidate or as a government servant. A

9. The argument that the respondent is in the feeder cadre and should be treated as a departmental candidate is again not sustainable. The Recruitment Rules mentioned by the respondent provides a promotion channel to the teachers working in the Municipal Corporation. Such channel of promotion is in no way comparable for appointment to the post as direct recruit. The respondent would be entitled to be considered for promotion in terms of the statutory rules on the basis of her seniority. Therefore, the respondent is not entitled to age relaxation as she cannot be considered as a departmental candidate for appointment by way of direct recruit. B C

10. Consequently, the appeal is allowed. The orders passed by the High Court and that of Central Administrative Tribunal are hereby set aside.

Divya Pandey

Appeal allowed.