

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

Date of decision: 31st October, 2011.

+ **W.P.(C) 7767/2011**

% **NARAYAN LAL MEENA****Petitioner**
Through: Mr. Rajat Aneja with Ms. Neha
Rastogi, Adv.

Versus

GOVT. OF NCT OF DELHI & ORS. **..... Respondents**
Through: Ms. Zubeda Begum with Ms. Sana
Ansari, Adv. for R-1 to 3.
Mr. Shanker Raju, Adv. for MCD.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 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 |

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the order dated 30th September, 2011 of the Central Administrative Tribunal (CAT) dismissing the O.A. No.3613/2010 under Section 19 of the Administrative Tribunals Act, 1985 preferred by the

petitioner impugning the notice dated 18th October, 2010 to show cause why his services/employment as a Teacher (Primary) with the respondent MCD be not terminated.

2. The undisputed facts are, that on 12th October, 2007 the Delhi Subordinate Services Selection Board (DSSSB) issued a public notice inviting applications for recruitment to the post of Teacher (Primary) in the MCD; the last date for applying/submitting the applications was 29th October, 2007; the required educational qualifications were as under:

- “(i) Senior Secondary (10+2) or intermediate or its equivalent with 50% marks from a recognized Board.*
- (ii) Two Years Diploma/Certificate course in ETE/JBT or B.El.Ed from a recognized institution.*
- (iii) Must have passed Hindi as a subject as secondary level.”*

;that as on 29th October, 2007 the petitioner was not possessing the requisite two years diploma/certificate course in ETE/JBT or B.El.Ed from a recognized Institution though he was a student of ETE course since the year 2005 from a University in Rajasthan and had also cleared the 1st year thereof in June, 2006. It is the case of the petitioner that though the second year

examination of the said course was scheduled to be held in June, 2007 but on account of agitation by the *Gujjar* community in the State of Rajasthan the said examination was not held and was eventually conducted in October, 2007 and the result thereof declared on 12th March, 2008; the petitioner successfully completed the said course.

3. It is also not in dispute that though the petitioner as aforesaid, as on 29th October, 2007 did not fulfill the eligibility conditions for applying for the post but was permitted to take the examination and upon clearing the same, allowed to appear in the interview and was also appointed on 31st January, 2009.

4. However the petitioner was served with the notice dated 18th October, 2010 to show cause as to why his services be not terminated for the reason of his appointment being in violation of the Recruitment Rules. The petitioner in his reply to the show cause notice though not controverting that he was not eligible to apply as per the Recruitment Rules contended that having been allowed to appear in the examination, interview and having been appointed and allowed to serve for about twenty months, his services could

not be terminated particularly when he had, though after the cut-off date of 29th October, 2007, acquired the eligibility condition.

5. The petitioner simultaneously also approached the Tribunal as aforesaid impugning the notice to show cause. Vide *ex parte* order dated 29th October, 2010 the Tribunal stayed the termination of the employment of the petitioner.

6. The Tribunal has vide order impugned in this petition dismissed the application of the petitioner relying on the judgment dated 7th September, 2010 of the Division Bench of this Court in W.P.(C) 1343/2010 titled ***Santosh Kumar Meena v. Govt. of NCT of Delhi*** and other connected petitions and on ***Pramod Kumar v. U.P. Secondary Education Services Commission*** 2008 (2) SCC (L&S) 244 and ***Jenany J.R. v. S. Rajeevan*** 2010 (2) SCC (L&S) 109. This Court in ***Santosh Kumar Meena*** (supra) has held that the fact that due to civil disobedience movement by the *Gujjar* community in the State of Rajasthan and Western Haryana the results of examination taken could not be declared on time, is irrelevant and the persons who were not qualified by the cut-off date, even if owing to the said

reason could not be eligible for admission. The Apex Court in ***Pramod Kumar*** (supra) held that where the qualification for holding a post has been laid down, any appointment in violation thereof would be a nullity and void in law. Similarly in ***Jenany J.R.*** (supra) it was held that the educational qualification was to be determined on the cut-off date and if the applicant did not possess the qualification on that date he would not be eligible for appointment even if had acquired qualification subsequently and the same would be of no consequence.

7. The counsel for the petitioner has fairly stated that the present case is squarely covered by the judgment of the Division Bench of this Court in ***Santosh Kumar Meena***. He has however contended that SLP 27037/2010 has been preferred thereagainst and in which notice has been issued on 25th October, 2010 and the respondents have been restrained from proceeding on the basis of the show cause notice issued to the petitioners therein. He has further contended that the Division Bench in ***Santosh Kumar Meena*** did not consider the dicta of the Supreme Court in ***Bhupinderpal Singh v. State of Punjab*** (2000) 5 SCC 262 and also misconstrued the judgment of the Apex

Court in *Mrs. Rekha Chaturvedi v. University of Rajasthan* JT 1993 (1) SC 220.

8. We are however unable to comprehend as to how the aforesaid two judgments support the petitioner. The Apex Court in *Bhupinderpal Singh* (supra) has held that if cut-off date has been laid down in the relevant rules it has to be followed and even otherwise it may be prescribed in the advertisement; only if no such date is prescribed, the eligibility has to be determined on the last date of receipt of applications. The Apex Court also deprecated the practice then prevalent in the State of Punjab of determining eligibility conditions as on the date of interview. Similarly in *Mrs. Rekha Chaturvedi* (supra) also it was held that even in the absence of a fixed date in the advertisement, the only certain date for scrutiny of eligibility and qualifications has to be the last date for making the applications. The contention that the eligibility/qualifications should be examined with reference to the date of selection and not with reference to the last date for making the applications was rejected. It was held that the date of selection is invariably uncertain and in the absence of knowledge of such date the

candidates who applied for posts would be unable to state whether they are qualified for the post in question or not.

9. The advertisement in the present case and in response where to the petitioner had applied provided as under:-

(5) *The Educational qualification, age, experience and other conditions of eligibility as stipulated above shall be determined as on the closing date of receipt of applications i.e. 29.10.2007."*

10. Ms. Zubeda Begum, Advocate appearing for the respondents no. 1 to 3 has also drawn our attention to ***Ashok Kumar Sonkar v. Union of India*** (2007) 4 SCC 54 where also the Apex Court while laying down that in the absence of any cut-off date specified in the advertisement or in the Rules, the last date for filing the application must be considered as the cut-off date also held that the candidates not holding the requisite qualification as on the cut-off date could not be held eligible for appointment. It was further held that the principles of natural justice also would not be applicable in terminating such employment where the selection was illegal as the candidate was ineligible to be considered for appointment.

11. The counsel for the petitioner, before us, has also sought to contend

that there was a mere irregularity in the appointment of the petitioner. The Apex Court however in **Ashok Kumar Sonkar** (supra) has clarified that the appointment of a candidate not fulfilling the eligibility conditions on the cut-off date is nonest in the eye of law and a nullity and not irregular. It was further held that even the Apex Court in exercise of equity jurisdiction would have no role to play in such a situation.

12. Ms. Zubeda Begum, Advocate to meet the argument of the counsel for the petitioner of the respondents being estopped from terminating the employment of the petitioner has also drawn our attention to the following clauses in the advertisement pursuant to which the petitioner had applied:-

CANCELLATION OF CANDIDATURE

1. *The candidates applying for the post should ensure that they fulfill all the eligibility conditions because a candidate has been allowed to appear at the examination will not be considered as a va.. group 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.*
2. *Candidates are cautioned that they should not furnish any incomplete, false information or submit a document which is defective or fabricated or otherwise commit any*

act of misconduct submitting application forms or during the course of recruitment or fraudulently claim SC/ST/OBC etc. and other benefits. In case any such case is detected, the Board/Appointing Authority reserves its right to withdraw/cancel any selection and take legal action against the candidate concerned. The candidate may be permanently or for a specified period debarred from taking part in the recruitment conducted by the Board.”

13. It is thus apparent that the responsibility of satisfying that the eligibility conditions were fulfilled was on the applicants and the petitioner cannot take any advantage of the mistake of the respondents in allowing the petitioner to appear in the examination and the interview and also in appointing him even though he did not fulfill the eligibility conditions as on the cut-off date. Moreover the Supreme Court in **Ashok Kumar Sonkar** having held such appointment to be illegal, the question of estoppel does not arise.

14. We are further of the opinion that granting any relief to the petitioner would tantamount to giving a benefit to the petitioner to the prejudice of others. If the eligibility were to be allowed to be determined on the date of interview and/or on the date of appointment, then the same would be to the

detriment/prejudice of the others who considering themselves to be ineligible as per the terms of the advertisement, did not apply. The same would tantamount to giving a premium to the illegality practiced by the petitioner in applying when he was clearly in the know that he was ineligible to apply. It is well-nigh possible that had others similarly placed as the petitioner and who acted honestly and did not apply, had also applied and competed, the petitioner may not even have been found successful. The counsel for the respondents in this regard has also relied on ***Dr. Santosh Kumar v. Union of India*** (1995) 1 SCC 269 where it was laid down that allotment of seats in Medical Colleges has to be according to merit and it does not depend upon who comes to the court and who does not; the matter is one of principle; a more deserving candidate may not have the means to approach the court.

15. We are therefore unable to persuade ourselves to hold that the judgment of the Coordinate Bench of this Court in ***Santosh Kumar Meena*** requires re-consideration. There is thus no merit in the petition. The same is dismissed. However since notice has been issued in the SLP preferred

against the judgment of this Court in *Santosh Kumar Meena* and interim protection extended to others similarly placed as the petitioner and further since we are informed that the services of the petitioner pursuant to the interim order of the Tribunal have not been dispensed with till now, we deem it expedient to extend the said protection to the petitioner for a period of six weeks from today to enable the petitioner to approach the Apex Court. It is however clarified that if on the expiry of the said six weeks there is no interim protection, the respondents shall be entitled to proceed against the petitioner in accordance with law.

No order as to costs.

RAJIV SAHAI ENDLAW,J

ACTING CHIEF JUSTICE

OCTOBER 31, 2011

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