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

% *Judgment Reserved on: May 06, 2013*
Judgment Pronounced on: May 13, 2013

\+ **W.P.(C) 834/2013**

DELHI SUBORDINATE SERVICES SELECTION BOARD & ANR. .....Petitioners
Represented by: Ms.Zubeda Begum, Advocate

versus

UMA SHANKAR SHARMA .....Respondent
Represented by: Mr.M.K.Bhardwaj, Advocate for R-1
Ms.Anjana Gosain, Advocate with Mr.T.Mitra, Advocate for R-2

W.P.(C) 914/2013

DELHI SUBORDINATE SERVICES SELECTION BOARD & ANR. .....Petitioners
Represented by: Ms.Zubeda Begum, Advocate

versus

MS.PRIYANKA & ANR. .....Respondents
Represented by: Mr.M.K.Bhardwaj, Advocate for R-1
Ms.Anjana Gosain, Advocate with Mr.T.Mitra, Advocate for R-2

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. On November 07, 2009 an advertisement was issued by the Delhi Subordinate Service Selection Board inviting applications from eligible candidates to be appointed as Teachers under the Directorate of Education, Government of NCT Delhi. The appointment was for the post of Trained Graduate Teachers (TGT) in various disciplines such as English, Hindi, Maths, Natural Science, Social Studies, Sanskrit, Punjabi and Urdu. The advertisement specified the number of posts in each discipline. It was indicated in the advertisement that the last date for receipt of the applications would be March 15, 2010. It was specifically notified that eligibility would be determined with respect to said date i.e. March 15, 2010. The essential educational qualification to be possessed by the candidates was indicated to be March 15, 2010.

2. The user department i.e. the Government of NCT Delhi found that there was an error in the number of vacant posts notified to be filled up and sent a correct number to the Delhi Subordinate Service Selection Board, resulting in the Board issuing an addendum to the notification inviting applications dated November 07, 2009, indicating therein that the vacancies would be as indicated in the corrigendum. The last date for receiving applications was extended to March 25, 2010. No other term or condition of the notification dated November 07, 2009 was changed, and hence it is obvious that the prescribed cut off date by which eligibility had to be acquired continued to be March 15, 2010.

3. The respondents of the two writ petitions who were desirous of seeking appointment as TGT (Natural Science) and TGT (English) were not qualified by the prescribed cut off date. Uma Shankar Sharma had taken the final year B.Ed. examination conducted by the University of Jammu and the result was declared on March 22, 2010. As regards Priyanka, she too had taken the B.Ed. examination conducted by the University of Jammu and even her result was declared on March 22, 2010. The degree B.Ed. was an essential qualification.

4. Being held not qualified to be appointed as a TGT in the respective disciplines, both approached the Central Administrative Tribunal and placed reliance upon a decision of the Tribunal dated March 30, 2012 in an original application filed by one Preeti Balyan and others, wherein as a result of a corrigendum issued to an advertisement, the Tribunal had directed shifting of the last date for acquiring eligibility to the extended date by which applications could be received.

5. Vide impugned decision dated September 03, 2012, claim by Uma Shankar Sharma and Priyanka had succeeded before the Tribunal and we note that the Tribunal has simply relied upon its decision in *Preeti Balyan*'s case.

6. The decision in *Preeti Balyan*'s case has been set aside by a Division Bench of this Court on February 06, 2013 when W.P.(C) No.3397/2012 *Delhi Subordinate Services Selection Board & Anr. Vs. Preeti Balyan & Ors.* was decided.

7. Facts which led to Preeti Balyan and others filing a claim before the Tribunal was that admittedly with the acceptance of the recommendations of the 6th Central Pay Commission, applicable from

January 01, 2006, the post of Assistant Teachers and Primary Teachers which hitherto fore were Group 'C' Posts became Group 'B' Posts. The resultant effect was that the upper age limit had to be 30 years because the mandate of the Government was that for appointment to a Group 'B' post by direct recruitment the upper age limit had to be 30 years. For Group 'B' post the upper age limit prescribed for direct recruitment was 27 years. And when the Recruitment Rules for the two posts were framed much prior to January 01, 2006, being Group 'C' posts, the upper age limit prescribed was 27 years. Nobody realized that there was a hiatus; and proceeding to fill up 4500 vacant posts of Primary Teachers and 520 posts of Assistant Teachers an advertisement was issued inviting applications prescribing last cut off date to be January 15, 2010. But when this fact was brought to the notice of the Tribunal it directed, and rightly so that firstly the Recruitment Rules should be amended and secondly applications should be invited from those who would be less than 30 years of age. The result was a corrigendum issued by the Selection Board retaining the cut off date by which eligibility had to be attained i.e. January 15, 2010, but made the upper age limit to be 30 years.

8. At a second stage challenge, the Tribunal held that the prescribed cut off date for eligibility had to shift to the date by which applications could be received as per the corrigendum.

9. The effect of the direction issued by the Tribunal was that those who turned 30 years of age as of January 15, 2010 would become ineligible and those who were less than the minimum age prescribed as of January 15, 2010 but would cross the lower age limit by said date would

become eligible. In other words, the rights of some candidates with respect to the upper age in the context of the shifting of the cut off date would get adversely affected. There was an apparent conflict between the right of those who were eligible as of January 15, 2010 and would loose the eligibility on becoming overage if the date was shifted to October 17, 2011 and those who were ineligible as of January 15, 2010 but became eligible with reference to the cut off date being shifted to October 17, 2011. Neither set of candidates was at fault. The situation was of a kind which had no precedent.

10. Posing the question: '*What should a Court do?'* It was answered in paras 23 to 25 as under:-

> *"23. In our opinion navigate the journey using the ancient mariner's compass. In other words, the Court should be guided by the reason of the law and seek direction from the reason of the law.*
>
> *24. The first reason of the law which acts as our compass is that ordinarily vacancies have to be filled up from amongst the eligible candidates pertaining to the year of the vacancy and if for some reasons the selection process is postponed, only those who were eligible in the year of the vacancy should be considered. The second reason of the law which acts as our compass is that wherever in an ongoing process a derailment takes place at a particular point, the rail should be put back at the point where it derailed after removing the cause of derailment and letting the train chug along.*
>
> *25. Guided by the aforesaid two reasons of law we unhesitatingly reach the conclusion that the only corrective action which could be directed to be taken was, as was directed by the Tribunal when the Original Applications filed by candidates who pointed out a hiatus between retaining the upper age limit of 27 years and the classification of the post*

was decided with a direction to amend the Recruitment Rule and issue a corrigendum making eligible candidates up to the age of 30 years; requiring the cut-off date January 15, 2010 to be retained. The subsequent decision mandating that the eligibility cut-off date should be shifted to October 17, 2011 would amount to modifying the track and as a result making ineligible many candidates who cross the age of 30 years as of January 15, 2010. It must be also remembered that the vacancies pertained to the vacancy year 2010 and this explains the cut-off date being January 15, 2010."

11. Suffice would it be to state that the consistent view taken by Courts is that if a date is prescribed in an advertisement as the last date by which a qualification has to be obtained, the date being sacrosanct, has to be respected and we may note the reason for the view by reproducing paragraph 10 from the decision of the Supreme Court reported as 1993 Supp. (3) SCC 168 *Rekha Chaturvedi Vs. University of Rajasthan & Ors.* which reads as under:-

"10. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence

may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. We have, therefore, no hesitation in holding that when the Selection Committee in the present case, as argued by Shri Manoj Swarup, took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent illegality, and on this ground itself the selections in question are liable to be quashed. Reference in this connection may also be made to two recent decisions of this Court in A.P.Public Service Commission, Hyderabad Vs. B.Sarat Chandra and District Collector & Chairman, Vizianagaram Social Welfar Residential School Society, Vizianagaram Vs. M.Tripura Sundari Devi."

12. For the reasons recorded by the Division Bench of this Court overruling the view taken by the Tribunal in *Preeti Balyan*'s case and for the law declared by the Supreme Court in *Rekha Chaturvedi*'s case (supra) the impugned decision has to be set aside; additionally for the reason that it was for the Staff Selection Board to have notified the last date by which eligibility had to be acquired. Further, the advertisement inviting applications gave a wrong figure pertaining to the vacancies notified to be filled up and the corrigendum simply corrected by disclosing to the candidates the exact number of vacancies proposed to be filled up. An error of notifying the number of vacancies being corrective, it had not to be treated that the original advertisement inviting applications stood superseded. There is no law that eligibility has to be

always as of the last date by which applications would be received. The date of eligibility has to be clearly spelt out and the same could be any date as per the advertisement inviting applications.

13. The writ petitions are allowed. Impugned judgment and order dated September 03, 2012 allowing OA No.1592/2011 filed by Uma Shankar Sharma and OA No.4266/2011 filed by Priyanka are dismissed but without any order as to costs all throughout.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

MAY 13, 2013
mamta