



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

F.1 (166)/CC-II/DSSSB/2009/10789-94

Dated: 26/11/2020

ORDER

1. This order is being passed 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. The Ld. CAT vide order dated 01/10/2019 has directed as under:-

"6. In view of the facts and circumstances, without going in to 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/judgment 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.

- 7. The OA is disposed of in the above terms.
- 8. The pending MA stands disposed of accordingly.
- 9. No order as to costs."

2. In compliance of above order, the case of the applicants i.e. Ms. Raju (Roll No. 1629560) and Sh. Deepak Kumar (Roll No. 1622929) has been 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.

(ii). That as per the then existing policy, the minimum qualifying marks in written examination for different categories were 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 &

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Ors. has 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 on scrutiny of dossiers 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 is to be followed.

(ix) That order dated 01/10/2019 in OA No. 3744/2015, MA No. 3423/2015 in the matter of Raju & Anrs passed on the basis of order dated 30/07/2019 of Ld. CAT in OA No. 913/2016, MA 890/2016, MA 4305/2018 in the matter of Dinesh & Ors. V/S Govt. of NCT of Delhi & Ors. in which the Ld. CAT mentioned that in view of judgment of Hon'ble Supreme Court in the matter of Bir Singh Vs. Delhi Jal Board & Ors. the OA of the applicant allowed.

(x) That Board has 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 appeal filed vide writ petition no. 971/2020 titled as GNCTD & Ors Vs. Dinesh & Ors. is still pending in the Hon'ble High Court.

(xi). That the Board had complied with the directions of Hon'ble Supreme Court order dated 30/08/2018 in the matter of Bir Singh & Ors V/s Delhi Jal Board & Ors in Civil Appeal No.1085/2013 tagged Civil Appeal No. 8141/2014 titled as Mukesh Kumar & Ors. V/s DSSSB & Ors. In the civil appeal No. 8141/2014 titled as Mukesh Kumar & Ors. V/s DSSSB & Ors. tagged with the case of Bir Singh & Ors V/s Delhi Jal Board & Ors, there were 14 petitioner in the said appeal and all of them were SC migrant and their candidatures were kept pending at the time of declaration of result under post code 16/08. During examination of proposal for considering the candidature of above said 14 candidates in compliance with above said judgment of Hon'ble Supreme Court the merit list of SC category candidates was reexamined and the cut off marks for selection of candidate in SC category revised/raised from 94 marks to 104 marks. In that scenario only first 6

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candidates/petitioners were recommended for selection for the said post. Further it was also noticed due to rising of cut off marks for selection of candidates in SC category, candidature of 47 SC (Delhi) candidates who were earlier selected vide Result Notice No. 46 dated 06.10.2009 and scored less than 104 marks should be rescinded. Further these selected candidates already in the job for last 10 years and rescinding of their candidature will be further created legal issues. Considering these facts Board has decided to file a miscellaneous application in Hon'ble Supreme Court. Accordingly 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. Thus the judgment of Hon'ble Supreme Court dated 30.08.2018 in the matter of Bir Singh & Ors. Vs. Delhi Jal Board & Ors. was implemented partially and 6 petitioners who had obtained more than 104 marks were selected and candidature of 8 petitioners who had scored marks between 104 and 94 were kept pending.

(xii) That vide Supplementary Result Notice No. 815 dated 29.08.2019 Board has declared result of 06 candidates attached to the civil appeal no. 8141/2014 titled as Mukesh Kumar & Ors. Vs. DSSSB & Ors. tagged with judgment of Bir Singh Vs. Delhi Jal Board & Ors. who had scored more than 104 marks. Further candidature of 8 remaining candidates/petitioner who had scored marks between 104 & 94 in SC category was kept pending till the clarification received from Hon'ble Supreme Court in Miscellaneous Application (MA) filed vide Diary No. 28762/2019 in the supreme court in the matter of DSSSB Vs. Mukesh Kumar & Ors.

(xiii). Further, in various similar issues Board has filed SLP vide Diary No. 24670 in the matter of GNCTD & Ors V/s S.N. Bairwa and SLP vide Diary No. 24678 in the matter of GNCTD & Ors V/s Raut Sunita Rao in the Hon'ble Supreme Court. The said matter is not listed before the Hon'ble Supreme Court yet. Besides this 4 more SLPs related to similar issues are going to be filed before Hon'ble Supreme Court shortly.

(xiv) Further in the case of selection of Ms. Raju and Sh. Deepak who have obtained 100 & 101 marks respectively, selection of 29 SC (Delhi) candidates who have scored marks between 100 and 94. who were earlier selected vide Result Notice NO 46 dated 06.10.2009 should be rescinded. Further these selected candidate already in the job for last 10 years and rescinding of their candidature at this stage will be further created legal issues on different forums.

(xv) That the applicant Ms. Raju and Sh. Deepak has not made affected persons as party in their OA filed in the Ld. CAT resulting that the affected persons could not present their point before Ld. CAT.



(xvi) Apart from that during the period 04.08.2009 to 12.09.2012 the Board has declared about 110 results and in the case of implementation of judgment of Hon'ble Supreme Court in the matter of Bir Singh & Ors., candidatures of many SC (Delhi) candidates who have selected during that period should be rescinded and in that case also lot of legal issues will be created.

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 declared in compliance of directions of Hon'ble Supreme Court order dated 30/08/2018 in the matter of **Bir Singh & Ors V/s Delhi Jal Board & Ors** in Civil Appeal No.1085/2013 tagged Civil Appeal No. 8141/2014 titled as **Mukesh Kumar & Ors. V/s DSSSB & Ors.**, the cut off marks for selection of SC category candidates comes to 104 marks which was earlier 94 marks. Further 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) Ms. Raju and Sh. Deepak approached the CAT after lapse of about 05 years after declaration of result and beyond the limitation period. Whereas the 14 applicant/candidates i.e. Mukesh Kumar & Ors. were alert to their legal rights and approached the Ld. CAT within time and also fight the case upto Supreme Court of India. It is a well settled principle of law that if someone is not alert and do not fight for their right at the appropriate time period in that case they cannot claim benefits on the basis of others who have fight their cases in time.

c) Board has already 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 Wali Gali, 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 Wali Gali,
Sirsa, Haryana.