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

Date of Decision: 20th January, 2023

+ **W.P.(C) 3401/2022 & CM APPL.9949/2022**

JANE KAUSHIK

..... Petitioner

Through: Mr. Amritnanda Chakravorty, Mr.
Mihir Samson & Ms. Asawari, Sodhi,
Advocates (M-999684017)

versus

LIEUTENANT GOVERNOR,
NCT OF DELHI & ORS.

..... Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel, GNCTD with Ms. Tania
Ahlawat, Mr. Nitesh Kumar Singh,
Ms. Palak Rohmetra, Ms. Laavanya
Kaushik & Ms. Aliza Alam,
Advocates for R-1, 2 & 4.
Ms. Varsha Sharma, Advocate for Mr.
Jawahar Raja, ASC, GNCTD for R-3.
(M:9013379251)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner – Jane Kaushik is a 28 year old Indian citizen, and is a transgender person residing in Delhi. She is a highly qualified individual, holding degrees in B.A. (General), Masters in Arts (M.A.) (Political Science), Bachelor of Education (B.Ed.), as well as a two-year diploma in Nursery Teacher Training ('NTT'), which is also called Early Childhood Care and education ('ECCE'). Since 2019, the Petitioner has been looking for employment in government schools in Delhi.

3. The present petition raises an important issue in respect of recognition of transgender persons and their rights for employment and recruitments in state departments, schools etc., under the GNCTD. The Petitioner has filed this petition seeking the following prayers:

- a. *Issue an appropriate writ, order or direction to Respondent Nos.1, 2 and 4 to notify separate vacancies for transgender persons in all advertisements issued for recruitment to teaching positions in schools administered by Respondent No. 2 with immediate effect;*
- b. *Issue an appropriate writ, order or direction to Respondent Nos. 1, 2 and 4 to adopt necessary relaxations in minimum qualifications and age for the vacancies to be issued for transgender persons;*
- c. *Issue an appropriate writ, order or direction to Respondent Nos. 1, and 4 to frame a policy for the recruitment of transgender persons in all appointments for the Government of NCT of Delhi;*
- d. *Issue an appropriate writ, order or direction to the Respondent Nos. 1, 2 and 4 to grant relaxations to transgender persons in accordance with Clause 9 of the TET Guidelines issued by NCTE;*
- e. *Issue an appropriate writ, order or direction to Respondent Nos. 1 to implement the provisions of the Transgender Persons (Protection of Rights) Act, 2019 and the Transgender Persons (Protection of Rights) Rules, 2020 in the territory of NCT of Delhi;*
- f. *Issue an appropriate writ, order or direction to the Respondent Nos. 2. and 4 to consider the Petitioner's application for any vacancy to a teaching position notified or due to be notified as a one-time measure;*
- g. *Issue an appropriate writ, order or direction to the Respondent No. 4 to permit the Petitioner to amend her registration details, to reflect her legal gender and name on the OARS;*

h. Issue a writ, order or direction to the Respondents to extend reservation to transgender persons in all public appointments in the NCT of Delhi.

4. Ld. Counsel for the Petitioner places reliance on the judgment of the Hon'ble Supreme Court in *National Legal Services Authority v. Union of India & Ors. [(2014) 5 SCC 438]*, which clearly recognizes the rights of transgender persons.

5. The grievance of the Petitioner in this case is that the vacancy notices issued by the Respondent No. 4 - Delhi Subordinate Staff Selection Board ('DSSSB') on 2nd January, 2020 and 12th May, 2021 notifying vacancies in schools administered by the Respondent No. 2 – Directorate of Education, GNCTD for the posts of assistant teacher at the primary and nursery levels, male and female TGTs for several subjects. In respect to some vacancies, no identification of gender is mentioned. However, these notices exclude transgender persons from applying for these posts. The Petitioner is also aggrieved by the fact that the DSSSB portal i.e. Online Application Registration System (OARS), when accessed, did not permit the Petitioner, who is a transgender person, to apply under the Transgender category.

6. Subsequent to the filing of the present writ petition, the DSSSB has placed on record its affidavit along with the screenshot of its OARS portal, which now clearly identifies in the field of gender - male or female or transgender i.e. all three categories.

7. Ld. counsel for the Petitioner submits that this would not be sufficient to take care of the issues raised by the Petitioner, inasmuch as, so long as the vacancies notices circulated by the DSSSB continue to mention gender as male or female, the Petitioner would choose on the portal the transgender

category but still be forced to apply in a vacancy, which is either for male or female candidates or for vacancies where no gender is mentioned. It is her submission that this would be discriminatory and would be violative of the provisions of the Transgender Persons (Protection of Rights) Act, 2019 (*hereinafter, "Transgender Act"*).

8. In addition, Id. counsel for the Petitioner submits that the Respondent No. 3 - Department of Social Welfare, GNCTD has itself recognized this position and has suggested relaxation given to the extent of age relaxation of 5 years and qualifying marks of 5%. The said letter by Respondent No. 3 dated 8th February, 2021, to the Additional Chief Secretary, GNCTD reads as under:

"Sub: Reg. age relaxation and qualifying marks relaxation for employment in Government recruitment in Delhi for Transgender persons for period of not more than 10 years.

Sir,

With reference to subject cited above it is to bring to your kind notice that the Transgender Person (Protection of Rights) Act, 2019, has been enacted in December-2019.

The Act intends to promote equal opportunities in education and employment, so as to promote their integration in the social mainstream.

In this regard, your attention is drawn to Rule 12(1) of the Transgender Person (Protection of Rights) Rules, 2020.

"Rule 12.(1) Every establishment shall implement all measures for providing a safe working environment and to ensure that no transgender person is discriminated in any matter relating to employment including, but not limited to, infrastructure adjustments, recruitment, employment benefits, promotion and other related

issues.”

The Act endeavours to mainstream the vulnerable section of transgenders who have been conspicuous by their absence in mainstream society. This department has been holding consultation with various representatives of the Transgender community wherein a demand for providing adequate opportunities for access to employment has been prominent. In order to facilitate the same, and as a measure of positive discrimination, it is requested to consider age relaxation of 5 years and relaxation in qualifying marks upto 5% for their employment in the offices of NCT of Delhi. This initiative for providing employment opportunities to Transgender persons may be considered for a period of not more than 10 years, to provide ample opportunity for their inclusion to employment. This would go long way in mitigating the problems faced by this marginalized community and will be a positive step by Delhi government in implementing the provisions of Transgender Person (Protection of Rights) Act, 2019.”

9. Mrs. Ahlawat, Id. Counsel for the Respondent No. 1,2 &4, submits that, upon becoming aware of the facts pleaded herein, the DSSSB has taken necessary steps for immediately amending the portal. In addition, she points out that the Respondent No.3, has placed on record the communication addressed to the Under Secretary (UT), MHA, Government of India dated 2nd March, 2022 and the communication addressed to the Joint Secretary (UT) MHA, Government of India dated 2nd December 2021.

10. A perusal of the said communications by the Respondent No.3 shows that it sought notification in the central gazette empowering the Administrator/ Id. LG Delhi as per provisions in clause (1) of the Article 239

of the Constitution to frame state rules as per the Transgender Act.

11. Considering these communications, which are on record, it is deemed appropriate to implead the Union of India, Ministry of Home Affairs through Under Secretary (UT), Government of India as the Respondent No.5 in the present case.

12. Issue notice to the Respondent No.5 through Id. CGSC.

13. The Respondent Nos. 1 and 2 shall also place their stand in respect of the communications received from the Respondent Nos.3. In addition, an affidavit shall be filed by the Respondent No.5 considering the relief sought by the Petitioner in terms of the notification for separate transgender positions and the stand of the Government in respect of the same. The said affidavit shall be filed within 6 weeks.

14. Insofar as the Petitioner is concerned, Mrs. Ahlawat, Id. Counsel for the Respondent No.1, 2 & 4 submits that OARS portal facility is also available for transgender persons to apply. Accordingly, the Petitioner is free to apply under the category of transgender for the vacancies which the Petitioner deems appropriate ignoring the gender mentioned *qua* the said vacancy.

15. Accordingly, the Petitioner may file applications for the said vacancies in terms of this order, which shall be considered and processed.

16. List on 28th March, 2023.

PRATHIBA M. SINGH
JUDGE

JANUARY 20, 2023/dk/kt