GOVERNMENT OF NCT OF DELHI
DELHI SUBORDINATE SERVICES SELECTION BOARD
FC-18, INSTITUTIONAL AREA, KARKARDOOMA, DELHI-92

No.F.4 (387)/CC-I/DSSSB/2013/ 9599-607 Dated: 09.12.2020

COMPLIANCE RESULT NOTICE: 1180
SPECIAL EDUCATION TEACHER UNDER POST CODE-01/13
DIRECTORATE OF EDUCATION, GNCTD.

1 It is stated that vide order dated 02.07.2019 by Hon'ble High Court in WP(C) 1200/2016, titled as Syed Mehedi V/s Govt. of NCT of Delhi &Ors., the Hon'ble High Court has ordered, inter alia, as under:-

"The plea of the respondents that in the absence of regularly appointed SET, education is currently being imparted to these children by guest teachers needs only to be noted, to be rejected. The guest teachers, who evidently do not fulfill the eligibility criteria prescribed in the recruitment rules, cannot be considered an appropriate substitute for Special Education Teachers possessing the requisite qualifications. Once we find that the respondents are acting in a patently arbitrary, stubborn and mindless manner, and now that all the relevant material in the present case has been placed before us, we will be failing in our duty if we do not consider the aspect of age relaxation on merits, not as much for the benefit of the petitioner – who has no vested right to demand age relaxation as a matter of right, but keeping in view the constitutional and statutory obligation of the respondents and corresponding rights of the differently – abled children. In this regard, reference may be made to the decision in B.C. Chaturvedi (supra) which has been relied upon by the petitioner and states as under:

"25. No doubt, while exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review. It is because of this that substitution of the High Court's view regarding appropriate punishment is not permissible. But for this constraint, I would have thought that the law-makers do desire application of judicial mind to the question of even proportionality of punishment/penalty. I have said so because the Industrial Disputes Act, 1947 was amended to insert Section 11-A in it to confer this

power even on a labour court/industrial tribunal. It may be that this power was conferred on these adjudicating authorities because of the prevalence of unfair labour practice or victimisation by the management. Even so, the power under Section 11-A is available to be exercised, even if there be no victimisation or taking recourse to unfair labour practice. In this background, I do not think if we would be justified in giving much weight to the decision of the employer on the question of appropriate punishment in service matters relating to government employees or employees of public corporations. I have said so because if need for maintenance of office discipline be the reason of our adopting a strict attitude qua the public servants, discipline has to be maintained in the industrial sector also. The availability of appeal etc. to public servants does not make a real difference, as the appellate/revisional authority is known to have taken a different view on the question of sentence only rarely. I would, therefore, think that but for the self-imposed limitation while exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionality of punishment/penalty. But then, while seized with this question as a writ court interference is permissible only when the punishment/penalty is shockingly disproportionate." (emphasis supplied) Further, reference may be made to the decision in SangitaSrivastava (supra), which was also relied upon by the petitioner and the relevant paragraphs therein read as under: "33. Ordinarily suitability is to be judged by the executive Council and not by this Court. But what are we to do when the Executive Council acts in a patently unfair manner, as it has done in this case? This Court is a Court of Justice. No doubt it has to do justice based on law, but the Court will interpret law in a way that leads to justice and not injustice. 34. On the facts of this case, and in view of the fact that the Executive Council has acted on irrelevant considerations and has misdirected itself, and since a remand to it would lead to further delay and harassment of the petitioner, we ourselves have judged the petitioner's suitability and we find her suitable to be appointed as regular lecturer, and we hold that she fulfils all the requirements of Section 31(3)(c) of the Act, In the circumstances a mandamus is issued to the respondents to regularize the petitioner as lecturer in Home science

forthwith and pay her salary of regular lecturer. The petition is allowed. No order as to costs." (emphasis supplied)

29. In the light of the aforesaid decisions, we are of the considered opinion that remanding the matter back to the respondents for consideration of the petitioner's request for age relaxation would lead to failure of justice. We are of the view that in a case like this, where there is a dearth of suitably qualified candidates for SET, it is qualification and merit which should be given due precedence. Relaxation of age ought to have been granted for appointment to the post of SET to all, who were otherwise eligible. While directing so, we are also mindful of the fact that women candidates selected for the same post have been granted a blanket relaxation of 10 years and, therefore, we see no reason as to why, in the light of the admitted shortage of SETs, the same relaxation was not granted to the male candidates as well. At this stage, we may also note that during the course of hearing, the result of the petitioner was produced before us, and having perused the same, we find that he possesses the requisite merit for selection.

30. So far as the submission of the respondents that the power of relaxation cannot be exercised in respect of an individual candidate is concerned, we are of the view that it is open to the respondents to grant such relaxation not only to the petitioner, but also to others, who may have similarly applied against the advertisement in question and whose candidature may not have been considered on account of the age bar. Moreover, that cannot be a reason to deny age relaxation to the petitioner, since the petitioner has been singlehandedly pursuing this cause before the Court for a long time now.

31. To be fair to those candidates, who may not have applied in response to the advertisement in question on account of being age barred, we direct that the respondents undertake a further process of recruitment to fill up the vacant posts of SET without any delay, and to incorporate the clause of grant of age relaxation to all candidates applying for the said posts to the extent required.

32. We allow this petition in the aforesaid terms and direct the respondents to ensure compliance qua the petitioner within the next four weeks, by granting him relaxation with regard to his age and considering his appointment to the post of SET on the basis of his merit position in the selection process already concluded. He will, however, be entitled to all benefits resulting from the said appointment, only from the date of his actual appointment to the said post. The respondents will also initiate the process for fresh recruitment to the post of SET, as directed hereinabove, within the same period of four weeks."

2. It is stated that the age of the applicant in the year 2013, at the time he applied for the post, was 36 years and the cut off age prescribed in RRs was not exceeding 30 years. The applicant, in April 2013 also, approached Tribunal through OA No.1173/2013 seeking age relaxation. Vide order dated 9.04.2013, as an interim measure, Ld. CAT directed the respondents to permit the applicant to participate in the selection process. The applicant appeared in the Exam and secured 106.25 marks. At the time of processing the result, he was found "Not eligible" due to being 'overage' as per RR of the User Department. The candidature of the **applicant Syed Mehedi was rejected vide rejection notice no. 318 dated 13.09.2013 being over age in UR category.**

3. After that, Ld. CAT vide order dated 7.03.2014 declined to grant any relief to the applicant, whereupon the applicant approached the Hon'ble High Court by way of Writ Petition (C) No. 2887/2014 and the Hon'ble High Court, vide order dated 10.07.2014, directed as under:

"In the circumstances, we direct the GNCTD to consider the petitioner's request, having regard to the Notification dated 26.03.2013, without being inhibited by the fact that he would not be eligible in terms of the Notification on the ground that he does not fulfill the general criteria. Instead, the GNCTD must keep in mind that a general relaxation of 10 years has been provided for. Other relevant factors too shall be taken into account. This exercise of considering the petitioner's application and case for age relaxation shall be completed and a reasoned order indicated to him directly, within six weeks from today. The order, if

adverse shall be reasoned. The writ petition is allowed in the above terms."

4. In compliance of the above order dated 10.07.2014, the user Department i.e. DOE passed the speaking order dated 17.09.2014 thereby the request for age relaxation to the male candidates for the post of SET was rejected.

5. Being aggrieved by the said order, the applicant has filed the OA 3805/2014 in Ld. CAT. In this regard, the then Dy. Secretary (Legal), DSSSB, had sent a letter to the Director, Dte. Of Education, Old Secretariat, Delhi vide No. F,1(2791)/LC/DSSSB/14/1388 dated 08-12-2014 to defend the case and look after the interest of Board stating that "the OA mainly pertained to the user Department i.e., Directorate of Education and the DSSSB is only a proforma party. The process of results of above mentioned post code was closed after taking the prior approval of Competent Authority. The LD. CAT in the above OA vide its order dated 05.01.2016 has directed as under:

".....15.We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

16. In its order dated 7.03.2014 in OA 1173/2013 (supra), a Coordinate Bench of this Tribunal had agreed with the contention of the respondents that the relief seeking direction to the respondents to give age relaxation is not permissible as per law and it is totally the prerogative of the executive in exercising the power under Rule 5 of the Recruitment Rules and unless sufficient ground has been shown, this Tribunal cannot interfere in such matters. This reasoning is also supported by various judgments of the Hon'ble Apex Court cited by the respondents (para 9 above). Based on this reasoning, the OA was dismissed. In other words, the Tribunal held that different criteria for male and female candidates is a reasonable classification and is not violate of Articles 14 and 16 of the Constitution of India. We cannot take a view contrary to that.

17. Moreover, the fact is that for balance 670 vacancies, the examination has already been held, which indicates the sincerity of the respondents to honor the observations of the Courts to fill up the vacancies on priority basis.

18. In view of above discussion, we do not find merit in this OA and it is, therefore, dismissed. "

6. Thereafter, being aggrieved to this order dated 05.01.2016, the applicant Syed Mehedi preferred an Appeal vide WP(C) 1200/2016 before Hon'ble High Court. Now, the Hon'ble High Court vide order dated 02.07.2019 has ordered to give him appointment by giving age relaxation.

7. It is stated that the whole case/issue was defended by user Department before Ld. CAT/ Hon'ble HC at their own level and DSSSB was only a proforma party. Further, Directorate of Education, being custodian of RRs as well as Appointing Authority and user Department, is appropriate authority to decide on the above, Director (Edu.) was requested to take appropriate decision in this matter vide this office letter dated 22.08.2019. In response to the said letter dated 22.08.19, the user department vide letter dated 02.09.2019 has informed as under:-

"The matter was placed before the Hon'ble Lt. Governor of Delhi, wherein Hon'ble Lt. Governor has approved the proposal of this Directorate to give offer of appointment to Sh. Syed Mehdi. Further, as regards granting age-relaxation to all those similarly placed candidates. Hon'ble Lt. Governor is of the view to provide similar relaxation to all the similarly placed candidates as per Article 14 of the Constitution as directed by Hon'ble High Court....."

8. In compliance of the above, the candidature of similarly placed candidates was examined afresh, giving them age relaxation as directed above. A total of 15 candidates were found to be similarly placed and who are otherwise eligible as per RRs for the post of Special Education Teacher under post code- 01/13 in Directorate of Education, GNCTD and the same was placed before the Board in its meeting on 24.08.2020 with regard to candidature of these 15 similarly placed candidates, who are otherwise eligible as per RRs, by giving them age relaxation as per directions of Hon'ble High Court and Hon'ble LG. The Board approved provisional selection of all these 15 candidates having following Roll No's in pursuance of directions of Hon'ble High Court and Hon'ble LG, vide minutes of meeting dated 27.8.2020, for the post of Special Education Teacher in Dte of Education, GNCTD under the post code- 01/13:

UR CATEGORY-TOTAL-15

SL No.	Roll No.	SL No.	Roll No.	SL No.	Roll No.	SL No.	Roll No.	SL No.	Roll No.	SL No.	Roll No.
1	110442	2	110235	3	110657	4	110683	5	110638	6	110472
7	110087	8	110335	9	110116	10	110474	11	110684	12	110017
13	110216	14	110470	15	110464	Fifteen Only					

9. The provisional selection of the above total **Fifteen candidates (UR- 15 candidates)** shall be further subject to genuineness of the documents on the basis of which they have claimed to have fulfilled all the eligibility conditions as prescribed in the RRs and terms and conditions of advertisement inviting applications and subject to thorough verification of their identity with reference to their photographs, signatures/ handwriting etc. On the application form, admission certificate etc. **The candidature of the candidate is liable to be cancelled by the User Department, in case, candidate is found not fulfilling all the eligibility conditions of the Recruitment Rules for the posts or for any other genuine reason. The decision of the User Department regarding the eligibility of the candidate shall be final and binding on the candidate. The Competent Authority of the Department concerned shall issue the offer of appointment to the candidates after being satisfied about their eligibility as laid down in the recruitment rules and after verification of the correctness of the information furnished in the application form and the documents related to Educational Qualification, Age and other essential certificates.**

10. **The User department shall also check the eligibility of the reservation benefit, if any. Further, if applicable, User Department shall verify the genuineness of the caste certificate furnished by the candidate prior to issuing offer of appointment to the candidates. The Competent Authority of the User Department shall arrange to verify the correctness of the information/ documents as furnished in the application forms and e-dossier vis-à-vis the original documents. The user Department is requested to ascertain the scrutiny/correctness of the same at their own level before issuing the offer of appointment to the provisionally selected candidates. Further, the appointing authority shall verify and satisfy itself about the authenticity of documents/certificates and essential qualification for the post before finally appointing the candidate. The User Department is also requested to rectify/correct, in case, any minor/clerical error/deficiency noticed in the documents of the candidate at their own level.**

11. **It is stated that the User Department shall verify the genuineness of the caste certificate furnished by the candidates in the light of Notification No. 36012/22/93-Esttt.(SCT)dated 08/09/1993 issued by DOPT and other instructions/ guidelines issued from time to time by the competent authorities prior to issuance of offer of appointment to the candidate. It is further stated that, prior to appointment, the user department must satisfy, itself, that the above candidates are fulfilling the necessary criteria as prescribed for entitlement of OBC(Delhi) certificate as specified in various Orders/Guidelines/Circulars including order dated 07/03/2017 issued by Revenue Deptt, GNCTD after thorough verification of caste certificate.**

12. **User Department shall also get the SC/ST/OBC certificates verified from the issuing authority. Further, in case of the OBC candidates, it may also be verified that the candidate does not belong to creamy layer of the schedule of Govt. of India, DOPT O.M. No. 36012/22/93-Estt.(SCT) dated 08.09.1993, O.M. No. 36033/3/2004-Estt. (Res) dated 09.03.2004 and 14/10/2008 and 36033/1/2013-Estt. (Res) dated 27.05.2013 & 13.09.2017.**

13. The Competent Authority of the Department concerned shall issue the appointment letters to the candidates after verification of the correctness of the information furnished in the application form and the documents related to education qualification, age and other essential certificates including caste certificate as per Government of India instructions issued in this regard **vide MHA OM No. 2/29/54-RPS, 19/11/54.**

14. The User department shall ensure that the appointment made is in conformity with DOPT guidelines and instructions of Govt issued from time to time.

15. Mere inclusion of the name of the candidate in the result notice does not confer any right upon the candidate over the post unless the user department is satisfied after such inquiry as may be considered necessary that the candidate is suitable in all respect for appointment to the post.

16. The marks of last selected candidate for following categories is as under:-

CATEGORY->	UR	OBC	SC	ST	OH-PH
The marks Obtained By The Last Selected Candidate	80.25	80.25	76.00	60.50	**No candidates found suitable.**

17. The recruitment process for the post Special Education Teacher under post code 01/13 in Directorate of Education had been closed. Further, the waiting panel for the post of Special Education Teacher under post code 01/13 in Directorate of Education could not be prepared as no suitable candidate is available.

18. While every care has been taken in preparing the result, DSSSB reserves the right to rectify errors and omissions, if any detected at any stage.

This issues with the approval of the Competent Authority, DSSSB.

Deputy Secretary, DSSSB