

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

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Date of decision: 17th January, 2013

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LPA NO.499/2012

BINDU RANI

..... Appellant

Through: Ms. Jyoti Singh, Sr. Adv. with Mr. Abhilash Mathur, Mr. Amandeep Joshi & Ms. Saahila Lamba, Advs.

Versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. T. Mitra, Adv. for Ms. Anjana Gosain, Adv. for R-1.
Mr. J.S. Vohra, Adv. for R-2 to 4.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the judgment dated 14.05.2012 of the learned Single Judge of dismissal of W.P.(C) No.10781/2009 preferred by the appellant. Notice of the appeal was issued. A reply to the memo of appeal has been filed by the respondents No.2 to 4. The counsels have been heard.

2. The appellant had filed the writ petition from which this appeal arises, pleading:

- (i) that she possesses the qualification of Bachelor of Arts (B.A.), Bachelor of Education (B.Ed.) and is also holding the qualification of Junior Basic Training (JBT);
- (ii) that an advertisement was issued in the newspapers inviting applications for the post of Assistant Teacher in Guru Nanak Girls Senior Secondary School, Dharampura, Gandhi Nagar, Delhi, Chairman of which School's Managing Committee and Principal of which School have been impleaded as respondents No.2 and 3 herein;
- (iii) that she had applied and / was called for interview on 08.01.2008;
- (iv) that against the five vacancies of Assistant Teacher in the unreserved category, 19 candidates had been called for the interview;
- (v) that the interview was conducted by a duly constituted Selection Committee as per the provisions of the Delhi School Education Rules, 1973;

- (vi) that in the result announced, the name of the appellant was not in the list of selected candidates;
- (vii) that one of the unsuccessful candidates viz. Ms. Anju Sharma challenged the selection process by filing W.P.(C) No.7297/2009;
- (viii) that along with counter affidavit of the Principal of the School in the said writ petition, the table of marks obtained by each candidate who appeared for interview was filed and wherefrom the appellant learnt that there was an error in giving weightage to the marks secured by the appellant in her JBT exams; the weightage of marks secured in JBT was given as 11.6 only when as per the criteria under the 'Marking Scheme for Recruitment of Teachers', weightage of 17.6 ought to have been given to the appellant;
- (ix) that if correct weightage is given to the JBT marks of the appellant, the appellant would stand at No.3 in the merit list and would have been appointed against the five vacancies;

- (x) that the aforesaid error came to the notice of the appellant only on 25.07.2009 and immediately whereafter the writ petition was filed; and,
 - (xi) that the appellant is thus entitled to be appointed by displacing the last candidate in the merit list of five selected candidates viz. Ms. Gurvinder Kaur who is respondent No.4 herein.
3. The respondents No.2 &3 School contested the writ petition pleading:
- (I) that the challenge by the appellant to the selection process was an afterthought inasmuch as the result of the selection was declared on 08.01.2008 but the writ petition had been filed on 07.08.2009 i.e. after the services of all the selected candidates had been confirmed;
 - (II) that the Selection Committee comprised of a) the Chairman of the Managing Committee of the School, b) the Education Officer Zone-IV in his capacity as the nominee of the Director of Education, c) District Education Officer Zone-III, d) Principal, Sarvodaya Kanya Vidayala, Kalyan Vihar, Delhi in her capacity as Subject Expert and e) the then Principal of the

School. All the said persons had scrutinized the documents submitted by the candidates and made selection in accordance therewith;

- (III) that the appellant was falsely claiming that she had produced the documentary evidence of holding the JBT qualification when she had submitted documents in support of her qualification of B.Ed. only. The Minutes of the Selection Committee also record the qualification of the appellant as B.Ed. and not JBT;
- (IV) that if the appellant had any grievance against the selection process, she ought to have raised objection immediately;
- (V) that the appellant had been given appropriate marks by the Selection Committee in accordance with the educational qualification of B.Ed. disclosed by her;
- (VI) that though the appellant had secured 58% marks in B.Ed. but due to a typographical mistake, in the Minutes of the Selection Committee, her B.Ed. marks were written as 58.69% but which mistake does not affect the weightage given to her;

(VII) that the appellant having failed to show her qualification of JBT before the Selection Committee, cannot be allowed to make any grievance on the basis thereof;

(VIII) that since no objections were raised, the School had after waiting for five or six months not retained the documents submitted by the unsuccessful candidates and had destroyed the same;

(IX) that W.P.(C) No.7297/2009 had been filed by the sister-in-law of the appellant and the appellant had filed the writ petition from which this appeal arises without disclosing the said fact and in collusion with her sister-in-law;

4. The respondent No.1 Director of Education also opposed the writ petition by filing a counter affidavit pleading the same defence as the School.

5. The respondent No.4 Smt. Gurvinder Kaur also opposed the writ petition pleading additionally that, she, upon being appointed in the respondent School was teaching Punjabi as well as other subjects; that the respondent School is a Sikh minority government aided school where a

Punjabi teacher is required; that she held the qualification of Master of Arts (MA), B.Ed.; that W.P.(C) No.7297/2009 stood dismissed on 09.11.2009.

6. The learned Single Judge dismissed the writ petition of the appellant observing that the services of all the selected candidates had been confirmed by the School; that the selection was not in the hands of any single person but was by a Selection Committee constituted in accordance with the Rules *supra* and that no error had been committed by the Selection Committee.

7. The senior counsel for the appellant has taken us through the “Marking Scheme for Recruitment of Teachers” whereunder, for Senior Secondary / JBT candidates, 30 marks are allocated for the qualification of JBT / Elementary Teachers Training (ETT) and 20 marks for the interview and for B.A. / B.Ed. candidates, 20 marks have been allocated for the qualification of B.Ed. It is argued that the appellant had both, ETT qualification as well as the qualification of B.Ed. Attention is next invited to the result dated 23.08.2005 of the State Council of Educational Research & Training (SCERT) of the Elementary Teacher Education examination taken by the appellant and in which the appellant had secured 763 out of 1300 marks constituting 58.69%. It is argued that the appellant, out of 30 marks allocated in the Scheme aforesaid to JBT / ETT, ought to have got weightage

of 17.6 but no marks were given. It is argued that if such weightage had been given, the appellant would have been above the last (fifth) candidate selected in the merit list. It is yet further argued that a false defence has been taken in the counter affidavit to the writ petition that the appellant at the time of interview had not submitted documents of her ETT qualification, as is evident from the Selection Committee in its Minutes taking the marks of the appellant as 58.69% only. It is further argued that the appellant in the B.Ed. examination had secured 1099 out of 1500 marks i.e. 73.26% entitling her to a weightage of 14.6 out of 20 provided therefor in the Marking Scheme. It is contended that if the total of the marks in ETT and B.Ed. are taken, the appellant would be above the last candidate appointed.

8. The counsel for the School has argued that the selection process has been upheld in the judgment in W.P.(C) No.7297/2009; that the writ petition was on the plea of JBT marks only but before this Bench, the matter is argued on the basis of ETT marks and which supports the contention that the appellant before the Selection Committee had sought selection only on the basis of B.Ed. marks and not on the basis of JBT marks. On enquiry, however it is admitted that B.Ed. is a higher qualification than that of JBT or ETT. It is also argued that in accordance with the Marking Scheme, 20% of

the credit earned from 58% marks i.e. of 11 has been correctly given. From the Minutes aforesaid, it is contended that the Selection Committee considered credits only of all the students. The counsel contends that this Court ought not to interfere with the decision of the five experts constituting the Selection Committee in accordance with the Rules aforesaid.

9. The senior counsel for the appellant in rejoinder has argued that the Single Judge wrongly took into consideration the B.Ed. marks.

10. The counsel for the Director of Education has also contended that the selection was in accordance with the Scheme.

11. The senior counsel for the appellant has also contended that the respondent No.4, on the date of appointment, was over-age.

12. We have considered the rival submissions and are of the opinion that the present is not a case where discretion under Article 226 should be exercised for granting any relief to the appellant.

13. It has come on record that the respondent No.4 was employed elsewhere and upon being selected for employment in the respondent School gave up the earlier appointment and not only joined the respondent School but her services were also confirmed prior to the appellant filing the

writ petition. In this regard, the delay by the appellant of more than one and a half years in preferring the writ petition challenging the selection process becomes fatal. When the challenge is to the selection / appointment process, it ought to be made immediately, preferably before the candidates who have been selected join or are confirmed. Knowledge of such challenge would enable the selected candidates to take a call whether to leave their existing employment and to take chance of the challenge succeeding or to in the face of the challenge continue in the existing employment. It is the case of the appellant that the respondent No.4 was over-age on the date of joining the employment. Without going into the merits of the said plea, she would definitely be over-age today. Without disturbing the respondent No.4, the appellant admittedly cannot be granted the relief. We are therefore of the opinion that the delay by the appellant of more than one and a half years disentitles the appellant from any relief on the grounds of laches and waiver.

14. The senior counsel for the appellant has of course argued that the Minutes of the Selection Committee were not available to the appellant when the result was announced and the appellant could not have made the challenge then and became aware of her rights only after the said Minutes were filed in the other writ petition aforesaid.

15. However, an applicant to a post has to be vigilant. In today's regime of Right to Information Act, 2005, none can be heard to contend that the information entitling him / her to relief was not available.

16. The senior counsel for the appellant has also argued that the appellant even till date is without a job and would be over-age. However, the same cannot constitute a reason for us to disturb the respondent No.4, when as aforesaid, the appellant is to blame for the situation prevailing today. It is significant that there are no allegations of any *mala fides*, partiality or favouritism having been practiced in the selection process. Even if the case of the appellant is to be believed, it is at best a case of mistake on the part of the Selection Committee. Equity demands that when both the appellant as well as the respondent No.4 are similarly situated, the appellant who is at fault in making the challenge late, and not the respondent No.4, should suffer.

17. Not only so, we also find the matter to be entailing disputed questions. The version of the respondent School of having after five / six months of declaration of the result of selection destroyed the documents of the unsuccessful candidates is in consonance with reason and logic. As aforesaid, there is a serious challenge to the appellant having submitted her

ETT documents before the Selection Committee. Such disputed questions of fact cannot be adjudicated in writ jurisdiction. We are unable to uphold the contention of the senior counsel for the appellant that the falsity of the said defence of the respondent is evident from the appellant's marks of B.Ed. having been taken as 58.69% instead of 58%. A perusal of the computation done by the Selection Committee shows that no marks were awarded to the appellant under the column JBT. It is well nigh possible that there was an error in the Selection Committee regarding the B.Ed. marks of the appellant and the said error is not conclusive of the appellant having sought appointment on the basis of JBT marks. It is also worth mentioning that B.Ed. is admittedly a higher qualification than the JBT and ordinarily a candidate would seek appointment on the basis of a higher and not a lower qualification. The marking scheme also provides for different formulas for marking the applicants seeking appointment as senior secondary / JBT candidates and candidates seeking appointment with BA/B.Ed. qualification and does not disclose any marks to be awarded to the BA/B.Ed. candidates if also possessing JBT / ETT qualification.

18. As far as the argument of the respondent No.4 on the date of appointment being over-age is concerned, we do not find any pleading in

that respect in the writ petition from which this appeal arises and for this reason alone refuse to go into the said question.

19. The appeal is accordingly dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

JANUARY 17, 2013
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