



GOVERNMENT OF NCT OF DELHI
DELHI SUBORDINATE SERVICES SELECTION BOARD
FC-18, INSTITUTIONAL AREA, KARKARDOOMA, DELHI-110092

F.1 (166)/CC-II/DSSSB/2009/350-356

Dated: 08/03/2021

ORDER

1. Ld. Tribunal vide its order dated 23.02.2021 in the CP 220/2020 titled as Raju & Ors. Vs. Vijay Kumar Dev and Ors. has made following observations:

2. Pursuant to the notice from this Tribunal the respondents have filed an affidavit dated 01.12.2020 alongwith an order dated 26.11.2020 (CP-I) purported to be in compliance of the directions of this Tribunal in the aforesaid order.

3. The applicant has filed rejoinder. After hearing we have come to a prima facie view that by passing the order dated 26.11.2020 the respondents have tried to over-reach the Order/Judgment of this Tribunal in the aforesaid OA.

4. Today, Ms. Esha Mazumdar, learned standing counsel on instructions of Sh. B.P. Jha, Deputy Secretary submits that respondents may be accorded a week's time to revisit their order dated 26.11.2020 and pass fresh order in compliance of the direction of this Tribunal.

5. In view of her request, the respondents are accorded further ten days' time to take the necessary action and pass appropriate order.

6. They shall file compliance affidavit positively within two weeks. Shri Luthra, learned counsel for the petitioner submits that in the meantime h will file amended memo of parties.

7. List the matter on 10.3.2021

8. Till further orders personal presence of the respondents including that of Shri ja is dispensed with.

2. In compliance of abovementioned order dated 23.2.2021 of Ld. Tribunal, the Speaking Order dated 26.11.2020 is modified as under:

3. That the Speaking Order dated 26.11.2020 was issued in compliance of the directions of Ld. CAT issued vide its order dated 01/10/2019 in OA No. 3744/2015 with MA No. 3423/2015 in the matter of Raju & Ors. V/s Govt. of NCT of Delhi & Ors.

4. In compliance of above order and observation of Ld. Tribunal dated 23.02.2021, the case of the applicants i.e. Ms. Raju (Roll No. 1629560) and Sh. Deepak Kumar (Roll No. 1622929) has been re-examined and it is hereby informed that:-

(i). That the Board vide its advertisement No. 02/2008 with closing date as 12/08/2008 had advertised 1000 vacancies {(UR-505, OBC-270, SC-150 & ST-75) including EXSM-100, PH(OH)-16 & PH(VH)-14} for the post of Teacher (Primary) in MCD under post code 16/08. The eligibility for the post is determined as per the RRs of the post as supplied by the user department.

h

- (ii). That as per the then existing policy, the minimum qualifying marks in written examination for different categories was 45% for UR, 35% for OBC/SC/ST/PH.
- (iii). That the examination for the said post was held on 15/02/2009. The final result for the said post was declared on 06/10/2009.
- (iv). That the cut-off marks for final selection for the post of Teacher (Primary) under post code 16/08 for different category were 114/200 for UR, 101/200 for OBC, 94/200 for SC, 109/200 for PH(O), 101/200 for VH, 71/200 for EXSM candidates.
- (v). That the Board in compliance of the judgment dated 04/08/2009 of Hon'ble Supreme court of India as passed in court case Civil Appeal No.5092 of 2009 arising out of petition(s) for special Leave to Appeal (civil) No(s). 24327/05 Subhash Chandra & Ors V/s DSSSB & Ors. had held that SC/ST candidates of states other than Delhi origin not eligible for admissibility of benefit of reservation in Govt. of NCT of Delhi.
- (vi). That the petitioners namely Ms. Raju and Deepak Kumar had applied for the post of Teacher Primary (MCD) under post code 16/08 and appeared under SC category in the written examination held on 15/02/2009 for the post of Teacher (Primary) in MCD and Ms. Raju had obtained 100/200 marks & Sh. Deepak Kumar had obtained 101/200 marks in part-II examination respectively.
- (vii). That at the time of processing of initial result in year 2009 dossiers of candidates namely Ms. Raju and Sh. Deepak was scrutinized and on the basis of SC caste certificate of outside Delhi State enclosed with their application forms, they were found not eligible for claiming benefit of reservation under SC category as per the judgment dated 04/08/2009 of Hon'ble Supreme Court of India passed in Civil Appeal No.5092/09 (arising out of SLP Civil No.24327 of 2005) - Subhash Chandra & Anr Vs DSSSB & Ors. Thus the candidatures of petitioners were not considered in SC category for the post.
- (viii). Later, the Hon'ble High Court of Delhi has decided the matter titled Deepak Kumar & Ors V/s District & Session Judge Delhi & Ors in WPC No.5390/2010 and connected petitions decided on 12/9/2012 that benefits of reservation of SC category to the candidate of other state shall also be given. However, the result for the post of Teacher (Primary) MCD under post code 16/08 was declared on 06/10/2009 i.e. prior to 12/09/2012, therefore, the law as applicable/existing on that date was followed and the Applicants had been treated as SC outsider candidates.
- (ix) That vide the Final Order dated 01/10/2019, the Hon'ble Tribunal directed:
- "...6. In view of the facts and circumstances, without going into the merits of the claim of the applicants, we dispose of the OA with the direction to the Respondent No. 2 to re-visit the impugned order dated 22.01.2013 and consider the claim of the applicant in the light of order/judgement dated 12.09.2012 of Hon'ble High Court of Delhi in the matter of Deepak Kumar (supra) as well as the order/judgment dated 30.07.2019 of this Tribunal in the matter of Dinesh (supra) and to pass an appropriate reasoned and speaking order within a period of eight weeks from the date of receipt of a certified copy of this order..."*
- 

(x) That Board has filed a Writ Petition against the order dated 30.07.2019 in the matter of Dinesh and Ors. Vs GNCTD & Ors in OA No. 913/2016 of Ld. Tribunal in the Hon'ble High Court vide WPC No. 971/2020 and the same is still pending in the Hon'ble High Court.

(xi) It is pertinent to mention here that the issue regarding benefits of reservation to SC outsider candidates is already decided by the Constitution Bench of the Hon'ble Supreme Court on 30.08.2018 in Bir Singh & Ors V/s Delhi Jal Board & Ors. in Civil Appeal No.1085/2013. That the Board had complied with the directions of Hon'ble Supreme Court order dated 30/08/2018 and the Board had revised cut off marks for final selection from 94/200 to 104/200 for SC category. Based on this the Board has only nominated candidates with 104 or more marks.

(xii) The Board had filed MA vide diary no. 28762/2019 in the Supreme Court in the matter of DSSSB Vs Mukesh Kumar and Ors. Board has sought following clarification in the said MA:

"To clarify the scope of application, operation and implementation of the judgment/ order dated 30.08.2018 in Bir Singh V/s Delhi Jal Board & Ors. as to whether the said judgment is prospective or is applicable retrospectively, even in cases from 2009 to September 2012 when this Hon'ble Court's judgment in Subhash Chandra V/s DSSSB was in operation;"

The said application is still pending in the Hon'ble Supreme Court. Further, in various similar issues Board has filed SLP vide Diary No. 25783/2020 in the matter of GNCTD & Ors V/s Deepika and SLP vide Diary No. 168/2021 in the matter of GNCTD & Ors V/s Manoj Kumar Bedwalin the Hon'ble Supreme Court which is still pending.

(xiii) In the instant case Ms. Raju and Deepak Kumar had applied for the post of Teacher Primary (MCD) under post code 16/08 and appeared under SC category in the written examination held on 15/02/2009 for the post of Teacher (Primary) in MCD and Ms. Raju had obtained 100/200 marks & Sh. Deepak Kumar had obtained 101/200 marks in part-II examination respectively. These marks are less than the revised cut off marks of 104 out of 200. In view of above the claim of the candidates cannot be considered. It is also worthwhile to mention the judgment of Hon'ble Supreme Court in the matter of MCD vs. Surender Singh & Ors. 2019 (8) SCC 67, where the decision of the Division Bench granting relief to Respondent who was far below in the merit was set aside by the Hon'ble Supreme Court on the ground that any undue sympathy to the private Respondents so as to direct their selection despite not possessing the desired merit would amount to interfere with the right of the employer to have suitable candidates and would also cause injustice to other candidates who had participated in the process and had secured a better percentage of marks than the private Respondent.

In view of above, the candidature of the applicants namely Ms. Raju & Sh. Deepak Kumar cannot be considered for selection for the post Teacher (Primary) under post code 16/08 on following grounds:

- a) As per Supplementary Result Notice No. 815 dated 29.08.2019 (**Annexure-1**) the cut off marks for selection in SC category revised to 104 marks from 94 marks and the candidate Sh. Deepak Kumar having Roll No. 1622929 had obtained 101 marks and Ms. Raju having Roll No. 1629560 obtained 100 marks which is below the cut off marks i.e. 104 as per Supplementary Result Notice No. 815 dated 29.08.2019.
- b) Board has also filed an appeal against the order dated 30.07.2019 in the matter of Dinesh and Ors. Vs GNCTD & Ors in OA No. 913/2016 of Ld. CAT in the Hon'ble High Court vide WPC No. 971/2020 titled as GNCTD & Ors Vs. Dinesh & Ors. The matter is still pending before the Hon'ble High Court.

This issues with the approval of the Competent Authority.


Dy. Secretary
DSSSB

To:-

1. **Ms. Raju D/o. Sh. Babu Singh**
R/o Begu Road, Kirti Nagar,
Gali No.-6, House No. 423/2,
Shiv Mandir WaliGali, Sirsa,
Haryana.
2. **Sh. Deepak Kumar S/o. Sh. Om Prakash**
R/o Begu Road, Kirti Nagar, Gali No.-6,
House No. 423/2, Shiv Mandir WaliGali,
Sirsa, Haryana.