

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

Date of Decision: 03.03.2016

+ W.P.(C) 1683/2016

GOVERNMENT OF NCT OF DELHI

..... Petitioner

Through: Mr. Saurabh Chadda, Advocate

Versus

ANUPAM GUPTA

..... Respondent

Through: Ms. Jyoti Singh, Senior Advocate
with Ms. Tinu Bajwa, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

JUSTICE SANJIV KHANNA (Oral)

1. Government of National Capital Territory of Delhi (GNCTD) impugns order 29.09.2015 passed by the Central Administrative Tribunal (CAT), Principal Bench, New Delhi, in O.A. No. 682/2013 whereby they have been directed to process the candidature of Ms. Anupam Gupta after treating her as a eligible candidate as far as her educational qualifications are concerned. It has been further directed that if the respondent is otherwise found suitable, she shall be appointed against existing vacancy and she would be also entitled to consequential benefits of pay fixation and seniority commensurate with her position in the merit list of successful candidates.
2. It is submitted that the respondent was not eligible for she does not have the requisite educational qualifications to be appointed as a Trained

Graduate Teacher (Social Science) [TGT (Social Science)].

3. As per the Recruitment Rules, educational qualifications prescribed for the said post are as under:

“A bachelor’s degree (Honors/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 Science/Physical Science*
4. *Social Science*

Note: *Main subjects for TGT (Social Science) shall be History/Political Science/Economics/Business Studies/Sociology/ Geography/Psychology.”*

4. It is an accepted position that the respondent possesses the following qualification:

*“B.Com(Hons)- Sri Venkateswara College, DU
M.Com – CCS University, Meerut
B.Ed – CCS University, Meerut
MBA (PGDBM F/T) – IMSPR, Delhi Productivity Council”*

5. The respondent had applied for the post of TGT (Social Science) Post Code No.148/2007 in response to advertisement No. 7 of 2007. The respondent being successful in the written examination, by letter dated 27.05.2009 was asked to furnish all documents of educational qualifications including mark-sheets of all the three years of graduation indicating the subject of specialisation. The respondent had submitted the particulars and documents. Subsequently, on reading the Public Notice published on 24.11.2009, the respondent learnt that she had been declared ineligible, as

not meeting the required minimum educational qualifications.

6. The respondent then made an application under Right to Information Act and after getting details, moved O.A. No. 4406 of 2010 before the Tribunal which was disposed of vide order dated 03.01.2011. The respondent was directed to submit a detailed representation to Delhi Staff Selection Board within 15 days explaining her case and the Board was required to consider and pass a speaking order under intimation to the respondent.

7. Resultantly, the respondent made a representation dated 17.01.2011 enclosing therewith the reply received from the University of Delhi in response to her application under the Right to Information Act.

8. By order dated 28.05.2012, Delhi Subordinate Services Selection Board (DSSSB) informed the petitioner that she has been declared as disqualified for the following reasons:

“And whereas since as per RRs of the post, Business Studies is also one of the subject which if studied in all the 3 years of graduation make a candidate eligible for the post, as such the new aspect which the Directorate of Education did not examine in the meeting dated 21.10.2009 needed to be examined by the Directorate of Education in first instance, as the Directorate of Education, in respect of some of the candidates, also considered clarifications of the Universities about nomenclature of subjects, for deciding the matter.

And whereas in view of aforesaid, the Board for passing final speaking order in the matter sought clarification/decision of the Directorate of Education on the said issue vide DSSSB's letter dated 2.2..2011. the copy of which was also endorsed to the applicant. It is informed that the Board has no role in framing of the RRs or interpretations of its provisions, as such final speaking

order can be passed only on the basis of clarification received from the Directorate of Education, the copy of which was also endorsed to the applicant.

And whereas Directorate of Education vide letter dated 28.3.2011 clarified that the clarification issued by HOD, Commerce Department, University of Delhi was considered and it was observed that even if it is inferred that the candidate studied Business Studies in all parts/years of the graduation/degree of B.Com (Hons.) then also she does not become eligible for the post of TGT (S. Sc) as Business Studies is not presently one of the subjects being taught in the schools. The Directorate further clarified that the requirement of Recruitment Rules is for two school subjects out of the following for TGT (S.Sc.) i.e. History/ Political Science/ Economics/ Business Studies/Sociology/Geography/Psychology and presently Commerce is not a school subject. Hence, such candidates are not considered eligible for the post of TGT (S.Sc.)”

9. A reading of the aforesaid order would indicate that the Directorate of Education had examined the clarification issued by the Head of the Department, Commerce Department of the University of Delhi and held that even if it could be inferred that the respondent had studied Business Studies in all Parts/years of the graduation/degree of B.com (Hons.), she would not be eligible for the post of TGT (Social Science) as Business Studies was not one of the subject being taught in the schools. The Directorate had clarified that requirement of the Recruitment Rules is that the school subjects in Social Sciences could be History/ Political Science /Economics / Business Studies /Psychology /Geography /Sociology, but presently Commerce was not one of the subjects being taught in the schools. Hence, the respondent cannot be considered as eligible.

10. The Tribunal did not agree with the said reasons and has allowed the O.A., observing:-

"7. A perusal of the documents produced before us reveals that the advertisement issued by the respondents stated that besides others Business Studies as an elective subject in all three years of graduation was one of the required subject for this post. This is evident from the relevant extracts of the advertisement, which are reproduced below:-.

"Educational and other Qualifications:

Essential (for. Post Code -143/07 to 150/071) : (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.

Note: Main subjects for TGT (Natural Science/Phy. Science) shall be
Physics, Chemistry, Biology, Botany and Zoology.

Social Science:- History/Political Science/
Economics/Business Studies/Sociology/Geography
/Psychology.

Provided further that the requirement as to minimum of 45% marks in the aggregate at graduation level shall be relaxable in case of:

(a) candidates who possess a Post Graduate qualification in any of the teaching subjects listed above,

- (b) belonging to SC/ST,
- (c) Physically Handicapped candidates,
- (d) Degree/Diploma in Training Education or SAV Certificate."

8. *Information received from Delhi University through RTI, which has not been disputed by the respondents is reproduced below:-*

"The present application is filed under Right To Information Act and the details whereof are as under:

- (1) Name of the Applicant : Ms. Anupam Gupta
- (2) Address : House No. 206, Sector-22B, Gurgaon
- (c) Address for Correspondence : Same as above.

The Following Papers were the subjects for .B.Com (Hons.) Examination for the batch year (1991 1994), for the University of Delhi:

Part-I

- I. Business Organisation
- II. Financial Accounting 1
- III. Business Mathematics
- IV. Business Law

Part-II

- V. Economics
- VI. . Business Statistics
- VII. Principles of Management
- VIII. Financial Accounting-II (Company Accounts)
- IX. Company Law

Part-III

- X. Indian Economy Resources, Trade and Development
- XI. Money income and Financial Institutions
- XII. Cost Accounting
- XIII. Auditing and Income Tax

(3) **Information Required**: Amongst the Papers mentioned in Part-I, Part-II and Part-III, which are

the papers in each Part that can be deemed/treated as a part of the study of "**Business Studies**" for the said batch of 1991-1994 as well as for the current year batch of B.Com.(Hons) for the University of Delhi:

(4) Requisite Fee for the said information is paid through Postal Order.

9. Thus, it is obvious that Delhi University has clarified that the applicant had studied the above mentioned subject which form part of Business Studies in all the three years of her graduation. Hence, the applicant has to be regarded as possessing the requisite educational qualification in terms of the advertisement issued by the respondents. The plea taken by the respondents that neither Commerce nor Business Studies is taught at the school level is hardly relevant for deciding the aforesaid OA. If Commerce and Business Studies were not taught in schools and were not required qualification for the post of TGT (Social Science), the respondents should have taken care to amend their Recruitment Rules accordingly and not to have advertised the post in the manner in which they have done. Their contention that they have constituted an Expert Committee and propose to make suitable amendments in the Recruitment Rules is also not relevant to the present controversy since any amendments made in the Recruitment Rules would only apply prospectively. From the documents produced by the applicant, it is clear that she had studied Business Studies in all three years of her graduation and, therefore, has to be treated as possessing the necessary educational ' qualifications in terms of the advertisement issued by the respondents."

11. The aforesaid narration refers to the information received from the University of Delhi which gives break up of courses/papers studied and taught in B.com (Hons.) in the batch for the years 1991-1994. Subjects

taught and exams cleared in part-I, part-II and part-III have been specified. In part-I, the respondent had studied Business Organisation and Business Law and in the part-II, the respondent had studied Business Statistics, Principles of Management and Company Law. In the third part, the respondent had studied Indian Economy Resources, Trade and Development and Money Income and Financial Institutions. It is apparent that the course was broad and extensive.

12. The above quoted paragraphs from the impugned order refer to the Recruitment Rules and the requirement that a candidate should have a specialized Degree (Honours/Pass) in either in English, Mathematics, Natural/Physical Sciences or Social Science from a recognised university with at least 45% of marks in aggregate. The candidate should have two school subjects out of which at least one subject should have been at the elective level.

13. 'Social Science' is one of the four elective subjects indicated in the Recruitment Rules. The expression 'Social Science' as per note would mean; History, Political Science, Economics. Business Studies, Sociology, Geography and Psychology.

14. The Recruitment Rules by themselves do not differentiate between the Social Science subjects which have been narrated and specifically mentioned in the note. The reason why the note was required is apparent for "Social Science" is wide term. Social Science subjects for the purpose of Recruitment Rules could be any of the elective subjects including Business Studies. Therefore, the contention of the petitioner that Business Studies should be excluded and not included in the Social Science is contrary to the Recruitment Rules. The Recruitment Rules themselves mention that the

school subjects will include Social Science and Business Studies is a Social Science subject. The recruitment rules thus stipulate and mandate that Business Studies is a school subject. In these circumstances it is not possible to accept the contention of the petitioner that Business Studies should not be treated as school subject as the same for the present was not taught in the schools. Once the Recruitment Rules recognises and accepts "Business Studies" as an elective subject, the petitioners cannot urge and submit that it is not a school subject. TGT (Social Sciences) teach classes from class 4 to 10.

15. The issue raised by the petitioners is whether the respondent meets the essential qualification requirements mentioned in the Recruitment Rules. In order to determine and decide this question against the petitioners, we have referred the Recruitment Rules itself. It is not the case of the petitioners that while calling for the applications, they had excluded candidates who had studied Business Studies as an elective subject at the graduation level. No such exclusion was prescribed or mentioned.

14. A similar issue, had come up for consideration before this Court in ***Government of NCT of Delhi & Ors. vs. Sachin Gupta & Ors.***, WP(C) 1520/2013 and four other cases. The said judgment refers to a corrigendum issued on 30.03.2000 defining the terms 'elective subject' in the following manner:

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

In the said case one of the candidates was a graduate from Delhi University

in B.com (Hons.). Subject Economics had been taught in second and third year of the three year B.com (Hons.) course. It was submitted that the said candidate had studied Economics in two years and not in all three years. The Division Bench examined the terms 'elective subject' with reference to the Corrigendum quoted above, and had observed as under:

"31. The necessity to issue the corrigendum was to give clarity as to what was meant by 'elective subject'; for the reasons there was no unanimity of opinion as to what would be an elective subject since different universities in India follow different procedures and methodologies of imparting education.

32. The study of various disciplines of education i.e. subjects taught is broadly classified into three categories i.e. (i) core subjects, (ii) elective subjects and (iii) mandatory subjects. The difference in the three is as under:

(a) Core subjects: The student shall complete successfully all the core subjects prescribed for the program to become eligible for the award of Degree. Such courses together with their grades and credits earned should be included in the Grade Card issued by the College at the end of each semester.

(b) Elective Subjects: The students shall further complete successfully the total credit equivalent of the elective subjects offered in the program to become eligible for the award of the Degree. The student can choose the subject of his/her interest from among the available credits.

(c) Mandatory Subjects: The student shall complete successfully all the mandatory courses prescribe from time to time by the college. These subjects however do not carry any credits.

40. To repeat, corrigendum dated March 30, 2010 prescribes that the expression 'elective subject' occurring

in the Recruitment Rules means that 'The candidate should have studied the subject concerned as mentioned in the RRs in all parts/years of graduation. The elective word may also include main subject as practiced in different universities'. It is clear that the ethos of the prescription contained in the corrigendum dated March 30, 2010 that 'the candidate should have studied the subject concerned as mentioned in the RRs in all parts/years of graduation' is that the candidate should have a deep understanding of the subject in which he is desirous of imparting education to the children.

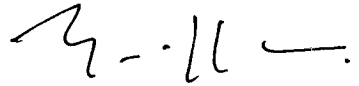
41. All universities in India do not offer a particular elective subject in all three years' of graduation course as in the case of Nainika, Vikram Singh and Sachin Gupta, where Delhi University did not teach English/Hindi/Economics in all three years of B.A. program/B.Com (H) course (s) conducted by 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 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"

42. It has also to be kept in mind that whereas the University of Delhi was teaching the concerned subject and was testing the knowledge of the students each year by assigning 100 marks to the paper i.e. three papers were being taught in the three years, as a result of restructuring, the number of papers continued to be three with marks assigned to each paper, being 100, except that now the three papers are taught in only two years. In other words the previous and the current position continues to be practically the same. It hardly matters whether three papers of 100 marks each are taught over three years or three papers of 100 marks each are taught in two years. A ready illustration could be a rational decision taken that unless a student studies History up to a particular level he may not understand the nuances of Political Science and hence a University may decide that the subject of Political Science should be taught after a foundation course in History is taught and this would mean that the subject of Political Science is introduced in the second year of study and continued in the third. The previous position of teaching Political Science in each year with one paper each year having 100 marks is replaced by teaching Political Science only in the second and the third year but retaining the three papers each having 100 marks.

43. In view of the aforesaid, respondents Nainika, Vikram Singh and Sachin Gupta who have studied the concerned subject, English/Hindi/Economics (one of the main subjects prescribed for T.G.T. (Social Science), in all the years in which the subject was taught during the graduation courses undertaken by them are eligible to be appointed to the post of T.G.T. (English)/(Hindi)/Social Science."

16. The ratio of the said decision would squarely apply in the present case. In the light of the aforesaid legal position, we do not find any infirmity in the order of the Tribunal and the writ petition is accordingly dismissed. There will be no orders as to costs.


SANJIV KHANNA, J.


NAJMI WAZIRI, J.

MARCH 03, 2016/acm