

\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgement reserved on: 14th September, 2018
Judgment pronounced on: 16th October, 2018

+ **L.P.A. No. 158/2018**

MANOJ KUMAR

.....Appellant

Through: Mr. Ranjit Sharma, Advocate.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Brajesh Kumar, Advocate for R-1
and R-2. Respondent No.3 in Person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J. (Oral)

1. The present appeal is directed against the Judgment dated 24.01.2018 passed by the Learned Single Judge of this court whereby the Writ Petition filed by the Petitioner was dismissed.
2. Necessary facts to be noticed for disposal of this appeal are that appellant had applied for the post of Primary Teacher pursuant to a Vacancy Circular issued in March, 2016 by Deen Dayal Institute for Physically handicapped (hereinafter referred to as Respondent No.2). As per the Vacancy Circular, the selection procedure was through a written test, after which eligible candidates were required to submit the requisite documents and thereafter, an interview was

to be held for the post in question. The interview was dispensed with *vide* Scheme for Allocation of marks in interview dated 27th April, 2016 indicating the bifurcation of marks for selection on the basis of essential qualification, additional qualification, essential experience and written test.

3. Being aggrieved by the decision of the Respondent No. 1, whereby Respondent No.3 – Hemlata Bawa had been appointed to the post in question, despite the Appellant having secured more marks in the written examination and also having superior educational qualification than Respondent No.3, Appellant herein filed the **W.P.(C) No.5279/2017**, challenging the said appointment which was dismissed. The order dated 24.01.2018 passed by the learned Single Judge in **W.P.(C) 5279/2017** is impugned before us.
4. Mr. Ranjit Sharma, learned counsel for the Appellant contended that Respondent No.2 had introduced a scheme for allocation of marks for interview, which was notified on 27.04.2016. Learned Counsel for the Appellant further contended that the Appellant has not been allotted marks for his post graduation degree as per the scheme for allocation of marks. It is further contended that the dicta in **UGC & Anr. V. Neha Anil Bobde reported in (2013) 10 SCC 519** has no application in the present case as the Respondent No.2 had wrongly and arbitrarily applied the scheme of allocation of marks for interview against the appellant, which is against the principles of natural justice.

5. On the contrary Mr. Brijesh Kumar, learned Counsel for Respondent No. 2 contends that there is no infirmity in the impugned order passed by the learned Single Judge and the same does not call for any interference by this court. The learned Counsel for Respondent No.2 contends that as per the Vacancy Circular, Respondent No.2 was well within his rights to short list candidates in the manner considered appropriate. Learned Counsel for Respondent No.2 further contends that a Result Drafting Committee was constituted by Respondent No. 2 owing to the numerous applications received for the post in question. The said committee decided that marks for additional qualification shall only be given to candidates holding additional qualification in the relevant field. Learned Counsel for Respondent No.2 further contended that as per the committee the M.Ed qualification possessed by Respondent No.3 was considered to be relevant for the primary teacher post thus, Respondent No.3 was given 7 marks for her additional qualification.
6. Respondent No.3 who appears in person adopts the arguments made by the Counsel for Respondent No.2 and sought dismissal of the present appeal.
7. We have heard learned counsel for the parties who have taken us through the relevant documents annexed with the writ petition and the appeal.
8. Before delving into the arguments raised by counsels for the parties we deem it appropriate to reproduce the Scheme for Allocation of

marks dated 27.04.2016, which indicates that instead of interview, marks for additional qualifications would be provided, relevant portion of the same has been reproduced hereinafter:-

Sl.	Particulars		Marks
1.	Marks for essential Qualification (Maximum)		20
	Up to 50%	4	
	50% to 60%	8	
	60% to 70%	12	
	70% to 80%	16	
	Above 80%	20	
2.	Marks for additional Qualifications (Maximum)		10
	PG Diploma	5	
	PG Degree	6	
	M.Phil/professional Qualification in the field	7	
	Ph.D	10	
3.	Marks for essential Experience		20
4.	Written test (Objective/ Multiple Choice Question)		50
	Total Marks		100

9. We also deem it appropriate to reproduce the merit list issued by Respondent No.2, which provides the provisional result for the post in question. The list was drawn on the basis of aggregate of marks attained by candidates for their essential qualification, additional qualification, essential experience and written examination. The same has been reproduced hereinafter:-

S. No	Name	Roll No.	Categ-ory	Marks for Essential qualifica-tion	Marks for additional qualification	Marks for Essential experience	Marks for total academic qua	Marks for written exam	Total
A	B	C	D	E	F	G	H	I	J
1.	Hemalata Bawa	1619003	SC	16	7	0	23	33.25	58.25
2.	Nitin Nirwal	1619014	SC	20	0	4	24	33.75	57.75
3.	Manoj Kumar	1619049	SC	16	0	10	26	31.5	57.5
4.	Sumit Kr. Singh	1619105	SC	12	0	0	12	37.5	49.5
5.	Jitendra	1619024	SC	12	0	0	12	36.25	48.25

9

6.	Roshan Kr.	1619008	SC	20	0	0	20	27.5	47.5
7.	Kapil	1619021	SC	20	0	0	20	26.25	46.25
8.	Kalpana	1619103	SC	08	0	12	20	26	46
9.	Preeti	1619061	SC	20	0	3	23	22.5	45.5
10.	Nidhi Tomar	1619053	SC	16	0	4	20	24.5	44.5
11.	Shruti Tomar	1619067	SC	16	0	4	20	24	44
12.	Ramesh Bairwa	1619012	SC	16	0	0	16	27	43
13.	Kapil	1619057	SC	08	0	0	08	32.5	40.5

10. From the perusal of the Scheme for Allocation of marks, we find that allocation of marks for selection of candidates was in relation to marks for their essential qualification, additional qualification, essential experience and marks attained by the candidates in the written test. In case of additional qualification maximum marks i.e. 10 could only be allotted to the candidates having superior education qualification of Phd. whereas 7 marks were to be allotted to the candidates possessing M.Phil/Professional qualification in the field.
11. Counsel for the Appellant labored hard on the point that, he is better qualified than Respondent No.3, because he would have secured more marks than Respondent No.3 if he was awarded 6 marks for his post graduate qualification. This contention was refuted by Respondent No.2 in their counter affidavit filed during the Writ Proceeding on the premise that decision of Respondent No. 2 regarding eligibility of candidates was final and further the fulfillment of condition of minimum qualification did not necessarily entitle the appellant for being recruited. Moreover, Respondent No. 2 had allotted additional marks only to the candidates having additional qualification in the relevant field. This submission was not specifically denied by the Appellant in

their Rejoinder Affidavit during the writ proceedings and is deemed to have been accepted by the Appellant.

12. On perusal of the aforementioned merit list issued by Respondent No.2, we find that in the merit list Respondent No.3- Hemlata Bawa holds the first position with 58.25 marks, Mr. Nitin Nirwal holds the second position with 57.75. marks, and the Appellant herein ranks third with 57.5 marks. Even otherwise if we agree with the arguments raised by Counsel for the Appellant, the Appellant still would have failed to succeed in getting an appointment as Mr. Nitin Nirwal has secured has secured more marks than the Appellant and he has not been made a party in the present proceedings.
13. We also deem it appropriate to reproduce clause 14 and 19 of the Vacancy Circular:-

"14. Decision of the institute in all matters regarding eligibility of the candidate, the stages at which such scrutiny of eligibility is to be undertaken, the documents to be produced for the purpose of conduct of interview, selection and any other matter relating to recruitment will be final and binding on the candidate. Further, the institute reserves the right to stall / cancel the recruitment partially / fully at any stage during the recruitment process at its discretion, which will be final and binding on the candidate."

"19. Fulfillment of conditions of minimum qualification shall not necessarily entitle any applicant to be called for further process of recruitment, in case of large number of applications, Institute reserves the right to short-list applications in any manner as may be considered appropriate and no reason for rejection shall be communicated and no claim for refund of fee shall be entertained in any case."

14. From the perusal of extracted clauses, it is evident that Respondent No.2 was well within his right to short list the candidates in the manner considered appropriate and decision of Respondent No.2 in all matters regarding eligibility of the candidate relating to recruitment was to be final and binding on the candidates. Impliedly the decision of the committee, pertaining to allocation of additional marks, remains purely an administrative decision.
15. The Apex court in the case of **Neha Anil Bobde (Supra)**, while heavily dealing with the issue of limitation of courts in policy matters has held as under:-

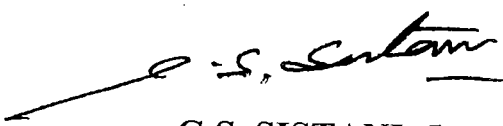
"29. We are of the view that in academic matters unless there is a clear violation of statutory provision, the Regulations or the Notification issued, the Courts shall keep their hands off since those issues fall within the domain of the experts. This Court in University of Mysore v. C.D. Govinda Rao IR 1965 SC 491, Tariq Islam v. Aligarh Muslim University (2001) 8 SCC 546 and Rajbir Singh Dala v. Chaudhary Devi Lal University (2008) 9 SCC 284, has taken the view that the court shall not generally sit in appeal over the opinion expressed by expert academic bodies and normally it is wise and safe for the Courts to leave the decision of academic experts who are more familiar with the problem they face, than the Courts generally are"

16. The Apex Court in the case of **Tamil Nadu Education Dept., Ministerial and General Subordinate Services Association v. State of Tamil Nadu and Ors.**, reported at (1980) 3 SCC 97, and

All India Council for Technical Education vs. Surinder Kumar Dhawan and Ors. reported at (2009) 11 SCC 726 has reiterated that in academic matters, the interference of courts should be minimum.

17. Therefore, we find no reasons to interfere with the order dated 24.01.2018 passed by the Ld. Single Judge.
18. The appeal is dismissed accordingly.


SANGITA DHINGRA SEHGAL, J.


G.S. SISTANI, J.

OCTOBER ^{16th}, 2018
gr//