



2025:DHC:7880-DB



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

***Date of decision: 08.09.2025***

+ W.P.(C) 14414/2023  
DELHI SUBORDINATE SERVICES SELECTION BOARD  
AND ANR .....Petitioners

Through: Ms.Avnish Ahlawat, SC for  
GNCTD (Services) with  
Mr.N.K. Singh & Mr.Mohnish  
Sehrawat, Advs.

versus

GAURAV SHARMA & ORS. ....Respondents

Through: Mr.Prashant Shukla, Adv for  
R-1 to R-11  
Ms.Jagrati Singh, SC for MCD  
with Mr.Rajpal, Mr.Surendar  
Kumar & Mr.Sanjay, Advs  
Mr.Ripudaman Bhardwaj,  
CGSC with Mr.Kushagra  
Kumar, Adv for UOI  
Mr.Jairaj Singh, Adv for  
intervenor  
Mr. Hemant Baisla, Mr.Hemant  
Kr Nirajan, Mr.Ankit Singh,  
Ms.Neha Yadav, Ms.Shikha,  
Ms.Pratima Saini, Advs for  
impleader  
Mr. Sudhir Naagar, Mr.Piyush  
Aggarwal, Mr. Rohit Arya,  
Mr.Divyansh Sharma, Advs. for  
intervenor

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE MADHU JAIN**



**NAVIN CHAWLA, J. (ORAL)**

**CM APPL. 56188/2025 (Exemption)**

1. Allowed, subject to all just exceptions.

**CM APPL. 56187/2025**

2. This application has been filed by the applicant, that is, Mr.Prabhakar Mishra, for impleadment in the present petition.
3. For the reasons stated in the application, the same is allowed and Mr.Prabhakar Mishra is added as party respondent.

**W.P.(C) 14414/2023 & CM APPL. 57111/2023**

4. This petition has been filed, challenging the order dated 08.02.2023 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal'), in O.A. 2059/2022, titled ***Gaurav Sharma & Ors. v. Govt. of NCT of Delhi & Ors.***, allowing the O.A. filed by respondent nos. 1 to 11 herein, with the following directions:-

*“6.1 It is obvious that every government department is bound to implement the rules, regulations, directions etc. prescribed by the Government in toto in its true spirit. There can be no two opinion on a factual matter like 10% reservation for EWS category and even at first glance at the total number of vacancies advertised (1126 vacancies) one can see that the reservation of only 54 posts of EWS does not constitute 10% of the vacancies. Whereas the respondents have accepted their error in this regard, their suggestion to adjust the balance 58 vacancies in the next recruitment cycle would be unfair not only to the applicants herein but also to others who may otherwise be eligible to be selected under the full quota reserved for EWS category.*

*6.2 In view of the above discussion, the instant*



*OA is allowed. The respondents are directed to fully adhere to the explained EWS reservation policy of the Government, above, and the case of the applicants be re-considered depending upon their merit position.*

*6.3 The exercise, as ordained above, be completed by the respondents within a period of three months from the date of receipt of a certified copy of this order.”*

5. The brief facts in which the present petition arises are that the petitioner no. 1 had issued Advertisement no. 01/21 dated 04.03.2021 for filling up posts in various Disciplines, including the 1126 posts of Special Educator (Primary) in MCD. Out of the said 1126 posts, only 54 posts were reserved for the Economically Weaker Section (EWS) candidates, contrary to the policy of having reservation to the extent of 10% for the EWS category. The respondent nos. 1 to 11 made a representation dated 31.03.2021 to the Director of Education Department, MCD, stating that there should be a total of 113 vacancies reserved for EWS candidates. While the said representation remained unanswered, the respondent nos. 1 to 11 appeared for the examination conducted in October 2021, and were successful in clearing the same. They, thereafter, gave a further reminder dated 18.07.2022 to the MCD, whereafter they approached the learned Tribunal by way of the above O.A..

6. Before the learned Tribunal, the MCD admitted that only 54 vacancies under the EWS quota, instead of 113, had been inadvertently notified by the Nodal Agency, that is, the erstwhile South Delhi Municipal Corporation. It was submitted by the MCD



that any change in the reservation of the EWS category at this stage would lead to inordinate delay in the appointment of Special Educator (Primary) in the schools of the MCD, which would adversely affect the education of Persons with Disability (PwD) category students and, therefore, the remaining 58 vacancies under the EWS category may be filled up at the time of the next recruitment.

7. The DSSSB also maintained that the number of vacancies that had been advertised, cannot be changed post the declaration of the result, and the remaining vacancies cannot be filled up by the other selected candidates.

8. The learned Tribunal, by its Impugned Order, held that the plea of the MCD that the 58 remaining vacancies be filled up in the next recruitment process, is not tenable, as it would affect the rights of respondent nos. 1 to 11. It was further held that it was incumbent upon the MCD to correctly calculate the number of vacancies in each quota, including the EWS quota, while making the requisition to the petitioner, that is, the DSSSB. Based on its finding, the learned Tribunal disposed of the O.A. with the above-quoted directions.

9. The learned counsel for the petitioners submits that future vacancies cannot be filled up against the notified vacancies. In support, he places reliance on the following judgments: –

- i. *Union of India & Ors. v. Ishwar Singh Khatri & Ors.*, (1992) Supp 3 SCC 84;
- ii. *Gujarat State Deputy Executive Engineers' Association v. State of Gujarat & Ors.*, (1994) Supp 2 SCC 591;



- iii. *State of Bihar & Ors. v. The Secretariat Assistant S.E. Union 1986 & Ors.*, AIR 1994 SC 736;
- iv. *Prem Singh & Ors. v. Haryana State Electricity Board & Ors.*, (1996) 4 SCC 319; and,
- v. *Ashok Kumar & Ors. v. Chairman, Banking Service Recruitment Board & Ors.*, AIR 1996 SC 976.

10. He further submits that the respondents, having participated in the selection process, are now estopped from challenging the same. In support, he places reliance on the following judgments:-

- i. *Anupal Singh & Ors. v. State of UP & Ors.*, 2020 (2) SCC 173;
- ii. *N.T.Devin Katti v. Karnataka Public Service Commission*, (1990) 3 SCC 157; and,
- iii. *Union of India v. Ravi Prakash Gupta*, (2010) 7 SCC 626.

11. On the other hand, Mr.Prashant Shukla, the learned counsel for respondent nos. 1 to 11 submits that the respondents had challenged the inadequate reservation for the EWS category immediately on the issuance of the advertisement, by way of their representation dated 31.03.2021. The MCD has now admitted its own mistake in not providing adequate seats for the EWS category. He submits that, therefore, the respondents cannot be made to suffer for the own folly of the MCD.

12. We have considered the submissions made by the learned counsels for the parties.

13. In the present case, it is not denied by the MCD that due to an inadvertent mistake, it had wrongly requisitioned only 54 posts of



Special Educator (Primary) in the MCD schools towards the EWS quota; the total numbers of vacancies to be reserved under the said quota was 112. It is not a question of filling up of future vacancies, but of the calculation of the vacancies that should have, in law, been reserved for the EWS candidates.

14. Once it was admitted that the MCD had not followed the reservation policy, the options before the learned Tribunal would have been to either cancel the entire examination and have it re-conducted, or to ensure that the requisite number of EWS category candidates are given a chance for appointment in terms of reservation policy. In our view, the learned Tribunal adopted the right approach by directing the petitioners, as also the MCD, to give adequate representation to the EWS category candidates in accordance with the reservation policy, rather than cancelling the entire examination process.

15. The plea of the petitioners that respondent nos. 1 to 11, after participating in the examination process, cannot be allowed to challenge the same, does not impress us. As noted hereinabove, respondent nos. 1 to 11 had challenged the number of seats reserved for the EWS category immediately after the issuance of the advertisement itself. It was for the MCD to look into that representation and correct its own folly at that stage. It did not do so, now resulting into this anomaly. Therefore, the Judgments in *Anupal Singh* (supra), *N.T.Devin Katti* (supra), and *Ravi Prakash Gupta* (supra), relied upon by the petitioners, cannot come to the aid to petitioners. More so, the Supreme Court in *Meeta Sahai v. State of*



***Bihar & Ors.***, (2019) 20 SCC 17 has categorically laid down that where the candidates allege misconstruction of statutory rules and discriminating consequences in the recruitment process, like in the present case, the same cannot be condoned only because the candidates have participated in the said process. The relevant paragraph of the said judgment is reproduced below:-

*“17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. **In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it.** The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.”*

**(Emphasis Supplied)**

16. However, at the same time, the additional seats, against which the candidates of the EWS category are to be appointed, should not be taken out from the other category seats that were provided in the advertisement, for the candidates who have been selected or are in the waiting list are not at fault. The fault, as noted hereinabove, lies squarely with the MCD.

17. We, therefore, while dismissing this petition, clarify that the additional 58 posts under the EWS category will be offered to the selected candidates by creating supernumerary posts against the same,



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and without affecting the rights of either the selected candidates or the candidates who are in the waiting list.

18. In view of the aforesaid, the petition, along with the pending application, is disposed of.

**NAVIN CHAWLA, J**

**MADHU JAIN, J**

**SEPTEMBER 8, 2025/rv/VS**