

Reportable
IN THE HIGH COURT OF DELHI AT NEW DELHI

WP (C) No. 8377 of 2007

Reserved on : November 30, 2007
Pronounced on : January 11, 2008

Farzana

.....Petitioner

!

through :

Mr. Tarun Sharma with
Mr. Ash Afsar, Advocates

VERSUS

Govt. of NCT of Delhi & Ors.

.....Respondents

!

through :

Mr. Amit K. Paul, Advocate

CORAM :-

*** THE HON'BLE MR. JUSTICE A.K. SIKRI**
THE HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether Reporters of Local papers 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?

A.K. SIKRI, J.

1. Whether the petitioner fulfills the eligibility condition relating to the educational qualifications for being engaged, on contract basis, to the post of Group-C Non-Gazetted Teacher (Primary) for recruitment in the schools run by the Municipal Corporation of Delhi (for short, 'MCD'), is the issue which is raised in this writ petition.

2. Apart from other qualifications prescribed, including educational qualifications, the notification issued for inviting applications for appointment to these posts stipulates the following essential qualification :-

“(iv) Must have passed in Hindi as a subject at Secondary Level.”

It is not in dispute that the petitioner did not study Hindi as a subject at secondary level.

However, she claims that she had studied Hindi language as a subject while acquiring a higher

degree and, therefore, it be deemed that she has the necessary qualification in Hindi as a subject at secondary level also. The petitioner had taken Hindi as a subject while passing the Bachelors of Commerce (Pass Course) examination from the University of Delhi.

3. Before we proceed to discuss the issue involved, it would be desirable to take note of certain basic facts and the respective contentions of the parties touching the aforesaid issue.

4. The petitioner states that she is an Other Backward Class (OBC) candidate born on 3.4.1982 and has presently completed 25 years of age and also passed 10th and 12th standard examinations in the years 1997 & 1999 respectively. At the secondary level the petitioner has studied Sanskrit language and did not have Hindi as a subject. Thereafter, the petitioner has qualified in Hindi language as a subject while passing the Bachelor of Commerce (Pass) Degree course in the session 2000-2002 from Delhi University. The petitioner has also successfully completed the Elementary Teacher Education (ETE) Two Years Diploma from the State Council of Educational Research and Training, Varun Marg, Defence Colony, New Delhi - 110 024 in the session 2004-2006. The petitioner has also passed the subject of teaching in Hindi in the said diploma course.

5. MCD runs various primary schools in Delhi and appoints Primary Teachers, which is a Class-IIF post. It has formulated its own recruitment rules which are published vide Notification dated 13.7.2007. As it needs the services of number of such primary teachers, it has forwarded to the Delhi Subordinate Services Selection Board (DSSSB) a request for carrying out the exercise of recruitment of these teachers. The DSSSB has already initiated the process for making selections on regular basis of these primary teachers, for which purpose advertisement has been issued and applications invited. While this process is on, in the meantime, in order to meet the immediate requirement of having these teachers so that the studies of the students admitted to these

schools do not suffer, the MCD has also issued advertisement on 30.10.2007 vide public notice dated 19.10.2007 in national dailies inviting applications for making engagements of approximately 3000 teachers on contract basis for the post of Teacher (Primary). As per the recruitment rules issued vide notification dated 13.7.2007, following essential minimum academic and professional qualifications in the said post are prescribed:-

- “(i) Age 20-27 years (relaxable in case of ST/ST/OBC/PH/ Ex-Servicemen as per Government of India instructions issued from time to time.*
- (ii) Senior Secondary (10+2) or Intermediate or its Equivalent with 50% marks from a Recognized Board; and*
- (iii) Two Years Diploma or Certificate Course in Elementary Teachers' Education (E.T.E.)/J.B.T. or Bachelor of Elementary Education (B.E.E.) or equivalent from a Recognized Institution.*
- (iv) Must have passed in Hindi as a subject at Secondary Level.*
- (v) Desirable Computer Knowledge.....”*

The public notice dated 19.10.2007 inviting applications on contract basis also prescribes the same eligibility conditions.

- 6. The petitioner is also aspiring for the aforesaid post. Though she fulfills all other eligibility conditions stipulated in the recruitment rules, she did not have Hindi as a subject at secondary level. Her contention is that when she has studied this subject at higher level, she should be treated as qualified and specific stipulation of studying Hindi as a subject at secondary level in the recruitment rules is not appropriate or legal and the said pre-requisite educational qualification prescribed in the recruitment rules dated 13.7.2007 be quashed and persons like the petitioner be treated as eligible candidates to apply for the post. The aforesaid grouse raised by the petitioner in respect of this particular rule is founded on the following legal submissions.*

- 7. The petitioner states that MCD had earlier formulated recruitment rules for the same post, which*

were approved by the UPSC in the year 1980 and these provide following essential educational and other qualifications :-

"(a)(i) Hindi Secondary passed of a Recognized Board/ University with an elective Subject in the required Language at the matric level.

(ii) Two years Teacher Training Certificate from the recognized institution.

OR

(i) Intermediate or equivalent from recognized Board/ University with an elective subject in the required Language at the Matric Level.

(ii) One year Teacher Training Certificate from the recognized institution.

Note: The name of the required Language will be indicated at the time of Recruitment."

Thereafter, a corrigendum was issued making modifications in the aforesaid note with the following prescription :-

"Note: The Candidate should have the required Language i.e. HINDI at Secondary or Senior Secondary Level."

8. According to the petitioner, a similar controversy was raised by filing a petition in this Court by a candidate who had studied Hindi at graduation level but not at secondary or senior secondary level. A Division Bench of this Court in its judgment dated 11.9.2001 in the case of Mrs. Manju Pal v. Govt. of NCT of Delhi & Anr., 2002 JJ AD (Del) 548, was pleased to hold that undoubtedly the qualification of Hindi language at graduation level is a higher qualification than the secondary level with Hindi and, therefore, a candidate who had studied Hindi language at graduation level was eligible to apply. Relevant portion of the said judgment is extracted below :-

"8. The learned counsel appearing for the appellant argued that the appellant was wrongly rejected on the spurious ground of her not having a qualification prescribed by the advertisement read with the corrigendum. Learned counsel appearing for the Board and the MCD submit that as per the qualification prescribed in the advertisement and the corrigendum for appointment to the post of Primary Assistant Teacher, the requirement of Hindi at the Secondary Level or Senior Secondary level is the essential qualification which a candidate must possess. According to them, in case a candidate having a Bachelor of Arts degree with Hindi did not pass the higher secondary level with Hindi, he/she would not be eligible for the post of Primary Assistant Teacher. We fail to see logic and the rationale of the argument of the learned counsel for the MCD and the Board. Undoubtedly, Bachelor of Arts degree with Hindi, is a higher qualification than the higher secondary with Hindi.

9. In the counter affidavit filed by the M.C.D. it has not been stated as to how the study of Hindi as a language at higher secondary or intermediate level by the candidates is more relevant than the study of Hindi as a language in B.A. pass course for the job requirement. Nothing has been brought to our notice by the learned counsel appearing for the Board and the M.C.D. which could justify the stand of the respondents that the study of Hindi as a language at higher secondary level by a candidate has a nexus with the object sought to be achieved, which object by the study of Hindi at B.A. level by a candidate cannot be achieved. No study or evaluation or analysis has been placed before us to show that the candidate having Hindi as a subject at the secondary level are better qualified and equipped to teach primary students than the candidate having Hindi at the graduate level. In case the argument of the learned counsel appearing for the M.C.D. and the Board is taken to its logical conclusion it will lead to absurd results. There may be a case where a person did not take up Hindi as a language at higher secondary level and took it up at higher levels, namely, B.A., M.A. and Ph.D. Surely, it can not be said that the person who had taken Hindi as a subject at the Graduate level, Masters level or Doctorate level is less qualified for the job than the person who had taken up Hindi as a subject at the higher secondary level. The counter affidavit of the M.C.D. is not at all helpful for the purpose of coming to the conclusion that there is any valid justification for the stand of the Board and the M.C.D. is considering higher secondary with Hindi as an essential requirement for the post of Primary Assistant Teachers. The invidious distinction made by the Board and the M.C.D. for ignoring candidates with higher qualification is unwarranted and without any valid basis.

10. It is significant to note that nothing is stated in the counter affidavit as to how Hindi at the Higher Secondary level is helpful for teaching primary level students. What is so special about Hindi at the secondary level, which attribute Hindi at higher level is lacking has not been explained in the counter affidavit or the arguments of the learned counsel for the respondents. Hindi as a language has not been mentioned in the advertisement as a special qualification for imparting education to the student at the primary level. It cannot be assumed by any stretch of imagination that a candidate possessing higher qualification like B.A. with Hindi or M.A. with Hindi will be less efficient in teaching primary classes than a person possessing lesser qualification such as higher secondary with Hindi."

The Court also referred to a decision rendered by the Allahabad High Court in *Laxmi Narayan Yadav v. District Inspector of Schools & Ors.*, 1988 (3) D.L.R. Allahabad 42 in arriving at the aforesaid conclusion.

9. Learned counsel for the petitioner further submitted that with a view to follow in letter and spirit the instructions of the Division Bench in the aforesaid judgment, the M.C.D. had issued Gazette Notification dated 7.7.2006, inter alia, prescribing that a candidate should have studied Hindi and English at secondary or higher level for the post of Teacher (Primary). However, the aforesaid

recruitment regulation is modified vide impugned notification dated 13.7.2007 changing this prescription and deleting the words “higher level”, which according to the petitioner is a departure from the aforesaid judgment rendered by the Division Bench without application of mind. It is stressed that stipulating the study of Hindi only at “secondary level” as a pre-requisite creates an unconstitutional discrimination against the petitioner though she has studied Hindi language as a subject while passing the All India Senior School Certificate examination from the Central Board of Secondary Education. It is on this basis that the aforesaid provision in the recruitment rules modified vide Notification dated 13.7.2007 is challenged.

10. In addition to placing strong reliance upon the case of *Mrs. Manju Pal (supra)*, learned counsel for the petitioner also attempted to draw sustenance from the following judgments :-

- (i) *Santosh Kumar & Ors. etc. v. The Secretary, Ministry of Human Resources Development & Anr.*,
AIR 1995 SC 293; and
- (ii) *Som Dutt v. State of Haryana & Anr.*,
AIR 1983 (3) SCR 141 (P&H)

11. Learned counsel for the MCD countered the aforesaid submission by arguing that a conscious decision was taken to prescribe the aforesaid qualification as study of Hindi language at secondary level was more relevant and important for a person who was to teach primary students. His submission was that it is at this level a student undertakes the study of grammar, knowledge of which was essential for teaching students in primary classes and as such grammar was not taught in higher levels. He further argued that the judgment of the Division Bench in *Mrs. Manju Pal (supra)* was given as in that case MCD had not explained the rational for prescribing such an essential qualification for the post of primary teacher, as is clear from the reading of the said judgment itself. On the other hand, in the present case, the rational for such a prescription was spelled out in detail in the counter affidavit. This being a policy decision, should not be interfered with, was the plea of

the learned counsel for the respondent. He also sought to argue that the qualification prescribed had rational with the objective sought to be achieved and there was no discrimination involved, as alleged by the petitioner. He further submitted that such an issue was dealt with by another Division Bench of this Court of which one of us (A.K. Sikri, J.) was a member and the case was WP (C) No. 5509/1999 entitled Ms. Bhawna Singh v. Govt. of NCT of Delhi & Ors. decided on 26.11.2002. He further argued that the issue was no more res integra and was specifically dealt with by the Supreme Court in Yogesh Kumar & Ors. v. Govt. of NCT, Delhi & Ors., (2003) 3 SCC 548 and number of other decisions of the Supreme Court and this Court were also referred.

12. *Before adverting to the issue, it would be prudent to take stock of legal principles laid down in various judgments which have been referred to by the counsel for the parties on either side as it would be more appropriate to then consider the submissions in the light of those principles.*
13. *In Yogesh Kumar (supra), a somewhat similar question arose for consideration. That 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 these candidates were dismissed by a Division Bench of this Court on the conclusion that such B.Ed. candidates were rightly excluded by the authorities from selection and appointment as Primary Teachers. In appeal the Supreme Court in the aforesaid judgment 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.

xx xx xx

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 (Cas 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 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."

14. The legal principle which can be culled out from the aforesaid judgment is two fold, namely - (a)
- possessing higher qualification than the one prescribed for the post may not necessarily be treated as
- fulfilling the lower qualification prescribed for the post. The Court was persuaded by the fact that
- training imparted to teachers for B. Ed. course equips them for teaching higher classes whereas a

specialized training given to teachers for teaching small children at primary level cannot be compared with training given for awarding B. Ed. degree. The Court upheld the contention of the respondent that prescription of TTC qualification was more relevant for teaching small children at primary level and was not comparable with B. Ed. degree qualification; and

(b) recruitment to public service should be made strictly in accordance with the terms of advertisement and the recruitment rules. Whether B. Ed. qualification can also be prescribed for primary teachers was a question to be considered by the authorities concerned and not by the courts.

15. *In Ms. Bhawna Singh (supra), a Division Bench of this Court was again concerned with appointment to the post of Asst. Teacher (Primary) in the M.C.D. At that time the governing rule stipulated that the candidate should have passed the required language, i.e. Hindi up to secondary or senior secondary level. The petitioner therein had passed her secondary school examination with Sanskrit as an optional subject. In her senior secondary examination, she did not study Hindi or Sanskrit as her subjects. Thereafter, she did her graduation, namely, B.A. (Hons.) in English from Delhi University and while doing her B.A. in English she has passed subsidiary examination in Hindi. On the basis of passing this subsidiary paper in Hindi while doing her graduation, her contention was that she fulfilled the aforesaid essential educational qualification and for this purpose she relied upon the judgment in the case of Mrs. Manju Pal (supra). This contention was not accepted holding that studying of Hindi language as a subsidiary subject at graduation level could not be treated as equivalent to study of Hindi language at secondary or senior secondary level. Following observation, in this context, would be relevant for our purposes :-*

"8. However, the next question which needs determination is as to whether studying Hindi language as a subsidiary subject at Graduation level would make a person eligible for the post in question. We are afraid, answer to this question has to be rendered in the negative. Merely by having Hindi as a subsidiary subject at Graduation level, it cannot be said that the candidate has acquired the qualification as per the advertisement. The educational qualifications as prescribed by the respondents stipulate that the candidate should have passed Hindi language at Secondary or

Senior Secondary level. The purpose for prescribing such a qualification is to ensure that the candidate has sufficient knowledge of the language and he/she has studied the same adequately. Even if the study of Hindi as a language is not at Secondary or Senior Secondary level but at the level of Graduation that may still serve the purpose in view of the aforesaid judgment in the case of Manju Pal (supra). However, even in that case Hindi has to be studied as one of the subjects i.e. B.A. with Hindi which is normally in all the three years of Graduation. It is a matter of common knowledge that in many Hons. courses at Graduation level, one or two subsidiary subjects are also required to be cleared. However, such a subject is only for one year and that too not a compulsory subject. In the instant case the petitioner has done Graduation in English (Hons.). Hindi was only studied as one of the subsidiary subjects. No marks of this subject were even added. It was only a qualifying examination. By studying Hindi as a subsidiary subject in a course, namely, B.A. (Hons.) in English, one cannot claim that he/she has passed B.A. with Hindi or has fulfilled the eligibility condition of studying Hindi. Proficiency required is clearly lacking. It may be added that the passing of the required language i.e. Hindi is made an essential qualification for the post of Primary Teacher keeping in view the duties which are to be performed by such Primary Teachers. Prescription of such eligibility conditions is the function of the employer. Equivalence is also to be judged by it and Courts normally cannot interfere unless the decision is arbitrary, malafide or discriminatory."

16. In J. Ranga Swamy v. Govt. of Andhra Pradesh & Ors., AIR 1990 SC 535, the Supreme Court took the view that relevancy and suitability of qualifications prescribed for the post was not for the courts to consider and assess. This dictum can be found from reading of para 6 of the judgment, which is to the following effect :-

"6. So far as the second plea is concerned, admittedly, the petitioner does not have, while the respondent has, a doctorate in nuclear physics. The plea of the petitioner is that, for efficient discharge of the duties of the post in question, the diploma in radiological physics (as applied in Medicine) from the Bhabha Atomic Research Centre (BARC) held by him is more relevant than a doctorate in nuclear physics. It is submitted that in all corresponding posts elsewhere, a diploma in radiological physics is insisted upon and that, even in the State of Andhra Pradesh, all other physicists working in the line, except the respondent, have the diploma of the BARC. 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 therefor 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. It will be open to the petitioner, if so advised, to move the college, university, Government, Indian Medical Council or other appropriate authorities for a review of the prescribed qualifications and we hope that, if a doctorate in nuclear physics is so absolutely irrelevant for the post in question as is sought to be made out by the petitioner, the authorities concerned will take expeditious steps to revise the necessary qualifications needed for the post appropriately. But, on

the qualifications as they stand today, the petitioner is not eligible to the post and cannot legitimately complain against his non-selection."

To the same effect is the judgment of the Supreme Court in the case of V.K. Sood v.

Secretary, Civil Aviation & Ors., AIR 1993 SC 2285.

17. *The question as to whether acquisition of an unprescribed higher academic qualification could be treated as fulfillment of the requisites of the prescribed lower qualification by the statutory rules also came up for consideration before the Full Bench of the Punjab & Haryana High Court in the case of Som Dutt v. State of Haryana & Anr., AIR 1983 (3) DLR (P&H) 141. In an elaborate discussion on this issue, while holding that possessing higher qualification may not necessarily be better or more advantageous for the peculiar needs of a post for which the employer State has prescribed lower qualifications, the following legal position has been highlighted while referring to various judgments of the Supreme Court and of its own Court :-*

- (1) There appears to be wide variety of reasons for holding that the employer-State, should in law, be entitled to prescribe the qualifications which it may think necessary as tailored to the peculiar needs of the particular post or service. Generally, it seems somewhat elementary that the employer alone would know what are the specialities and conditions of service or post for which the incumbent is required. Therefore, it would follow that its discretion in seeking the right man for the right job should be left relatively unfettered. Consequently, no doctrinaire rule can be laid down that a technically higher educational qualification is necessarily better or more advantageous for the peculiar needs of a post for which the employer-State has prescribed lower qualifications.*
- (2) On the larger perspective it was submitted, and in our view rightly that superlatively higher qualified individuals may not have requisite job satisfaction or motivation in holding a post disquietingly below their academic rank though circumstances for the time being may compel them to accept such a job. The respondent-State, apart from qualifications may have the larger interest of the service in mind in having persons to man posts who value them and would have enough job satisfaction to hold on to them as well. It seems unnecessary to dilate on the various administrative exigencies and other practical considerations which necessarily would come in for appraisal by the employer-State when prescribing minimal qualifications for a particular post or service generally.*
- (3) Once qualifications have been laid down by binding statutory provisions, then the concept of strict compliance therewith would entitle the State to insist that these be meticulously satisfied and extraneous considerations like qualifications other than those prescribed being either the*

exact equivalents, or technically higher than these, would be irrelevant to the issue and indeed may well be contrary to the statutory prescription.

- (4) An enquiry by the court for determining as to whether a particular qualification is an exact equivalent or is higher or superior to the prescribed one, would open a Pandora's Box on which the lid cannot easily be replaced.*
- (5) Even though an educational qualification may be higher it may not be necessarily suited to or particularly tailored to the needs of the post. As in the present case where teachers are being recruited for teaching primary classes or even at the levels lower thereto, its insistence on a literal satisfaction of the prescribed qualifications of junior Basic Training or Diploma in Education Training Course, seems to be obviously well-merited.*

18. *On the basis of the afore-stated principles, the Full Bench in the given case refused to consider B.Ed., a higher qualification, as fulfilling the requirement of the lower prescribed qualification, namely, Diploma in Junior Basic Training, which is clear from the following discussion in the said judgment :-*

"In the aforesaid light, the case in hand is indeed illustrative of these somewhat anomalous results which might ensue by the courts intrusion into this somewhat sensitive field. To highlight the peculiar requirements of the respondent- State with regard to the teachers, which it wishes to recruit, and the equally significant difference betwixt the degree of Bachelor of Education on one hand and the Diploma in Junior Basic Training on the other, the learned Advocate General forcefully pinpointed how the same are matched to or tailored to particular requirements. It was first pin-pointed that the State is looking for teachers for primary and relatively junior classes. The qualifications are prescribed with that end in view and are tailored to the peculiar requirements of the post. A technically higher qualification may be high sounding and superior, but in actual practice may be wholly wasteful and indeed counter-productive when it comes to teaching at the basic primary level or even at the kindergarten level in rural schools. The factual difference between the syllabi and the nature of training in the Bachelor of Education Degree and the two-year Diploma Course in Junior Basic Training is best highlighted by being tabulated and juxtaposed against each other :-

Bachelor of Education Degree	Diploma in Junior Basic Training
<i>1. Basic qualification is Graduation and the training is directed to teach primarily higher school from the IX Class onwards.</i>	<i>1. Basic qualification is Matriculation or below graduation and the training is directed to teach primary classes in school from I to V only.</i>
<i>2. The training as a teacher is general in character</i>	<i>2. The training in teaching is special in character</i>
<i>3. The syllabus for the Bachelor of Education Degree is significantly different from that for the Diploma in Junior Basic Training</i>	<i>3. The syllabus in the Diploma in Junior Basic Training is significantly different from that prescribed for Bachelor Education Degree.</i>
<i>4. The period of training is one year.</i>	<i>4. The period of training is two years.</i>

The aforesaid significant difference betwixt the degree of Bachelor of Education and a Diploma in Junior Basic Training would highlight the fact that even though an educational qualification may be higher, it may not be necessarily suited to or particularly tailored to the needs of the post. As in the present case where teachers are being recruited for teaching primary classes or even at the levels lower thereto, its insistence on a literal satisfaction of the prescribed qualifications of Junior Basic Training or Diploma in Education Training course seems to be obviously well-merited."

19. *We are in respectful agreement with the aforesaid erudition of legal principles. After stating the aforesaid principles, we advert to the case at hand before us.*

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 mold. 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. This*

is explained in the counter affidavit in rather greater details, as would be evident from the following averments contained therein :-

"12. It is submitted that the teachers being required to teach children at the primary level in Delhi there is nothing irrational in the requirement of passing Hindi at the secondary level being the popularly understood local language as well as the medium of instruction. At the Primary Level one teacher is required to teach all the classes from I to V which includes imparting education in the language subject of Hindi as well which is prescribed for all the five years. The focus of language education at this stage is to provide the building blocks to lay a strong foundation on which the child can build in the 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. 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. Even though a person may possess valuable written or spoken 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. Copies of the syllabi of Hindi as it is taught at the secondary level and senior secondary level along with the paper schematic and syllabus for the B Com (Pass) level are collectively annexed herewith as Annexure 3.

13. A perusal of the same shows 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 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 B Com (Pass) is greater than/better than or a substitute for study of Hindi at the secondary level. Neither can it be assumed that a person who has studied Hindi at the B Com 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 the absence of an analysis of the course contents, teaching methodology etc. would not be correct. It is only in case of courses such as M Tech which one is allowed to do only after B Tech that M Tech can be considered higher than B Tech. 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 levels or at one of these levels and a higher level. Even across various levels the curriculum is different depending upon whether Hindi is studied as a compulsory or as 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. As mentioned earlier 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. It is respectfully 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, whether knowledge of Hindi studied at Higher level is greater than or a substitute for Hindi studied at the secondary level are all technical questions the answers of which best ought to be left to technical/specialist bodies. Merely because a candidate has studied Hindi at a B Com level as in the instant case does not imply that he ipso facto fulfills the eligibility criterion of having passed Hindi at the secondary level as it is possible to study Hindi even at the higher level without passing the same at the secondary level. In the instant case it is an admitted position that the Petitioner did not pass Hindi at the secondary level. It is stated that the Petitioner has qualified the Hindi language as a subject while passing the B Com (Pass) course. Though the marksheets attached with the Petition are unclear it is submitted that the curriculum of Hindi prescribed at the B Com (Pass) level is completely different from that at the secondary level. The B Com (Pass) course being essentially a commerce course the thrust in papers related to that subject and the study of a language is required only as one of the optional subjects that too not for the duration of the entire course as part of study of one of the modern Indian languages. 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 the objective sought to be achieved and therefore the said qualification cannot be said to be arbitrary."

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 M.C.D. 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. However, parties are left to bear their respective costs.*

(A.K. SIKRI)
JUDGE

(VIPIN SANGHI)
JUDGE

January 11, 2008
nsk