

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

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WP(C) No.4332/2002

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Date of decision: 3rd March, 2010

ASHA KIRAN

..... Petitioner

Through: Mr. A.K. Thakur, Mr. Atul Jha,
Mr. Rajiv Arora and Mr. R.K. Mishra, Advocates

Versus

**CHAIRMAN (DELHI SUBORDINATE SERVICES
SELECTION BOARD**

..... Respondent

Through: Ms. Zubeda Begum with Ms Sana Ansari,
Advocates

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. This writ petition was preferred pleading that the sole respondent Delhi Subordinate Selection Board had on 11th December, 2000 advertised for recruitment of 66 TGT teachers in Sanskrit; that the petitioner had applied for the same; that pursuant to the said advertisement a written examination was conducted on 22nd July, 2001 and result whereof was declared on 9th November, 2001; that a total number of 348 candidates were declared successful in the written examination and asked to submit certificates for verifying their eligibility; that on 14th February, 2002, 106 candidates were finally declared selected; the name of the petitioner was not there in the list of 106 selected candidates; the petitioner on 7th March, demanded from the respondent the criteria for selection and the marks obtained by the successful candidates and was on 11th April, 2002 only informed that her position was very low in the merit list. The petitioner

preferred this petition alleging that there was bungling in the examination and the entire selection process was shrouded in secrecy. The relief of directing the respondent to explain as to how the list of successful candidates had been pruned from 348 to 106 and the criteria for selection of the said 106 candidates and quashing of the selection of the 106 candidates so selected was claimed in the petition. However, the selected candidates were not impleaded as parties to the petition. Though the writ petition was accompanied with an application for interim relief for staying the recruitment of the 106 selected candidates but no interim relief was granted to the petitioner.

2. A perusal of the advertisement aforesaid shows that the mode of selection was in the absolute discretion of the respondent and it is also mentioned that the respondent may at its discretion, design the structure of the selection process and the mode of selection may include any one or more of the following, namely, preliminary examination, main examination, personal interview etc. as and where considered necessary.

3. The respondent has filed a counter affidavit stating, inter alia, that after the release of the advertisement the Directorate of Education has increased the vacancies from 66 to 144; that after the written examination, candidates three times the number of vacancies were shortlisted; that since at the time of receipt of applications no documents in support thereof were called, shortlisted candidates were asked to send their documents; that the respondent had devised the selection criteria to include alongwith the marks of written examination, weighted marks on the basis of the academic career of the candidates and the final selection was made on such basis and in consultation with the user department. It is further informed that the petitioner had scored 84.60 marks while the last selected candidate had scored 90.60 marks.

4. On 28th September, 2005 the counsel for the respondent stated that the original record relating to the selection shall be produced before this court. The records were so produced and vide order dated 12th December, 2006 the petitioner permitted inspection of the same. Pursuant to the said inspection, the petitioner filed certain other documents and on 20th November, 2007 made submissions with respect thereto and on the basis whereof the respondent was directed to file affidavit further explaining the criteria for selection.

5. The counsel for the parties have been heard.

6. As far as the challenge by the petitioner to the selection criteria utilized for the selection of candidates in the present case is concerned, this court vide judgment dated 26th February, 2004 in writ petition CW.No.3383/2002 titled ***Raj Bala Vs Government of NCT of Delhi*** has upheld the same. Faced therewith the counsel for the petitioner has sought to, on the basis of documents filed after inspection as aforesaid of the records of the respondent, urged other discrepancies in the merit list drawn by the respondent. However neither is there any pleading for the same nor have the selected candidates who would ultimately be effected by the inquiry, if any, by this court into the said merit list been impleaded as parties, neither at the time of final filing of the petition nor even after the inspection had been given to the petitioner. In the absence of the selected candidates whose merit list is now sought to be challenged, the said contentions cannot be considered. I may, however, notice that the counsel for the respondent relies on ***Haryana Public Service Commission Vs Amarjeet Singh*** 1999 SCC (L&S) 1451 laying down that even if the criteria applied by the Public Service Commission is found to be defective by the court, if it is applied uniformly, the courts cannot reallocate marks, and ***Shankarsan Dash Vs UOI*** (1991) 3 SCC 47 laying down that the candidate included in the merit list has no indefeasible right to appointment even if a vacancy exists.

7. The counsel for the petitioner has contended that the rules of the game cannot be changed after the game has commenced. Reliance in this regard is placed on *Secretary, A.P. Public Service Commission Vs B. Swapna* (2005) 4 SCC 154. However, there is no pleading that the rules were different at the time of advertisement when the petitioner applied for selection or changed subsequently. On the contrary, in the advertisement no selection criteria was disclosed and complete discretion was left to the respondent to follow any selection criteria it desired.

8. The counsel for the petitioner lastly contends that the vacancies still exist and the petitioner should be appointed in one of the vacancies. Reliance in this regard is placed on *Tridip Kumar Dingal Vs State of West Bengal* (2009) 1 SCC 768. However, in the opinion of this court, the said relief also cannot be granted to the petitioner. The petitioner neither made out a case for the same nor has it been found by this court that the petitioner was eligible for selection. However, to satisfy the judicial conscience, I have considered whether there is any discrepancy in the merit list as orally urged by the petitioner. I am unable to find any. The counsel for the petitioner with reference to the merit list drawn has sought to contend that persons having the same marks in the written test have been given different percentages. That does not appear to be the position. In the absence of any pleading, all that can be said is that the column of percentage in the merit list appears to be the percentage arrived at of the weighted average criteria. The petitioner thus cannot be granted the said relief also.

9. The petition, therefore, fails and is dismissed, however no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

3rd March, 2010
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