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

+ **Judgment reserved on: 21.07.2014**

Judgment delivered on: 01.08.2014

% **W.P. (C) No. 2313/2014**

ANITA ..... Petitioner
Through: Mr. M.K. Bhardwaj, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS. ..... Respondents
Through: Ms. Ruchi Sindhwani, Addl. Standing Counsel, GNCTD along with Ms.Bandana Shukla and Ms. Megha Bharara, Advocates for respondents No.1 & 2.
Mr. Ram Kumar, Advocate for respondent No.3.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J.

1. The present writ petition has been preferred under Article 226 of the Constitution of India to assail the order dated 10.01.2014 passed in OA No. 501/2012 by Central Administrative Tribunal, Principal Bench, Delhi (CAT/ Tribunal), whereby the Tribunal has dismissed the Original Application preferred by the petitioner.

2. The petitioner being a person belonging to the Other Backward Classes (OBC) category applied for the post of Teacher (Primary) in the

Municipal Corporation of Delhi (MCD) pursuant to the advertisement issued by the respondents dated 06.10.2007. The said advertisement No.08/2007 laid down the following educational and other qualifications:

> *"Educational and other qualification;*
>
> *(i) Senior Secondary (10+2) or intermediate or its equivalent with* ***50% marks from a recognised board.***
>
> *(ii) Two year diploma/certificate course in ETE /JBT or B.EI.Ed. from a recognised institution*
>
> *(iii) Must have passed Hindi as a subject at the secondary level*
>
> *Desirable*
>
> *(iv) Computer Knowledge"*
>
> (Emphasis supplied)

3. The petitioner was aggrieved by the aforementioned advertisement, as it provided no relaxation of marks with respect to any of the reserved category such as Scheduled Castes (SC), Scheduled Tribes (ST), Other Backward Classes (OBC) and Physically Handicapped (PH) candidates. The petitioner had not scored 50% marks at the Senior Secondary (10+2) level examination.

4. On 24.10.2007, the petitioner along with similarly situated persons filed Civil Writ Petition No.7704/2007 before this Court questioning the Recruitment Rules of the respondent for the post in question, and in pursuance of the interim directions issued by the Court, the petitioner was permitted to participate in the selection process.

5. On 29.10.2007, the respondents issued a corrigendum, whereby 5% relaxation was given for candidates belonging to Schedule Castes, Schedule Tribes, and Physically Handicapped Candidates by following the regulations of State Council of Educational Research & Training (SCERT). However, similar relaxation of 5% marks in Senior Secondary Examination was not provided to OBC Candidates.

6. The aforesaid writ petition was disposed of on 28.08.2008 without giving any finding on the issue of relaxation to OBC candidates, as claimed by the petitioners. The High Court upheld the recruitment rules for the post of Teacher (Primary).

7. The result of the test for Teacher (Primary) was declared vide Result Notice No.71 dated 25.09.2008, and the petitioner was declared successful in the OBC category by the respondents. The petitioner, on 09.06.2009 enquired from the respondents the status of her appointment to the post of Teacher (Primary) in pursuance of the declared result. The respondents vide letter dated 22.06.2009 informed the petitioner that they have withdrawn the petitioner's name from the list of selected candidates by corrigendum No. F.1/(151)/CC-II/2008/347 dated 14.11.2008, as she was not entitled to relaxation in marks, being an OBC candidate.

8. The petitioner, aggrieved by the above decision, filed OA No. 1780/2009 which was disposed of by the Tribunal on 17.12.2009 with the direction that the respondents' should consider the case of the petitioner by granting benefits of the decision in the case of ***Seema Vs. DSSSB & Others***, TA 1204/2009 decided on 17.08.2009. In ***Seema*** (supra) the

Tribunal had similarly, directed the respondents to consider the claim of the applicant as an OBC candidate for relaxation of 5% marks in Senior Secondary School Certificate Examination (SSSCE) and to appoint the applicant on the basis of her merit in the OBC category. Consequently, the Tribunal directed the respondents to consider granting extension of benefit of the decision in ***Seema*** (supra) by relaxing 5% marks in SSCE.

9. In pursuance of the order passed by the Tribunal, the respondent MCD passed the following speaking order dated 21.02.2011. This speaking order reads as follows:

> *"**SPEAKING ORDER***
>
> *1. OA No.1780/2010 was filed by the applicant seeking directions for appointment to the post of Teacher (primary) under post code 165/2007.*
>
> *2. The applicant was having less than 50% marks in her senior secondary examination, therefore, her name has not been recommended by the DSSSB.*
>
> *3. The Hon'ble Tribunal disposed off the OA vide order dated 17th December, 2009 with the following directions:*
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> ***"As we are satisfied that the claim of the applicant in all fours requires to be reconsidered by the respondents for extending the benefits of the decision referred to above. This OA stands disposed off with a direction to the respondents to consider granting extension of benefit of the decision in Seema's case (supra) by relaxing 5% marks in senior school certificate."***
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> *4. It is further submitted that the Hon'ble High Court vide its order dated 19/08/2010 has quashed the impugned order dated 17.08.2009 passed in TA No.1204/2009 (Seema Vs MCD & Ors.). The Hon'ble High Court further stated in its order that:*

"The reasoning of the Tribunal is ex-facie faulty for the reason SC/ST candidates and OBC candidates do not form one homogenous group and the question of parity, for purposes of equality, of SC/ST candidates with OBC candidates does not arise."

5. The Hon'ble High Court disposed off the writ petition quashing the impugned order dated 17.08.2009 and as a result setting aside the finding returned by the Tribunal that OBC candidates have to be treated at par with SC/ST candidates. But, nothing that the issue raised vide ground B in the writ petition which was numbered as TA No.1204/2004 has not been decided by the Tribunal, we restore TA No.1204/2009 with a direction to the Tribunal to decide the question raised before it vide ground B of TA No.1204/2009.

8. The TA No.1204/2009 was finally heard by the Hon'ble Central Administrative Tribunal and was dismissed on merit vide orders dated 02/11/2010.

9. Since in view of the above position, the applicant is not entitled for any relief in view of the judgment dated 19/08/2010 of the Hon'ble High Court of Delhi vide which the judgment dated 17/08/2009 in T.A. No.1204/2009 has been quashed."

10. From the aforesaid, it would be seen that the respondent MCD relied upon the fact that the High Court had quashed the order in case of ***Seema*** (supra) by observing that the reasoning of the Tribunal was ex-facie flawed as SC/ST candidates and OBC candidates do not form one homogenous group and the question of parity, for purposes of equality, of SC/ST candidates with OBC candidates does not arise. The respondents also took note of the fact that the High Court had restored T.A. No.1204/2009 (Seema's case) for decision on ground 'B' raised in the said case and the Tribunal had dismissed the same on merits, after hearing, vide order dated 02.11.2010.

11. Being aggrieved by the aforesaid decision/ speaking order dated 21.02.2011, the petitioner preferred O.A. No.501/2012 before the CAT, which was also dismissed. In view of the above, the petitioner has preferred the present petition.

12. It is submitted by learned counsel for the petitioner that, inter alia, OBC candidates having 45% marks and in some cases, passing marks were eligible to acquire the qualification of ETE/ D. Ed., prescribed for appointment to the post of Teacher (Primary). Therefore, as the petitioner, belonging to the OBC category got relaxation of 5% marks for admission to acquire the essential qualification, which is required for appointment for the post of Teacher (Primary), the respondent should grant the same relaxation in respect of the SSSCE marks for appointment to the post, as granted to other reserved categories.

13. Learned counsel further submits that the petitioner being identically placed as the other reserved category, i.e. SC/ST & PH, was required to be considered for appointment by relaxing the requirement of having 50% marks in 10+2 SSCE. It is further submitted that the respondents realised their mistake and in respect of the later recruitments, granted relaxation of 5% to the OBC candidates. However, the said relaxation has been denied in respect of the recruitment process in question to the OBC candidates only.

14. It is further submitted that the petitioner has now become overage and cannot qualify for subsequent recruitment processes.

15. On the other hand, the submission of learned counsel for the respondents is that the employer in the present case is the MCD and it is

open to the MCD to set its own norms for recruitment. The MCD is not bound to adopt the same standards as prescribed by SCERT for grant of admission to the qualifying courses/ diploma in ETE/JBT or B.El.Ed from a recognised institution. She submits that the respondent MCD is within its rights to fix higher standards. Learned counsel for the respondents further argued that the MCD is not the only entity which engages Teacher (Primary) and there are other avenues open to the petitioner such as private schools and institutions and the schools of the Government of National Capital Territory of Delhi (GNCTD).

16. Having heard learned counsels for the parties and considered the materials placed on record, this Court is of the opinion that the qualification required for appointment by the MCD cannot be challenged before this Court as it is not for the Court to consider the relevance of qualification prescribed for any post, being essentially a matter of policy. It is the prerogative of the employer to decide the qualifications for appointment to the post of Teacher (Primary). The MCD is not bound to prescribe and accept the same percentage of marks in the qualifying examination, as was accepted for the purpose of grant of admission to the diploma/ certificate courses in ETE/ JBT/ B.El.Ed. The MCD is entitled to lay down a higher criteria, if it so chooses.

17. In this regard, reference may be made to ***Sachin Gupta v. Delhi Subordinate Services through its Chairman & Ors.***, 152 (2007) DLT 378. The challenge before this Court in a batch of writ petitions was to the recruitment rules for appointment of the Assistant Teachers (Primary) in the GNCTD and the MCD. Both the GNCTD and the MCD had framed the

recruitment rules which were identical. Apart from prescribing the essential eligibility criteria with regard to the minimum and maximum eligibility age, the recruitment rules also prescribed the passing of Hindi subject at secondary level and minimum 50% marks in the SSSCE. One of the grounds raised by the petitioner to challenge the prescription of minimum 50% marks in the SSSCE was that the said criteria had no nexus with the objects sought to be achieved, because the basic degree for appointment of a Teacher (Primary) was the ETE diploma course, for entry to which, no minimum percentage had been stipulated. This argument, which is identical with the argument raised by the petitioner in the present case, was rejected by the Division Bench in the following words:

> *"60. As far as the requirement of at least 50% marks in the senior secondary examination is concerned, we are of the view that the candidates selected have to shoulder the responsibility of imparting values of academic excellence in young impressionable minds. Considering the nature of the responsibility to be thrust on the candidates, the requirement of 50% marks in the senior secondary examination is not a tough benchmark at all. Further Article 14 mandates that equals are to be treated alike but it does not prohibit classification. In fact, in State of West Bengal v. Anwar Ali Sarkar reported in 1952CriLJ510 it has been held that classification is permissible, if the same is founded on an intelligible differentia and the said differentia has a rational relation to the object sought to be achieved. We are of the view that the qualifications of 50% of marks in senior secondary examination fulfills the above test as it ensures that the best from amongst the young, dedicated and meritorious candidates are selected for the post of the teachers and the same cannot be faulted by the Petitioners."*

18. The Division Bench also recognised the prerogative of the employer to prescribe its recruitment rules. While dealing with the challenge raised by the petitioners in that case to the prescription of minimum and the maximum age limit. The Division Bench observed as follows:

> *"52. We are also of the opinion that, the NCTE Act only lays down minimum qualification for a person to be employed as an Assistant Teacher (Primary). Consequently, it is always open to the Respondents to prescribe additional qualifications. In this connection we may refer to the Functions of the Council stipulated in Section 12(d) of the NCTE Act which reads as under:*
>
> > *"12. It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and co-ordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act, the Council may -*
> >
> > *(d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognized institutions."*
>
> *53. In the present case, we find that there is neither any inconsistency nor contradiction between the NCTE Act, NCTE Regulations on the one hand and the impugned RRs on the other hand. If the Petitioners' submissions were to be accepted then the Respondents could never have prescribed any qualification with regard to age as there is no stipulation in either the NCTE Act or the Regulations with regard to age. In fact, the new age, marks and language criteria are additional/higher qualifications and, therefore, the impugned RRs are not ultra vires the NCTE Act or Regulations.*
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> *54. To our mind, like any other employer it is the prerogative of the Respondents to decide the age limit and academic*

suitability of candidates which they wish to employ and so long as the same are not contradictory to the academic eligibility as prescribed by the NCTE Act any challenge to the same, merely because it renders some candidates ineligible, ought to be rejected. For several posts minimum and maximum limits of age are prescribed by different authorities along with the required academic qualifications. It may be possible for the candidates to attain the requisite academic qualifications even at lesser or higher ages but that does not imply that the authorities are duty bound to consider all of them for employment by framing rules to ensure that everyone who secures the required academic qualification at any age is eligible for appointment to the said posts. In our view, the mere completion of an eligibility course gives no vested right or right of consideration to a candidate enforceable against the State."

19. In view of the aforesaid decision, there is no merit in the petitioner's submission that – because she was granted relaxation of 5% marks (being an OBC category candidate) while securing admission to the qualifying course, i.e. B.El.Ed., she should be granted a similar relaxation while seeking employment to the post of Teacher (Primary) advertised by the MCD. The petitioner is not prevented from seeking employment with any other institution like private schools, etc on the basis of her educational qualifications. She cannot insist that she must be employed by one or the other Government agencies such as MCD in breach of the existing recruitment rules, or by granting relaxation in the recruitment rules.

20. The Division bench of this Court in ***Municipal Corporation of Delhi & Ors. v. Seema*** (W.P. (C) 1376/2010) decided on 17.08.2009, has already held that the SC/ST candidates and OBC candidates cannot form one homogenous group and the question of parity of equality of SC/ST with OBC candidates does not arise. The petitioner, therefore, cannot seek the

same relaxation as granted to SC/ST and candidates with disabilities or physical handicaps.

21. In the light of the aforesaid discussion, we find no merit in the present petition and dismiss the same, leaving the parties to bear their respective costs.

VIPIN SANGHI, J

S. RAVINDRA BHAT, J

AUGUST 01, 2014
B.S. Rohella