

REPORTABLE

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

% **Date of Decision : July 25, 2008**

+ **WP(C) No. 2576/2002**

SAROJ RANA & ANR. ... Petitioners

! Mr. Naresh Kaushik & Ms. Aditi Gupta,
Advocates.

Versus

\$ GOVT. OF NCT OF DELHI & ORS. ... Respondents.

^ Ms. Avnish Ahlawat, Advocate for
DOE.
Ms. Zubeda Begum for DSSB.

AND

+ **WP(C) No.3243/2005**

HIMANI SHARMA ... Petitioner.

! Mr. N. Prabhakar, Advocate.

Versus

\$ GOVT. OF NCT OF DELHI & ORS. ... Respondents

^ Ms. Avnish Ahlawat, Advocate for
DOE.
Ms. Zubeda Begum for DSSB.

**CORAM :
HON'BLE MR. JUSTICE S.N. AGGARWAL**

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

S.N. Aggarwal, J.

Both these writ petitions are proposed to be decided by this common judgment because question of facts and law involved in both of them are identical.

2 The short question that arises for consideration in these writ petitions is whether the subject of English studied by the petitioners as compulsory subject in all the three years of their B.A. (Pass) course meets the requirement prescribed by the respondents for recruitment of TGT (English). In other words, the question is whether the expression 'elective subject' used in the recruitment rules would include within its ambit the main subjects with at least 100 marks studied by the candidate at the graduation level during all the three years of graduation.

3 The brief facts of the case giving rise to the above question are that the Director of Education wanted to appoint teachers for their schools in Delhi and the task to select teachers was entrusted to Delhi Subordinate Service Selection Board (in short 'DSSSB'). DSSSB is respondent No. 2 in both these petitions. Respondent No. 2 vide its advertisement No. 04/2000 as published in the Times of India, New Delhi dated 11.12.2000

invited applications from eligible candidates for the recruitment to various teaching and related posts in the Department of Government of National Capital Territory of Delhi and its local and autonomous bodies/public undertakings. As per the aforesaid advertisement dated 11.12.2000, respondent No. 2 prescribed the following educational and other qualifications for the posts of TGT in Natural Science, Social Science, Mathematics, English, Hindi, Sanskrit, Urdu and Punjabi:-

"I. Bachelor's Degree (Pass/Hon) from a recognized university or Equivalent having secured at least 45% marks in aggregate in two School subjects of which at least one of the following should have been at the elective level (a) English, (b) Mathematics, (c) Social Science, (d) Physical/Natural Science.

NOTE : Main subjects 1. TGT (Natural Science/Physical Science) shall be Physics, Chemistry, Biology and Zoology.

2. TGT (Social Science) shall be History/Political Science/Economics/Business Studies/ Sociology/ Geography/ Physiology.

Provided that the requirement as to minimum of 45% Marks in the aggregate at graduation level shall be relaxable in the case of :-

A). who possess a post graduate qualification in any of the Teaching subject listed above.

B) belonging to SC/ST.

C) Physically handicapped category.

II. Degree/Diploma in training education or SAV certificate,*

III. Working knowledge of Hindi.

Provided that Assistant Teachers (from MCD/Directorate of Edn) and Lab Assistant shall not be required to have received 45% marks in

aggregate in Bachelor's degree (Pass/Hon.) or equivalent.

**NOTE : Only those diplomas in teaching will be considered where the minimum qualification required at the entry point is graduation and which are recognized by NCTE as equivalent to B.Ed."*

4 It was mentioned in the aforesaid advertisement No. 04/2000 dated 11.12.2000 that the mode of selection may include any one or more of the following, namely:- Preliminary examination/Main examination/ Personal interview, etc as and where considered necessary.

5 The petitioners in both these writ petitions, who fulfill all the educational qualification and other eligibility conditions, had applied for the posts of TGTs in respective subjects in the manner prescribed therein in the advertisement referred above.

6 The petitioners were issued admit cards by respondent No. 2 for the purpose of written examination along with a scheme of examination wherein it was clearly mentioned that the result of written examination was to be drawn subject-wise and in order of merit.

7 Respondent No. 2 conducted a written examination for the posts advertised on 11.12.2000 at various centres of Delhi and New Delhi on 15.07.2001. The petitioners in both these petitions along with thousands of other candidates appeared in the aforesaid written examination. The petitioners have stated that in the past respondent No. 2 had selected the

candidates for appointment as teachers only on the basis of their performance in the written examination and those who qualified the written examination were recommended by respondent No. 2 Board for their appointment for the concerned posts.

8 Respondent No. 2 declared the result of written examination for the posts of TGTs held on 15.07.2001 and declared 2206 candidates as successful vide its public advertisement as published in the Hindustan Times dated 09.11.2001. All candidates who have been qualified in the written examination were directed by respondent No. 2 to submit their certified documents in support of their educational qualification and other eligibility conditions to the Board in person on or before 29.11.2001.

9 It is stated that the petitioners in both these petitions were declared successful in the written examination along with the other candidates who had qualified the said examination. The petitioners are stated to have submitted required certificates before respondent No. 2 Board well within the prescribed time.

10 The petitioners have further stated that the call letters issued by respondent No. 2 to them have clearly mentioned that the information as contained in the letters required from them was simply to verify their eligibility for the posts of TGTs applied for. However, respondent No. 2 did not declare the petitioners successful for the appointment for the posts of

TGTs vide its impugned result notice dated 11.02.2002 and various other dates(as the Board declared the result of TGTs of various subjects on different dates).

11 The petitioners have alleged that respondent No. 2 after declaring the result of written examination and holding 2206 candidates including them as successful, did not take any personal interview etc. of the successful candidates and therefore nobody was aware of the fact as to what procedure was adopted by respondent No. 2 in declaring the candidates as finally selected. Respondent No. 2 is stated to have not disclosed any rules, which it has followed in declaring the impugned result and under what procedure, respondent No. 2 has declared rest of the candidates ineligible for the post. Since the names of the petitioners did not find place in the final select list for their appointment to the posts of TGT (English), they have filed the present writ petition seeking issuance of a writ in the nature of certiorari or any other writ, order or direction quashing the impugned result dated 11.02.2001 and of various other dates for the posts of TGT as declared by respondent No. 2 on its notice board and to further issue a writ in the nature of mandamus or any other writ, order or direction directing the respondents to declare the result of the examination held on 15.07.2001 afresh in accordance with the prescribed rules.

12 When the writ petition filed by the petitioner Ms. Himani Sharma being WP(C) No. 3243/2005 came up for admission hearing before the Court for the first time on 25.02.2005, this Court directed the respondents to keep one post of TGT (English) vacant for her till further orders to the contrary. This Court vide its letter dated 25.02.2005 while reserving one post for the petitioner Ms. Himani Sharma vacant had noted as follows:-

“This case relates to the selection to the post of TGT (English) in schools run by the NCT of Delhi (User). The recruitment rules of the user clarify as follows- “As per policy the definition of elective in R/Rs has been framed as that the candidate should have studied the main subject concerned as mentioned in R/Rs of at least 100 marks each in all parts/years of graduation.”

I have perused the mark-sheet of the Petitioner which shows that English was one of the four subjects which she had studied at the B.A. level, along with Hindi compulsory and Sanskrit elective. Significantly the Petitioner has also cleared M.A. In English. She has appeared in the examinations conducted by DSSSB and has been ranked 17th. At this stage that the DSSSB has taken the stand, which I consider inexplicable, that she has not studied English as an elective subject. Even if the fact of her having cleared M.A. in English is discounted since it was not one of the specified/advertised conditions, the Petitioner appears to have all the pre-requisite for appointment.”

13 In the other writ petition filed by Ms. Saroj Rana and two others being WP(C) No. 2576/2002, no interim orders were passed by this Court and the said petition has been heard along with the connected petition of

Ms. Himani Sharma being WP(C) No. 3243/2005 as the cases of the petitioners in both these writ petitions are similar.

14 Director of Education has been impleaded as respondent No. 3 in both these petitions. However, the name of Director of Education has been ordered to be deleted from the array of respondents in the petition of Ms. Himani Sharma vide order dated 25.02.2005 passed in her petition. Director of Education continued to remain party as respondent No. 3 in the other petition of Ms. Saroj Rana and two others (WP(C) No. 2576/2002). In fact respondent No. 2 (DSSSB) is the main contesting respondent in these proceedings.

15 Respondent No. 2 (DSSSB) has filed its counter affidavit in response to notice of these petitions. It is contended in the counter affidavit filed on behalf of DSSSB that the petitioners have no vested right to claim appointment on the advertised posts as a candidate is required to be selected on the basis of written examination and weightage and score in academic qualification as duly notified to the public at large. The contesting respondent has taken a preliminary objection that these petitions are not maintainable unless the petitioners clearly bring out the *mala fides* on its part or show that the action of the answering respondent in selecting the candidates was in any manner arbitrary, irrational or discriminatory in nature. It is contended that the petitioners have not

placed any such material on record and therefore according to respondent No. 2, the present writ petition merits straightway dismissal. On merits of the case, respondent No. 2 has taken a stand that the petitioner Ms. Saroj Rana was not selected for appointment as TGT (English) as she was not eligible as per recruitment rules whereas in case of other two petitioners namely Mr. Vijay Kumar Garg and Mr. Vikesh Kumar Singh, the stand of respondent No. 2 is that they were not selected as they were lower in merit to the last selected candidate in respective category. As far as case of the petitioner Ms. Himani Sharma is concerned, the reasons for her non-selection given by respondent No. 2 in its counter affidavit is that she was not selected because she did not confirm to the recruitment rules prescribed for the posts of TGT (English) by user department. In view of the counter affidavit filed by respondent No. 2 in response to notice of these petitions, Mr. Naresh Kaushik, learned counsel appearing on behalf of the petitioners in WP(C) No.2576/2002 stated that he has instructions not to press the said petition on behalf of petitioners No. 2 & 3 namely Mr. Vijay Kumar Garg and Mr. Vikesh Kumar Singh and for that reason, the petition being WP(C) No.2576/2002 qua petitioners No. 2 & 3 namely Mr. Vijay Kumar Garg and Mr. Vikesh Kumar Singh is dismissed as not pressed.

16 The petition being WP(C) No.2576/2002 survives only with regard

to one person namely Ms. Saroj Rana only who had passed the written examination held on 15.07.2001 but was not finally selected.

17 It may be seen from the counter affidavit in reply to these petitions filed on behalf of respondent No. 2 that the same reason has been given by respondent No. 2 for not selecting the petitioner Ms. Saroj Rana in WP(C) No.2576/2002 and the petitioner Ms. Himani Sharma in WP(C) No. 3243/2005. The reasons for their non-selection given by respondent No. 2 is that neither Ms. Saroj Rana nor Ms. Himani Sharma had studied English as an elective subject in all the three years of B.A. (Pass) course as required under the relevant rules and therefore they were not eligible for appointment to the posts of TGT (English).

18 The case of the petitioner Ms. Saroj Rana in WP(C) No. 2576/2002 is that she has passed B.A. (Pass) course from Maitri College, Delhi University with English as a compulsory subject with 100 marks in all the three years. She is stated to have also done M.A. in English on the basis of B.A. (Pass) course which she qualified in second division from Maharishi Dayanand University in 1998.

19 The case of the petitioner Ms. Himani Sharma in WP(C) No. 3243/2005 is that she has done her post graduation in English and has had an extraordinary brilliant academic record with 70% marks at the level of graduation and 62% marks at the post graduation level i.e. M.A.

in the subject of English besides having a degree of B.Ed to her credit from the Maharishi Dayanand University, Rohtak, a recognized University.

20 It is the case of the petitioners in both the writ petitions that they both have studied English as a compulsory subject with 100 marks in all the three years of B.A. (Pass) course besides post graduation degree of M.A. in English. The qualification required under the recruitment rules for the post of TGT (English) is that a candidate should have B.A. (Pass/Hons) from a recognized university with English as an elective subject. The word 'elective; used in the recruitment rules has been clarified by the Directorate of Education, Estb. III Branch, Government of N.C.T. Vide corrigendum No. F.D.E.3 (42).E.III/99 dated 13.03.2000 (Annexure A-3) extracted hereinbelow:-

“As per policy the definition of Elective in R/Rs has been framed as that the candidate should have studied the subject concerned as mentioned in the R/Rs of at least 100 marks each in all parts/years of graduation. The Elective word may also include main subject as practised in different Universities.”

21 Respondent No. 2 in para 2 of its preliminary submission in its reply which is at page 50 of the petition of Ms. Himani Sharma (WP(C) No. 3243/2005) has stated as follows:-

“That as per policy of the Department Elective subject as specified in the Recruitment Rules may be interpreted to mean

all those who have passed the concerned subject in all the year/semesters of Graduation as the case may be with at least 100 marks paper each year/semester in the concerned teaching subject as the case may be. The Elective word may also include main subject as practiced in different Universities.”

22 In view of what has been stated by the Government of NCT of Delhi in the corrigendum dated 13.03.2000 referred above and in view of stand of respondent No. 2 in para 2 of its preliminary submission in the case of Ms. Himani Sharma, there can be no manner of doubt in holding that the petitioners in both the writ petitions namely Ms. Saroj Rana and Ms. Himani Sharma possessed the requisite qualification of B.A. (Pass/Hons) with English as one of the main subjects of study prescribed under the relevant rules for appointment to the posts of TGT (English).

23 It shall further be relevant to mention that the Director of Education has communicated to one of the candidates Mr. Kishan Chander Sharma vide its letter dated 05.03.2007 while supplying information under the Right to Information Act that as per the existing information available on records, the elective subject stands for main subject studied by the candidate at the graduation level during all the years of graduation with at least 100 marks. This communication dated 05.03.2007 by the Director of Education is admitted by the counsels who appeared on behalf of the respondent. In view of the legal position regarding the meaning to be assigned to the expression 'elective subject' used in the recruitment rules

as explained hereinabove, the judgment of this Court in *Pratap Singh Chaudhary Vs. Government of NCT of Delhi and Others in WP(C) No. 1954/2002* decided on 30.05.2002 is not applicable to the facts and circumstances of the present case. The said judgment is distinguishable on facts. In *Pratap Singh Chaudhary's* case (Supra), the candidate whose case was considered by the Court had the option to study English literature as an elective subject but despite having the said option, since he did not study English literature as an elective subject in his B.A. (Pass) course, the Court held that the general English studied by that candidate in his B.A. (Pass) course, cannot be equated with elective English paper in terms of recruitment rules for the post of TGT (English). In the case of *Pratap Singh Chaudhary*, the corrigendum dated 13.03.2000 which is referred in para 20 of this judgment was not before the Court. In the case in hand, the petitioners in both the writ petitions have studied English as one of the main subjects in all the three years of their B.A. (Pass) course. The subject of English studied by them carry 100 marks in all the three years of their graduation. The answer to the question whether the main subject of English studied by the petitioners in all the three years of their B.A. (Pass) course would fit in the description of 'elective subject' used in the R/Rs lies in the corrigendum dated 13.03.2000 extracted in para 20 of the judgment hereinabove. The corrigendum dated 13.03.2000 clearly

provides that as per the policy of the department 'elective subject' specified in the recruitment rules would be interpreted so as to include passing of the concerned subject by the candidate in all the years/ semesters of graduation with at least 100 marks paper each year/semester in the concerned teaching subject as the case may be. In the present case, the petitioners were to be recommended by respondent No. 2 for their appointment as TGT (English). In the present case, both the petitioners namely Ms. Saroj Rana and Ms. Himani Sharma have studied English as main subject in all the three years of their graduation and have passed the paper in English Subject in all the three years carrying 100 marks each. This meets the requirement of the recruitment rules prescribed for appointment to the post of TGT (English).

24 It is not disputed that both the petitioners namely the petitioner Ms. Saroj Rana and the petitioner Ms. Himani Sharma have passed the written examination held for recruitment to the post of TGT (English). It is further not in dispute that the candidates who were lower in merit than the petitioners have already got appointment in the schools under the Director of Education on the recommendations of respondent No. 2. These petitioners were denied appointment to the post of TGT (English) because they allegedly did not meet the requirement of recruitment rules

of having studied English as an elective subject in their graduation. The reason given by respondent No. 2 in not recommending them for their appointment has been found to be non-existent. Since people lower down in the merit list of the successful candidates have already been appointed to the post of TGT (English), the petitioners Ms. Saroj Rana and Ms. Himani Sharma have to be recommended by respondent No. 2 for their appointment by Director of Education to the post of TGT (English), if they are otherwise eligible for their such appointment.

25 This Court vide its order dated 25.02.2005 passed in the writ petition of Ms. Himani Sharma being WP(C) No. 3243/2005 has ordered for keeping one post of TGT (English) vacant. We have two persons before us who have now to be recommended for their appointment as TGT (English). The petitioners who have shown that they were entitled to be appointed to the post of TGT (English) along with other candidates cannot be denied appointment for no fault on their part. The appointment of teachers in the schools under the control of Director of Education is an on going process. Accordingly, respondent No. 2 is hereby directed to immediately recommend the names of the petitioners Ms. Saroj Rana and Ms. Himani Sharma to the Director of Education for their appointment to the post of TGT (English) in case they are otherwise eligible for such

appointment. The seniority of the petitioners in the cadre of TGTs shall be decided by the respondents on the basis of their merit position in the select list. The petitioners, however, shall not be entitled to any salary for the period prior to the date of their joining the service of the respondents on the principle of 'no work no pay'.

26 Both these petitions are allowed in terms referred hereinabove. The parties are left to bear their own costs.

July 25, 2008
'a'

S.N.AGGARWAL
[JUDGE]