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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 11381/2015

Date of Judgment : 8th December, 2015

VANDANA Petitioner
Through : Mr. P. R. Agrawal and Mr. Mohit Saroha,
Advocates.

Versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents
Through : Mrs. Harvinder Oberoi, Advocate for
Mr. Devesh Singh, ASC, GNCTD.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

CM APPL. No. 29945/2015

1. Exemption allowed, subject to all just exception.
2. Application stands disposed of.

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3. The petitioner is aggrieved by the order dated 24.07.2015 passed by the Central Administrative Tribunal (CAT) by which OA filed by the petitioner herein stands dismissed.
4. Mrs. Oberoi, learned counsel for the respondent enters appearance on an advance copy.
5. We have taken up the matter for hearing with the consent of the parties.
6. The facts necessary to be noticed for disposal of the present writ petition are that the respondent No. 4 published an advertisement No. 07/2007 for the post of TGT (Sanskrit). Counsel for the petitioner submits that the petitioner being fully eligible applied for the

TGT(Sanskrit) (Post Code: 154/07) on 26.10.2007. It is also the case of the petitioner that the petitioner had truly and faithfully mentioned in detail all her qualifications in the application form that at the relevant time the petitioner had appeared in B.Ed examination and the result was awaited. Thus, she did not conceal or suppress any fact or information much less any material fact. Counsel submits that after the respondents examined the form of the petitioner, the detailed mentioned therein and the documents attached, the respondents accepted the eligibility of the petitioner and allowed her to appear in the written examination. It is submitted that the petitioner had successfully passed the examination conducted by respondent no.4 for the post of TGT (Sanskrit) and the DSSSB declared the petitioner as successful in the said examination and after the declaration of the final result, the respondents verified all requisite documents pertaining to qualifications, age etc. and asked the petitioner to produce a provisional certificate of professional degree (B.Ed.) from the university concerned and the petitioner, as per the desire of the respondents, produced the said certificates also. It is submitted that after having verified all the documents/certificates etc. and having satisfied themselves, the respondents issued offer of appointment to the petitioner for the post of TGT(Sanskrit). It is submitted that the Directorate of Education, Govt. of NCT of Delhi issued offer of appointment to the petitioner for the post of TGT(Sanskrit) vide Memorandum No.DE-3(33) E.III/DR/09/6291 dated 23.02.2009. It is submitted that on 27.07.2009, in response to the offer of appointment,

the petitioner joined the post and has ever since been performing her duties with the utmost dedication, devotion, diligence and discipline. The petitioner was appointed on provisional basis on the said post vide order No.DE.3(33)/E-III/DR/2009/20454 dated 11.08.2009 issued by Directorate of Education, Delhi. It is further submitted that from 22.09.2009 to 26.09.2009, the petitioner participated in the five days training programme on YUVA-SLP(School Life Skills Programme) conducted by State Council of Educational Research and Training, which is an autonomous organization of Govt. of NCT of Delhi. On 29.04.2010, the petitioner herein was appointed as an Enumerator for the purpose of Census of India, 2011. It is submitted that on 18.09.2010 after more than a year of her joining duty, the petitioner was shocked and surprised to receive a show cause notice on totally false, frivolous and baseless grounds that petitioner did not possess the required qualification and she was asked to give reply thereto within three days only and the petitioner filed reply to the said show cause notice within the prescribed period.

7. It is also submitted that in October, 2010 the petitioner herein filed an OA No.3504/2010 before the Central Administrative Tribunal, Principal Bench, New Delhi. On 22.10.2010, the said OA was listed by the learned Tribunal and notices were issued to the respondents and the Tribunal also directed to maintain *status quo* as of date. It is submitted that during the pendency of the OA, the petitioner was given various duties which were performed by her to the entire satisfaction of the respondents. Vide the impugned order dated

24.07.2015, the learned Tribunal dismissed the said OA filed by the petitioner.

8. Learned counsel for the petitioner submits that in the application form, the petitioner had made a correct declaration that she had appeared for the examination and thus she had not violated column 11 of the offer of appointment and there was no false information which was furnished by her nor she had concealed any vital information or made any misrepresentation.
9. Per contra, learned counsel for the respondents submits that the petitioner did not fill up the application form truthfully and a false declaration was made. Learned counsel for the respondent submits that as per column 16 (b) of the form, it was mandatory for the candidate to disclose as to whether she had the essential qualification and experience as on the closing date of receipt of application, to which she had answered in the positive.
10. We have heard learned counsel for the parties and considered their rival contentions and also perused the order passed by the Tribunal.
11. The short question which arises for consideration before this Court is, (i) As to whether the petitioner was eligible on the date the application form was filled up; (ii) Whether the petitioner had made any false declaration in the application form; and (iii) Whether the petitioner had informed the respondents that she had appeared in the examination and thus, there was no false declaration.
12. It is not in dispute that as per the advertisement 07/2007 for the post of TGT (Sanskrit), a candidate was required to possess all essential

educational qualification as on the date of receipt of the application i.e. 27.10.2007. It is also not in dispute that petitioner was awarded the B.Ed. Mark Sheet on 28.01.2008 and B.Ed. Provisional Certificate on 28.01.2009 i.e. subsequent to the cut off date.

13. Column 16 (b) of the application form would show that the petitioner had made a positive assertion that she possessed essential education qualification and experience as on the closing date. Column 16(b) of the application form reads as under:

(b) *“DO YOU POSSESS THE ESSENTIAL
QUALIFICATION AND EXPERIENCE AS ON
CLOSING DATE OF RECEIPT OF APPLICATION.*

Tick Mark ✓ in the box) Yes ☒ No ☐

14. The applicant had marked ‘yes’ in the column provided. A photocopy of the form which is handed over in Court shows that the word ‘appeared’ has been written, but with naked eye it can be seen that the writing is different and even otherwise, there was no such column provided to make such an endorsement, besides the fact that reading of column 16(b) would show only two answers were provided, whether the candidate possessed the essential qualification and experience as on the closing date of receipt of the application and the applicant had clearly marked the column ‘yes’. A bare examination of the form would show that the word ‘appeared’ had been added subsequently. Even the word ‘appeared’ would have no bearing and

can be of no benefit to the petitioner.

15. The Hon'ble Apex Court in *Civil Appeal No. 6116/2013 titled as Rakesh Kumar Sharma v. Govt. of NCT of Delhi*, has held as under:

“16. In the instant case, the appellant did not possess the requisite qualification on the last date of submission of the application though he applied representing that he possessed the same. The letter of offer of appointment was issued to him which was provisional and conditional subject to the verification of educational qualification, i.e., eligibility, character verification etc. Clause 11 of the letter of offer of appointment dated 23.2.2009 made it clear that in case character is not certified or he did not possess the qualification, the services will be terminated. The legal proposition that emerges from the settled position of law as enumerated above is that the result of the examination does not relate back to the date of examination. A person would possess qualification only on the date of declaration of the result. Thus, in view of the above, no exception can be taken to the judgment of the High Court.

17. It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement.

There is no obligation on the court to protect an illegal appointment. Extraordinary power of the court should be used only in an appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and

was not delayed at all so as to even remotely give rise to an expectancy of continuance. The appeal is devoid of any merit and does not present special features warranting any interference by this court. The appeal is accordingly dismissed.”

16. Having regard to the fact that as per the advertisement 07/2007 for the post of TGT (Sanskrit), a candidate was required to possess all essential educational qualification as on the date of receipt of the application *i.e.* 27.10.2007. It is also not in dispute that petitioner was awarded the B.Ed. Mark Sheet on 28.01.2008 and B.Ed. Provisional Certificate on 28.01.2009 *i.e.* subsequent to the cut off date and taking into consideration that the petitioner did not possess the eligibility criteria on the date the application form was filled up, also having regard to the fact that the petitioner had made a false declaration which is evident upon perusal of column 16(b), we find no infirmity in the order passed by the Central Administrative Tribunal. We find no merit in the present writ petition. Accordingly, the same is dismissed. No costs.

CM APPL. Nos. 29944/2015 and 29946/2015

17. In view of the order passed in the writ petition, both applications are dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 08, 2015

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