

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

+ **W.P.(C.) No. 7903/2008**

% **Date of Decision: 05th March ,2010**

VARSHA MAHAVRA

.....PETITIONER

! Through: Mr. Naresh Kaushik and Ms Aditi Gupta,
Advocates.

VERSUS

\$ DELHI SUBORDINATE SERVICES SELECTION BOARD & ORS.
.....RESPONDENTS

^ Through: Ms. Ruchi Sindhwani, Advocate.

CORAM: Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper 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**

S.N.AGGARWAL, J

Pursuant to an advertisement issued by Delhi Subordinate Services Selection Board (respondent No. 1 herein) in the Employment News of 13-19/01/2007 for inviting applications for filling up of various posts of Teachers, the petitioner had applied for her appointment to the post of TGT, Punjabi (Female) against Post Code No. 117/2006. She had qualified the preliminary examination but the result of her main examination was withheld by respondent No. 1. The petitioner later on came to know through information under RTI Act that she had also qualified the main examination but was denied appointment as she did not fulfill the eligibility criteria on the cut-off date of 02.02.2007 mentioned in the advertisement pursuant to which she had applied. Aggrieved therefrom, the petitioner has filed the present writ petition seeking issuance of a writ

of certiorari quashing the cut-off date of 02.02.2007 fixed by the respondents for determining the eligibility for the post of TGT, Punjabi (Female) vide its advertisement in the Employment News dated 13-19/01/2007 (Advertisement No.06/2006) as arbitrary and discriminatory. The petitioner has prayed for directions to the respondents to consider her for appointment to the post of TGT, Punjabi (Female).

2 I have heard the arguments of learned counsel for both the parties and have also perused the record.

3 In the advertisement pursuant to which the petitioner had applied for her appointment to the post of TGT, Punjabi (Female), the cut off date of 02.02.2007 was specifically mentioned as the date on which the candidates applying for various posts should meet the eligibility criteria mentioned in the said advertisement. The last date of receipt of applications from eligible persons mentioned in the advertisement was 02.02.2007. It was specifically provided in the advertisement that the educational qualification, age, experience and other conditions of eligibility as stipulated in the advertisement shall be determined as on the closing date of applications i.e. 02.02.2007.

4 As per the advertisement, one of the essential qualifications required by a candidate for appointment to the post of TGT, Punjabi (Female) was a degree or diploma in Education. Admittedly, the petitioner did not possess the said degree of B. Ed. or diploma in Education on the cut-off date of 02.02.2007. She is stated to have passed the B. Ed. course through distant education from University of Jammu on 15.03.2007. There is no dispute about this fact.

5 Mr. Naresh Kaushik learned counsel appearing on behalf of the petitioner has contended that since the petitioner was allowed to sit in

the preliminary as well as in the main examination held for the post, it should be deemed that the respondent had treated the petitioner as eligible for her appointment to the post she had applied for. He has further argued that since the petitioner possess the requisite qualification required for her appointment to the post of TGT, Punjabi (Female) and as the vacancies are also available, the Court should direct the respondents to appoint her to the post for which she has qualified the preliminary as well as the main examination.

6 I have given my anxious consideration to the above arguments advanced on behalf of the petitioner but I am sorry I could not persuade myself to agree with the same in view of judgments of the Hon'ble Supreme Court in ***State of Haryana & Ors. Vs. Anurag Srivastava & Ors.*** JT 1998 (9) SC 190 ; ***Bhupinderpal Singh Vs. State of Punjab*** AIR 2000 SC 2011; ***State of Uttar Pradesh Vs. Vijay Kumar Misra*** AIR 2003 SC 4411; ***Ashok Kumar Sonkar Vs. UOI & Ors.*** (2007) 4 SCC 54.

7 It will be apt to refer to the judgment of the Hon'ble Supreme Court in ***Ashok Kumar Sonkar's case (Supra)***, wherein the Hon'ble Supreme Court has held that in order to avoid any uncertainty for determining the eligibility conditions, fixation of a cut off date is a must. It is further held in the said judgment that in the absence of any cut off date specified in the advertisement or in the Rules, the last date for filing the application should be considered as a cut off date.

8 In the present case the cut off date for determining the eligibility of the candidates for the post of TGT, Punjabi (Female) was specifically mentioned in the impugned advertisement as the last date of receipt of applications from eligible candidates, which was 02.02.2007. Since the petitioner did not possess the essential qualification of B. Ed. prescribed in the advertisement for her appointment to the post of TGT, Punjabi

(Female) on the said cut off date, she was rightly not considered for her appointment to the post in question. Acquiring of essential qualifications by her on a subsequent date after the cut off date is of no consequence. I am of the view that by no stretch of imagination it can be said that the cut off date for determining the eligibility mentioned in the impugned advertisement was arbitrary particularly in view of a specific clause contained in the advertisement in question regarding cancellation of candidature which is extracted below:-

*“The candidates applying for the posts should ensure that they fulfill all the eligibility conditions. Merely because a candidate has been allowed to appear at the examination will not be considered as a valid ground for his/her being eligible for the selection. **If on verification at any time before or after the written examination or at any stage of selection process, it is found that they do not fulfill any of the eligibility conditions, his/her candidature for the post applied for, will be cancelled by the Board/Appointing Authority.**”*

9 The petitioner had sufficient notice of the clauses contained in the advertisement pursuant to which she had applied for her appointment to the post of TGT, Punjabi (Female) that her candidature was likely to be cancelled as she did not possess the requisite essential qualification of degree in education which she admittedly acquired after the cut-off date of 02.02.2007 and therefore, she cannot make any grievance regarding fixing of cut off date of 02.02.2007 in the advertisement by respondent No. 1.

10 Mr. Naresh Kaushik learned counsel appearing on behalf of the petitioner has argued that the respondents have power to relax the rules depending on facts of a particular case. He submits that in the facts of the present case, the respondents should have relaxed the eligibility

conditions for the petitioner and should have offered appointment to her as she has qualified the preliminary as well as the main examination. I do not find any substance in this argument urged by the petitioner's counsel. In case this argument of the petitioner is accepted, then it will amount to denial of opportunity to those who might have become eligible like the petitioner during the period intervening between the cut-off date and the date on which the petitioner acquired the essential qualification of B.Ed. Degree on 15.03.2007. The acceptance of this argument of the petitioner's counsel will be in complete violation of provisions contained in Articles 14 & 16 of the Constitution of India and this cannot be allowed to happen.

11 In view of the foregoing, I do not find any merit in this writ petition which fails and is hereby dismissed but with no orders as to costs.

MARCH 05, 2010
'A'

S.N.AGGARWAL, J