

CC- I BRANCH, DSSSB

SPEAKING ORDER

No. F.4 (391)/DSSSB/CC-I/2014/1271

Dated: 05/11/2015

The DSSSB vide Advertisement No.004/09, Government of NCT of Delhi (Delhi Subordinate Services Selection Board) invited applications to fill up inter alia 4500 posts of Teacher (Primary) in Municipal Corporation of Delhi (MCD) (Post Code No.70/09). Relevant excerpt of the Advertisement including the category-wise breakup of the vacancies reads thus:-

Name of the Post : Teacher (Primary) in MCD Post Code : 70/09

Number of Vacancies: 4500(UR-1900, OBC-1044, SC-766 ST-790, including PH (OH-OA/OL/BL)-52, PH (VH-B/LV)-96, EXSM-982)

Essential Qualifications: 1. Sr. Secondary (10+2) or Intermediate or its equivalent with 50% marks from a recognized Board.

2. Two years diploma/Certificate course in ETE/JBT or B.El.Ed. from recognized institutions or its equivalent.

3. Must have passed Hindi as a subject at Secondary level.

Desirable Qualification: Computer knowledge. Pay Scale: 9300-34800/- plus Grade Pay Rs.4200/-

Group C Non-Gazetted, Probation Period: Two years

Age Limit: 20-27 years. Relaxable for SC/ST-05 years, OBC-03 years, PH-10 years, PH&SC/ST-15 years, PH&OBC-13 years, Departmental employees-upto 42 years of age (general), upto 47 years from SC/ST, having 03 years of continuous service in the same line or allied cadres. Relaxable upto 37 years for (general) and upto 42 years for SC/ST for widows, divorced women and women judicially separated from their husband and who are not re-married.

The closing date for receipt of the applications mentioned in the Advertisement was 15.1.2010.

4. Later, the user deptt. Forwarded revised RRs and also increased vacancies from 4500 to 6500. The same was informed to candidates/public vide Addendum, on 13.9.2011, the Board issued Notice No.F.2(40)/2009/P&P/DSSSB/8289 dated 13.9.2011 giving opportunity to the candidates, who were eligible on 15.1.2010, to apply for the post by 17.10.2011. The candidates who had already submitted their application form in response to Advertisement.



No. 004/2009 were not required to apply again except for depositing the additional fee of Rs.50/- .

All the other details and terms & conditions as contained in the original advt. no.004/2009 remained unchanged.

The eligibility of the candidates with regard to educational qualifications, age, experience etc. was to be determined as on 15-01-2010 i.e. the closing date of receipt of application as invited vide advt. No. 004/2009.

Some applicants approached the Hon'ble CAT in this matter for change of cut off date from 15/01/2010 to 17/10/2011. The said Original Applications were taken up and disposed of by a common Order on 30.3.2012. Operative portion of the Order passed by the Tribunal reads as under :-

"In the above facts and circumstances of the case, we allow these O.As. Resultantly, we declare that the impugned notice dated 13.09.2011 fixing 15.01.2010 for determination of the eligibility of the candidates with regard to their educational qualifications, age, etc. is arbitrary, illegal and unconstitutional and accordingly the same is quashed and set aside to that extent. Further, the respondents shall treat the closing date for receipt of applications of the applicants in terms of the impugned notice dated 13.09.2011 i.e. 17.10.2011 based on the Recruitment Regulations, 2011 as crucial date for determining the eligibility of the applicants with regard to their educational qualifications, age, etc. as well. The interim direction passed in these cases directing the respondents to accept the applications of the applicants provisionally and subject to their fulfilling all other eligibility conditions is made absolute. The respondents are also directed to proceed with selection process to the post of Teacher Primary (Post Code No. 70/09) and Assistant Teacher (Primary) in the MCD and the Directorate of Education respectively in terms of the aforesaid directions and finalize it at the earliest. No costs."

The above Order was challenged by the DSSSB, Government of NCT of Delhi before the Honble High Court of Delhi. Nevertheless, instead of filing separate petitions against the applicants in all the Original Applications, the DSSSB challenged the Order passed in Preeti Balayan & another v. DSSSB & another, i.e., O.A. No.3663/2011 alone. The Writ Petition (C) No.3397/2012 preferred before the Honble High Court of Delhi was disposed of in terms of the Order dated 6.2.2013 and the Order passed by the Tribunal, changing the cut-off date from 15.1.2010 to 17.10.2011, was reversed and the cut off date was retained as 15/01/2010. Order passed by the Honble High Court reads thus:-




"The first reason of the law which acts as our compass is that ordinarily vacancies have to be filled up from amongst the eligible Candidates pertaining to the year of the vacancy and if for some reasons the selection process is postponed, only those who were eligible in the year of the vacancy should be considered. The second reason of the law which acts as our compass is that wherever in an ongoing process a derailment takes place at a particular point, the rail should be put back at the point where it derailed after removing the cause of derailment and letting the train chug along.

Guided by the aforesaid two reasons of law we unhesitatingly reach the conclusion that the only corrective action which could be directed to be taken was, as was directed by the Tribunal when the Original Applications filed by Candidates who pointed out a hiatus between retaining the upper age limit of 27 years and the classification of the post was decided with a direction to amend the Recruitment Rule and issue a Corrigendum making eligible Candidates up to the age of 30 years; requiring the cut-off date January 15, 2010 to be retained. The subsequent decision mandating that the eligibility cut-off date should be shifted to October 17, 2011 would amount to modifying the track and as a result making ineligible many Candidates who cross the age of 30 years as of January 15, 2010. It must be also remembered that the vacancies pertained to the vacancy year 2010 and this explains the cut-off date being January 15, 2010. . Accordingly, we dispose of the Writ Petition setting aside the impugned judgment and order dated March 30, 2012 leaving the parties to bear their own costs."

The written exam for the post of Teacher (Primary)MCD, Post Code 70/09 was held on 2/2/2014 and 2676 candidates were provisionally selected vide Result Notice 343 dated 5/12/2014 and 502 candidates were provisionally selected vide Result Notice 367 dt. 16/4/2015 and 1500 candidates were rejected due to not fulfilling eligibility criteria as on cut off date vide Rejection Notice No. 344 dated 5/12/2014

In the meantime, the applicants herein had participated in the examination but since they were not eligible for the post in question on 15.1.2010, in the wake of the Order of the Hon'ble High Court, the DSSSB issued impugned office order No.344 dated 5.12.2014 cancelling their candidatures on the ground that they had passed the ETE after the cut-off date, i.e., 15.1.2010. Thereafter, some candidates again approached the Hon'ble CAT in the matter Abhimanyu & Ors V/s DSSSB in OA No. 299/2015 and Hon'ble CAT vide order dated 11/08/2015 passed an order, the operative para of the same is as under :-

"In terms of the ratio decidendi of the judgment of Honble High Court, the eligibility of the candidates need to be determined with reference to the year of vacancy. We are also apprised that in the examination / selection process held pursuant to the aforementioned Advertisement, sufficient number of candidates are not found qualified / suitable and a large number of vacancies have remained unfilled. The ramification of such factual position would be that the respondents will have to advertise the posts again to invite the fresh applications

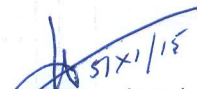


to fill up the posts. The applicants before us have already participated in the examination. Maybe by the fresh cut off dates many of the candidates, who were eligible by 17.10.2011, may become ineligible. In the circumstances, in all fairness, the Board may assess the candidatures of the applicants herein against the unfilled vacancies on their own."

In view of order dated 11/08/2015 of Hon'ble CAT as above, the matter was placed before the Board in the meeting held on 4/11/2015 wherein it was observed that the cut off date for determining eligibility of candidates for the post of Teacher (Primary) MCD under Post code 70/09 as advertised by the Board already stands duly settled as 15/01/2010, as per Hon'ble High Court order dt. 6/2/2013 passed in the matter of DSSSB V/s Preeti Balyan & Ors. Thus, the candidates who are the petitioners in the OA are not eligible with respect to the cut off date and as such their case and representations is liable for rejection. Accordingly, applicants case being bereft of any merit stands rejected.

This issues with the prior approval of the Competent Authority.

No.F.4(391)/DSSSB/CC-E/2014/1271


Dy. Secretary (CC-I)

Dated:- 05/11/15

SA, with the request to upload the order
on the official website of the Board