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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Writ Petition (C) 7297 of 2007

Reserved on : 11th August, 2008

% Date of Decision : August 28th, 2008

Sachin Gupta & Others

..... Petitioners

Through Mr. Ajay Kumar, Advocate

Versus

Delhi Subordinate Services

..... Respondents

Selection Board (DSSSB)

Through Ms. Avnish Ahlawat, Advocate

Through its Chairman & Ors.

WITH

WP(C)No.7395/2007, WP(C)No.7522/2007, WP(C)No.7588/2007,
WP(C)No.7589/2007, WP(C)No.7590/2007, WP(C)No.7611/2007,
WP(C)No.7612/2007, WP(C)No.7613/2007, WP(C)No.7614/2007,
WP(C)No.7656/2007, WP(C)No.7661/2007, WP(C)No.7682/2007,
WP(C)No.7684/2007, WP(C)No.7687/2007, WP(C)No.7693/2007,
WP(C)No.7695/2007, WP(C)No.7696/2007, WP(C)No.7697/2007,
WP(C)No.7699/2007, WP(C)No.7704/2007, WP(C)No.7742/2007,
WP(C)No.7743/2007, WP(C)No.7747/2007, WP(C)No.7748/2007,
WP(C)No.7750/2007, WP(C)No.7751/2007, WP(C)No.7757/2007,
WP(C)No.7760/2007, WP(C)No.7763/2007, WP(C)No.7764/2007,
WP(C)No.7766/2007, WP(C)No.7841/2007, WP(C)No.7845/2007,
WP(C)No.7846/2007, WP(C)No.7847/2007, WP(C)No.7848/2007,
WP(C)No.7850/2007, WP(C)No.7852/2007, WP(C)No.7853/2007,
WP(C)No.7854/2007, WP(C)No.7855/2007, WP(C)No.7856/2007,
WP(C)No.7879/2007, WP(C)No.7896/2007, WP(C)No.7897/2007,
WP(C)No.7902/2007, WP(C)No.7903/2007, WP(C)No.7904/2007,
WP(C)No.7908/2007, WP(C)No.7921/2007, WP(C)No.7934/2007,
WP(C)No.7936/2007, WP(C)No.7946/2007, WP(C)No.8071/2007,
WP(C)No.8107/2007, WP(C)No.8108/2007, WP(C)No.8109/2007,
WP(C)No.8110/2007, WP(C)No.8150/2007, WP(C)No.8218/2007,
WP(C)No.8224/2007, WP(C)No.8233/2007, WP(C)No.8360/2007,
WP(C)No.8387/2007, WP(C)No.8411/2007, WP(C)No.8430/2007,
WP(C)No.8463/2007, WP(C)No.8699/2007, WP(C)No.8700/2007,
WP(C)No.8749/2007, WP(C)No.47/2008, WP(C)No.386/2008,
WP(C)No.8420/2007, WP(C)No.9173/2007, WP(C)No.3127/2008,
WP(C)No.1868/2007, WP(C)No.7842/2007, WP(C)No.3676/2008,
WP(C)No.3677/2008, WP(C)No.3918/2008, WP(C)No.4774/2008,
WP(C)No.4784/2008, WP(C)No.5533/2008, WP(C)No.5537/2008,
WP(C)No.5546/2008, WP(C)No.5552/2008, WP(C)No.5708/2008,
WP(C)No.5756/2008, WP(C)No.5782/2008, WP(C)No.5796/2008

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Mr. R.K. Saini, Advocate in

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Mr. Alok Sangwan, Advocate in

WP(C)No. 7760/2007, 7764/2007, 7841/2007 & 5782/2008

Mr. Siddharth Aggarwal, Advocate in

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Mr. Sanjeet Kumar Trivedi,
Advocate in

WP(C)No. 3676/2008

Mr. H.K. Chaturvedi, Advocate in

WP(C)No. 5708/2008

Mr. Madhu Sudan Bhayana,
Advocate in

WP(C)No. 5756/2008

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Mr. Mukesh Gupta, Advocate.
Ms. Smita Shankar with Ms.
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Ms. P.L. Gautam, Advocate.
Ms. Nalin Tripathi, Advocate.
Mr. Sanjeev Sabharwal, Advocate.

Govt. of NCT/DSSSB/
Dept. of Education

Ms. Avnish Ahlawat with Ms. Nidhi
Gupta, Advocates.
Ms. Reeta Kaul, Advocate.
Ms. Zubeda Begum, Advocate.
Ms. Ruchi Sindhwani, Advocate.
Mr. D.P. Kaushik with Mr. Sudhir
Sharma, Advocates.
Ms. Meera Bhatia, Advocate.

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Ms. Ruchi Sindhwani, Advocate.

Mr. D.P. Kaushik with Mr. Sudhir Sharma, Advocates.

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CORAM:
HON'BLE MR. JUSTICE MANMOHAN SARIN
HON'BLE MR. JUSTICE MANMOHAN

1. Whether Reporters of local papers may be allowed to see the judgment? **Yes**
2. To be referred to the Reporter or not? **Yes**
3. Whether the judgment should be reported in the digest? **Yes**

J U D G M E N T

MANMOHAN, J :

1. The present batch of writ petitions have been filed challenging both the Directorate of Education's Notification dated 8th May, 2006 and the Department of Urban Development's Notification dated 13th July, 2007 notifying Recruitment Rules for appointment to the post of Assistant Teachers (Primary) in the Government of NCT of Delhi and Municipal Corporation of Delhi as being unconstitutional, illegal and arbitrary.
2. While the Government of NCT of Delhi has notified its Recruitment Rules, (hereinafter referred to as 'RRs') by virtue of power conferred by Proviso to Article 309 of the Constitution, Municipal Corporation of Delhi has exercised its power under Section 98 and followed the procedure prescribed in Section 480(2) of the Delhi Municipal Corporation Act, 1957. It is pertinent to mention that both the RR's of Government of NCT of Delhi and MCD are identical.
3. Both the RR's mandatorily prescribe as essential eligibility criteria not only a minimum and maximum eligible age as 20 and 27 years

respectively but also prescribe passing of Hindi subject at secondary level and minimum 50% marks in the senior secondary examination.

4. It has been alleged that the impugned RRs are illegal, arbitrary and unconstitutional because they constitute a departure from the past regulations with regard to three essential criterias namely age, marks and language. Prior to the impugned RRs, the age limit for participating in the Assistant Teachers (Primary) examination conducted by the Respondent was 32 years for male candidates and 42 years for female candidates and study of Hindi as a subject at secondary level was not mandatory. Under the old RRs 50% marks at senior secondary level was also not an essential eligibility criteria.

5. Mr. Aman Lekhi, learned Senior Counsel for some of the Petitioners in the present batch of the writ petitions, submitted that the Respondents have not given any reason for effecting such drastic changes in the essential eligibility criteria. He contended that neither any study was undertaken nor data collected on the basis of which the changes in the new eligibility conditions could be justified. He submitted that discretion empowers the Government to do what it ought to do and not what it likes, as it cannot act arbitrarily but only in a legal and regular manner and that too based on relevant consideration of facts and circumstances. According to him, a justification based upon prerogative cannot be advanced even in the country of its origin, as even in England, it does not confer unreviewable discretion. While conceding that ordinarily, courts

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may not interfere with the question of policy, he submitted that exception is nevertheless made on the grounds of unreasonableness and arbitrariness – which arise in the present case.

6. Mr. Lekhi further stated that MCD in its counter-affidavit had only given one justification for change of age namely that the then prevailing age criteria was contrary to Government's Memorandum dated 30th November, 1988. He submitted that the said Memorandum had not been followed for twenty years and it had fallen into disuse. He further submitted that consistent usage contrary to the said memorandum suggested that the said memorandum had lost its force even without express repeal.

7. Mr. Lekhi further submitted that the doctrine of legitimate expectation was attracted in the present case as the prospectus of the two year Elementary Teachers Education course expressly professed that it was *"carefully designed to prepare teachers at elementary level in Delhi"* and the said prospectus contained a minimum and maximum age of enrollment as 17 and 30 years respectively, thereby representing that aspirants between 19 to 32 years would be eligible for appointment to the post of teachers in Delhi. In not taking that expectation into account, the Respondents acted unreasonably by ignoring circumstances proximate and relevant for acceptable decision. He submitted that the doctrine so applied is not contrary to the statute and persisting with change in age would render the very option of studying such a course futile.

8. Mr. Lekhi also referred to the Notification dated 1st November, 1980 which gives a relaxation of ten years to women candidates. The said Notification is reproduced hereinbelow for ready reference :-

"General Age Relaxation of 10 Years for Women Candidates for Recruitment to Teachers Post.

1. In exercise of the powers vested in him under Rule 43 of the Delhi School Education Rules, 1973, the Administrator is pleased to prescribe for women candidates a general relaxation for 10 years in the maximum age limits prescribed in the Recruitment Rules for recruitment to various posts of teachers in Delhi Schools.

2. The Managing Committees shall, while considering women candidates for appointment to vacancies in their schools, consider such candidates as per the revised age limit for women candidates."

9. According to him, this Notification is consistent with Article 15(3) of the Constitution of India and the reason advanced by the Respondents for withdrawal of the said relaxation namely that the said Notification issued under Rule 43 of the Delhi School Education Rules, 1973 has no application to government school teachers is baseless as both government and Municipal Corporation of Delhi schools are covered by the said Rule.

10. According to Mr. Lekhi, it is patently unreasonable to suggest that a person having studied Hindi at higher than secondary level would not be familiar with 'basic grammatical skills' so as to effectively teach students.

The condition of having studied Hindi at secondary level, according to him, has been held to be unreasonable by this Court in **Mrs. Manju Pal Vs.**

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**Government of NCT of Delhi and Anr. reported in 2002 Vol. 2 Apex
Decision Delhi 548.**

11. Ms. Deepali Gupta, appearing for some of the Writ Petitioners, contended that the age limit prescribed for the two year eligibility professional course (ETE/JBT etc.) was between 17-30 years and, therefore, those candidates who had secured admission in the said professional course either at the age of 27 and beyond or at the age of 17 would be rendered ineligible to compete due to the new prescribed age limit of 20-27 years.

12. She further submitted that impugned RRs are ultra vires the National Council of Teacher Education Act, 1993, hereinafter referred to as the NCTE Act, which had been enacted by the Parliament in exercise of its power under Entry 66 of List I of Schedule VII to the Constitution. She referred to the Preamble of the NCTE Act which states :-

"An Act to provide for the establishment of a National Council for Teacher education with a view to achieving planned and coordinate development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith."

13. She further stated that in exercise of powers conferred under Clause (d)(I) of sub-section (2) of Section 32 read with Section 12(d) of the NCTE Act, 1993 vide Gazette Notification dated 4th September, 2001 the Council had framed '*The National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools)*

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Regulations, 2001 for recruitment of teachers in all the schools run by Central or State Governments and other authorities for imparting education at pre-school, nursery, elementary (primary, upper primary and middle school), secondary and senior secondary stages. She submitted that once the Regulations had been framed under the NCTE Act, neither the State Government nor any authority under the State had any power or authority or jurisdiction to frame regulations upon the said subject contrary to or inconsistent with the NCTE Regulations. In this connection she relied upon the judgment of the Apex Court in ***State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya & Ors. reported in JT (2006) 4 SC 201*** wherein it has been held :-

"In the present case, as the field was fully occupied by Entry 66 of List I of Schedule VII to the Constitution and Parliament has enacted 1993 Act, it was not open to the State Legislature to exercise power by making an enactment. Such enactment, as per decisions of this Court, would be void and inoperative."

14. Consequently she contended that the impugned RRs being inconsistent with Regulations framed under the NCTE Act, 1993 were ultra vires and unconstitutional.

15. Mr. Raman Duggal, appearing for another batch of Writ Petitioners, also referred to the NCTE Act and submitted that the National Council of Teacher Education was the controlling and regulatory authority at the national level upto senior secondary teachers. He stated that in every State, there was a State Council of Educational Research and Training

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(SCERT) and one of its primary duty was to bring about uniformity in the entire state in qualification of teachers. He further stated that District Institutes of Education and Training (DIET) had been set up to offer a two year Diploma of Elementary Teacher Training (ETE).

16. Mr. Duggal referred in great detail to the 'Foreword of Diploma course in ETE' published by SCERT of Govt. of Delhi. The relevant portion of the Foreword is reproduced hereinbelow for ready reference :-

FOREWORD

The State Council of Educational Research and Training (SCERT), Delhi is an autonomous body of the Government of NCT of Delhi established in 1988. It is the nodal agency recognized by the National Council of Teacher Education (NCTE) for admission, curriculum construction, course conduct, guidance, Examination and certification of the pre-service training programme for elementary school teachers- the two years Diploma for Elementary Teacher Education (ETE) presently being offered in the nine District Institutes of Education & Training (DIETs) and four recognized private institutes in Delhi.

ETE is a carefully designed programme based on NCTE guidelines to prepare teachers at the preliminary level for the schools of Delhi. The curriculum is reviewed periodically by a Curriculum Committee comprising experts with long experience in the area of elementary education. The quality of teacher education being offered at DIETs has received appreciation by personnel of the school systems that receive our teacher trainees as teachers upon completion of the ETE programme. The ETE Programme consists of theory and practical work in DIETs, schools and the communities around the schools. A variety of activities undertaken in the DIETs such as morning assembly, sports and cultural programmes, debates, work experience, art, etc. offer students an opportunity to experience a reflection of life in schools.

DIETs are academic resource centers established to promote achievement of the twin goals of universalization of elementary and adult education. Students of DIETs will have the opportunity to participate in many activities of DIETs which are as under:

- *In-service training and orientation programmes for teachers, heads of schools, administrators, instructors and supervisors of adult education, community leaders etc.*
- *Action research and experimentation for improving classroom pedagogy teaching, learning materials, material development, curricula and community involvement in school education.*
- *Publications*
- *Involvement in institutional programmes & research both during and after training as & when needs arise.*

While all DIETs offer curricular content of equivalent quality and engage in similar functions, each DIET has a unique history of development that has generated unique resources. Engaging in the activities of DIETs is a rich experience that can be fully appreciated in later years of professional advancement.

The four private institutes that offer ETE for female candidates only are recognized by GNCT of Delhi and NCTE and offer a common curriculum with DIETs.

ETE is a professional programme. Candidates selected for admission are requested to take the programme with seriousness and undergo two years of rigorous educational experience with a commitment to become teachers of young children, rather than view it as a means to a 'job'.

Elementary education in Delhi is an area full of exciting opportunities for learning and professional growth. Those who are selected for admission must appreciate the unique opportunity being offered over thousands of other aspirants and live up to expectations to become some of the finest teachers in Delhi."

17. According to Mr. Duggal the qualifications prescribed by the statutory authorities under the NCTE Act have worked well for the last twenty-eight years and there was no reason for changing the qualifications overnight. He contended that the action of the Respondents in issuing the impugned RRs was arbitrary, mindless and had adversely affected the vested rights of students who were pursuing the ETE course.

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18. Mr. Duggal submitted that the 'son cannot be taller than the father' inasmuch as a student could complete his ETE course till the age of 32 but could not sit for the exams conducted by the Respondents beyond the age of 27 years. He contended that the intent behind the ETE course, which was the basic eligibility criteria, would stand frustrated if ETE graduates were not to be eligible to be considered for the post of Assistant Teachers (Primary). He submitted that the new age criteria has no nexus with object sought to be achieved by way of enactment of the new RRs.

19. Mr. R.K. Saini, Advocate appearing for some of the Petitioners stated that he was challenging the impugned RRs in so far as they prescribed a minimum eligibility age of 20 years. He stated that the basic educational qualification prescribed in the impugned RRs could be completed by the age of 19 years as the minimum eligibility age for ETE entrance was 17 years. He submitted that prescribing a minimum qualifying age entailed loss of career time for an aspirant who was otherwise duly qualified. He submitted that such a restraint was arbitrary and unreasonable.

20. Mr. Alok Sangwan, appearing for another batch of Writ Petitioners, pointed out that essential age prescribed for primary teachers in other States was much higher. In Haryana the maximum age limit was 40 years, while in Jharkhand it was 35 years. He contended that Delhi has the lowest age slab i.e. between 20 to 27 years.

21. Mr. Jasbir Singh Malik, appearing for another batch of Writ Petitioners, submitted that the age restriction between 20 to 27 years was counter productive as it tended to restrict competition as well as available talent.

22. Mr. Adarsh Saini, appearing for some of the Writ Petitioners, contended that the age limit prescribed in the new RRs was illegal and invalid as the earlier age relaxation granted to women candidates upto 42 years of age had not been withdrawn. He referred to the above mentioned Notification dated 1st November, 1980 issued under Rule 43 of the Delhi School Education Rules.

23. Ms. Manjusha Verma, appearing for some of the Writ Petitioners urged that the change in RRs could only be prospective and the Respondents had no power to give them retrospective effect.

24. Mr. K. Venkatramani, appearing for another batch of Writ Petitioners impugned the RRs to the extent that they prescribed minimum 50% marks at senior secondary level. He submitted that the said criteria had no nexus with the object sought to be achieved. He stated that the basic degree for appointment of a primary teacher was the ETE diploma course, for which no minimum percentage had been stipulated. Consequently, he submitted that the stipulation of minimum marks in senior secondary exams was arbitrary and irrational.

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25. Mr. Tarun Sharma, appearing for another batch of Writ Petitioners impugned the mandatory condition of passing Hindi subject at secondary level. He contended that having a higher educational qualification could never be a disqualification for getting a post for which a lower qualification is prescribed. In this context he also placed reliance on the judgment of **Mrs. Manju Pal** (Supra).

26. In reply, Mrs. Avnish Ahlawat, Standing Counsel for Government of NCT of Delhi took us through the entire gamut of recruitment rules framed by the Directorate of Education beginning from 28th June, 1960 to the amendments of 17th November, 1984, 26th May, 1993, 19th June, 1998 and finally to the impugned RR dated 8th May, 2006. She pointed out that the age limit for Assistant Teachers (Primary) was never more than 30 years. According to her the changes in essential criteria of RRs from 1960 were as follows :-

"(i) In the 1960 Rules the post as a promotional post only with qualifications BA or BSc from recognized university. Age below 30 years.

*(ii) 17.11.84 As per 1984 Rules.
The education qualification was bachelor's degree with English as one of the subject from a recognized university with JBT/BTC Trained desirable B.Ed or its equivalent.
Age below 30 years.*

(iii) 26.5.1993

*The educational qualification was reduced to Higher secondary/senior secondary/intermediate with respective subject/language from recognized university/Board with JBT/ETE course.
Age below 30 years.*

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(iv) 29.6.98
Higher secondary/senior secondary/intermediate with
respective subject/language from recognized university/Board.
2 Years JBT/ETE course.

(v) 08.05.06
Age – 20-27 years.

Educational qualifications

- (a) Senior secondary (10+2) or intermediate or its
equivalent with 50% marks from a recognized Board.
- (b) Two years diploma certificate courses in ETE/JBT or
B.Ed or equivalent from recognized university.
- (c) Must have passed Hindi as a subject at secondary level.

Desirable

Computer knowledge."

27. She stated that the stand of the Directorate of Education was that the impugned RRs had been framed after due deliberation, initially by the Geeta Sagar Committee which looked into certain complaints and grievances of Municipal Corporation of Delhi teachers and later on by the administrative department and services department. She further stated that the essential criteria fixed in the impugned RRs were in conformity with the Delhi Administration's Office Memorandum dated 30th November, 1988. According to her the said office memorandum deals with consolidated guidelines issued by the Government of NCT of Delhi and the said guidelines comprehensively deal with as to how the promotions are to be made. She pointed out that under Clause 3.5, review of RRs is required to be made every five years with a view to effect such changes as are necessary to bring them in conformity with changed position including addition or reduction in the strength of lower or higher level posts. Under

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Clause 3(13), the RRs including their amendment are to be approved at the level of administrator after obtaining the concurrence of Services-II Department and UPSC. Sub-clause 4(5) stipulates that advice of Services-II Department is binding on the department. Sub-clause 4(12) indicates that in case of group C and D posts, proposal of framing of RRs is to be processed by the administrative department concerned for obtaining approval of the Chief Secretary, Lt. Governor after receipt of advice of Services-II Department. She pointed out that in accordance with Clause 6(2.10) of the said OM the age limit for group C and D posts was to be between 18 to 25 years.

28. Mrs. Ahlawat also referred in extenso to the Government file. She contended that the Administrative Department vide its note dated 2nd August, 2002 submitted a proposal for amendment of the RRs applicable to both the Directorate of Education and Municipal Corporation of Delhi. A chart was also prepared where the existing Rules and proposed amendments were mentioned. In Column No. 6, the existing age was shown as below 30 years while the proposed age was shown as below 32 years for male candidates and 42 years in the case of female candidates and that too relaxable in certain conditions. She further stated that the matter was thereafter discussed in various meetings with the Directorate of Education. In fact, in the meeting held on 8th December, 2003, a proposal was mooted for amendments in RRs for increasing the percentage of marks as eligibility criteria for getting better and talented teachers so as to

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provide quality education to students. The intent of proposed changes was also to provide better promotional avenue for teachers working in Government of NCT of Delhi and Municipal Corporation of Delhi. Proposals for increase in age from 30 to 32 years in case of male candidates and 42 years in case of female candidates did not find favour with officials on the ground that as per Government's guidelines the upper age limit for direct recruitment could only be 25 years as Assistant Teachers (Primary) was a group C post and as per Government of India Notification dated 21st December, 1998, with two years increase, the highest age could only be 27 years.

29. She further pointed out that the Services Department in its note dated 12th January, 2005 also dealt with the Notification of Lt. Governor dated 1st November, 1980 by observing that the said Notification was issued under Rule 43 of Delhi School Education Rules, 1973 which rule applied only to private schools. She submitted that the teachers of Government schools are Government employee and are guided by the terms and conditions in the matter of age for appointment to a post as is applicable in respect of other employees of the Government as laid down by the Department of Personnel and Training, Government of India from time to time. Mrs. Ahlawat further stated that a fresh proposal was put up starting from page 37 of the note where minimum 50% marks were prescribed and knowledge of Hindi as a subject at secondary level was made mandatory. The proposal to enhance the age from 30 to 40 years

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was again mooted. However, the Services Department approved the age limit proposal only between 20 to 27 years relaxable in case of SC/ST/OBC/PH/Ex Servicemen. The essential qualification of having 50% at senior secondary level and Hindi as a subject at secondary level as well as the two years diploma in ETE/JBT were also suggested.

30. The Administrative Department, Directorate of Education, was still of the opinion that a candidate should have passed Hindi as a subject at secondary level and sought approval of Lt. Governor to insert it as an essential eligibility criteria. At page 55 of the note file, the Chief Secretary opined that as Hindi was a language of communication and learning for all students in Delhi Schools, making Hindi as an essential qualification at secondary level would help the students enormously. The Lt. Governor approved the amendment and, therefore, the Notification of 8th May, 2006 was issued amending the RRs. Mrs. Ahlawat contended that the above facts would clearly show that the impugned RRs had been issued by the Respondents after due deliberation.

31. Consequently, Mrs. Ahlawat submitted that while the age limit in the impugned RR was in conformity with the Government of India as well as State Governments OM with regard to age limit prescribed for Group C and D posts, the minimum eligibility condition of 50% marks at secondary level and knowledge of Hindi as a subject were perfectly legitimate and had a rational relation to the object sought to be achieved.

32. Mrs. Ahlawat lastly submitted that prescribing educational qualifications, and age limits were the prerogative of the legislature as well as the executive and the courts should be slow to interfere with the same. In this connection Mrs. Ahlawat referred to and relied upon ***Union of India & Ors. Vs. Shivbachan Rai reported in (2001) 7 SLR page 595*** wherein it has been held :-

"6.....Prescribing of any age limit for a given post, as also deciding the extent to which any relaxation can be given if an age limit is prescribed, are essentially matters of policy. It is, therefore, open to the Government while framing rules under the proviso to Article 309 of the Constitution to prescribe such age limits or to prescribe the extent to which any relaxation can be given. Prescription of such limit or the extent of relaxation to be given, cannot be termed as arbitrary or unreasonable. The only basis on which the respondent moved the Central Administrative Tribunal was the earlier Rules of 1976 under which, though an age limit was prescribed, a limit had not been placed on the extent of relaxation which could be granted. If at all any charge of arbitrariness can be levied in such cases, not prescribing any basis for granting relaxation when no limit is placed on the extent of relaxation, might lead to arbitrariness in the exercise of power of relaxation. In any case, the Rules of 1976 have been replaced by the Rules of 1985 which govern direct recruitment to the post of Assistant Director in the present case. One has, therefore, to look to the Rules of 1985 in order to decide the eligibility of the respondent for the post of Assistant Director. We, therefore, do not agree with the finding of the Tribunal that the Rules of 1985 insofar as they prescribe the extent of relaxation of age limit, are arbitrary or unreasonable....."

(emphasis supplied)

33. She also referred to the judgment of the Apex Court in ***J. Ranga Swamy Vs. Government of Andhra Pradesh & Ors. reported in (1990) 1 SCC 288*** wherein it has been held :-

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"6....It is not for the court to consider the relevance of qualifications prescribed for various posts. The post in question is that of a Professor and the prescription of a doctorate as a necessary qualification therefore is nothing unusual. Petitioner also stated before us that, to the best of his knowledge, there is no doctorate course anywhere in India in radiological physics. That is perhaps why a doctorate in nuclear physics has been prescribed. There is nothing prima facie preposterous about this requirement. It is not for us to assess the comparative merits of such a doctorate and the BARC diploma held by the petitioner and decide or direct what should be the qualifications to be prescribed for the post in question....."

(emphasis supplied)

34. Mrs. Ahlawat also referred to judgment of Apex Court in **Yogesh Kumar & Ors. Vs. Govt. NCT of Delhi reported in (2003) 3 SCC 548** which was a case where recruitment to the post of Asst. Teachers in Primary Schools of MCD itself was involved. One of the qualification prescribed was that the candidate should possess Teachers' Training Certificate (TTC) as essential qualification for the post. Though the petitioners, who approached the court, did not possess TTC, they were holding B.Ed. degrees. Their contention before the Court was that since they are holding higher qualification than TTC, they should be treated as eligible for the post. The writ petitions filed by those candidates were dismissed by a Division Bench of this Court holding that such B.Ed. candidates were rightly excluded by the authorities from selection and appointment as Primary Teachers. In appeal the Supreme Court affirmed the decision of this Court holding that B.Ed. degree could not be treated as

a qualification higher than TTC. What is important for us are the following observations :-

"5. The Division Bench of the Delhi High Court in the impugned judgment has dealt with the above two arguments in great detail. In our considered opinion, it has rightly come to the conclusion that BEd qualification, although a well-recognised qualification in the field of teaching and education being not prescribed in the advertisement, only some of the BEd candidates who took a chance to apply for the post cannot be given entry in the field of selection. We also find that the High Court rightly came to the conclusion that teacher training imparted to teachers for BEd course equips them for teaching higher classes. A specialized training given to teachers for teaching small children at primary level cannot be compared with training given for awarding BEd degree. Merely because primary teachers can also earn promotion to the post of teachers to teach higher classes for which BEd is prescribed qualification, it cannot be held that BEd is a higher qualification than TTC. Looking to the different nature of TTC qualification, the High Court rightly held that it is not comparable with BEd degree qualification and the latter cannot be treated as higher qualification to the former.

8. This last argument advanced also does not impress us at all. Recruitment to public services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the rules allows entry to ineligible persons and deprives many others who could have competed for the post. Merely because in the past some deviation and departure was made in considering the BEd candidates and we are told that was so done because of the paucity of TTC candidates, we cannot allow a patent illegality to continue. The recruitment authorities were well aware that candidates with qualification of TTC and BEd are available yet they chose to restrict entry for appointment only to TTC-pass candidates. It is open to the recruiting authorities to evolve a policy of recruitment and to decide the source from which the recruitment is to be made. So far as BEd qualification is concerned, in the connected appeals (Case Nos. 1726-28 of 2001) arising from Kerala which are heard with this appeal, we have already taken the view that BEd qualification cannot be treated as a qualification higher than TTC because the nature of the training imparted for grant of certificate and for degree is totally different and between them there is no parity

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whatsoever. It is projected before us that presently more candidates available for recruitment to primary school are from BEd category and very few from TTC category. Whether for the aforesaid reasons, BEd qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider BEd candidates for the present vacancies advertised as eligible. In our view, the Division Bench of the Delhi High Court was fully justified in coming to the conclusion that BEd candidates were rightly excluded by the authorities from selection and appointment as primary teachers. We make it clear that we are not called upon to express any opinion on any BEd candidates appointed as primary teachers pursuant to advertisements in the past and our decision is confined only to the advertisement which was under challenge before the High Court and in this appeal."

(emphasis supplied)

35. Mr. Amit K. Paul, learned Standing Counsel for Municipal Corporation of Delhi submitted that the impugned RRs were a delegated legislation made by a competent authority after following the procedure prescribed in the statute. In short, Mr. Paul submitted that impugned RRs are part of a statute and the court should draw a presumption in favour of their constitutional validity. He submitted that 'grammar of challenge' of the Petitioners was incorrect as their arguments have proceeded on the hypothesis that the impugned RRs were administrative instructions.

36. He further submitted that the test with regard to unreasonableness qua delegated legislation was laid down by the English Court in **Kruse v. Johnson, (1898) 2 QB 91** wherein Lord Russel of Killowen while upholding the validity of a municipal by-law banning singing within 50 yards of dwelling houses observed as under :-

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".....But, when the Court is called upon to consider the bye-laws of public representative bodies clothed with the ample authority which I have described, and exercising that authority accompanied by the checks and safeguards which have been mentioned, I think the consideration of such bye-laws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, "benevolently" interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered. This involves the introduction of no new canons of construction. But, further, looking to the character of the body legislating under the delegated authority of Parliament, to the subject-matter of such legislation, and to the nature and extent of the authority given to deal with matters which concern them, and in the manner which to them shall seem meet, I think courts of justice ought to be slow to condemn as invalid any bye-law, so made under such conditions, on the ground of supposed unreasonableness.....

"But unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires". But it is in this sense, and in this sense only, as I conceive, that the question of reasonableness can properly be regarded. A bye-law is not unreasonable merely because particular Judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there. Surely it is not, too much to say that in matters which directly and mainly concern the people of the country, who have the right to choose those whom they think best fitted to represent them in their local government bodies, such representatives may be trusted to understand their own requirements better than judges. Indeed, if the question of the validity of bye-laws were to be determined by the opinion of Judges as to what was reasonable in the narrow sense of that word, the cases in the books on this subject are no guide; for they reveal, as indeed one would expect, a wide diversity of

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judicial opinion, and they lay down no principle of definite standard by which reasonableness or unreasonableness may be tested....."

(emphasis supplied)

37. Mr. Paul submitted that the test laid down in ***Kruse Vs. Johnson*** (Supra) has been adopted by the Indian Supreme Court in the case of ***H.C. Suman & Anr. Vs. Rehabilitation Ministry Employees' Cooperative House Building Society Ltd., New Delhi & Ors. reported in (1991) 4 SCC 485 at page 499*** wherein it has been held as under :-

"In Kruse v. Johnson it was held that in determining the validity of bye-laws made by public representative bodies, such as country councils, the court ought to be slow to hold that a bye-law is void for unreasonableness. A bye-law so made ought to be supported unless it is manifestly partial and unequal in its operation between different classes, or unjust, or made in bad faith, or clearly involving an unjustifiable interference with the liberty of those subject to it. In view of this legal position the Notification dated October 27, 1987 deserves to be upheld as, in our opinion, it does not fall within any of the exceptions referred to in the case of Kruse v. Johnson."

(emphasis supplied)

38. He further contended that the onus to plead and prove that the impugned RRs were illegal and invalid was on the Petitioners, who in the present case, had failed to produce cogent and convincing evidence to show that the same were discriminatory and arbitrary.

39. Mr. Paul contended that as the teachers are being required to teach children at the primary level in Delhi there is nothing irrational in the

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requirement of passing Hindi at the secondary level as it was the most popular local language as well as the main medium of instruction. Mr. Paul stated that at the Primary Level, a teacher is required to teach all the classes from I to V which also includes imparting education in the subject of Hindi for all the five years. According to him, the focus of language education at this stage is to lay a strong foundation on which a child can build in future. While teaching Hindi to students of primary classes it is necessary that the teacher be himself aware of and well conversant with the basic grammatical skills of the language such as alphabets, word formation, spelling and recognition of writing symbols, sentence formation and correction, singular-plural, masculine-feminine, gender, present-past-future tenses, synonyms, antonyms, usage of phrases, verbs, nouns, adjectives etc. He contended that there is an appreciable difference in the purpose, curriculum and manner in which the language course of Hindi is structured at the secondary, senior secondary and higher level.

40. Mr. Paul stated that it is only at the Class X that the basic grammatical skills of the language which constitute its essential building blocks are taught and tested. Focus at the higher levels is on report writing, essays, letter writing, study of poetry, scriptures, different forms of the language as it stood in different times and practical use of the language etc. and it cannot be simplistically concluded by an empirical/comparative evaluation that study of Hindi at a higher level is greater than/better than or a substitute for study of Hindi at the secondary

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level. Neither can it be assumed that a person who has studied Hindi at the higher level would be equipped with the skill set of Hindi prescribed at the secondary level (the skill sets, curriculum, methodology of study, importance attached to the study of the subject – all being different) and such a presumption in absence of an analysis of the course contents, teaching methodology etc. would not be correct. In the case of Hindi language it is possible for a person to have not studied the same at the secondary level but only at the senior secondary level or at a higher level. Even across various levels the curriculum is different depending upon whether Hindi is studied as a compulsory or an optional subject and at the higher levels it is different depending also upon whether Hindi is studied at the secondary level or the senior secondary level. According to him, a person having working/functional knowledge of Hindi at the higher level may not be equipped with the knowledge of the grammatical skills and the manner in which they are taught to the children at the secondary level. He submitted that whether Hindi at secondary level is suitable for teaching students at the primary level or Hindi at higher level is suitable for the said purpose, are all technical questions, the answers of which best ought to be left to technical/specialist bodies and ought not to be adjudicated by courts.

41. Mr. Paul submitted that in view of the different skill set acquired by the candidates at different levels and keeping in mind the fact that the small children need to be taught the basic skills rather than scriptures the prescription of study of Hindi at a secondary level has a direct nexus with

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the objective sought to be achieved and therefore the said qualification cannot be said to be arbitrary.

42. In rejoinder learned Counsel for Petitioners reiterated and reemphasized their arguments. Mr. Sumit Kumar referred to the judgment of the Apex Court in **Cantonment Board, MHOW & Anr. Vs. M.P. State Road Transport Corporation reported in (1997) 9 SCC 450** wherein it has been held :-

"16. Coming to the conclusion of the applicability of doctrine of desuetude Mr. Lekhi, the learned senior counsel strongly relied upon the decision of this Court in Municipal Corporation for City of Pune and Anr. v. Bharal Forge Co. Ltd. and Ors. [1995] 3 SCC 434 and submitted that the provisions of the Motor Vehicles Taxation Act must be held to be of disuse as no grant as provided in Section 7 of the Taxation Act has ever been made at any point of time after the enactment of the said Act in 1947. This contention is wholly unsustainable in law in as much as we are not concerned with the question of grant to local authorities and Cantonment Boards as provided under Section 7 of the Taxation Act but we are concerned with the leviability of tax on Motor Vehicles under Section 3(2) of the Taxation Act. It is nobody's case that no tax was being levied on Motor Vehicles which is used or kept for use under Section 3(2) of the Madhya Pradesh Motor Vehicles Taxation Act, 1947. That apart to apply the principle of desuetude it is necessary to establish that the statute in question has been in disuse for long and the contrary practice of some duration has evolved. In other words to make the aforesaid principle applicable in the case in hand it is required to be established that the provisions of Section 3(2) of the Motor Vehicles Taxation Act has been in disuse for a long period and that the imposition of tax on entry of Motor vehicles into the Cantonment limit has been in operation for a fairly long period, neither of these two ingredients has been satisfied in the case in hand and therefore the aforesaid principle of desuetude is of no application to the case in hand."

(emphasis supplied)

43. Mr. Duggal submitted that the Respondents had given no reason for invoking the OM of 1998 after a gap of 19 years. He reiterated that the NCTE Act governed the entire field and the Respondents had no power to lay down any additional qualification like age, marks or language.

44. Before adverting to the issues at hand, it would be prudent to take stock of the legal position and the principles of law referred to by Counsel for the parties on either side. This would also help in defining the approach of this Court to the issues at hand.

45. Since the impugned RRs have been notified by the MCD and Government of NCT of Delhi by virtue of power conferred under Section 98 of DMC Act and by virtue of proviso to Article 309 of the Constitution respectively, we are of the view that the impugned RRs are statutory and legislative in character. In **V.K. Sood Vs. Secretary, Civil Aviation & Ors. reported in (1993) Supp 3 SCC 9** the Apex Court recognized this legal position when it held:-

"3.....It would thus be clear that the rules made by the President or authorized person under proviso to Article 309 are subject to any law made by the Parliament and the power includes rules regulating the recruitment and the conditions of service or post. They are statutory and legislative in character. The statutory rules thus made are subject to the law that may be made by the Parliament....."

(emphasis supplied)

46. It is further settled law that the courts must approach subordinate legislative instruments with considerable amount of caution. Presumption

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of constitutionality and reasonableness ordinarily attached to legislative enactment, applies to statutory rules also. In ***P.V. Mani & Ors. Vs. Union of India*** reported in ***AIR 1986 Kerala 86*** a Full Bench of Kerala High Court observed as under :-

".....It is therefore needless to add that the courts shall approach subordinate legislative instruments with considerable amount of caution and examine them for absence of competence or reasonableness or fairness and other invalidating circumstances with almost the same standards as legislative enactments are dealt with by courts. The presumption of constitutionality, competence and reasonableness ordinarily attaches to such instruments just as much as to legislative enactments, as is evident from the following observations from "Administrative Agencies and the Courts" by Cooper : --

"Where the legislature has clearly delegated such authority, the only issue that can normally be raised as to the validity of the rule concern the question whether it is ultra vires as exceeding the scope of the authority delegated, and whether it is violative of due process guarantees. These issues are not often presented and accordingly such regulations are normally treated on the same basis as legislative acts.

It is not that such instruments are absolutely immune from attack. But such attacks should be considered only on production of prima facie proof as to such invalidating circumstances. The court shall not assume that a subordinate legislative instrument is invalid for absence of competence or bona fides or fairness or reasonableness and cast the negative burden on the rule-making authority. It should be just the other way; the person who challenges the vires of a rule has to prove his challenge just as much as a person who challenges a legislative enactment. If he fails in such attempt the challenge can only be thrown out....."

(emphasis supplied)

47. In ***Khoday Distilleries Ltd. v. State of Karnataka*** reported in ***(1996) 10 SCC 304 para 13*** it has been held that the test of the

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arbitrariness applicable to the delegated legislation is different from the one applicable to executive actions. The relevant portion of the said judgment is reproduced for ready reference :-

"13. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In the case of Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India (SCR at p. 243) this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; "unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary". Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, "Parliament never intended the authority to make such Rules; they are unreasonable and ultra vires". In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution."

48. Further, as the Rules are legislative in character they cannot be challenged on the grounds of malafides. In **Capt. B.D. Gupta v. State of U.P. reported in 1991 Supp (1) SCC 1 para 1** the Supreme Court held :-

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"17.....If the Rules were framed for making regular appointments in the Civil Aviation Department, there was no reason why they should have been confined only to three posts which included the post of Director. Secondly, he pointed out that whereas the post of Director was not a promotional one earlier and was, therefore, open to external candidates as well, it was made promotional to suit Captain Singh. These circumstances according to us do not prove the mala fides. Admittedly, the Rules are made under Article 309 of the Constitution of India and are, therefore, a piece of legislation. It is well settled that no legislation can be challenged on the ground of mala fides....."

(emphasis supplied)

49. In our opinion, the doctrine of legitimate expectation, referred to by the Petitioners, has no application to the present case as the Respondents have never represented or held out to any student entering into an ETE course, that he would be given employment with the Respondents. In fact, ETE is a professional training course and the candidates securing such degrees are free to pursue other career options all over India with other agencies as well. The course does not confer any vested right of employment with either the Government or MCD. In view of the absence of any representation regarding employability with the Respondents alone upon completion of a qualifying course, the Petitioners' plea of legitimate expectation merits no acceptance.

50. We are also of the view that the impugned RRs do not operate retrospectively. No candidate who has already been appointed as a teacher and who had acquired vested right of such appointment in accordance with the earlier Rules has been prejudicially affected by the

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impugned RRs. The impugned RRs are effective only from their date of Notification and the Petitioners cannot claim any vested right on the strength of an advertisement issued under old Rules which now stand withdrawn.

51. As far as the doctrine of disuse, referred to by the Petitioners is concerned, we are of the opinion that the same has no application to the facts of the present case. From the judgments referred to hereinabove, it would be apparent that the said doctrine is applicable only when there has been a statute in force for long, but the same has either not been applied or there is a practice contrary to the said statute for long. In the present case, when the old RRs were contrary to the Government of NCT of Delhi's Office Memorandum dated 30th November, 1988, how can it be urged that the said OM was invalid due to the doctrine of disuse, as in the first place the said OM was not applicable.

52. We are also of the opinion that, the NCTE Act only lays down minimum qualification for a person to be employed as an Assistant Teacher (Primary). Consequently, it is always open to the Respondents to prescribe additional qualifications. In this connection we may refer to the Functions of the Council stipulated in Section 12(d) of the NCTE Act which reads as under :-

"12. It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and co-ordinated development of teacher education and for the determination and maintenance of standards for teacher education and for

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the purposes of performing its functions under this Act, the Council may -

(d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognized institutions."

(emphasis supplied)

53. In the present case, we find that there is neither any inconsistency nor contradiction between the NCTE Act, NCTE Regulations on the one hand and the impugned RRs on the other hand. If the Petitioners' submissions were to be accepted then the Respondents could never have prescribed any qualification with regard to age as there is no stipulation in either the NCTE Act or the Regulations with regard to age. In fact, the new age, marks and language criteria are additional/higher qualifications and, therefore, the impugned RRs are not ultra vires the NCTE Act or Regulations.

54. To our mind, like any other employer it is the prerogative of the Respondents to decide the age limit and academic suitability of candidates which they wish to employ and so long as the same are not contradictory to the academic eligibility as prescribed by the NCTE Act any challenge to the same, merely because it renders some candidates ineligible, ought to be rejected. For several posts minimum and maximum limits of age are prescribed by different authorities along with the required academic qualifications. It may be possible for the candidates to attain the requisite academic qualifications even at lesser or higher ages but that does not imply that the authorities are duty bound to consider all of them for

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employment by framing rules to ensure that everyone who secures the required academic qualification at any age is eligible for appointment to the said posts. In our view, the mere completion of an eligibility course gives no vested right or right of consideration to a candidate enforceable against the State.

55. Moreover, as rightly pointed out by Mrs. Ahlawat prescribing of an age limit for a given post is a matter of policy and as held by the Apex Court in **Shivbachan Rai** (Supra) it is open to the Government while framing rules under the proviso to Article 309 to prescribe such age limits as it may deem necessary and the same cannot be termed as arbitrary or un-reasonable. In the present case we also find that the new age limit has been fixed in accordance with the Office Memorandums issued by the Government of India and Government of NCT of Delhi, whereby the age limit for group C & D posts has been fixed between 18 to 25 years. In fact, by the impugned RRs the Respondents have actually rectified their mistake and brought their RRs in conformity with the Government's policy. The Supreme Court in **Yogesh Kumar** (Supra) has held that merely because in the past there was some deviation and departure, the courts cannot allow a patent illegality to continue.

56. We also agree with Mrs. Ahlawat that the teachers appointed by the Respondents are government employees and are to be governed by the terms and conditions applicable to other government employees in the same category/group as laid down by the Department of Personnel and

Training, Government of India from time to time. Consequently, the age limit stipulated in the notification under Rule 43 of Delhi School Education Rules, 1973 would not govern the recruitment to the post of government teachers. In any event, as the impugned RRs have been approved by the Lt. Governor of Delhi who had issued the notification dated 1st November, 1980, it would mean that the said notification stands impliedly repealed.

57. As far as the under-aged candidates are concerned, we are of the view that it is open to the State government to stipulate a cut off age as it may like to recruit only candidates having sufficient maturity. In any event, the under-aged candidates suffer no prejudice as they would be eligible to apply for the post of Assistant Teachers (Primary) in the future.

58. In our opinion, a cut off limit has to be prescribed along with eligibility conditions to select the best and the most suitable from amongst the available talent and so long as a uniform yardstick is applied for all, it cannot per se be claimed to be arbitrary or discriminatory. According to us far from being absurd or preposterous, fixing of age limit between 20-27 would only encourage young motivated, committed professionals to take up the challenge of teaching the small children.

59. However, considering that the maximum age prescribed for the post of Assistant Teachers (Primary) for the MCD and NCT has been reduced from 32 years for males and 42 years for females to 27 years, we are of the view that this would cause hardship to candidates already enrolled in

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the ETE course, who might suddenly find themselves over-age and ineligible. With a view to ameliorate this hardship and as a one-time measure, following the ratio in the case of **Anuj Johri Vs. Union of India & Ors. reported in 2005 III AD (DELHI) 614.**, it is directed that the respondents would permit all those candidates who have completed the ETE course either in the year 2006 or 2007 or 2008 to appear in the examination conducted by the Respondents for the posts of Assistant Teachers (Primary) once each of the Respondents i.e. MCD and Govt. of NCT of Delhi provided they do not exceed the upper age limit of 32 years for males and 42 years for females and also fulfill all other eligibility conditions. This would also apply to candidates, who have already taken the examination as permitted by this Court. This relaxation will be independent of the relaxation applicable to reserved categories. However, the Relaxation granted by this Court shall cease to operate for the ETE courses after 2008 i.e. commencing from 2009 as from 30th September, 2007 the maximum age limit for ETE course has been reduced from 30 years to 24 years.

60. As far as the requirement of at least 50% marks in the senior secondary examination is concerned, we are of the view that the candidates selected have to shoulder the responsibility of imparting values of academic excellence in young impressionable minds. Considering the nature of the responsibility to be thrust on the candidates, the requirement of 50% marks in the senior secondary examination is not a tough

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benchmark at all. Further Article 14 mandates that equals are to be treated alike but it does not prohibit classification. In fact, in ***State of West Bengal Vs. Anwar Ali Sarkar reported in AIR 1952 Supreme Court 75*** it has been held that classification is permissible, if the same is founded on an intelligible differentia and the said differentia has a rational relation to the object sought to be achieved. We are of the view that the qualifications of 50% of marks in senior secondary examination fulfills the above test as it ensures that the best from amongst the young, dedicated and meritorious candidates are selected for the post of the teachers and the same cannot be faulted by the Petitioners.

61. With regard to passing of Hindi subject at secondary level, we are in agreement with Mr. Paul, that even though a person may possess valuable skills of the language which he may acquire at a higher level, yet absence of knowledge of the basic and rudimentary building blocks of the same may prove to be detrimental while teaching small children the basic alphabets of the same language in a simplistic yet interesting manner. Superior knowledge of scriptures or the ability to write reports, features complex essays or translate complex passages may not be an adequate substitute for the basic knowledge of grammar and the skill set which is exclusive to the secondary level and essential for teaching the same to the children at the primary level. Moreover, on a perusal of the Government file, we find that the relevant considerations were discussed by the concerned authorities before prescribing Hindi as a compulsory subject.

62. In fact, the impugned language criteria is no longer res integra. A Coordinate Bench of this Court in **Farzana Vs. Govt. of NCT of Delhi & Ors. in WP (C) No. 8377/2007** has held as under :-

"20. It is clear that in the present case we are concerned with the recruitment to the post of Primary Teachers in MCD. These teachers are required to teach students at primary level i.e. up to Standard V. These small children are to be given basic education in Hindi language. Rather, they are to be initiated into this language from scratch, namely, from alphabets and then into the basic grammar, for which purpose the teacher is required to be equipped in a specific mould. It is the case of the MCD that keeping this in mind the prescription of studying Hindi language at secondary level is provided in the recruitment rules....."

63. After discussing the case of **Mrs. Manju Pal Vs. Government of NCT of Delhi & Anr.** referred to by the Petitioners, this Court in **Farzana** came to the conclusion that the essential educational qualification of having passed Hindi at secondary level was perfectly legal, valid and not violative of Article 14 of the Constitution. The observations of the Coordinate Division Bench are re-produced hereinbelow :-

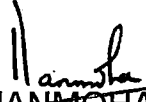
"21. We find sufficient justification/rational in providing for the aforesaid qualifying course at secondary level for the post in question. It is neither arbitrary nor discriminatory and specific objective is sought to be achieved thereby for which sufficient justification/rational is given by the MCD. Once the respondents are able to satisfy such a rationality, further probe into a policy decision like this in prescribing these qualifications in the recruitment rules, which are of statutory nature, is not permitted as per the dictum noticed in various judgments in the foregoing paragraphs.

22. We, therefore, are of the opinion that the rule in question meets the constitutional requirement and is not violative of Article 14 thereof. We accordingly find the petition bereft of any merit and, therefore, dismiss the same....."

64. To conclude, the language and marks criteria (namely passing of Hindi subject at primary level and minimum 50% marks in senior secondary examination) are upheld in their entirety. Even the age criteria

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(namely minimum and maximum eligibility age as 20-27 years respectively) is upheld but with a view to ameliorate the hardship of already enrolled students in ETE courses, it is directed that the respondents would permit all those candidates who have completed the ETE course either in the year 2006 or 2007 or 2008 to appear in the examination conducted by the Respondents for the posts of Assistant Teachers (Primary) once each of the Respondents i.e. MCD and Govt. of NCT of Delhi provided they do not exceed the upper age limit of 32 years for males and 42 years for females and also fulfill all other eligibility conditions. This would also apply to candidates, who have already taken the examination as permitted by this Court. This relaxation will be independent of the relaxation applicable to reserved categories. However, the Relaxation granted by this Court shall cease to operate for the ETE courses after 2008 i.e. commencing from 2009 as from 30th September, 2007 the maximum age limit for ETE course has been reduced from 30 years to 24 years. Except to the above extent, legality and validity of the impugned RRs are upheld and accordingly the entire batch of writ petitions are disposed of in the above terms with no order as to costs.


[MANMOHAN]
Judge.


[MANMOHAN SARIN]
Judge.

August 28th, 2008
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