

\$~23 (2021)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 08.10.2021

+ **W.P.(C) 11906/2019**

GOVT. OF NCT OF DELHI AND ORS. Petitioners
Through: Mrs. Avnish Ahlawat, Standing
Counsel for GNCTD with Mr. N.K.
Singh, Advocate.

versus

SHIKHA AND ORS. Respondents
Through: Mr. J.S. Mann, Adv. for R-8.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J.: (ORAL)

[Physical Court Hearing]

W.P.(C) 11906/2019 and CM No. 35484/2021

1. The above-captioned application has been moved on behalf of respondent no.8, wherein a direction is sought that, one post be kept vacant in the category of Assistant Teacher (Nursery) (Post Code 16/19) by the Directorate of Education, Government of NCT of Delhi, *albeit*, till the disposal of the writ petition.

2. While we were hearing submissions in the application advanced by counsel for respondent no.8, Mrs. Avnish Ahlawat, who appears for the petitioners, drew our attention to the fact that, although, the above-captioned writ petition was preferred against the interim order dated 11.10.2019 passed

by the Central Administrative Tribunal (in short, “the Tribunal”), in O.A. No.3017/2019, during the pendency of the writ petition, a final order has been passed by the Tribunal in the said O.A..

2.1. It would be relevant to extract hereafter, the operative directions contained in the impugned order, as also, in the final order passed by the Tribunal, on 20.02.2020:-

Interim order dated 11.10.2019

“Admit.

2. *Ms. Esha Mazumdar takes notice on behalf of the respondents.*

3. *We direct that the respondents shall receive the applications of the applicants by extending the benefit of relaxation of age limit of 5 years, on the basis of then working as Teacher on contractual basis, if they are otherwise entitled to. The benefit shall not be denied on the ground that they availed it in the earlier selection.*

4. *Post on 01.11.2019.”*

Final order dated 20.02.2020

“2. The first respondent, issued a notification on 14.01.2020 inviting applications for various posts, including the TGT Special Education Teacher (SET), Post Code-93/20. 978 vacancies are notified with breakup of reservations. The age limit stipulated for that post is 30 years, with relaxation in age, up to the extent of five years, in favour of Guest/Contract Teachers. However, a clause is added to the effect that, in case, the facility of age relaxation is availed by such candidates on an earlier occasion, they shall not be entitled to claim it once again. The applicants filed the OAs challenging the condition incorporated by the respondents.

XXX

XXX

XXX

6. *The respondents incorporated another clause, by way of corrigendum to the effect that in case, the benefit of relaxation*

is availed on an earlier occasion; the similar benefit is not available for the second time. The relevant clause reads:

“The Guest/Contract teachers who have already availed one time age relaxation earlier, will not be entitled for this age relaxation”.

7. *The condition, no doubt, appears to be not so sound in law. Reason is that a futile attempt made by the candidate, by availing benefit of age relaxation, should not defeat his right to claim it once again. Almost on this very basis, we granted an interim order in OA No. 3017/2019. It is brought to our notice*

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that the respondents filed WP(C) No. 11906/2019 against the said order and, the Hon’ble Delhi High Court stayed the operation of the interim order on 13.11.2019. The Writ Petition is now said to be pending.

8. *We, therefore, dismiss these OAs, however, directing that, in case, the Hon’ble High Court of Delhi grants any relief in this regard, the respondents shall be under an obligation, to extend the same to the applicants also”.*

2.2. In effect, what the Tribunal has done is that, while dismissing the original application filed by the respondents, and other similarly circumstanced persons, it has held that, in case the interim order passed by it i.e. order dated 11.10.2019 is sustained, then the respondents [i.e., the original applicants] will also get the benefit of the same.

2.3. To be noted, the interim order passed by the Tribunal i.e., order dated 11.10.2019 was stayed, by way of order dated 13.11.2019, passed in the instant writ petition.

3. In view of the fact that, the writ petition was filed against the interim order dated 11.10.2019, which has been, effectively, effaced with the dismissal of the original application, vide order dated 20.02.2020, nothing survives in the instant writ petition.

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4. Therefore, although, only the above-captioned application was listed before us for hearing today, however, for the reasons given hereinabove, the writ petition is closed. Consequently, pending applications shall also stand closed, including CM No.48832/2021.

4.1. That being said, in case, the respondents wish to assail the order dated 20.02.2020, they will have the liberty to do so.

5. The case papers shall stand consigned to record.

RAJIV SHAKDHER, J

TALWANT SINGH, J

OCTOBER 8, 2021/nk

[Click here to check corrigendum, if any](#)

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