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

+ W.P.(C) 848/2016

GULAB SINGH

..... Petitioner

Through: Mr. Deepak Verma, Advocate

versus

THE CHIEF SECRETARY GOVT. OF NCT OF DELHI & ANR

..... Respondents

Through: Mr. Rizwan, proxy counsel for
GNCTD

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **03.02.2016**

CM No.3762/2016(exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 848/2016

Two contentions have been raised by the petitioner, impugning the order dated 24.9.2015. The first plea is predicated on the principle of constructive *res judicata*. The petitioner had earlier filed OA No.14/12, as the petitioner's candidature for selection to the post of TGT (English) was rejected on the ground of overage. The original application was allowed, holding that in a case of an ex-serviceman, the entire period during which the applicant has served in the Army, has to be excluded and the prescribed period has to be added. The operative portion of the said order dated 17.2.2015, disposing off OA No.14/12, reads:

“10. In the circumstances and for the aforesaid reasons,, the OA is allowed and the respondents are directed to consider the applicant for appointment to the post of TGT (English), as per his merit in the Ex-serviceman category, with all consequential benefits, except backwages, within sixty days from the date of receipt of a copy of this order.”

In our opinion, the Tribunal has rightly interpreted the said paragraph and order and held that the principle of constructive *res judicata* would not be applicable. At that stage, the only issue or contention raised was whether or not the petitioner was overaged. In this context, the plea of the petitioner was accepted and the question of selection was remitted for consideration. The petitioner's candidature having been rejected on the ground of overage, was not earlier examined on other aspects, including eligibility. The Tribunal rejecting the plea of constructive *res judicata* has rightly referred to and quoted from ***A.P.S.R.T.C. and Others v. G.SriniVas Reddy and Others, (2006) 3 SCC 674***, wherein it has been observed:-

"14. We may, in this context, examine the significance and meaning of a direction given by the court to "consider" a case. When a court directs an authority to 'consider', it requires the authority to apply Its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. There is a reason for a large number of writ petitions filed In High Courts being disposed of with a direction to "consider" the claim/case/representation of the petitioner/s in the writ petitions.

15. Where an order or action of the State or an authority is found to be illegal, or In contravention of prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being

quashed, the High Court will not proceed to substitute its own decision in the matter, as that will amount to exercising appellate, power, but require the authority to 'consider' and decide the matter again. The power of judicial review under Article 226 concentrates and lays emphasis on the decision making process, rather than the decision itself.

16. The High Courts also direct authorities to 'consider', in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of power of judicial review, directs the authority to 'consider' and decide the matter. In such cases, while exercising, the power of judicial review, the High Court directs 'consideration' without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court, may also direct the authority to 'consider' afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.

17. Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to 'consider' the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to 'consider' the matter, the authority will have, to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the court.

18. We may also note that sometimes the High Courts dispose of matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court, to avoid deciding the issue which requires to

be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of 'pliable' authorities have misused the direction 'to consider' issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer, to direct the authority to 'consider' and dispose of the representation.

When the court disposes of the petition with a direction to 'consider', the authority, grants the relief, taking shelter under the order of the court directing him to 'consider' the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider', may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of court's direction to 'consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily wagers seeking regularization/absorption into regular service is a species of cases, where there has been a large scale misuse of the orders 'to consider'.

20. Therefore, while disposing of writ petitions with a direction to 'consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time-frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the

aggrieved, petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

The plea of constructive *res judicata* thus fails.

The second contention raised by the petitioner is that he had studied English at the post-graduation level, as he is Masters in Arts in English from the University of Pune. During the course of hearing before us, in support of his contention, the petitioner had filed a copy of the mark-sheet issued by the University of Pune. The petitioner has also relied upon the decision of this Court titled ***Delhi Subordinate Service Selection Board & Anr. v. Nisha Kapoor*** in WP(C) No.2592/2010 decided on 26.4.2010.

We have considered this contention but are unable to agree and accept the submission. The letter/order dated 7.8.2015 passed by the Delhi Subordinate Service Selection Board of the Government of National Capital Territory of Delhi refers to the requisite qualifications required for the post of TGT teachers, the post for which the petitioner has applied. The relevant portion of this letter is quoted below:

"Essential qualification (s) for the posts indicated in the RRs of the post as supplied by the Directorate of Education are as under:

Age:-Below 30 years (relaxable in case of Govt. Servants of Delhi Admn. up to 40 years (45 years for SC/ST employees) and up to 40 years in case of female candidates. Two years extension to the upper age limit has been indicated in the requisition of Directorate because of increase in the age of retirement.

Education Qualifications:- (i) *A Bachelor's Degree (Honours/Pass) or equivalent from a recognized University having secured 45% marks in aggregate, in two school subjects of which at least one out of the following should have been at the elective level.*
1.English 2.Mathematics 3.Natural/Physical Science 4.Social Science.

Provided further that the requirement as to minimum of 45% in the aggregate at graduation level shall be relaxable in case of (a) Candidates who passes a Post Graduate Qualification in any of the teach subjects listed above. (b) Candidates belonging to SC/ST/PH Category.

(ii) Degree/Diploma in teaching OR SAV Certificate.

(iii) Knowledge of Hindi is essential.

Provided that the Assistant Teacher from MCD/Dte of Education and Lab Assistants shall not be required to have received 45% marks in aggregate in Bachelor's Degree (Pass/Honours) or equivalent.

N.B. "The Candidates should have studied the subject concerned as mentioned in all parts/years of the graduation. The elective word may also include main subject as practiced in different universities."

The aforesaid letter/order dated 7.8.2015 thereafter records that the documents of the petitioner available in the file were scrutinized and it was noticed that the petitioner had passed B.A.(External) Examination Part I/II in March/April 1995 in one year course from the Osmania University. He had not studied English in parts I/II at the graduation level and accordingly he was not eligible for the post of TGT(English). A specific reference was made to the essential eligibility requirement mentioned in the Recruitment Rules that the candidate should have studied the subject in all parts at the graduation level. The petitioner has filed before us a copy of the mark-sheet of the Osmania University External Examination. The petitioner had appeared in Hindi, Political Science, Public Administration and Sociology papers. The petitioner, it is apparent, had only undergone one year course. English was not one of the subjects.

The judgment in the case of **Nisha Kapoor** (supra), referred by the petitioner, is not apposite. The RRs quoted therein are different from the

ones quoted and referred to in the order/letter dated 7.8.2015. In the said case the petitioner had undergone three year B.A.(Pass) Course from the Calcutta University. The Court noticed that the RRs did not specify as to the number of years the subject should have been studied. The RRs quoted in the letter/order dated 7.8.2015 are perceptibly different and stipulation is clear. It is not the contention of the petitioner that the averments made in the RRs, quoted in the letter/order dated 7.8.2015, are incorrect or wrong. English was not a subject in the one year graduation course undergone by the petitioner.

The writ petition, accordingly, has no merit and is dismissed.

SANJIV KHANNA, J

NAJMI WAZIRI, J

FEBRUARY 03, 2016

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