

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

% *Judgment Reserved on: July 25, 2013*
Judgment Pronounced on: August 07, 2013

+ **W.P.(C) 1520/2012**

GOVT OF NCT OF DELHI & ORS Petitioners
Represented by: Ms.Avnish Ahlawat, Advocate
with Mr.N.K.Singh, Advocate

versus

SACHIN GUPTA Respondent
Represented by: Mr.Ajay Kumar, Advocate

W.P.(C) 4483/2012

GNCT OF DELHI AND ORS Petitioners
Represented by: Ms.Avnish Ahlawat, Advocate
with Mr.N.K.Singh, Advocate

versus

VIKRAM SINGH Respondent
Represented by: Mr.Manoj Ohri, Advocate

W.P.(C) 2514/2012

GNCT OF DELHI AND ORS Petitioners
Represented by: Ms.Avnish Ahlawat, Advocate
with Mr.N.K.Singh, Advocate

versus

SNEHLATA Respondent
Represented by: Mr.M.K.Bhardwaj, Advocate

W.P.(C) 4301/2012

GOVT. OF NCT OF DELHI AND ORS Petitioners
Represented by: Ms.Avnish Ahlawat, Advocate
with Mr.N.K.Singh, Advocate

versus

NAINIKA

..... Respondent

Represented by: Mr.Manoj Ohri, Advocate

W.P.(C) 575/2013

DIRECTOR OF EDUCATION AND ANR

..... Petitioners

Represented by: Ms.Avnish Ahlawat, Advocate
with Mr.N.K.Singh, Advocate

versus

NEELAM RANA

..... Respondent

Represented by: Mr.Umesh Mishra, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. The above captioned five writ petitions have a common backdrop and hence are being decided together.
2. Pertaining to the educational qualifications; specified as essential, relevant portion of the Recruitment Rule for the post of Trained Graduate Teacher (T.G.T.) as originally framed by the Government of NCT of Delhi on December 11, 1991 reads as under:-

“ANNEXURE-I

Recruitment Rules for the post of Trained Graduate Teacher in Education Department, Delhi Administration, Delhi

<i>Name of the post</i>	<i>Educational and other qualifications required for direct recruits</i>

<i>1</i>	<i>8</i>
<i>Trained Graduate Teachers</i>	<i>1. A bachelor's Degree (Pass/Hons) from a recognized University or equivalent having secured at least 45% marks in aggregate of having studied to a level not lower than ancillary/subsidiary subjects indicated in any of the following groups:-</i>
<i>English</i>	<i>1. English as main subject at graduation level with one of the following subjects:- (i) History, (ii) Pol. Science, (iii) Economics, (iv) Commerce, (v) Geography, (vi) Agriculture, (vii) Horticulture.</i>
<i>Mathematics</i>	<i>.....</i>
<i>Social Science, and</i>	<i>3. Social Science: At least two of the following main subjects at graduation level: (i) History, (ii) Pol. Science, (iii) Economics, (iv) Commerce, (v) Geography, (vi) Agriculture, (vii) Horticulture.”</i>
<i>Physical Science/Natural Science</i>	<i>.....</i>

3. Pertaining to the educational qualification, specified as essential, relevant portion of the Recruitment Rule for the post of Trained Graduate Teacher (Modern Indian Languages) as originally framed by the Government of NCT of Delhi on December 30, 1992 reads as under:-

“SCHEDULE

RECRUITMENT RULES FOR THE POST OF TRAINED GRADUATE TEACHER (MIL) UNDER THE DTE. OF EDUCATION, DELHI ADMN., DELHI

<i>Name of the post</i>	<i>Educational and other qualifications required for direct recruits</i>
<i>1</i>	<i>8</i>
<i>T.G.T. (MIL)</i>	<i>(i) B.A. (Honours) in one of the MIL concerned or B.A. with MIL concerned as one of the elective subjects from a recognized University having 45% marks in aggregate with one additional language at B.A. level.</i> <i>OR</i> <i>Equivalent Original Degree in MIL concerned from a recognized University having 45% marks in aggregate.”</i>

4. On January 17, 1994 the Government of NCT of Delhi made following amendments in the Recruitment Rules for the post of Trained Graduate Teacher (Modern Indian Language) in Education Department, Delhi Administration, Delhi:-

<i>“Name of the post</i>	<i>Educational and other qualifications required for direct recruits</i>
<i>1</i>	<i>8</i>
<i>T.G.T. (MIL)</i>	<i>(i) B.A. (Honours) in one of the Modern Indian Languages (MIL) concerned or <u>B.A. with MIL concerned as one of the elective subjects</u> from a recognized University having 45% marks in aggregate with one additional language or one school subject at Degree level.</i> <i>OR</i> <i>Equivalent Original Degree in MIL concerned from a recognized University having 45% marks in</i>

	<i>aggregate.” (Emphasis Supplied)</i>
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5. On February 27, 1997 Government of NCT of Delhi made following amendments in the Recruitment Rules for the post of Trained Graduate Teacher English, Mathematics, Social Science and Physical Science/Natural Science in Education Department, Delhi Administration, Delhi requiring column 11 of the existing Recruitment Rule to be amended as under:-

<i>Educational and other qualifications required for direct recruits</i>
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<i>A Bachelor’s degree (Honours/Pass) or equivalent from a recognized University having secured 45% marks in aggregate, in two school subjects of which at least one out of following should have been at elective level:-</i>
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<i>1. English</i>

<i>2. Mathematics</i>

<i>3. Natural/Physical Science</i>

<i>4. Social Science</i>

<i>Note: Main subjects for T.G.T. (Natural Science/Phy. Science) shall be Physics, Chemistry, Biology, Botany and Zoology.</i>
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<i>Social Science: - History/Political Science/Economics/Business Studies/Sociology/Geography/Psychology.” (Emphasis Supplied)</i>
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6. A corrigendum was issued on March 13, 2000 defining what is meant by the expression ‘*elective subject*’ occurring in the afore-noted Recruitment Rule(s), which reads as under:-

“In partial modification of this office order no.2 dated 1.7.99 issued vide endorsement no.F.DE.3 (2)(2)/E-III/9915505-519 dated 01.07.99 the N.B. column after endorsement S. No.1 on page 50 of the said order be read as under:-

N.B: As per policy the definition of elective in RR’s has been framed as the candidate should have studied the subject concerned as mentioned in the RR’s of at least 100 marks each in all parts/years of graduation. The elective word may also include main subject as practiced in different universities.

The above definition of elective subject shall apply to all orders of promotion and Direct Recruitment issued by this office from time to time.”

7. Another corrigendum was issued on March 30, 2010 defining ‘*elective subject*’ in supersession of earlier corrigendum dated March 13, 2000 and same reads as under:-

“In supersession to this office corrigendum no.F.DE.3(44)/E-III/99/2209 dated 14/03/2000, the term ‘Elective’ as specified in the Recruitment Rules may be read as under:

“The candidate should have studied the subject concerned as mentioned in the RRs in all parts/years of graduation. The elective word may also include main subject as practiced in different universities.”

The above definition of elective subject shall apply to all orders of promotion and Direct Recruitment issued by this office from time to time.

This issues with the prior approval of the Competent Authority.”

8. In the year 1996 the respondent of W.P. (C) No.1520/2012; Sachin Gupta, obtained a B.Com (Hons.) degree from Delhi University.

9. It is an undisputed fact that in the year 1994 the subject of Economics was taught in only the 2nd and the 3rd year of the three years Bachelors degree i.e. not in all the three years of the course; students opting for B.Com (Hons.) course had to clear a total of three papers in Economics in the examinations conducted by the University in the 2nd and 3rd year of the course and each paper was of 100 marks. Needless to state, Sachin Gupta studied Economics in only the 2nd and 3rd year of B.Com (Hons.) course undertaken by him and cleared the three papers of Economics in the examination conducted by the University.

10. In the year 2001, the respondent of W.P.(C) No.575/2013; Neelam Rana, obtained a B.Sc. degree from Maharishi Dayanand University, Rohtak and had not studied English as a subject in any of the three years of the graduation course. Thereafter, Neelam Rana obtained a M.A. (English) degree from the same University in the year 2006 after undergoing two years study.

11. Pertaining to the other three writ petitions before we note the facts personal to the respondents of the writ petitions, we note that till the academic session 2003-04 a student who opted for a B.A. (Pass) course in the University of Delhi had to study two languages: English and Hindi in all three years of the course. In the year 2003, Delhi University set up a B.A. Restructuring Committee to formulate '*Foundation and Application Courses*' and take appropriate measures to implement the program. The Committee was of the view that the B.A. (Pass) course should be replaced by a new program of study leading to the B.A. degree. The Academic Council of Delhi University accepted the report of the Committee and decided that the new B.A. program course shall come into force with effect from July, 2004. It is significant to note here that under the B.A.

program course two courses in two languages: Hindi and English were offered to the students; one course of each language was offered to the students in first year and remaining one course of each language was offered to the students in the second or the third year as per the choice of the student. Meaning thereby, the students who opted for new B.A. program did not study two languages: English and Hindi in all three years of program but only in two years.

12. It would be worthwhile to note the perspective and objectives behind introduction of aforesaid new B.A. program course by Delhi University:-

“PERSPECTIVE

The perspective for the B.A. programme is based on the view that there is need for an undergraduate programme relevant to the immediate environment of social opportunities while, at the same time, giving the student basic intellectual equipment expected of a programme of higher education.

OBJECTIVES

a. *The B.A. programme of the University of Delhi should be a useful and attractive programme that enables a Graduate to acquire the basic intellectual equipment in terms of thinking ability, linguistic skills and reasonable knowledge in certain fields with which he/she can enter the world of work.*

c. *By offering a combination of relevant courses, changing the method of teaching in the direction of greater interaction between teachers and students and reorganizing the examination system, this objective is sought to be achieved within the overall framework of the existing workload and faculty strength in the colleges.*

d. *The structure and the contents of the programme make it an integrated and interdisciplinary programme with flexibility and choice.*

e. Thus the B.A. programme will provide the students a demanding, but worthwhile and enjoyable experience, in the form of a liberal education to enter the wider world of work or go for higher studies after three years of college.” (Emphasis Supplied)

13. In the year 2004 the respondent of W.P. (C) No.4483/2012; namely Vikram Singh took admission in (new) B.A. program course conducted by Delhi University and was awarded B.A. (Program) degree by the University on successful completion of the course. He studied Hindi language in the second and the third year of the B.A. program course undertaken by him.

14. In the year 2005 the respondent of W.P. (C) No.4301/2012; namely Nainika, took admission in the (new) B.A. program course conducted by Delhi University and was awarded B.A. (Program) degree by the University on successful completion of the course. She studied English language in only the first and the second year of the B.A. program course undertaken by her.

15. In the year 2003 the respondent of W.P. (C) No.2514/2012; namely, Snehlata obtained a B.A. degree from Maharishi Dayanand University, Rohtak and had not studied Sanskrit as a subject in any of the three years of the graduation course. After completing the graduation course in the year 2003, she cleared three papers in Sanskrit language in an examination conducted by Maharishi Dayanand University and obtained a degree B.A.(Additional) pertaining to Sanskrit subject in the year 2004 i.e. after studying Sanskrit for only one year. In respect of which B.A.(Additional) Degree the University armed her with a document as under:-

“Point No.1.1. Clause 19 of the ordinance of B.A./B.SC./B.COM provides as under:

i) A candidate who has passed B.A. three years course of this university may appear in additional subject (s) prescribed for the course in the subsequent examination except the subject (s) with which he/she has already passed the course.

Point 2 Sanskrit (Elective) subject for regular as well as distance mode and additional subject (Sanskrit) in B.A. is one and same and equal in all subject.” (Emphasis Supplied)

16. In the National Capital Territory of Delhi appointment to the post of Trained Graduate Teachers under the Government of NCT of Delhi as also the Municipal Corporation of Delhi are effected through a statutory board called the Delhi Subordinate Staff Selection Board (DSSSB), which undertakes the selection process and forwards the list of successful candidates to the Education Department of the Government of NCT of Delhi or the Municipal Corporation of Delhi where scrutiny of the certificates pertaining to the essential educational qualifications as also character is conducted before letters offering appointment are issued.

17. In the years 2010 and 2011, DSSSB issued advertisements inviting applications from eligible candidates to be appointed as Trained Graduate Teachers in various disciplines such as T.G.T. (English), T.G.T. (Hindi), T.G.T. (Sanskrit) and T.G.T. (Social Science).

18. In response to the advertisement, respondents Nainika and Neelam Rana in W.P.(C) Nos.4301/2012 and 575/2013 respectively, applied for the post of T.G.T. (English); respondent Sachin Gupta in W.P.(C) No.1520/2012 applied for the post of T.G.T. (Social Science); respondent Vikram Singh in W.P. (C) No.4483/2012 applied for the post of T.G.T. (Hindi) and respondent Snehlata in W.P. (C) No.2514/2012 applied for the post of T.G.T. (Sanskrit). They successfully cleared the written

examination conducted by DSSSB and were declared successful. However, save and except respondent Vikram Singh in W.P.(C) 4483/2012, the Directorate of Education did not issue appointment letters to the respondents in the other writ petitions. Respondent Vikram Singh was issued an appointment letter by the Directorate of Education but thereafter he did not receive any communication requiring him to join for duty. On account of aforesaid facts, the respondents of all the writ petitions made enquiries at the Directorate and learnt that they are not being appointed/required to join for duty on account of the reason the Graduation degree obtained by them, as per the Directorate of Education, did not satisfy the eligibility conditions prescribed in the Recruitment Rules.

19. Aggrieved by the inaction of the Directorate of Education in appointing/requiring them to join for duty to the posts of T.G.T., the respondents of all the writ petitions filed separate applications under Section 19 of the Central Administrative Tribunal, Principal Bench, New Delhi highlighting therein that the Graduation degrees obtained by them satisfy the eligibility conditions prescribed in the Recruitment Rules and thus sought a direction to be issued against the Government of NCT of Delhi to appoint them as a T.G.T. in the respective discipline with all consequential benefits.

20. In the replies filed it was pleaded by the Directorate of Education that the respondents Nainika, Sachin Gupta and Vikram Singh could not be appointed to the post of T.G.T. for the reason the Graduation degrees obtained by them did not satisfy the eligibility condition prescribed in the Recruitment Rules read with the corrigendum dated March 30, 2010: that the candidate should have studied the concerned subject i.e. the subject

for which the candidate applies in all parts/years of graduation since neither Nainika nor Sachin Gupta nor Vikram Singh had studied English, a subject pertaining to Social Science and Hindi respectively in all three years of the Graduation course undertaken by them. Pertaining to Sachin Gupta, we need to highlight that he had applied for the post of T.G.T. Social Science and the Recruitment Rule required a study of at least any two of the seven subjects listed in the applicable Recruitment Rule and he was a student of B.Com (Hons.) and was claiming on the strength of having studied Economics and Commerce. As regards Snehlata and Neelam Rana the Directorate of Education took the stand that neither had studied Sanskrit or English in their Graduation course.

21. The Tribunal has allowed the applications filed by the respondents of all the writ petitions.

22. By a common judgment dated November 28, 2011, the Tribunal has allowed the applications filed by respondents Nainika and Vikram Singh essentially on the ground that in view of the decision of a learned Single Judge of this Court in W.P.(C) No.2576/2002 'Saroj Rana & Anr. v Government of NCT of Delhi' decided on July 25, 2008 and some earlier decisions of the Tribunal on the subject that the candidates who have passed concerned subject i.e. the subject for which the candidate applies as compulsory subject(s) would also be entitled to be appointed as a T.G.T. in the concerned subject and thus according to the Tribunal it was immaterial whether respondents Nainika and Vikram Singh had studied English/Hindi in all three years of Graduation; particularly in the light of clarification given by Delhi University that languages (English/Hindi) were taught to the students in only two years in (new) B.A. program introduced by the University with effect from July, 2004.

Similar is the reasoning of the Tribunal in allowing the application filed by respondent Sachin Gupta vide judgment dated August 11, 2011.

23. Vide judgment dated December 01, 2011 the Tribunal has allowed the application filed by respondent Snehlata on the ground that the stand taken by the Directorate of Education that Snehlata had not studied Sanskrit as an '*elective*' subject in all parts/years of her graduation course cannot be accepted in view of the fact that Snehlata has cleared all three papers relating to 'Sanskrit' conducted by the University after she had completed the three years Graduation course with Hindi as the subject.

24. Vide judgment dated February 03, 2012 the Tribunal allowed the application filed by Neelam Rana on the ground that since she has obtained M.A. (English), a qualification which is higher than the qualification prescribed for appointment to the post of T.G.T. (English,) Neelam Rana should be deemed to have satisfied the eligibility condition prescribed for appointment to the post of T.G.T. (English).

25. Aggrieved by the aforesaid judgment(s), the Directorate of Education has filed the above captioned five writ petitions marching under the banner of the Government of NCT of Delhi.

26. From the afore-noted conspectus of facts, it is clear that the controversy which has arisen in the present case(s) relates to the corrigendum dated March 30, 2010 as per which the elective subject must have been studied by the candidate in all years of Graduation and the paper should be of at least 100 marks in each year.

27. The questions which arise and need to be answered in the present petition(s) are: (i) Whether the corrigendum was incorporated formally by amendment of the Recruitment Rules? If yes, what is the effect thereof?

(ii) If the corrigendum dated March 30, 2010 remains as an executive instruction, what is the effect thereof? and (iii) What is the exact meaning of the corrigendum?

28. On a bare reading of the afore-noted extract(s) of the Recruitment Rules existing in the year 2010 and 2011 i.e. when the advertisement(s) for appointment to the post of T.G.T. in various subjects were issued in the instant case(s), it is clear that the minimum essential educational qualification stipulated for appointment to the post of T.G.T. (MIL)/T.G.T. in is B.A.(Hons.) degree in concerned subject i.e. the subject for which the candidate applies or a B.A. degree with the concerned subject included as an elective subject in the course from a recognized university/Bachelor's degree (Hons./Pass) in two school subjects of which at least English, Mathematics, Natural/Physical Science, Social Science should have been at elective level from a recognized University.

29. The expression '*elective subject*' was not defined in the Recruitment Rules.

30. On March 13, 2010 a corrigendum was issued by the Government defining the expression '*elective subject*' occurring in the Recruitment Rules, which corrigendum was superseded by another corrigendum issued on March 30, 2010. As per corrigendum dated March 30, 2010 the expression '*elective subject*' occurring in the Recruitment Rules means that '*The candidate should have studied the subject concerned as mentioned in the RRs in all parts/years of graduation. The elective word may also include main subject as practiced in different universities*'.

31. The necessity to issue the corrigendum was to give clarity as to what was meant by '*elective subject*'; for the reason there was no unanimity of opinion as to what would be an elective subject since different universities in India follow different procedures and methodologies of imparting education.

32. The study of various disciplines of education i.e. subjects taught is broadly classified into three categories i.e. (i) core subjects, (ii) elective subjects and (iii) mandatory subjects. The difference in the three is as under:

(a) Core Subjects: The student shall complete successfully all the core subjects prescribed for the program to become eligible for the award of Degree. Such courses together with their grades and credits earned should be included in the Grade Card issued by the College at the end of each semester.

(b) Elective Subjects: The student shall further complete successfully the total credit equivalent of the elective subjects offered in the program to become eligible for the award of the Degree. The student can choose the subject of his/her interest from among the available credits.

(c) Mandatory Subjects: The student shall complete successfully all the mandatory courses prescribe from time to time by the college. These subjects however do not carry any credits.

33. Aforesaid is the classification which can be found across the board for all universities in India. We may clarify that in some universities mandatory subjects are referred to as subsidiary subjects. The difference in the three is that the marks awarded for the core and elective subjects

are reckoned for the purposes of the grade awarded but not for mandatory or subsidiary subjects.

34. In the above backdrop, we proceed to answer the three questions posed by us in the foregoing paras.

35. With regard to question (i) posed above, the answer is a clear NO. It is an admitted position that the corrigendum dated March 30, 2010 has not been incorporated formally in the Recruitment Rules and remains as an executive instruction.

36. It is settled legal position that when the statutory rules are silent on any point the Government can fill up gaps and supplement rules by issuing executive instructions.

37. As already noted hereinabove, the Recruitment Rules do not define the expression '*elective subject*' occurring therein. In order to fill up said gap, the Government issued corrigendum dated March 30, 2010 defining the expression '*elective subject*'. Such being the position, the Government was justified in issuing corrigendum dated March 30, 2010 and the same i.e. corrigendum dated March 30, 2010 will operate the field to give meaning to the expression '*elective subject*' occurring in the Recruitment Rules.

38. This takes us to the most crucial question arising in the present petitions: Whether the corrigendum dated March 30, 2010 meant that the subject concerned had to be studied in each year of the three years' Graduation course?

39. What is the ethos of the corrigendum dated March 30, 2010?

40. To repeat, corrigendum dated March 30, 2010 prescribes that the expression '*elective subject*' occurring in the Recruitment Rules means that '*The candidate should have studied the subject concerned as mentioned in the RRs in all parts/years of graduation. The elective word may also include main subject as practiced in different universities*'. It is clear that the ethos of the prescription contained in the corrigendum dated March 30, 2010 that '*the candidate should have studied the subject concerned as mentioned in the RRs in all parts/years of graduation*' is that the candidate should have a deep understanding of the subject in which he is desirous of imparting education to the children.

41. All universities in India do not offer a particular elective subject in all three years' of graduation course as in the case of Nainika, Vikram Singh and Sachin Gupta, where Delhi University did not teach English/Hindi/Economics in all three years of B.A. program/B.Com (H) course (s) conducted by it. If the corrigendum dated March 30, 2010 is given a literal interpretation, all such candidates who have studied concerned subject i.e. the subject for which they have applied from the Universities which are not teaching said subject in all three years' of Graduation course offered by them would be rendered ineligible for appointment to the post of T.G.T. despite the fact they have studied the concerned subject in *all parts/years in which the subject is taught by the university* and have a good understanding thereof. This is absurd. It is a settled legal position that where literal meaning of a statute or rule leads to an absurdity, the principle of literal interpretation need not be followed and recourse should be taken to the purposive and meaningful interpretation to avoid injustice, absurdity and contradiction so that the intent of the purpose of Legislature is given effect to. Therefore, a

meaningful and practical interpretation has to be given to the corrigendum dated March 30, 2010 and same should be interpreted as follows: 'the candidate should have studied the subject concerned as mentioned in the RRs in all parts/years in which the subject was taught during the Graduation course'

42. It has also to be kept in mind that whereas the University of Delhi was teaching the concerned subject and was testing the knowledge of the students each year by assigning 100 marks to the paper i.e. three papers were being taught in the three years, as a result of restructuring, the number of papers continued to be three with marks assigned to each paper, being 100, except that now the three papers are taught in only two years. In other words the previous and the current position continues to be practically the same. It hardly matters whether three papers of 100 marks each are taught over three years or three papers of 100 marks each are taught in two years. A ready illustration could be a rational decision taken that unless a student studies History up to a particular level he may not understand the nuances of Political Science and hence a University may decide that the subject of Political Science should be taught after a foundation course in History is taught and this would mean that the subject of Political Science is introduced in the second year of study and continued in the third. The previous position of teaching Political Science in each year with one paper each year having 100 marks is replaced by teaching Political Science only in the second and the third year but retaining the three papers each having 100 marks.

43. In view of the aforesaid, respondents Nainika, Vikram Singh and Sachin Gupta who have studied the concerned subject, English/Hindi/Economics (one of the main subjects prescribed for T.G.T.

(Social Science), in all the years in which the subject was taught during the graduation courses undertaken by them are eligible to be appointed to the post of T.G.T. (English)/(Hindi)/Social Science.

44. As regards respondent Snehlata, there is a subtle but material difference between the position of respondents Nainika, Vikram Singh and Sachin Gupta and she.

45. Respondent Snehlata had applied for being appointed to the post of T.G.T. (Sanskrit). It is an admitted fact that she has not studied Sanskrit subject in any year of the Graduation course undertaken by her, but has subsequently appeared in an examination conducted by the University and cleared three papers pertaining to Sanskrit subject after studying the same in one year.

46. The corrigendum dated March 30, 2010 prescribes that '*the candidate should have studied the subject concerned as mentioned in the RRs in all parts/years of graduation. The elective word may also include main subject as practiced in different universities*'. We emphasize the word '*studied*' occurring in the corrigendum dated March 30, 2010. Respondent Snehlata who has not studied concerned subject i.e. Sanskrit subject in the graduation course undertaken by her is clearly not eligible for appointment to the post of T.G.T. (Sanskrit). After clearing the Graduation course and obtaining a degree what she has done is to have studied some kind of a course designed by the University and has learnt Sanskrit. The degree which she has in Graduation does not pertain to the subject Sanskrit.

47. The controversy pertaining to Neelam Rana is not in the context of what would be an elective subject studied during Graduation. Admittedly

Neelam Rana seeks appointment as T.G.T. English, a subject which she never studied in her Graduation course which we find was B.Sc. (Botany) but she fights the battle on the strength of having obtained a Post Graduate Degree in English i.e. M.A.(English).

48. This issue is no longer res integra and stands decided by a decision of a Division Bench of this Court reported as 2002 (61) DRJ 58 Manju Pal v Government of National Capital Territory of Delhi. In said case, the appellant who had studied Hindi at Graduate level applied for being appointed to the post of Primary Assistant Teacher in the MCD. Despite being successful in the selection process conducted for said purpose, the appellant was not appointed to the post of Assistant Primary Teacher on the ground that she had not studied Hindi at the Higher Secondary Level and is thus not eligible for being appointed to said post. Aggrieved by the aforesaid, the appellant had filed a writ petition before a Single Judge of this Court which got dismissed. Aggrieved thereof, the appellant filed a Letters Patent Appeal before a Division Bench of this Court. The Division Bench allowed the appeal filed by the appellant and held that the appellant is eligible for being appointed to the post of Primary Assistant Teacher in MCD as she possessed a higher qualification than the qualification required for appointment to the post of Primary Assistant Teacher. It would be relevant to note following portion of the said judgment:-

“8. The learned counsel appearing for the appellant argued that the appellant was wrongly rejected on the spurious ground of her nt having a qualification prescribed by the advertisement read with the corrigendum. Learned counsel appearing for the Board and the MCD submit that as per the qualification prescribed in the advertisement and the corrigendum for appointment to the post of Primary Assistant Teacher, the

requirement of Hindi at the Secondary level or Senior Secondary level is the essential qualification which a candidate must possess. According to them, in case a candidate having a Bachelor of Arts degree with Hindi, he/she would not be eligible for the post of Primary Assistant Teacher. We fail to see the logic and the rationale of the argument of the learned counsel for the MCD and the Board. Undoubtedly, Bachelor of Arts degree with Hindi, is a higher qualification than the higher secondary with Hindi.

9. In the counter affidavit filed by the MCD it has not been stated as to how the study of Hindi as a language at higher secondary or intermediate level by the candidates is more relevant than the study of Hindi as a language in BA pass course for the job requirement. Nothing has been brought to our notice by the learned counsel appearing for the Board and the MCD which could justify the stand of the respondents that the study of Hindi as a language at higher secondary level by a candidate has a nexus with the object sought to be achieved, which object by the study of Hindi at B.A. level by a candidate cannot be achieved. No study or evaluation or analysis has been placed before us to show that the candidates having Hindi as a subject at the secondary level are better qualified and equipped to teach primary students than the candidates having Hindi at the graduate level. In case the argument of the learned counsel appearing for the MCD and the Board is taken to its logical conclusion it will lead to absurd results. There may be a case where a person did not take up Hindi as a language at higher secondary level and took it up at higher levels, namely, B.A., M.A. and Ph.D. Surely, it can not be said that the person who had taken Hindi as a subject at the Graduate level, Masters level or Doctorate level is less qualified for the job than the person who had taken up Hindi as a subject at the higher secondary level. The counter affidavit of the MCD is not at all helpful for the purpose of coming to the conclusion that there is any valid justification for the stand of the Board and the M.C.D. in considering higher secondary with Hindi as an essential requirement for the post of Primary Assistant Teachers. The invidious distinction made by the Board and the MCD for ignoring candidates with higher qualification is unwarranted and without any valid basis.

10. It is significant to note that nothing is stated in the counter affidavit as to how Hindi at the Higher Secondary level is helpful for teaching primary level students. What is so special about Hindi at the secondary level, which attribute Hindi at higher level is lacking has not been explained in the counter affidavit or the arguments of the learned counsel for the respondents. Hindi as a language has not been mentioned in the advertisement as a special qualification for imparting education to the students at the primary level. It cannot be assumed by any stretch of imagination that a candidate possessing higher qualification like B.A. with Hindi or M.A. with Hindi will be less efficient in teaching primary classes than a person possessing lesser qualification such as higher secondary with Hindi.

11. We are supported in our view by a decision of the Allahabad High Court in Laxmi Narayan Yadav Vs. District Inspector of Schools and Ors., 1988 (3) SLR Allahabad 42, in which it was held as follows:-

As regards the eligibility of respondent No. 3 for the post of Lecturer in Hindi, the learned counsel for the respondents drew out attention to N.B. (Note)(2) below the rule prescribing minimum qualifications for 'Hindi Teachers for Intermediate' contained in Appendix A which provides as follows:

"The Hindi Teachers may not be required to have a Degree in Sanskrit in those institutions where qualified Sanskrit teacher is available to teach the Sanskrit portion of the Hindi Court".

The above note clarifies the intention why B.A. with Sanskrit was kept as an essential qualification for a Hindi Teacher for Intermediate Classes. The person should be such who can also teach Sanskrit portion of the Hindi Course. The qualification prescribed for Sanskrit Teacher for Intermediate' is 'M.A. with Sanskrit preferably trained'. As respondent no. 3 is M.A. in Sanskrit, he is fully qualified to teach Sanskrit also. Consequently, respondent no. 3 cannot be said to be disqualified for being appointed teacher in Hindi simply because he is not 'B.A. with Sanskrit', especially when he is M.A. in Sanskrit and is qualified to teach Sanskrit portion of Hindi Court, so that requirement of 'B.A. with Sanskrit' is not

applicable in his case. Moreover, respondent no. 3 may not be having Sanskrit as a subject for his Bachelors' degree. He is, however, having Master's Degree in Sanskrit, which is certainly a higher qualification than B.A. with Sanskrit. Consequently, the claim of respondent no. 3 could not be rejected merely on the ground that he is not 'B.A. with Sanskrit', when he is admittedly M.A. Sanskrit'."
(Emphasis Supplied)

49. A similar view was taken by a Single Judge of this Court in the decision reported as 186 (2012) DLT 132 Kalpana Pandey v Director of Education & Ors. The aforesaid decision was affirmed by a Division Bench of Court in LPA No.640/2010 'Director of Education v Kalpana Pandey' decided on September 18, 2012.

50. In view of aforesaid authoritative pronouncements, we hold that respondent Neelam Rana is eligible for being appointed to the post of T.G.T. (English), particularly when the Directorate of Education has placed no material before us to show that the person who has studied English at graduate level would be better equipped to teach English to students vis-à-vis a person who has obtained a Post Graduate degree in English language.

51. In view of above discussion, save and except respondent Snehlata, respondents in all other petitions i.e. Sachin Gupta, Nainika, Vikram Singh and Snehlata are held eligible for being appointed to the posts of T.G.T. applied by them.

52. Accordingly W.P.(C) No.1520/2012, W.P.(C) No.4483/2012, W.P.(C) No.4301/2012 and W.P.(C) No.575/2013 are disposed of upholding the claim of the respondents in said writ petitions before the Tribunal as per Original Application with the exception that they shall not be entitled to back wages but would be entitled to all consequential benefits such as seniority as per their merit position in the select panel and notional pay fixation with reference to the date of their joining being treated as the one on which the person immediately junior to them joined duty.

53. W.P.(C) No.2514/2012 is allowed and impugned decision dated December 01, 2011 passed by the Tribunal in favour of Snehlata is set aside and the Original Application filed by her is dismissed.

54. Before concluding we pen a thought for the benefit of the Directorate of Education, Government of NCT of Delhi. With the march of times the imparting of education at the Graduate level is changing all over the world. It has been recognized that it would be useless to start teaching a particular subject without a basic study of some other subject; and we have already given the example above pertaining to Political Science. The hitherto fore practice of teaching a subject each year with a paper of 100 marks in each year is giving way to the subject being taught in the second and the third of the Graduation course but retaining the three papers each having 100 marks. The march of times has led the University of Delhi to pioneer a Bachelorette degree i.e. a four years course to obtain the first degree after senior secondary. The Directorate of Education should keep in mind that it has to march in tune with the rest in the onward march in time and thus keeping in view that it is the substance which is recognized by law and not the form, the Directorate of Education should formally suitably amend their Recruitment Rules by specifying the eligibility norms in relation to the substance and not the form. Otherwise, as we can see the future cord of time: Students from University of Delhi would be in perpetual litigation with the Directorate of Education as and when they seek employment as Teachers in Delhi.

55. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

AUGUST 07, 2013

Mamta