

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

+ **W.P.(C) No.11470/2009**

%

15th July, 2013

SH. YOGESH DUTT

..... Petitioner

Through: Mr. R.K. Saini, Advocate with Mr.
Vikram Saini, Advocate.

versus

DIRECTOR OF EDUCATION AND ORS.

..... Respondents

Through: Mr. Sachin Chopra, Advocate for
respondent Nos.1 and 2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The petitioner by means of this writ petition seeks promotion to the post of TGT (English) with the respondent No.3/Diwan Chand Arya Senior Sec. School. Petitioner claims that he meets the necessary criteria/qualification and the respondents are wrongly denying him the promotion. Respondent No.3-school is an aided school i.e 95% of the finances are given by the Government of NCT of Delhi through Director of Education. The qualification which is required for the post of TGT (English) is that the candidate must have a bachelor degree (pass/hons.)

from a recognized University having secured at least 45% marks in aggregate in the actual subjects of which at least one is English. I am not making reference to other subjects because they are not necessary for the decision of this writ petition.

2. It is not disputed that the aforesaid criteria was a requirement in terms of the notification dated 13.3.2000, but, what the respondent Nos.1 and 2 contend is that a subsequent circular has been issued clarifying that the requirement of the elective subject English is such that the subject English should be a subject in all the three years. The amended requirement/corrigendum reads as under:-

“A Bachelor’s degree (Pass/hons.) from a recognised University or equivalent having secured at least 45% marks in aggregate in two school subjects of which at least one out of the following should have been at the elective level:

(a) English, (b) Mathematics, (c) Natural/Physical Sc., (d) Social Science.

Note: As per policy the definition of elective in R/Rs has been framed as that the candidate should have studied the main subject concerned as mentioned in the R/Rs of atleast 100 marks each in all parts/years of graduation. The election word may also include main subject as practised in different universities. (Circulated vide No.F.DE3(42)/E.III/99/1688-1699 dt. 13.3.2000)”

3. On behalf of the petitioner, in rejoinder it is contended that the issue in the present case is covered by two Division Bench judgments of this

Court. First is the judgment in the case of *Mrs. Manju Pal Vs. Govt of National Capital Territory of Delhi and Anr. 2002 (1) All India Service Law Journal 377* wherein a Division Bench of this Court held that for appointment to a post of Primary Assistant Teacher in the Municipal Corporation of Delhi when the requirement was of studying higher secondary in Hindi, then if the candidate had graduation in Hindi, then such qualification being higher is enough even if the candidate does not have higher secondary in Hindi. The second judgment which is relied upon is the judgment of a Division Bench of this Court in the case of *Government of NCT of Delhi Vs. Ram Prakash Pathak* in W.P.(C) No.14473/2005 decided on 5.9.2005 which holds that executive instructions in the nature of corrigendum cannot take away the effect of rules which have been specifically notified.

4. In my opinion, the arguments as urged on behalf of the petitioner must succeed and the petitioner is bound to be appointed as TGT (English) by the respondents. Firstly, assuming that the executive instructions dated 1.10.1999 hold the field even then the ratio of a Division Bench judgment in the case of *Manju Pal (supra)* will squarely apply to the facts of the present case. The relevant paras of the judgment in the case of

Manju Pal (supra) are paras 6 to 8 and which read as under:-

“6. 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.

7. 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.

8. 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 underlining)

5. Therefore, following the ratio in the case of *Manju Pal (supra)* since the petitioner has a higher qualification of M.A, and for the sake of arguments if three years of English in the graduation course is the requirement for English subject, then, two years can be taken of English in the post graduation course of M.A in English by the petitioner and one year can be taken of graduation course and which admittedly the petitioner has. Also, the requirement specified has to be taken as a minimum requirement and thus a higher qualification is surely a fulfilment of the requisite criteria. Accordingly, respondents are unjustified in denying appointment for the post of TGT (English) to the petitioner. In fact, I may express my distress and anguish as to a very shortsighted stand taken by the respondents because surely post graduation is a higher qualification than graduation, and if there are persons who are better qualified, I fail to understand as to how better qualification becomes a disqualification. My distress at the stand of respondent Nos.1 and 2 is more confirmed because the Government of India, Ministry of Education and Social Welfare, New Delhi has in fact written to the Secretary (Education) of the then Delhi Administration (now known as Government of NCT of Delhi) its letter dated 31.5.1973 clarifying that if a person has M.A. qualification, then, where the requirement is only of

graduation then M.A. can be considered for employment of teachers i.e where B.A. is prescribed as the minimum academic qualification. This letter of the Government of India reads as under:-

“GOVERNMENT OF INDIA, MINISTRY OF EDUCATION & SOCIAL WELFARE, NEW DELHI

F/50/70 UT.1

Dated the 31st May-1973

To

The Secretary (Education),
Delhi Administration,
Delhi

Sub: Clarification regarding treating of M.A. Degree after passing Bharti degree from Mahila Gram Vidhyapeeth, Allahabad for purpose of employment of Teacher.

Sir,

I am directed to refer to your letter No.F.32/1/35/Gen. 71/73/8383 dated the 26th March, 1973 on the above cited subject and to clarify that since M.A. degree is higher than B.A., a person who has M.A. examination from an Established University after passing the Bharti degree may be considered for employment as a teachers, where B.A. is prescribed as the minimum academic qualification.

Yours faithfully

Sd/-

(Girdhari Lal)

Under/Secretary”

6. The second reason why writ petition has to be allowed is that the Division Bench of this Court in the case of ***Ram Prakash Pathak (supra)*** has held that executive instructions cannot supplant the rules issued through a notification. I may note that in the case of ***Ram Prakash Pathak (supra)*** the issue was of appointment to the post of Teacher/TGT in the

present respondent Nos.1 and 2 i.e Director of Education, under the Government of NCT of Delhi. A Single Judge of this Court has followed the ratio of ***Ram Prakash Pathak's (supra)*** in the case of ***Kalpana Pandey Vs. Director of Education and Ors.*** in W.P.(C) No.5789/2008 decided on 4.11.2011 and relevant paras of which judgment are paras 14, 15 and 18 and which read as under:-

“14. The senior counsel for the petitioner has referred to:

- (i) ***Bhagwati Prasad Vs. Delhi State Mineral Development Corporation*** 1992 (8) SLR 784 (AIR 1990 SC 371) laying down that practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. It is contended that the petitioner having performed her duties as TGT (English) right since her confirmation in the year 1995 if not from her appointment in the year 1993, the technicality if any ought not to be allowed to come in her way;
- (ii) The order dated 23.02.2005 of the Central Administrative Tribunal (CAT) in O.A. No.1039/2004 titled ***Sh. Ram Prakash Pathak Vs. The Director of Education*** where the Recruitment Rules for TGT were interpreted as not providing for the study of subject in all three years of graduation and it was held that the executive instruction cannot supplant the Statutory Rules. Accordingly, promotion was granted;
- (iii) The order dated 05.09.2005 of the Division Bench of this Court in W.P.(C) No.14473/2005 titled ***Government of NCT of Delhi Vs. Ram Prakash Pathak*** dismissing the writ petition preferred against the order aforesaid of CAT.

15. The counsel for the respondents No.1&2 DOE has argued that if it were to be held that study of English as subject in two years only of graduation is sufficient, then on the same reasoning, study of the English as subject for one year also would be sufficient and which would be contrary to the spirit of the Rule. He has further contended

that the petitioner did not have the qualification of M.A. (English) at the time of holding of the DPC in 06.08.2008.

18. I am of the opinion that the matter is clearly covered by the judgment aforesaid of the Division Bench of this Court in ***Ram Prakash Pathak*** (supra). Thus, it has to be necessarily held that even under the Recruitment Rules, the petitioner was eligible to be appointed as TGT and the DPC holding the petitioner to be not eligible has to be accordingly quashed. It cannot also be forgotten that the petitioner, since December, 2008 has the qualification of M.A. (English). The competence of the petitioner to teach the subject of English, the minimum qualification wherefor is only graduation with English as a subject, cannot be doubted. It is thus not as if this Court by allowing the petitioner would be thrusting an unqualified or incompetent teacher on the students. There is merit also in the contention that the petitioner on the sheer strength of her experience is entitled to the relief. This Court in ***Harbhazan Kaur v. The Director of Education (NCT of Delhi)*** MANU/DE/0756/2010.”

7. Therefore, in view of the Division Bench judgment in the case of ***Ram Prakash Pathak*** (supra) I hold that the executive instructions will not hold the field once there is a specific notification with respect to the recruitment rules, and which notification will have to prevail over executive instructions. Thus there cannot be a binding requirement as instructed vide the circular as stated in para 2 above.

8. Learned counsel for the respondent Nos.1 and 2 sought to place reliance upon two judgments before me. First is the judgment in the case of ***Rakesh Pandey Vs. Govt. of NCT of Delhi and Ors.*** in W.P.(C)

No.11058/2009 decided on 31.8.2009 and second in the case of ***Jainish Kumari (Ms.) Vs. Govt. of NCT of Delhi & Ors. 2007 IX AD Delhi 153.***

In my opinion, both the judgments relied upon by the respondent Nos.1 and 2 have no application to the facts of the present case. The judgment in the case of ***Rakesh Pandey (supra)*** only dealt with the issue of there being executive instructions of the electives to be required for all the three years of graduation course, and which argument was accepted. The judgment does not deal with the aspect of invalidity of executive instructions in the presence of notification of the relevant recruitment rules. In any case, the judgment in the case of ***Manju Pal (supra)*** will squarely cover the present case because in that judgment it was held that a higher qualification surely entitles a candidate to be appointed and merely because a candidate does not have lesser qualification will not act as a handicap. The judgment in the case of ***Jainish Kumari (supra)*** relied upon by the respondents also has no application because the issue in this case was of equivalence of a diploma to B.Ed. degree course, and it was accordingly held in that judgment that concerned authority best knows why equivalence is not granted to a diploma course when taken in comparison with a B.Ed. course.

9. In view of the above, the writ petition is allowed. Respondents

are directed to appoint the petitioner to the post of TGT (English) within a period of four weeks from today. It is further clarified that monetary benefits applicable to the petitioner for the post of TGT (English) will be from the date when the petitioner is appointed to the post of TGT (English) within a period of four weeks from today. It is also clarified that petitioner will be given theoretical seniority and consequential benefits for further subsequent appointments taking the petitioner to be appointed to the post of TGT (English) w.e.f 18.10.2007. Parties are left to bear their own costs. I may note that the petitioner had interim orders dated 30.5.2008 and 7.9.2009 in his favour directing the respondents to keep one post vacant for the petitioner.

VALMIKI J. MEHTA, J

JULY 15, 2013

Ne