

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.3862-3863 of 2015
(@ Special Leave Petition (C) Nos. 24342-24343/2012)

JYOTI DUA & ORS. ETC. ETC.

Appellant(s)

VERSUS

D.S.S.S.B. & ORS. & ETC. ETC.

Respondent(s)

WITH

C.A. No. 3864 of 2015
(@ Special Leave Petition (C) No.24654/2012)

C.A. No. 3865/2015
(@ Special Leave Petition (C) No.25170/2012)

C.A. No. 3866/2015
(@ Special Leave Petition (C) No.5534/2013)

O R D E R

Leave granted.

These appeals arise out of a common judgment and order dated 23.04.2012 passed by the High Court of Delhi whereby Writ Petition (C) No. 8147 of 2011 and Writ Petition (C) No. 8572 of 2011 filed by the appellants have been dismissed and order dated 04.08.2011 passed by the Central Administrative Tribunal, New Delhi in O.A. No. 751/2010 and in O.A. No. 1540 of 2010 filed by the appellants affirmed.

This litigation has a chequered history stretching over 8 years or so. It is in our opinion unnecessary to recapitulate the entire factual matrix

in which the controversy arose before the Central Administrative Tribunal, the High Court as well as before this Court. We say so because the orders passed by the Tribunal from time to time and those passed by the High Court have done so at considerable length. All that we need say is that Elementary Teachers Examination (ETE) is prescribed as the bare minimum qualification for recruitment as Assistant Teachers (Primary) in the Government of NCT of Delhi as also in the Municipal Corporation of Delhi (MCD). ETE happens to be a two years course conducted by the State Council for Educational Research and Training (SCERT), Delhi.

It is a common ground that the appellants herein have passed the ETE in the year 2005 and were therefore eligible to appear in the competitive examination conducted by the Delhi Subordinate Service Selection Board (DSSB) in the year 2006. It is also not in dispute that pursuant to Advertisement No.1/2006 for the post of primary teacher in MCD, the appellants had applied for and appeared in the competitive examination but failed to qualify. What is important is that on the date on which the said examination was held, the upper age limit for recruitment prescribed by the relevant Rules prevalent in MCD and the Government of NCT of Delhi was 32 years in the case of male candidates and 42 years in the case of female candidates. The upper age limit underwent a change in

terms of a Notification dated 08.05.2006 whereby the Government of NCT of Delhi amended the relevant recruitment Rules reducing the maximum age limit from 32 years for male candidates and 42 years for female candidates to 27 years for both male and female candidates. A similar notification amended the prevalent Rules in MCD on 13.07.2007 whereby the upper age limit even for recruitment in MCD was reduced to 27 years for both male and female candidates. This amendment affected a large number of candidates who became ineligible for recruitment both in MCD as well as in the State Government on account of their having gone past the prescribed upper age of 27 years.

The result was that a batch of writ petitions came to be filed before the High Court of Delhi including Writ Petition (C) No. 7297 of 2007, *Sachin Gupta and Ors. vs. DSSB* in which the writ petitioners challenged the amendment to the Rules in so far as the same prescribed a lower age for the purposes of recruitment. A Division Bench of the High Court of Delhi by a common judgment and order dated 28.08.2008 dismissed the said petitions. The High Court took the view that the Government of NCT of Delhi and MCD were well within their powers to make a suitable amendment to the Rules prescribing a lower age limit for the purposes of recruitment. Having said that the High Court considered it proper to make a provision with a

view to preventing any hardship to students who already stood enrolled to the ETE courses and directed that the respondents i.e. the NCT of Delhi and MCD would permit all those candidates who had completed the ETE course either in the year 2006 or 2007 or 2008 to appear in the examination conducted by the respondents for the post of Assistant Teachers (Primary) at least once provided the candidates do not exceed the upper age limit of 32 years for males and 42 years for females and also fulfilled all other eligibility conditions. The rationale behind this direction ostensibly was that candidates who had taken admission to the ETE course during these years perhaps did so under the impression that upon acquiring the said qualification, they would be able to find a job as an Assistant Teacher in MCD or the Government of NCT of Delhi. The candidates who had thus changed their position by reason of such an expectation would have been seriously prejudiced in case the lower age limit prescribed by the amended Rules would continue to render them ineligible for such recruitment. To that extent there has been no difficulty and indeed no controversy at any stage after the judgment was pronounced by the High Court which we believe was unsuccessfully challenged in Special Leave Petitions before this Court. The difficulty actually arises when we look at the order passed by the High Court which prescribes an additional chance to be given

to candidates who completed their ETE Course in the year 2006 or 2007 or 2008. The appellants claim that the directions issued by the High Court for an additional chance to be given to candidates who completed their ETE course in the years 2006 to 2008 by necessary implication if not by specific words covers their cases also. In support of that submission, reliance is placed upon the words: "*This would also apply to candidates who have already taken the examination as permitted by this Court*" appearing in the operative portion in paragraphs 59 and 64 of the Judgment of the High Court in Sachin Gupta's case which read as follows:

"59. However, considering that the maximum age prescribed for the post of Assistant Teachers (Primary) for the MCD and NCT has been reduced from 32 years for males and 42 years for females to 27 years, we are of the view that this would cause hardship to candidates already enrolled in the ETE course, who might suddenly find themselves over-age and ineligible. With a view to ameliorate this hardship and as one-time measure, following the ratio in the case of Anuj Johri vs. Union of India and Ors. reported in 2005 III AD (Delhi) 614, it is directed that the respondents would permit all those candidates who have completed the ETE course either in the Year 2006 or 2007 or 2008 to appear in the examination conducted by the Respondents for the posts of Assistant Teachers (Primary) once each of the Respondents i.e. MCD and Govt. of NCT of Delhi provided they do not exceed the upper age limit of 32 years for males and 42 years for females and also fulfill all other eligibility conditions. This would also apply to candidates, who have already taken the examination as permitted by this Court.

xx xx xx xx

64.....Even the age criteria (namely minimum and maximum eligibility age as 20-27 years respectively) is upheld but with a view to ameliorate the hardship of already enrolled students in ETE courses, it is directed that the respondents would permit all those candidates who have completed the ETE course either in the year 2006 or 2007 or 2008 to appear in the examination conducted by the Respondents for the posts of Assistant Teachers (Primary) once each of the Respondents i.e. MCD and Govt. of NCT of Delhi provided they do not exceed the upper age limit of 32 years for males and 42 years for females and also fulfill all other eligibility conditions. This would also apply to candidates, who have already taken the examination as permitted by this Court."

Before we advert to the rationale underlying the direction issued by the High Court and whether it extends to the cases of those of the appellants who have admittedly passed their ETE course earlier in the year 2006, we may as well complete the factual narration to put the entire controversy in proper perspective.

Upon pronouncement of the order in *Sachin Gupta's* case, the appellants herein appear to have filed Writ Petition (C) No.8946 of 2008 which was dismissed as withdrawn by the High Court by order dated 17.12.2008 with liberty to the appellants herein to move an application for clarification before the Division Bench of the High Court in *Sachin Gupta's* case and if necessary to file a fresh writ petition after a prior clarification.

An application for clarification was accordingly moved but dismissed as withdrawn by order dated

01.05.2009. Writ Petition No. 10376 of 2009 for a similar relief was then filed which too came to be dismissed as withdrawn by the appellants reserving liberty to file an Original application before the CAT for redressal of their grievance. OA No. 751 of 2010 was then filed by the appellants before the Central Administrative Tribunal, New Delhi which was allowed by the Tribunal by a common order dated 08.07.2010. The Tribunal observed as follows:

"8. Considering the facts of the case, we are of the considered view that the case of the applicant is entitled to be considered under the relaxation accorded by the Delhi High Court in Sachin Gupta's case. This would mean that the rejection of her candidature on the ground of being over-aged at the critical date of 29.10.2007 would not be tenable. Since as per the information under the RTI Act the applicant has secured more marks than the last selected candidate, denial of appointment to her would also not be fair or reasonable. In view of these substantive facts which favour the case of the applicant, we would not set store by the technical pleas raised on behalf of the Respondent-MCD.

9. In view of the foregoing, the OA is allowed with a direction to the Respondents to reconsider the applicant's case for appointment as Assistant Teacher (Primary) under the MCD. Considering the totality of the circumstances, the prayer for a retrospective appointment with seniority and other consequential benefits does not find favour with us and the appointment when offered should be with a prospective effect. These directions are to be complied within a period of three months from the date of receipt of a copy of this Order. No costs."

10. Having regard to the above, we in respectful agreement not only as a binding precedent of the High Court's decision but the dicta of the coordinate Bench and the stand taken by the respondents in this case is untenable. OAs are

allowed. Respondents are directed to offer appointment to the applicants with all consciences within a period of three months from the date of receipt of a copy of this order. No costs."

The above order was then challenged by the Government of NCT of Delhi in Writ Petition (C) Nos. 8523 of 2010, 8524 of 2010 and 8545 of 2010. These writ petitions were allowed by a Division Bench of the High Court of Delhi by its order dated 22.12.2010. With the consent of the parties, the High Court set aside orders dated 8.7.2010 and 12.07.2010 challenged in the writ petitions and remanded the matters back to the Tribunal to re-examine and dispose of the Original Applications afresh.

Taking note of the decision of the Division Bench of the High Court in Writ Petition (C) No. 4677 of 2010, the Tribunal pursuant to the said direction examined the matter afresh and by its order dated 04.08.2011 dismissed the petitions holding that the appellants' argument that they were situated similarly as the 2006 batch of ETE candidates, was not borne out by the record. The appellants were thus left with no option but to once again approach the High Court in WP (C) No. 8147 of 2011 and WP (C) No. 8572 of 2011. The High Court dismissed the said writ petitions by an order dated 23.04.2012.

The High Court took the view that the observations made by it while dismissing *Sachin Gupta's*

case and the connected batch of cases did not enure to the benefit of the appellants who completed their ETE course in the year 2005 and were not therefore situated similarly with the candidates who had completed that course in the subsequent three years. The High Court appears to have accepted the logic advanced by the State for making a distinction between the candidates who have passed the ETE examination in the year 2006 or 2007 or 2008 on the one hand and those who have passed the ETE examination in the earlier years.

We have heard learned counsel for the parties at considerable length who have taken us through the relevant records, particularly, the orders passed by the High Court from time to time. Mr. Maninder Singh, learned Additional Solicitor General appearing for some of the appellants strenuously argued and in our opinion rightly so that the High Court has remained oblivious of certain aspects of the matter. He contended that the High Court does not appear to have noticed that the candidates who passed the ETE examination in the year 2006 or 2007 or 2008 were given an additional chance to appear in the competitive examination for recruitment as Assistant Teachers on the assumption that the candidates who passed in those years did not have even a single opportunity to compete for such appointments even after acquiring the requisite qualification. The fact of the matter was that some of the candidates who

had passed in 2006 batch of ETE had actually applied for and appeared in the competitive examination and had failed to qualify the same. Such candidates had then challenged the amendment to the Rules like the appellants in a writ petition filed by them and obtained an interim direction to the effect that they shall also be permitted to appear in the ensuing competitive examination at their own risk without creating any equity in their favour. Mr. Maninder Singh contended that while granting the concession to the candidates who had acquired their basic qualification in the year 2006 or 2007 or 2008, the High Court did not make any distinction between those who had taken a chance, failed and turned around to challenge the validity of the amendment to the Rules and those who did not, for whatever reason, either apply or appear in the examination. He urged that the very fact that the candidates of the 2006 batch had just about one week's time to file their applications the cut-off date for which was fixed as 31.05.2006 did not provide rational basis for making a distinction between such candidates on the one hand and the appellants on the other hand. What is important, according to Mr. Maninder Singh, was that applications were filed within the time. Once they are so filed, the candidates must be deemed to have had a reasonable opportunity which could have and indeed was availed by

the candidates appearing in the examination.

So also the argument that the candidates who had passed in the year 2006 ETE Batch had less time to prepare for examination held in 02.07.2006 does not according to Mr. Maninder Singh appeal to common sense, inasmuch as once the cut-off date for filing the application is prescribed and a date for holding of the examination stipulated, every candidate who applies within the time prescribed is presumed to have had sufficient opportunity to prepare for the examination to be held on the stipulated date. On both counts argued Mr. Maninder Singh, the rationale underlying the classification sought to be made between candidates who are given the benefit of the orders passed by the High Court and those who are denied such a benefit fails to stand scrutiny. It is thus clear that the appellants were situated similarly in all respects as those who had passed their examination in the years 2006 to 2008, particularly, with the candidates who had passed in the year 2006 and had in fact appeared in the competitive examination and failed to qualify. Denial of the benefit of the order passed by the High court in *Sachin Gupta's* case does not appear to be fair and reasonable argued the learned counsel. At any rate, the expression "*this would also apply to candidates who have already taken the examination as permitted by this Court*" was capable of a liberal construction,

keeping in view the fact that the Court had by making a provision to effect tried to reduce the hardship of candidates who were affected by the litigation in regard to the issue of upper age limit. This Court, according to Mr. Singh, ought to accept the more liberal interpretation in the facts and circumstances of the case. He submitted that the apprehension expressed by the respondents, that a flood gate of litigation will open to claim parity with the appellants, was also misplaced keeping in view of the fact that apart from appellants before this Court no other candidate had chosen to even raise a little finger against the denial of declaration of their result or denial of an appointment in their favour. He submitted that the apprehensions of the respondents that a large number of similarly situated candidates may approach the Court for relief on the basis that this Court has passed an order in favour of the appellants, is misplaced. This Court could at any rate make it clear that the relief being granted is confined to the appellants alone and that no other claim, if not already filed in a competent court shall be entertained.

On behalf of the respondents, it is submitted by Mr. R.S. Suri, learned senior counsel that a very large number of posts of Assistant Teachers (Primary) are lying unfilled in the Government of NCT of Delhi and

that the appellants would have found a job with the Government but for the amendment that had reduced the age limit to 27 years.

We have given our serious consideration on the submissions made at the Bar. We agree with Mr. Maninder Singh that the appellants ought to succeed in this appeal as the basis of refusal of relief to them does not stand scrutiny for the reasons pointed out by Mr. Maninder Singh. It is true that the order passed by the High Court in *Sachin Gupta's* case confines the grant of relief to only such candidates as had appeared and passed their examination in the year 2006 or 2007 or 2008. A closer reading of the said order and the expression "*this would also apply to the candidates, who have already taken the examination, as permitted by this Court*" are in our opinion capable of being interpreted to mean that the benefit will go even to candidates who may have taken the examination pursuant to interim directions issued in the batch of cases challenging the amendment to the Rules. Excepting the two features which Mr. R.S. Suri, learned senior counsel has tried to elaborate and which the High Court has referred in paragraphs 6 and 7 of the order passed by it, we do not see any other compelling reason for making a distinction between the cases of the appellants and those who had passed the examination in the year 2006 and yet taken a chance by appearing in

the examination but failed to qualify. In that view, therefore, and having regard to the fact that the appellants are the only ones who have agitated the matter over the past 7 years in different fora at different levels, we are inclined to interfere and issue proper directions for the declaration of their result and in case they are found to have qualified in the examination for their appointment as Assistant Teachers.

We accordingly allow these appeals and set aside the orders passed by the Tribunal as well as the High Court and direct the respondent - DSSB to announce the result of the appellants herein within a period of four weeks. We further direct that in case the appellants or such of them who are found to have qualified in the said examination there shall be appointed by the competent authority in the Government of NCT of Delhi or MCD as the case may be depending upon where they have filed their applications. Needful shall be done within six weeks from the date of declaration of the results of the appellants. We make it clear that this order shall not be taken as a precedent for any other candidates who have not agitated their grievance based on the directions issued in *Sachin Gupta's* case.

We make it further clear that the appellants, if appointed, shall be entitled to salary and emoluments , seniority etc. only from the date they actually join

the posts against which they may be appointed.

We must place on record our appreciation for the assistance which Mr. Maninder Singh, learned ASG offered to us at our request. Needless to say that Mr. Maninder Singh was as usual not only articulate in his presentation but persuasive also.

The civil appeals are allowed in the above terms with no orders as to costs.

.....J.
[T.S. Thakur]

.....J.
[R. Banumathi]

NEW DELHI
APRIL 22, 2015

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Special Leave to Appeal (C) No(s). 24342-24343/2012

(Against the common final order dated 23.04.2012 passed by the High Court of Delhi at New Delhi in Writ Petition (C) No.8147 of 2011 and Writ Petition (C) No.8572 of 2011)

JYOTI DUA & ORS. ETC. ETC.

Appellant(s)

VERSUS

D.S.S.S.B. & ORS. & ETC. ETC.
(With Office Report)

Respondent(s)

WITH

C.A. No. 3864/2015 (@ SLP (C) No. 24654/2012)
(With Interim Relief and Office Report)

C.A. No. 3865/2015 (@ SLP (C) No.25170/2012)
(With appln.(s) for permission to appear and argue in person and Office Report)

C.A. No. 3866/2015 (@ SLP (C) No. 5534/2013)
(With Office Report)

Date : 22/04/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s)

Mr. Maninder Singh, ASG
Mr. R. Balasubramanian, Adv.
Ms. Pujitha Gorantla, Adv.
Mr. Nalin Kohli, Adv.
Mr. Rohan Jaitley, Adv.
Ms. Bindu Rani, Adv.

Mr. Satya Mitra Garg, Adv.
Mrs. M. Aggarwal, Adv.

Mr. Arvind Kumar Shukla, Adv.
Mr. M. Rais Farooqui, Adv.
Mr. Alok Shukla, Adv.
Mr. Amit Shukla, Adv.

Petitioner-in-person

Mr. Pijush K. Roy, Adv.

Mrs. Kakali Roy, Adv.
Mr. Rajan K. Chourasia, Adv.

For Respondent(s) Mr. R.S. Suri, ASG
Mr. K. Radhakrishnan, Adv.
Ms. Rashmi Malhotra, Adv.
Mr. P.K. Dey, Adv.
Mr. Mohan Prasad Gupta, Adv.
Mr. D. S. Mahra, Adv.

Mr. Ajay Bansal, Adv.
Mr. Praveen Swarup, Adv.

Mr. P. Parmeswaran, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The civil appeals are allowed in terms of the signed order.

(MEENAKSHI KOHLI)
COURT MASTER

(VEENA KHERA)
COURT MASTER

[Signed Order is placed on the file]