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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Rev.Pet.No.346/2015 and CM No.13184/2015 in

+ **W.P.(C) 7309/2013**

% **Date of decision : 18th September, 2015**

BABOO LAL SHARMA Petitioner
Through : Mr. Amarjit Singh Bedi, Md.
Asfar Heyat Warsi and Mr.
Varun Chandiok, Advs.

versus

GOVT. OF NCT OF DELHI & ORS. ... Respondents
Through : Mr. Arun Panwar, Adv. for Mr.
Raman Duggal, Standing
Counsel (Civil) for GNCTD/R-
1&2.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT (ORAL)

GITA MITTAL, J.

CM No.13184/2015

Heard. For the reasons stated in the application, the delay in
filing the accompanying review petition is condoned.

The application is disposed of.

Rev.Pet.No.346/2015

1. By way of the present review petition, the petitioner seeks review of the judgment dated 9th April, 2015 passed by this court dismissing the writ petition. It is submitted by learned counsel for the respondents that no reply is necessary inasmuch as the review petitioner is relying on the judgment dated 7th August, 2013 passed in ***W.P.(C)No.1520/2012, Government of NCT of Delhi & Ors. v. Sachin Gupta*** and a batch of connected writ petitions. It is submitted by learned counsel for the respondents that the respondents are not at issue with the petitioner on the fact that the judgment of ***Sachin Gupta*** would clearly apply to the case of the petitioner and that the writ petition filed by him deserves to be allowed for this reason alone. Learned counsel points out that the correct paras of this precedent were not pointed out to the court resulting in the judgment under review.

2. The facts giving rise to the instant writ petition are in a narrow compass. The petitioner was seeking appointment as a teacher to the post of TGT (Sanskrit) by the respondent no. 1. The essential

eligibility criteria for the same was possession of a Bachelor Degree (Honours/Pass) or equivalent from any recognized University and should have secured 45% marks in aggregate. In his Bachelor's degree, the petitioner had secured 44.27 marks in aggregate which were treated as being below the criteria of possessing the minimum 45% marks in aggregate at the graduation level.

3. For the purposes of appreciating the submissions of the review petitioner, we set out hereunder the qualifications of the petitioner. He is stated to have undertaken a B.A. Degree course with History Political Science and Sociology from Maharishi Dayanand Saraswati University, Ajmer between 1996-98. The petitioner relies on Ordinance 203 of the MDS University, Ajmer, to the effect that “*any candidate who has passed the B.A.(Pass and Hons.) B.Sc. (Pass and Hons.) B.Sc. (Ag) or B.Com (Pass and Hons.) exam of the university or an examination recognized by the university as equivalent thereto shall be allowed to present himself for examination in any subsequent year in any of one of the optional subjects prescribed for the B.A. examination and not already taken by him at the degree examination,*

and if successful will be given a certificate to the effect. Such a candidate shall be required to appear in all the papers of that subject in one and the same year, provided that his is not registered for any other examination of the university in the same years”. It is submitted by the petitioner that as permitted under the rules of the said university, he applied for the additional course with Sanskrit as the additional optional subject which was cleared by him in 2005. As a result, the petitioner completed the subject in question i.e. Sanskrit in all parts in which this subject was taught during graduation course with sanskrit. In the meantime, the petitioner also cleared his post-graduation as well and a degree of M.A. in Sanskrit was conferred upon him in July, 2002 by the MDS University, Ajmer. In 2007, the petitioner passed his B.ED examination from the university of Kashmir, Sri Nagar with first class distinction inter alia for teaching method Sanskrit.

4. The respondent had issued an advertisement for the post of TGT (Sanskrit) in October, 2007 in the schools of Government of NCT of Delhi run by the Directorate of Education. The petitioner

appeared in the examination conducted by the respondent on 11th May, 2008 and his name had appeared in the list of successful candidates in the results notified on 29th October, 2008.

5. On 10th April, 2009, the petitioner was issued a memorandum of offer of appointment. His documents were scrutinised on 28th April, 2009. As no information was received by him, the petitioner sought information under Right to Information Act on the 8th of July 2009. It is only thereafter on 24th September, 2009, the respondent no.1 passed an order directing cancellation of the candidature of the petitioner on the ground that the B.A. Additional course undergone by him could not be considered as rendering the petitioner eligible for appointment to the post.

6. The petitioner approached the Central Administrative Tribunal by way of O.A.No.3628/2009 seeking a direction to the respondent for appointment and posting on the post of TGT (Sanskrit). By its order dated 6th October, 2009, the tribunal directed the respondent to dispose of the petitioner's representation. As no response was received from the respondent, yet another O.A.No.2787/2009 was

filed by the petitioner which was decided in his favour by the judgment dated 11th March, 2001.

7. The respondent assailed the judgment of the tribunal by way of W.P.(C)No.6006/2010. The same was considered and by an order dated 4th October, 2010, the matter was remanded to the tribunal. The matter was decided again by the tribunal on 21st December, 2010 directing the respondent no.1 to reconsider the matter and take a final decision in consultation with respondent no.3.

8. On 1st March, 2011, respondent no.1 sought clarification on the issue of eligibility of the petitioner from the respondent no.3. Despite the clarification given by respondent no.3 on 26th April, 2011, the respondent no.1 rejected the petitioner's candidature by an order dated 27th May, 2011 without giving any explanation. The petitioner assailed the said action by third petition before the Central Administrative Tribunal which unfortunately was rejected by an order dated 9th August, 2012. The petitioner's review application was dismissed on 30th November, 2012 by the tribunal resulting in filing of the present writ petition.

9. The writ petition also came to be dismissed by this court by the judgment dated 9th April, 2015. This court was of the view that the acquisition of a B.A. additional course was not relevant for the purposes of assessing the petitioner's eligibility for appointment to the post of TGT (Sanskrit) in terms of the recruitment rules. Furthermore, no benefit can be taken by the petitioner of his having been successfully completed the M.A. (Sanskrit) degree course for the purposes of his engagement as TGT (Sanskrit). This court in the judgment dated 9th April, 2015 was of the view that the eligibility criteria has to be strictly applied and the petitioner's candidature was rightly rejected for the reason that he had not secured 45% marks in the additional B.A. Degree course and that he had not undertaken Sanskrit as part of his subjects in that course.

10. Our attention is drawn to the consideration of this very aspect by a co-ordinate Bench of this court in the judgment dated 7th August, 2013 in ***Sachin Gupta*** which is in the following terms :

“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 WP(C) 1520/2012 & conn.matters 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.'

11. We also find that the Division Bench has considered the teaching ability of a person who has studied the concerned language at the graduate as well as at the post-graduate level in the following terms :

“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 G graduate degree in English language.”

However, on 9th April, 2015, the attention of this court was drawn only to paras 30 and 32 of ***Sachin Gupta*** and not to the above findings.

12. In the case in hand, the petitioner has acquired a post-graduate degree in the Sanskrit language and has to be considered better to teach Sanskrit vis-a-vis a person who has studied the same under graduate degree course.

13. In view of the above, the fact that the petitioner had undertaken study of Sanskrit language for all parts in the B.A. additional course, was a relevant factor for consideration of his eligibility, as mentioned in the recruitment rules. The acquisition of the post-graduate degree in Sanskrit renders the petitioner even better qualified to teach in the position than a person with a mere graduate degree.

14. Our attention is also drawn to the notification issued by the Government of NCT of Delhi dated 17th January, 1994 regarding the method of recruitment and qualifications necessary for appointment to the post of TGT (Sanskrit) in the Directorate of Education of the Government. Amongst the amendments notified by the concerned government, so far as the qualifications required for direct recruitment are concerned, the respondents have notified the following eligibility qualifications :

“(For appointment as Hindi Teachers only)
Sahitya Rattan of Hindi Sahitya Sammellan
Prayag having secured atleast 45 per cent marks in aggregate with English in Matriculation provided further that the requirement as to the minimum of 45 per cent marks in the aggregate shall be relaxable in the case of
(a) candidate who possesses a Post Graduate Qualification in MIL concerned from a recognised University (b) candidates belonging to SC/ST (c) Physically handicapped candidates.”

(Emphasis by us)

15. As a result, for a candidate possessing a post-graduate qualification in MIL (Modern Indian Language), a minimum requirement of 45% marks in aggregate at the graduate level is relaxable.

16. It is admitted by the learned counsel for the respondent that the said notification was also not brought to the notice of the Bench when it passed the order dated 9th April, 2015 resulting in the dismissal of the petitioner's claim.

17. In view of the above discussion, we find that the relevant law on the subject as well as binding notification of the Government of NCT of Delhi was not placed before the Division Bench of this court, resulting in an error apparent on the face of the record.

18. The prayer made in the review petition is justified and admitted by the respondent. The findings of the Division Bench of this court in para 10 of the judgment dated 9th April, 2015 are hereby recalled. It is held that the petitioner fulfilled the basic eligibility criteria laid down in the recruitment rules and notified in the advertisement are possessed the required educational qualifications. The petitioner was, therefore, validly appointed and has to be permitted to join at a place of posting to be effected by the respondent no.1.

19. The claim of the petitioner in the petition before the tribunal as per the Original Application seeking appointment to the post of TGT

(Sanskrit) is upheld with the exception that he shall not be entitled to back wages but would be entitled to all consequential benefits such as seniority as per his merit position in the select panel and notional pay fixation with reference to the date of his joining being treated as the one on which the person immediately junior to them joined duty.

20. The respondents shall pass the orders in terms of the above within a period of four weeks from today.

This petition is allowed in the above terms.

Dasti.

GITA MITTAL, J

I.S.MEHTA, J

SEPTEMBER 18, 2015

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